European Commission public consultation on the review of the MiFID II/MiFIR regulatory framework

ATHEXGroup Response

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

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

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

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

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

MiFID introduced more competition in equity markets and MiFID II / MiFIR was aiming to increase transparency and to ensure level playing field – competing venues, carrying out the same activity, should be regulated in the same way. This was important not only to ensure fair competition but also for investor protection, legal clarity and market integrity. However, the new set of rules allowed for a proliferation of systematic internalisers (SIs) on an unlevel playing field to the detriment of the price formation process. This increased market fragmentation and did not improve transparency. As a result, the share of price forming lit trading activity has gone down in the detriment of issuers and investors.

Periods of crisis like the current one caused by Covid-19 are showing us that, at the times of high uncertainty, trading volumes go to the Regulated Market (as a safe, transparent and robust trading venue), instead of being conducted through bank or anonymous execution venues. At times of uncertainty, transparency is highly appreciated by all market participants, as this is what provides financial stability, integrity and fairness. This event (which was also witnessed after the 11th September or the Lehman Brothers' crash in 2008) shows the high value of transparent trading versus dark or less regulated trading. Central banks and governments have reacted swiftly to inject liquidity, but ultimately when solvency is lacking, the transformational capacity of banks can only work to a certain extent. Equity is needed to buffer exogenous shocks.

The need for more equity shows that transparent trading must be preserved and strengthened. An adequate and enforced market structure must ensure enough levels of transparent liquidity for price discovery, that would support companies to be evaluated in a fair and orderly manner. This brings confidence to the shareholders and makes companies less dependent from bank lending. A good functioning of equity secondary markets would also boost primary markets as this could be a knock-on effect for more IPOs.

Exchanges allow companies to raise capital by listing on public markets and afterwards be traded in the marketplace by investors. Europe needs a market architecture that funds the economy in the most inclusive and fair way. One of the key activities of stock exchanges is orchestrating the activity on primary markets, especially for SMEs. This includes education, promotion, marketing of issuers and communication with banks and brokers. Without exchanges' support, there would not be any kind of SME markets in certain EU countries, especially those with not so deep capital markets. This activity is in short and medium run cross-subsidised by other sources of income generated by exchanges. Regulated markets use their income from exchange transaction and market data to support the IPO function and correspondingly allow for the provision of equity to the real economy. Other venues which do not play that role, such as MTFs, SIs and OTC, can free-ride on the primary market function of exchanges as well as the price formation in secondary trading. This is for the detriment of the local economy.

Certain provisions included in MiFID II/MiFIR resulted in unintended consequences and increased the regulatory burden for issuers and investors. For instance, MiFID II has accelerated the reduction in equity research focusing on smaller issuers. Pre-MiFID II, research was supplied as part of a bundled service, paid by execution fees. Research post-MiFID II is required to be unbundled and priced separately from execution of financial instruments. A growing number of SMEs are therefore paying independent research providers to write research and take the initiative in approaching investors directly. However, this is challenging due to potential conflict of interests and a lack of recognition and coverage limitations due to budget constraints. As a result of unbundling rules, fund managers are prevented from accepting research on small companies provided by brokers for free. The rules should be amended to allow brokers to send SME-research reports to fund managers without having to establish a research contract with them.

Lastly, when it comes to derivatives trading, capital markets with deep pools of liquidity across different market segments can act as a strong stabilisation force in times of crisis by diversifying sources of finance. Even more so, the criticality of liquid and transparent markets becomes obvious on risk transfer markets which heavily rely on the liquidity found in Exchange Traded Derivatives (ETDs). In critical market situations, liquidity in bilaterally-traded products does not allow for efficient risk management. This is precisely the time when market participants turn to liquid markets in legally certain environments – the 'flight to quality' principle. Any fundamental and experimental market structure change (such as the MiFIR provisions on 'Non-discriminatory' access for ETDs) should therefore not be implemented unless a quantitative financial stability impact is conducted to carefully assess all possible negative effects on the financial stability and competitiveness of the EU27.

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

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

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

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

We fully agree with the overall aim of MiFID II/MiFIR to increase transparency, foster investor protection and improve the price formation process to the benefit of the economy and society as a whole, but we feel these objectives have not materialised with its implementation.

The analysis on the evolution of the EU equity and non-equity market structure hints to the fact that policy measures to bring trading from dark to lit have not been as successful as had been originally expected. Public equity and non-equity markets with deep pools of high-quality liquidity are a crucial component of healthy ecosystems as well as an important contributor to competitive, transparent and stable EU financial markets. However, ensuring transparency in these markets requires tailored rules that balance the need for enhanced transparency whilst recognising the nuanced working of such markets. Based on this, we believe more needs to be done to ensure the transparency objectives of MiFID II can be fulfilled. We therefore calls for increased reflection on the appropriate application and subsequent enforcement of existing rules.

Transparent trading on exchanges plays a central role in price formation, which contributes to fairer and more efficient markets and lower costs of capital for European companies. Whilst recognising that for larger trades there may be a need for alternative execution methods to negate the potential effects of market impact (see also sections below), price formation and transparency are beneficial to all market users.

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

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

Question 3.1 Please explain your answer to question 3:

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

Yes, impediments have bee observed to effective implementation of some MiFID II/MiFIR rules.

- Flagging of SI trades at an EU level is not done in a consistent manner. Even more than two years after MiFID II got introduced the flagging is very unclear. Therefore, we would urge ESMA to address this issue. A broader implementation of the Market Model Typology (MMT) which currently ensures consistency of exchange data maybe a solution. We think that the extension of the MMT would promote enhancing data consistency and contribute to the increase of regulatory oversight of SI activity. In addition, we believe that ESMA should review how SIs operate by looking more deeply into the transactions they conclude and report. One issue results around riskless trading. Hubs that have the potential to link up SIs and counterparties should be monitored to guarantee that they always work on a bilateral basis, and in case they do operate an internal matching system they must operate an MTF. Such activities must be monitored as there is the risk that trading takes place on a multilateral rather than bilateral basis and hence would be in violation with the legislation.
- MiFID II tick size regime applying to shares, DRs and certain ETFs (RTS 11) is not applied uniformly across trading venues. This situation results from technical issues as well as different understanding of the regulation across national jurisdictions. Because of the complexity of the regime, and the fact that it is based on the FITRS database which still contains errors and where we realise Competent Authorities actually have very limited if no grasp, we need to make daily adjustments to our systems, question regularly information published and spend a significant amount of resources ensuring that all trading venues do apply the same values for the

Average Daily Number of Transactions (ADNT) for the determination of the tick sizes. It is necessary, especially now that in June 2020 at the latest, SIs are also subject to the tick size regime, that ESMA engages with trading venues to take their input and clarifies some points in the interpretation of the regulation at Level 3 and that technical issues are solved as quickly as possible. We would like to underline as well that the non-respect of the tick size regime creates competitive distortion which, even if temporary, shall be avoided.

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

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

Question 4.1 Please explain your answer to question 4:

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

We believe that the level of transparency could still be improved. We appreciate the intention of the Commission to assess the current pre- and post-trade transparency requirements for all financial instruments and would like to propose some measures largely in line with the proposals currently made by ESMA.

- With regard to ETFs, we should follow ESMA's proposal, as outlined in its recent consultation paper on transparency regime for equity instruments, to increase the pre-trade LIS threshold for ETFs to 5m EUR as the current level is too low. Additionally, we would urge ESMA to complement this measure with additional steps to further promote transparency for on-venue trading of ETFs.
- Regarding post-trade transparency, we would generally agree with ESMA's proposal to increase the applicable deferred publication threshold to align the proportion of deferred transactions more closely with equities. We would also request real-time publication for transactions that are below 20m EUR.
- With regard to shares and DRs, we would generally agree with the principle of deferral of publication for large transactions and would also not see any reason to amend the current conditions for deferred publications for those instruments. The analysis conducted by ESMA in its consultation paper shows that only a very small portion of trades benefits from deferred publication, justified by their large size; this means that the deferral regime as currently defined has delivered on its objectives to protect large trades while maintaining a high level of transparency.
- Concerning OTC transactions for equities and equity-like instruments, we agrees with ESMA's conclusion on the level of post-trade transparency and that there is no reason for different thresholds for OTC and on-venue transactions. Rather, we are of the view that trading OTC does not mean that post-trade transparency shall be minimal. In general, we believe that OTC transactions, hence in the case of shares,

exemptions to the share trading obligation (STO), shall reach the same level of quality in post-trade data than transactions executed on executions venues; this appears as well necessary to monitor the correct application of Art. 23 MiFIR and its exemptions.

- With regard to publishing post-trade information in general, we believe that a 1-minute delay is not sensible for electronic order book systems and fully supports the ESMA Q&As from October 2017 stating that transactions should be published 'as close to real time as technically possible'. Please note that in such cases the time stamps for trading venues and other execution venues should be aligned in RTS 1 / RTS 2, as currently requirements differ (e.g. milliseconds vs. seconds). These differences have as well a detrimental effect on any data aggregation. Hence, for electronic order book systems, we consider that the maximum timeframe to disclose post-trade data should be aligned with the ones of trading venues – we do indeed understand that manual/high touch systems found it challenging to adjust to this 1-minute delay. We also believe that the maximum delay should be equal for all execution venues including SIs.
- Furthermore, we believe that only large orders for equity and equity-like instruments may be exempt from pre-trade transparency requirements. Pre-trade transparency leads to a more efficient price formation process by distributing price signals more rapidly to the market. Hence, all standard orders that are below LIS compared to the normal market size, and for which the necessary liquidity is available on a trading venue, should be subject to full transparency requirements.
- When it comes to pre-trade transparency requirements for SIs the current minimum quoting size of 10% of the SMS is too low. Instead, they should quote at a minimum 10,000 EUR on each side. We believe that an extension of the transparency obligation for SIs to illiquid instruments would be an effective way to improve market transparency.
- In addition, due to a significant shift of trading volumes in ETFs from lit order book trading systems to RFQ trading systems following the introduction of MiFID II/MiFIR, we suggest considering implementing a pre-trade transparency regime for RFQ trading systems similar to that for lit order book trading systems. This would require the publication and dissemination of each quote submitted in response to a sub-LIS RFQ immediately after the reception of the quote by the RFQ trading system.

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

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

Question 5.1 Please explain your answer to question 5:

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

We do not think that MiFID II/MiFIR has levelled the playing field between trading venues and SIs in the equities and equity-like space. Although broker crossing networks were banned with the introduction of MiFID II/MiFIR, the rules for the SI regime were only slightly modified, meaning that SIs are still at a competitive advantage compared to trading venues (see also our responses to Q25 and Q26). Indeed, when it comes to pre-trade transparency requirements the current minimum quoting size of 10% of the SMS is very low. The threshold only increased by 250 EUR to 1,000 EUR compared to MiFID I, which effectively is meaningless to increase transparency. When it comes to the instruments in scope, currently all illiquid instruments are excluded from any pre-trade transparency requirement for SIs. To the contrary, illiquid instruments are in scope for pre-trade transparency for all trading venues unless a waiver from pre-trade transparency is used. We believe that an extension of the transparency obligation for SIs to illiquid instruments would be an effective way to improve market transparency and level the playing field between on-venue and SI trading. We are not of the view that such new requirements would be overly burdensome for SIs rather they would effectively foster lit trading and overall transparency.

Furthermore, we believe that ESMA should review how SIs operate by looking more deeply into the transactions they conclude and report, e.g. riskless trading. Moreover, there does not seem to be any specific details of the operation of the business model required. This is in contrast with what MTFs and Regulated Markets need to fulfil. Hence, we suggest establishing a level-playing field as regards the description of the business model and how regulatory compliance is maintained. In addition, we notice that there is no level-playing field with regard to flagging of SI trades at an EU level. After more than two years after MiFID II was introduced, the flagging remains very unclear and inconsistent. This could be solved thanks to a broader implementation of the Market Model Typology (MMT) which currently ensures consistency of exchange data as highlighted in Q3.1. We however believe that the most effective way to address the shortcomings of the SI regime (inconsistent flagging of trades, the question of riskless principal trading being based on a bilateral relationship) and create a level-playing field would be to restrict SI activity to trading above LIS only. We believe that such restrictions to the SI regime are necessary in order to increase transparency as well as price formation and promote a level playing field between trading venues and SIs. Above LIS trading would thereby constitute a legitimate dark space in which trades across bilateral execution venues and multilateral trading venues are not subject to pre-trade transparency and would benefit from delayed post-trade transparency.

We also see an unlevel playing field between SIs and multilateral venues active in non-equity instruments. Bonds and securitised derivatives trading are still opaque and there was no increase in transparency triggered by MiFID II compared to MiFID I. This is in particular the case for SI trading where there is seemingly no pre- and post-trade transparency available. Transparency is established by SIs via proprietary means, via their websites, via ECN-like networks or has not to be established at all (for illiquid bonds).

For bonds and securitised derivatives, we would recommend using the 100,000 EUR denomination threshold to delineate lit (RM, MTF and OTF) trading from dark (OTC and SI) trading. Prohibiting trades in instruments with denominations below 100,000 EUR to be executed via SIs could trigger a shift of (retail) bond trading to lit venues (RMs, MTFs and OTFs) compared to the current market structure where the major part of bond trades are executed in the dark ((1) OTC between banks or (2) between retailers and SIs). Trading at and below the 100,000 EUR threshold on transparent multilateral venues would reduce market fragmentation and increase liquidity and pre- and post-trade transparency, in particular for retail investors. We suggest that this level applies to both non-liquid and liquid products. The delimitation based on the 100,000 EUR denomination threshold would be consistent with the threshold used for the wholesale disclosure regime defined by the Prospectus Regulation. Furthermore, this threshold would also be in line with the one currently used for the calculations to determine whether a bond is liquid or not. For securitised derivatives, this delimitation would simplify the fragmented execution landscape. We expect that investors – especially retail investors – would profit from the change as it would allow for a better interaction on multilateral markets.

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

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

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

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

We believe that point 1 of Art. 4 of the PRIIPs Regulation (Regulation 1286/2014), which defines the scope of the regulation, is not sufficiently precise in order to unambiguously assess whether a product qualifies as a packaged retail investment product ("PRIIP"). This has led to uncertainty regarding bonds and to potentially the false inclusion of classic corporate and bank bonds into the scope of the regulation.

Current interpretation of the PRIIPs Regulation by regulators and the market results in the inclusion of

- Corporate and bank bonds with a call option for the issuer where the amount to be paid back is not fixed but is depending on parameters defined in the prospectus, and
- Corporate and bank bonds with a floor or a cap for the variable coupon.

Consequently, these bonds cannot be accessed by retail investors unless the issuer of the bond publishes a KID. As a result, European retailers are not able to invest in about 50% of the corporate bonds market.

Question 6.1 Please explain your answer to question 6:

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

We believe that the scope of the regulation has led to uncertainty and to negative consequences for the functioning of financial markets and affected access by retail investors as well as the liquidity of these markets.

We also observed that the number and overall volume of low denomination issuances by non-financial corporates decreased, while at the same time retail investors faced difficulties to trade corporate and bank bonds (for further detail, please see the position paper provided by FESE of 17 September 2019, https://fese.eu/app/uploads/2019/09/190917-PRIIPs-Regulation-Impact-on-retail-investors-access-to-corporate-bonds.pdf).

Therefore, we ask regulators for more guidance and clear criteria, whether a bond should be classified as PRIIP and if classic bonds at all should be defined as PRIIP. Therefore, we propose to assign the ESAs the competence to define such criteria via a change of the Level 1 text to foster a uniform application of the regulation.

When defining the scope of the PRIIPS regulation for bonds ESA should consider the following:

- Objective of the PRIIPS regulation is to cover products “manufactured” by the “Financial Services Industry” to provide investment opportunities to retail investors (recital 6 of PRIIPS regulation). Issuers like Apple, Amazon, Daimler or Bayer cannot be considered as part of the financial services industry. Therefore, we conclude that bond issues of these firms cannot be in scope of the PRIIPS regulation. Recital 6 of the PRIIPS regulation states: “PRIIPS are defined as products where the amount repayable to the retail investor is subject to fluctuation because of exposure to reference values, or subject to the performance of one or more assets which are not directly purchased by the retail investor. For all those products, investments are not of the direct kind that is achieved when buying or holding assets themselves. Instead these products intercede between the retail investor and the markets through a process of packaging or wrapping together assets so as to create different exposures, provide different product features, or achieve different cost structures as compared with a direct holding.” Additionally, recital 7 of the PRIIPS regulation states: “Assets that are held directly, such as corporate shares or sovereign bonds, are not PRIIPs, and should therefore be excluded from the scope of this Regulation”.
- Considering recital 6 and 7 the regulation clearly excludes “classic” bonds from the PRIIPS regulation as no service provider “intercedes” between the retail investor and the issuer of a bond. “Classic” bonds are clearly held directly by retail investors. There is no differentiation possible between a sovereign bond held by a retail investor or a classic bank or corporate bond held by a retail investor. Corporations and banks lend money from investors (including retail investors) using classic bonds to finance their undertakings as do states to finance their infrastructure or welfare.

PART ONE: PRIORITY AREAS FOR REVIEW

I. The establishment of an EU consolidated tape

CTP – Part 1 (Current state of play)

1.1. <u>Reasons why the CTP has not emerged</u>

Q7: What are in your view the reasons why an EU consolidated tape has not yet emerged?

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

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

- We believe that **difficulties in identifying a valid regulatory use case** is the main reason as to why an EU consolidated tape, as defined by MiFID II/MiFIR, has not yet emerged.
- Furthermore, the viability and potential attractiveness of a CT ultimately depends on the **non-existence of a valid business case**.

- The **impact of the UK's departure from the EU** must also be factored into the assessment.

In our view, the creation of a "tape of record" would represent a more cost-effective solution, avoid latency issues and deliver clear value to the market and investors: notably, a means for them to analyse execution quality.

Q7.1: Please explain your answers to question 7

In our view, **the creation of a «tape of record» would represent a more cost-effective solution**, **avoid latency issues** and **deliver clear value to the market and investors**: notably, a means for them to analyse execution quality.

In contrast, the case for a real-time CTP is weak due to:

- **Lack of business case**. If a business case existed to develop a CTP within EU (as currently provided for in the legislation) it would have emerged from an existing market data vendor or even a new entrant. However, it has not. We attribute this to the lack of a use case, compounded by poor data quality from non-exchange venues. A convincing use case is particularly important to ensure that the tape does not add cost to the industry (i.e. infrastructure and maintenance costs) without any clear benefits, which would make it a disproportionate intervention.
- **Increased initial/on-going costs & uncertain take-up from users**. A real-time consolidated tape will create of lot of costs for market users and trading venues. Several market participants (namely some brokers and sell-side firms) have voiced concerns in this respect. In such a scenario, it is worth asking whether a real-time CT would lead to important costs for little benefit. This will be the case if the use case for the tape is not compelling. The implementation of data disaggregation constitutes an instructive precedent in that regard, with significant implementation costs for infrastructures and additional complexity in terms of managing data, and a non-existing take-up by end users.
- **The impact of the UK's departure** from the EU must also be factored into the assessment. In our view, the relevance of a CT without UK data is questionable. It is difficult to conceive mechanisms to include UK data, notably via voluntary mechanisms, post Brexit. As such, the value of an EU27 CT, particularly real-time, would be weakened.
- **Not justified and clearly uneven demand.** Looking at the current use of market data, the benefit of the tape and its potential use cases remains unclear especially considering the fact that different firms have different needs. Indeed, smaller/regional firms focusing on a subset of the EU market will not have a use for all the data contained in the EU CT and would need to filter out the data that is relevant for them. Filtering the EU CT will be costly and add latency, meaning that such firms would be better off using their current market data solutions rather than the EU CT. Bigger firms may also see a benefit in continued use of their current market data solutions that allow them to access individual trading venues and execution mechanisms with ultralow latency, to execute at the best prices available on the various execution venues and mechanisms.
- **Issues of data quality.** A pre-condition for any reliable CT is the improvement of off-venue data quality as well as coverage of all execution venues. The main underlying issue for the absence of a commercial EU tape is the lack of quality of data reported by SIs and OTC operators, and the reluctance of data vendors to aggregate such inferior data with highly reliable data as, if they were doing so, the full set of data would become unreliable. However, data vendors provide quasi-consolidated tapes already

today even if, they are not yet fully comprehensive due to such data quality issues. In addition, MIFID II/MiFIR does not provide specific information on the role and purpose of a CTP which is also one of the reasons that no CTP has yet emerged across the vendor community.

In order to improve off-venue data quality we are positive, amongst other improvements, to implement the Market Model Typology (MMT) across all trading venues and execution mechanisms, as well as OTC trades. It can be observed that the quality, reliability and consistency of flagging of SI and OTC trades is currently the biggest issue preventing transparency. Indeed, incorrect classification and flagging of transactions is widespread.

If data quality, consistency and reliability of SI and OTC data is improved, data vendors will be in a position to consolidate the full range of data on existing trading venues and execution mechanisms thus providing full transparency in the European space.

Q8: Should an EU consolidated tape be mandated under a new dedicated legal framework, what parts of the current consolidated tape framework (Article 65 of MiFID II and the relevant technical standards (Regulation (EU) 2017/571)) would you consider appropriate to incorporate in the future consolidated framework?

Please explain your answer

We do not support the introduction of a pre-trade CTP; such a CTP would add yet additional costs to the industry and lack a clear use case.

The creation of a **"tape of record"** (TOR) would be more appropriate and is more likely to meet market participants' needs than a "as close to real-time" tape as currently provided in MiFID II. While several market participants are calling for a real-time tape, the cost of providing it (e.g. infrastructure cost and maintenance cost) and its inherent latency especially in case of pre-trade data - puts a viable use case into question. A tape of record would represent a more cost-effective solution, have no latency issues and deliver clear value to the market and investors: notably, a means for them to analyse execution quality or use the data for valuation purposes. This option would however, require an amendment to MiFID II.

We would strongly caution against amending the current CT framework to include pre-trade data.

In light of the challenges outlined in questions 7 and 7.1, we believe that TOR would be a sensible and an attractive alternative to what is provided for by the current consolidated tape framework. Such a tape of record would consolidate and disseminate the details of all transactions that have taken place in these markets during the trading session, including closing prices.

These details would include, among others: the hour, price and volume of each individual transaction. This information is very useful for investors as it allows them to analyse the performance of each instrument during the trading session and carry out compliance checks. Importantly, it would allow for the assessment of execution quality. Data could also be used from predictive analytics on liquidity developments in different trading venues and the market (this is already applied by serval Service Providers as of today), identification of liquidity risks, end of day pricing used to calculate Net Asset Valuation for mutual funds and ETFs, and other.

The advantages of a tape of record versus a real-time CT are the following:

- Information already available: this information is already being generated by trading and execution venues under MiFIR.
- Infrastructure cost: this information is already generated in plain text files, allowing end users to easily process the contents. The CTP would be able to receive, process and disseminate the information without having to make a large investment in IT infrastructure;
- Maintenance cost: the cost of maintaining an IT infrastructure that receives and processes plain text files once a day is a small fraction of the cost of an IT infrastructure that has to receive, process and disseminate information via data feeds on a real-time / delayed basis;
- Compliance checks: the information consolidated by the tape of record may include additional information compared to a real-time / delayed CT (e.g. block trades information, amendments and cancelations, etc.);
- No latency issues: the latency issues would be non-existent given that the information is not provided real-time.

We would strongly caution against amending the current CT framework to include pre-trade data (see also answer to 15.1).

If a real-time CT is ultimately mandated under a new dedicated legal framework, we consider that in this scenario the following parts of the current consolidate tape framework should be maintained:

- Article 65 1.-5
- Article 8 a), b) and e)

We do not consider Art 65 8. c) to be key as there is agreement that a CT should include all instruments from all sources and as such provide a 100% view of the market including off-venue information. Any CT must reflect 100% of activity per asset class. A large portion of transactions in the EU takes place outside of transparent exchanges with asset classes such as ETFs or Fixed Income predominantly traded off-venue. In order to get a full picture of the market and the liquidity of such instruments, there is a need to include all data sources. In the case of ETFs, it is possible to count approximately 46 data sources, compared to 150 data sources reported by ESMA for cash equities and at least half of those data sources are categorized as off-venue data.

We do not consider that Art 65 8. d) of the current consolidated tape framework should be incorporated into a potential future consolidated tape framework. The reason for this is that the model of Competing Tapes for single asset classes (to be newly set-up) would increase the cost for the industry and lead to a sub-optimal outcome.

As regards Art 65 1. FESE would like to point out that use of the tape by market participants is key. An analysis should be conducted to ensure that market participants will purchase and use the tape.

We believe that the relevant technical standards (Regulation (EU) 2017/571) should apply with a few adjustments to the following articles:

- Art 14: Machine readability should not apply to “free of charge and publicly available”;
- Art 15: While a 6 months onboarding period for a new venue is prescribed in Art 15, no time limited for onboarding of new instruments from already contributing venues to the CT is set. We proposes to mandate the onboarding of new instruments from contributing venues to into a CT to take no longer than 30 days.

1.2. Availability and price of market data

Q9: Do you agree with the above targeted amendments recommended by ESMA to address market data concerns? Please explain your answer

We generally consider that Capital Markets Regulation is not the right place to review the pricing of market data by Trading Venues as it would turn financial markets' supervisors into price regulators. Competition authorities, rather than financial supervisory authorities, are better suited for ensuring that pricing policies are set up on a "reasonable commercial basis", if there is such an issue.

ESMA mandate to specify the content, format and terminology of RCB information

ATHEX along with other Exchanges members of FESE intend to make pricing schedules easier and more comparable for customers, where possible. Especially for ATHEX, due to the market size/number of assets/instruments, the pricing policy is straight-forward and easy to apply. Nevertheless, we participate in the work that FESE is currently conducting to make MIFID RCB disclosures more comparable across exchanges. This work is conducted under legal counsel as work on contacts falls under competition law. The initiative also covers terminology and categories used in market data agreements to examine whether further harmonisation could reduce complexity for users taking data from many trading venues. In parallel, a number of exchanges have also proactively reached out to market participants to discuss the main sources of complexity and where harmonisation is needed the most.

Deletion of articles allowing to charge for market data according to value

We cannot support, however, ESMA's suggestion to delete Article 86(2) of CDR 2017/565 and Article 8(2) of CDR 2017/567 allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the data represents to users.

Article 8(2) of CDR 2017/567 currently allows for differentiation in prices charged to different pre-defined categories (e.g. retail vs professional) of customers taking into account the value which the market data represents to those customers. Not allowing a differentiation between customer groups would make the suggested regulatory intervention disproportionate, discriminatory and would in fact distort competition between venues / business entities.

We are concerned as well about the impact such a measure would have on private investors and smaller market participants, as well as (smaller) exchanges:

1) If private investors are required to pay the same fees as a Legal Entity / Professional Investor, the price would, with reason, be considered to be too high for private investors.
2) If professional investors / legal entity - for NDIU - only pay the fee applicable to private investors, exchanges risk being severely undermined and would not be able to cover the costs of producing and disseminating market data. This is especially true in smaller capital markets – like Greece – where the number and hence the demand from professional investors is limited vis-à-vis retail investors.
3) There is also concern that retail investors and smaller firms may, ultimately, indirectly end up financially supporting the market data needs of major international firms in such a scenario.

Furthermore, competition law precedents recognise that product differentiation is reflective of competition on the market and that even dominant undertakings (which exchanges are not) can apply different commercial conditions to their customers (and are even required to do so if there are different objective circumstances).

Communication of costs and margins to NCAs

We are willing to provide some information on our cost base or how prices were set to our regulator where this is warranted and appropriate, as long as information is not shared with the market at large. Any Level 2 measures specifying the frequency, content and format of information provided should respect the heterogeneity of exchange business models and take account of the diversity of commercial models. However, weregret that while a majority of stakeholders agree price regulation is not the right way forward, some of the proposals put forward by ESMA (e.g. defining a typology of eligible costs when setting market data fees) come very close to regulating prices.

When considering ESMA's recommendations, it is important that regulators and policymakers acknowledge that commercial appetite for market data also exists. Indeed, a number of entities use data provided by exchanges on a non-discriminatory basis to run commercially rewarding business models. Alternative trading venues benefit substantially from exchange data.

1.3. Use cases for a consolidated tape

Q10: What do you consider to be the use cases for an EU consolidated tape

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

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

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

The main use case that we see is to control execution quality obtained by investors on their orders. This is done based on **transactions (post-trade data) and closing prices of all assets.** We note as indicated above that the cost to the industry of a pre-trade tape would outweigh any advantages, as due to latency it will not be possible to fairly trade on such a tape i.e. it will not be possible to route orders to a best price because due to latency the "best price" while visible on the CT will in the vast majority of cases either not be accessible (no connection to 170+ venues) or not be available anymore, as firms directly connected to venues will trade on that price before it is reflected on the tape.

Q10.1: Please explain your answers to question 10 and also indicate to what extent the use cases would benefit from a CT:

None of the above represents a regulatory driven use case and would add that any of the above listed use cases could be satisfied by the following:

- By using the data provided by those venues to which the investment firms have commercial ties to (e.g. is a member customer, etc.)
- Any of the above listed cases are standard commercial use cases for aggregated data already, not specific to a regulatory use case.

What is currently missing for a fully comprehensive aggregation by Market data vendors is quality of off-venue data. Quality of off-venue data needs to be improved first in order to allow for a reliable full consolidation of data.

We are sceptical regarding a real-time tape being used to ensure and document best execution under MiFID II/MiFIR, as no need exists to verify best execution against all venues within the EU. Indeed, only those venues to which the execution broker has established trading ties form part of the best execution requirements/policy. It would seem difficult to document best execution when indeed it has not been achieved taking 170+ venues into consideration, while it would have been achieved, taking those venues in consideration which form part of the best execution policy and at which transactions indeed can be executed. If the CT only exists for SIs and OTC to execute within the spread of transparent trading venues in an even more systematic way, this creates market structure issues including the question of fair or unfair competition in the EU between trading venues and alternative trading mechanisms to the detriment of transparent markets.

Moreover, it is misguided to imagine that a tape could be of use to regulators for the purposes of monitoring cross-market activity. By nature, the consolidated tape will solely disseminate anonymous public data and is consequently not suitable for market surveillance or regulatory audit trail purposes which by nature also include information about the executing party or even Algo. The data needed this type of activity is much more granular in nature and must be based on transaction reporting and order record keeping data.

MiFID II/R requirements have increased operating costs for exchanges and market participants alike, including exchange operating costs relating to producing and administering market data. Therefore, it remains unclear how a consolidated tape would actually be able to lower the price for market data.

- For instance, changes brought in by MiFID II/R such as the separation of pre and post trade data and the creation of several different data packages which add to the complexities of providing MiFID II/R-compliant market data access and policy for market participants. This leads to increased administrative costs for the industry, including exchanges.
- Additionally, RTS 14 mandates that exchanges provide data in disaggregation upon request. *"The market operator or investment firm operating a trading venue shall apply the criteria referred to in paragraphs 1 and 2 in any combination upon request."* Therefore, exchanges have to enhance their market data environments to handle any number of different potential outcomes in order to able to respond to any disaggregated data request, although the actual demand for disaggregated data by market participants has been very limited.
- Further, exchanges also have to create public pre and post data machine-readable files. Again, the creation and continued maintenance of these mandated offerings create additional costs for the exchanges. However, the demand for public pre and post data machine-readable files is almost non-existent.

CTP – Part 2 (General features of a CTP)

Q11: Which of the following features, as described above, do you consider important for the creation of an EU consolidated tape?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
High level of data quality					x	
Mandatory contributions					x	
Mandatory consumption					x	
Full coverage					x	
Very high coverage (not lower than 90% of the market)	x					

Real-time (minimum standards on latency)	x					
The existence of an order protection rule	x					
Single provider per asset class					x	
Strong governance framework					x	
Other					x	

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

The identification of an appropriate and feasible regulatory use case (and a clear definition of this in the regulation) is particularly important to ensure that the tape does not add cost (i.e. infrastructure and maintenance costs) to the industry without any clear benefits, which would make it a disproportionate and discriminatory intervention by regulators. As outlined in response to question 10, we are concerned that most of the tape use cases currently envisaged have been thoroughly checked and thought through. A consolidated tape is not a silver bullet and will not, by itself, remedy current shortcomings in the EU market structure which are detrimental to investors and capital raising by companies.

The importance of protecting the quality of the price formation process and the role that lit markets play in delivering the CMU should be at the forefront of the CTP debate. There is a risk that the creation of a CTP will have negative consequences (e.g. high cost for the industry without any clear additional benefit and affect Exchanges' ability to continue to deliver high quality price formation for all EU market participants) to the detriment of investors and robust capital markets as well as the objective of the CMU. The price formation process carried out by Exchanges is highly beneficial to the well-functioning of transparent EU capital markets. This crucial price formation process should be fully acknowledged, preserved and fostered. In short, market data and market structure questions should be looked at together. If the CTP does not take into account the investments made by exchanges in the production of high quality price data, MTFs or SI's will be able to use the data to run their own, lucrative, business models without having to make any of the investments in price formation/technology/surveillance/compliance. This goes against the overall objective of MiFID II/MiFIR to create a level playing field and could seriously harm the rationale of exchanges' business models.

The specificities and uniqueness of the EU financial markets landscape should also be a primary consideration for the creation of a consolidated tape. It is important to note that the fact that there is a consolidated tape for shares in the US that consolidates both pre- and post-trade data does not in itself validate or justify taking the same approach in Europe. Indeed, whilst existing tapes could, where warranted, offer some inspiration to policymakers, it is nonetheless important to recognise that EU markets are very different to US markets, more fragmented, and it is therefore not possible to assume that the practical experience of the tape in the US presupposes a the success of a tape in the EU. Third country CT models should not simply be replicated as their specificities do not apply to European financial markets. In the US, there are less contributors of data and more consumers thus allowing for economies of scale. In Europe however, there are ten times more potential contributors to a tape as well as important geographic constraints which separate market actors and infrastructures by thousands of kilometres, adding to the latency issues of any CT. It is also worth noting that there is not a single tape in the US, that the CT situation in the US has given rise to front-running, has not reduced the overall market data bill for end users, and is currently under review.

Q11.1. 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.

We would suggest that the Commission should first review the large number of consolidated offerings through third party vendors for exchange data, in order to identify what data is currently not available through such offerings. We believe that the creation of a CT should be guided by

- the lack of transparency in the relevant asset classes
- the possibility to reduce costs in other areas of data consolidation. For example a much more useful contribution to transparency is to create a centralised, golden source of Closing Prices each day in all Trading Venues and for all ISINs, across all assets. That would be used through databases (e.g. such as FIRDS) and provided as source for any interested party. Given the high level of transparency in the equity market, the actual use case for an equity consolidated tape is limited. However, with the high level of fragmentation and lower transparency in the fixed income markets, we recommend that a fixed income consolidated tape be considered ahead of an equity consolidated tape.

High level of data quality is a necessary pre-requisite to the creation of a CTP

First and foremost, the inconsistent trade reporting behaviour of systematic internalisers (SIs) and over-the-counter (OTC) execution venues must be addressed. Guaranteeing high quality, reliable and consistent off-venue data including flagging of SI and OTC trades is key to delivering a CT that can be considered meaningful. Any tape, including the Tape of Record (as proposed by FESE) should be based on good quality data. Without firstly improving off-venue data quality and consistency at the source (i.e. investment firms), an EU CTP will never be in a position to deliver data consistency and quality: the quality of output data generated by a CTP can only be as good as the quality of its input data.

While market data from exchanges is usually 100% reliable, market data originating from SI and OTC trade reporting still lacks quality and consistency.

It is of paramount importance to understand that trading venues produce good data, as well due to the fact that, they have full insight over the order-transaction lifecycle. They therefore have a well-informed view on how to deliver a meaningful and fully compliant market data output that serves transparency and investor protection purposes. Vendors, APAs and for sure a CT operator do not have this insight over the order-transaction lifecycle. They consequently have no mean to assess downstream whether incoming data is good or bad. A CT will not be in a position to improve data quality. Good data can only be produced at the source.

Full coverage is essential

We believe that the coverage of all execution venues is paramount. Having a 100% view of the market – including SIs and OTC – is critical to ensuring that investors can assess execution quality in a comprehensive manner. It would be nonsensical to establish a CT with limited coverage where SIs and OTCs are dispensed from contributing, and lead to the underlying rationale for a tape being deprived of practical significance.

There is therefore a necessity to seriously consider how a CT could go about solving data quality issues that originate from inconsistent trade reporting behaviours at the source and that APAs have been powerless to address. The extension of the MMT to all market participants can contribute to addressing these issues. In order to improve SI and OTC trade reporting, an enforceable user guide on how to use these MMT tools could also be necessary.

Real-time should not be the focus

Overall, we would advise against the creation of a real-time tape. Real-time should not be the focus, a tape of record would be a significantly less complex and costly technical set-up, providing a comprehensive overview of overall liquidity within the EU on an instrument level to verify execution quality.

Strong governance framework is necessary

As underlined by ESMA in its report, a strong governance framework is key for the creation of a CTP. The governance framework should ensure the neutrality of the CT and high-level data quality and transparency.

In particular, Exchanges consider that the current DRSP regime and the minimum set of regulatory requirements should be applied, with strong focus on the avoidance of conflicts of interest, corporate transparency, and strict business continuity management requirements. A strong governance framework must ensure fair and ethical behaviour, as well as a full representation and voting power of data sources within the CTP Board. The board should include neutral representatives (e.g. ESMA) and the Board should be responsible for monitoring the impact of the CT on capital markets and to report on risks and/or benefits to regulators using fact-based evidence and where necessary call on scientific expertise (e.g. impact of latency issues on private and institutional investors).

Revenue sharing model for the CTP

The approach that the Commission is taking may include a suggestion to define a revenue sharing model for the reporting entities based on market share and/or their contribution to the price formation process.

Especially for medium and smaller Exchanges, whose market share in the EU is much lower than that of larger trading vennues, it is not clear whether such policy would be able to create enough demand from users to pay for the increased cost for provision of the feed in accordance to the new requirements.

ATHEX remains sceptical regarding the CTP's ability to play a role in incentivising lit trading, however.

Q12: 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:

The issue of mandatory consumption very much depends on the type of tape that would ultimately emerge. In any case, contributors must be sufficiently compensated for their data and users should contribute to the funding of the CT.

The CT should not be an opportunity for larger providers to maintain or increase their market share. The profit margin from such an exercise should not become a leverage for larger suppliers of data (due to the larger market share) versus smaller suppliers of data who will also have to burden the additional cost. If market participants are not convinced of the added value of a tape and that its purported use cases are not entirely compelling the new EU policy will distort competition among venues and data vendors.

Q13: 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):

Whilst a tape can help to analyse execution quality, it is misguided to affirm that a tape can be used to verify and ensure best execution since under the MiFID II best execution obligations, investment firms have to take into account a range of criteria in addition to price (e.g. costs, speed, likelihood of execution, and always external transaction cost). Furthermore, making the CT the best execution benchmark would not work from a broker perspective and would not offer an adequate representation of liquidity available to each broker due to lack of full interconnectivity between all venues in the EU (as opposed to US) and the fact that not all brokers offer execution to all venues. Eventually, it will create increased competition between smaller and regional brokers to pan-EU brokers.

Furthermore, significant technological hurdles increasing with number of venues to be consolidated mean that the tape would most likely distort the reality meaning that users would not be able to determine in real-time which order transactions truly occur. The upper limit on the speed with which information can flow is set by the speed of light. This has large implications for any rules that are based on prices at a given time and means that two observers in two different locations can simultaneously observe two different “best” prices. Also, depending on where the servers of the matching engine are situated, two different participants in exactly the same market can simultaneously observe two different “best” prices.

The argument that best execution will be a benefit of a real-time pre-trade consolidated tape does not take into account the fragmented nature of the European market structure and is wide geographical footprint, as opposed to the US.

Enforcing best execution on the basis of a European Best Bid and Offer (EBBO) carried by a real-time pre-trade tape would be **an oversimplification of the market and create a flawed, easily gameable benchmark that would ultimately be harmful to investors**. When a tape is used as the reference price for best execution, it creates an environment ripe for gaming at the expense of investors.

This is because best execution is only a local reality, true at one moment, for one specific location where the Smart Order Router (SOR) of the broker is located. Geographical spread and consequently latency considerations will mean that two observers in two different locations can **simultaneously observe two different "best" prices**. This renders the use of a unique EBBO as an ex ante or ex-post benchmark to ensure best execution misleading at best.

In addition, research demonstrates that liquidity displayed by trading venues in the order book is not always accessible because of **"ghost" liquidity** provided by certain types of market participants[1]. The emergence of a real-time pre-trade tape promoting a "visible" EBBO would give market participants the **illusion of achieving best execution**, while in fact creating an environment where ghost liquidity and latency arbitrage could easily be exploited by the most technology-savvy market participants.

As previously stated, each Smart Order Router has its own EBBO subject to its geographical location. The concept of a pan-European EBBO, carried by the tape and presented as "true" for every market participant, could in that case be used as a misleading execution benchmark at the expense of less sophisticated investors. **The tape would create a false sense of comfort amongst investors that best execution was achieved, reducing vigilance on execution quality, while in fact their orders would have been arbitraged.** This would be rendered even worse were the tape's EBBO be used as a reference price for Systematic Internalisers (SIs) and dark pools as it would weaken the price formation process on lit markets while creating significant arbitrage opportunities.

Q14: Do you agree with the following features in relation to the provision, governance and funding of the CTP?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
The CT should be funded on the basis of user fees					x	
Fees should be differentiated according to type of use					x	
Revenue should be redistributed among contributing venues					x	

[1] DEGRYSE, Hans, DE WINNE, Rudy, GRESSE, Carole, *et al*. *High frequency trading and ghost liquidity*, 2018

In redistributing revenue, price- forming trades should be compensated at a higher rate than other trades					x	
The position of CTP should be put up for tender every 5-7 years			x			
Other					x	-

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

A valid commercial use case is a pre-requisite for the funding of the CT. We would caution against pursuing the CT project in the absence of a clear business case.

Also, we would caution that the revenue distribution should not create a distortion or opening of the gap in market share between larger ans smaller venues.

Q14.1: 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):

Exchanges believe that mandatory consumption together with mandatory payment by each market participant would be necessary for the establishment and operations of a CT since it would ensure funding and revenues to the CT. However, in order to ensure that the CT does not only add costs to the industry overall, the CT must deliver on a regulatory use case as well. When reflecting upon the overall funding structure, mandatory tape fees should reflect the number of data sources and the data fees of the respective data sources plus operational charges for the tape provider. It is important to underline that in the event of an EU CT, the number of data sources would be significantly higher than the number of contributors to the tapes in the US. For this reason, the tape fees that exist in the US can neither be compared nor be used as a benchmark for tape fees in the EU, since they would not reflect the make-up of capital markets in Europe and would misrepresent the number of data sources, as well as the number of data users, in the EU. Exchanges also wish to underline that the sum of the fees of an EU tape should not also be compared to the US market since markets in the EU are more fragmented than the US market, which means that the costs of producing and disseminating market data are higher as there are less economies of scale.

The Tape of Record – as a viable alternative in the current regulatory setting, provided that it offers 100% coverage of all execution venues (including SIs and OTC), would provide substantial additional transparency at EU level, at comparably low cost.

A feasible and workable CT model would have to charge for the provision of consolidated data and redistribute a meaningful part of the revenues to the contributing entities, reference price forming venues especially. Contributors cannot be asked to contribute data for no or very limited fees, as this would be a disincentive to investing and operating transparent markets.

The funding model should be aligned with the overall objective of MiFID II providing incentives to trade lit as opposed to dark and therefore reward price forming venues.

CTP – Part 3 (Scope of the consolidated tape)

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

Q15: For which asset classes do you consider than an EU consolidated tape should be created?

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

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

We would suggest that the European Commission to review the large number of consolidated offerings through third party vendors for exchange data, in order to identify what data is currently not available through such offerings. Given the high level of transparency in the equity market, the actual use case for an equity consolidated tape remains unclear.

However, with the high level of fragmentation and lower transparency in the fixed income and ETF markets, we recommend that fixed income and ETF consolidated tapes be considered ahead of an equity consolidated tape.

Q15.1: Please explain your answers to question 15:

We would like to argue that misguidedly attempting to develop a tape for pre-trade data in Europe would raise a number of issues and is therefore not advisable nor reasonable.

A real-time pre-trade tape would - far from providing a consolidated view of European liquidity - **only advertise a misleading and illusory sense of liquidity** as:

- Pre-trade transparency is **only available for lit market** and a very limited portion of systematic internaliser business and will therefore not offer a complete view of liquidity in the market. Indeed, the **majority of SI trading will most likely not appear** in a pre-trade tape, unless regulation would be changed.
- The liquidity displayed on a pre-tape would **not be accessible to all market participants in the same way** since a broker will only be able to access liquidity on the venues or SIs to which he is technically and commercially connected for execution. The tape would therefore create a false sense of liquidity and options for investors. Executions that smaller/regional brokers will be able to provide will not be in line with the tape. Ultimately, the view provided by the tape would be one of ghost liquidity, or illusory liquidity. This has the potential to harm the market by creating a two-tier market structure between retail and professional users, potentially generating arbitrage opportunities and front running. In such a scenario, retail investors would systematically not get the best price since the best price would automatically be taken by those having latency solutions that surpass what is provided by the tape. Thirdly, due to latency issues, an order or quote shown on the tape will likely have disappeared or changed by the time it is displayed on the tape. This would, in many ways, be similar to situations where airline price comparison websites systematically advertise promotions or low fares, which prove to be “not available or sold out” each time a client tries to book the fare on the airline website.
- While conceptually appealing, the concept of a universal truth of visible liquidity **does not take into account the geographical and technical realities of European markets**. In effect, each trader has a specific view of the visible liquidity depending on its physical location. The liquidity displayed by a real-time pre-trade tape would therefore be illusory liquidity for most, and only true for a specific set of traders close to the CT provider and leveraging the same technologies.

In addition, as mentioned in our response to Question 13, enforcing best execution on the basis of a European Best Bid and Offer (EBBO) carried by a real-time pre-trade tape would be **an oversimplification of the market and create a flawed, easily gameable benchmark that would ultimately be harmful to investors**.

It is also misguided to imagine that a pre-trade tape could be of use to regulators for the purposes of monitoring cross-market activity. By nature, the consolidated tape will only publish anonymous data targeted at the public and is consequently not suitable for regulatory audit trail purposes. Data needed for regulators to monitor cross-market activity is much more granular in nature and is based on transaction or position reporting and order record keeping data. A public consolidated tape solely disseminates public data.

There are also a number of misconceptions in terms of what is technologically feasible in relation to a pre-trade tape. Significant technological hurdles mean that the tape would not be useful for trading and/or for best execution since the tape would most likely distort the reality meaning that users may not be able to determine in which order transactions truly occur. The speed of light provides an upper limit on the speed with which information can flow. This has large implications for any rules that are based on prices at a given time and means that two observers in two different locations can simultaneously observe two different "best" prices. Similarly, the inherent limits to the precision of time measurement mean that there will be an irreducible uncertainty as to when particular events occurred.[2]

The fact that there is a consolidated tape for shares in the US that consolidates both pre- and post-trade data does not in itself validate or justify taking the same approach in Europe. It is important to recognise EU markets are very different to US markets, more fragmented, and it is therefore not possible to assume that the practical experience of the tape in the US can be transposed and result in a success of the tape in the EU. Third country CT models should not simply be replicated as their specificities do not apply to European financial markets. In the US, there are less contributors of data and more consumers thus allowing for economies of scale. In Europe however, there are more contributors to a tape (170+ in EU compared to 17 in the US) as well as important geographic constraints which separate market actors and infrastructures by thousands of kilometres.

Overall, ATHEX, would advise against the creation of a pre-trade tape and reiterate that a "Tape of Record" would be a significantly less complex and costly technical set-up, providing a comprehensive overview of overall liquidity within the EU on an instrument level to verify execution quality. In any case, a pre-condition for a reliable CT is an improvement of off-venue data quality, covering all execution venues which would best meet the needs of users and the market.

Q16: 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:

We consider that a CTP with full coverage (100% of the market) to be the only option when providing transparency via a CTP. This refers to all data sources, be it RMs, MTFs, APAs or SIs. As regards data fields, we refer to the information as lined out under Article 65 MiFID II. The information consolidated by the tape should be identical to the post-trade transparency publication requirements of trading venues and APAs. We do not recommend to add any additional requirements beyond what is already required by the regulation.

Non-addressable liquidity as defined under MiFIR/MiFIR II should also be displayed but should be flagged accordingly. MMT should be used by any data source to ensure harmonised flagging.

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[2] Angel, J.J, 2014. When Finance Meets Physics: The Impact of the Speed of Light on Financial Markets and their Regulation, *The Financial Review, May 2014, Volume 49, No. 2,* 1.202.687.3765

3.2. The official list of financial instruments in scope of the CT

Shares

Q17: What shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

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

Please specify what other shares should in your view be included in the Official List of shares defining the scope of the EU consolidated tape?

We would underline that the use case of the CT should ultimately determine what shares are within scope. Given that the focus of a CT appears to be trading data, any proposed CT should therefore include all shares admitted to trading on EU venues. This includes shares with and without a prospectus.

In terms of terminology used, we would caution against using the term "Official List" for the CT as this could be confused with the Official Lists of exchanges under the Listing Directive and may not cover the same securities.

Q17.1. Please explain your answers to question 17:

We stand for and promotes transparent markets. While we do not support a real-time CT, as outlined earlier, we would promote a Tape of Record. We realise that the lack of certain reference data (ISIN) for shares admitted to trading, which are not listed in the EU are difficult to obtain. Not all EU instruments, however, are listed/traded on an EU exchange, but where demand for transparency in off-venue data is high. This is the case of ETFs and fixed income. Those instruments should form part of any CT or Tape of Record.

Q18: In your view, should the Official List take into account any additional criteria (e.g. liquidity filter to capture only sufficiently liquid shares) to capture the relevant subset of shares traded in the EU for inclusion in the consolidated tape? Please explain your answer:

The scope of the list should not 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. We considers it important that any official CTP provides a comprehensive picture of the market, this includes liquid and illiquid instruments.

Q19. 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 of EU MTF? Please explain your answer:

We would agree with allowing for flexible voluntary contribution of third country shares to the consolidated tape, as long as the data provided is fully compliant with the requirements set out at EU level. In other words, we advocates for non-mandatory contribution of 3rd country share data to the tape but following the same rules as EU shares when included in the EU CT.

ETFs, Bonds, Derivatives and other financial instruments

Q20: 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:

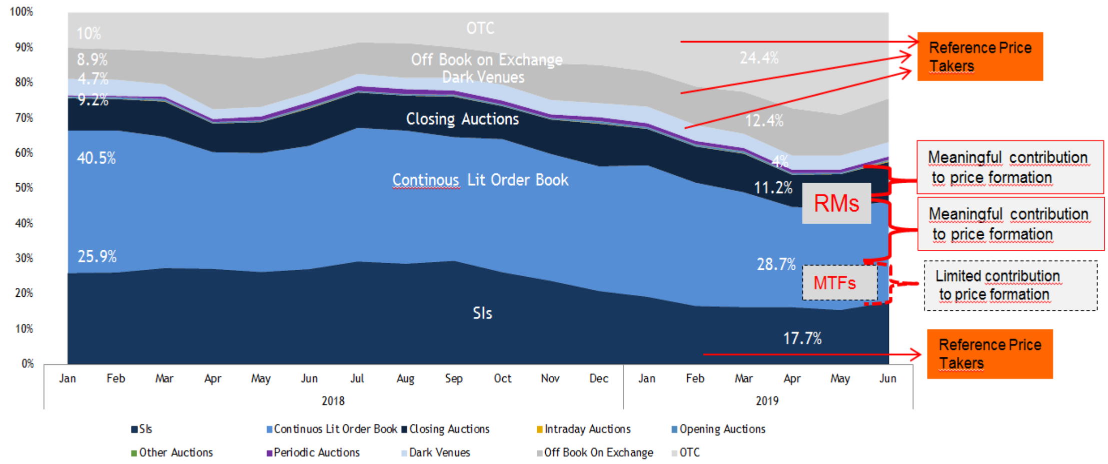
We would like to point out that it would not be sensible to have an aggregated tape across all asset classes. We would recommend having separate tapes, for equity and equity-like instruments, including ETFs, and separate tapes for bonds, and derivatives, where the latter would most likely be differentiated further. In any case, we would consider that the applied rules for any CT should be more or less the same.

CTP – Part 4 (Other MiFID II/MiFIR provisions with a link to the consolidated tape)

4.1. Equity trading and price formation

Q21: 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:

While the objective of MiFID II/MiFIR was to bring broker crossing networks (BCNs) to lit multilateral trading venues (i.e. RM and MTFs) to increase transparency and improve price formation and investor protection, the current situation is at odds with the spirit of MiFID II/MiFIR. The market share of continuous lit order books is decreasing while the combined share of OTC and SI trading keeps growing. It can be observed that the aggregated levels of OTC and SI trading in terms of turnover represent 22% and 18% respectively for 2019 based on data from Big xyt for European Exchanges.



Source: Data from big-xyt, calculations and comments on price formation contribution from FESE

This has led to increased complexity of equity markets and further fragmentation of liquidity - in contrast with the spirit of the legislation. In this sense, the STO has not delivered on increasing transparency on European markets.

We believe that the STO can have a significant positive impact on transparency of share trading and the competitiveness of EU trading venues and market participants provided that some modifications are taken into account. Consistent with a definition of EU shares and a clear delimitation of the universe of shares the STO applies to (see our response to Q23.1), the notion of equivalent third country venues become obsolete and could be removed. Exemptions from the STO should be removed where trades are "non-systematic, ad-hoc, irregular and infrequent"; instead, exemptions should only apply for those trades which do not contribute to price formation based on a clear and consistent list of qualifying transactions not contributing to price discovery. Furthermore, the scope of the STO is currently too narrow since it only applies to shares. The STO should be extended to other asset classes, in particular to ETFs to encourage lit trading and promote investor protection in this growing asset class. We believe that an extension of the trading obligation to other asset classes would reinforce investors' ability to take informed investment decisions and would prevent negative effects deriving from market fragmentation. This would result in strengthened investor protection and increased efficiency.

Q22: Do you believe there is sufficient clarity on the scope of the trades included or exempted from the STO, in particular having regards to shares not (or not only) admitted to an EU regulated market or EU MTF?

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

Q22.1: Please explain your answer to question 22

The share trading obligation (STO) remains necessary and is an important cornerstone of the overall aim of MiFID II/MiFIR to enhance the efficiency, resilience and integrity of financial markets in the EU. For the STO to be fully functional, further work on clearly determining which shares should be considered EU shares is necessary. The approach should avoid undue complexity and be based on predictable and meaningful criteria.

We support limiting the trading obligation to EU shares. The current approach does not provide certainty to the industry as the regulation's requirement exempting 'non-systematic, ad hoc, irregular and infrequent' trading has not been clarified in a conclusive way.

Furthermore, according to the current STO definition, EU investment firms can only undertake trades in shares admitted to trading in the EU on EU trading venues or equivalent third country trading venues and SIs.

To date, only a handful equivalence decisions have been adopted, while the Commission and ESMA have de facto limited application of the STO by interpreting the scope in a narrow way. Both the Commission and ESMA have indicated that equivalence decisions will only be adopted for countries where the EU trading in the shares is of a certain magnitude and that the absence of an equivalence decision therefore does not prevent EU investment firms from trading shares admitted to trading in the EU on non-EU venues.

While the extraterritoriality has been de facto limited this way, the approach does not provide certainty to the industry as the regulation's requirement exempting 'non-systematic, ad hoc, irregular and infrequent' trading has not been clarified in a conclusive way.

In addition, as highlighted by ESMA, there is a further challenge with respect to securities that are dual listed on an EU and non-EU trading venue as EU brokers may need to access both pools of liquidity. The STO should not restrict such access to this liquidity as this would harm EU investors and could disincentivise dual-listed issuers to retain their listing in the EU in order to extricate themselves from the STO if their primary liquidity is outside the EU.

Regarding determination of EU shares see 23.1

Q23: What is your evaluation of the general policy options listed below as regards the future of the STO?

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

Q23.1: Please explain your answer to question 23:

We support maintaining the STO with adjustments i.e. limiting the trading obligation to EU shares. The current approach does not provide certainty to the industry as the regulation's requirement exempting 'non-systematic, ad hoc, irregular and infrequent' trading has not been clarified in a conclusive way.

The share trading obligation (STO) remains necessary and is an important cornerstone of the overall aim of MiFID II/MiFIR to enhance the efficiency, resilience and integrity of financial markets in the EU. For the STO to be fully functional, further work on clearly determining which shares should be considered EU shares is necessary. The approach should avoid undue complexity and be based on predictable and meaningful criteria.

Determination of EU shares

Given the various challenges highlighted above in relation to the STO, a careful approach is essential. Therefore, in order to determine which shares should be considered as EU shares, we support the following approach (FESE):

- the STO should apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State plus those starting with a non-EU country code but where the issuer has its primary listing within the EU27
- the STO should not apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State where the issuer has its exclusive listing in a third country
- in cases where the security is dual-listed on both an EU trading venue and a non-EU trading venue at the specific request of the issuer, we propose that the STO should also still apply but that there is an exception in the provision (as suggested by ESMA in the consultation ESMA 70-156-2188 – para 278), to allow trading to take place on the non-EU trading venue where the issuer has listed the security, in addition to the EU venues.
- "Listing" in this sense is always made upon request of the issuer and involves various obligations for initial listing and for maintaining a listing.

This approach will ensure that the key objective of the STO can still be achieved i.e. more transparency with OTC trading moving to lit trading, it will also ensure in the case of dual-listed securities, that EU brokers and their investors can still access the main pools of liquidity where the issuer itself has requested its security to be traded and does not in any way disincentivise issuers from listing on EU trading venues.

Furthermore, we would also highlight the following points relevant to the STO:

- For dual-listed securities (where the issuer has chosen to have one of the two listings in the EU), investment firms should have the possibility to trade on either listing venue. To address the consequences of this exemption, reporting arrangements for such dual listed shares ought to be devised to achieve the transparency of these shares in the EU.
- Exemptions should be removed where trades are "non-systematic, ad-hoc, irregular and infrequent", instead exemptions should only apply for those trades that do not contribute to price formation based on a clear and consistent list of qualifying non-price forming trades – see our response to Q.33 for further detail.

- The scope of the STO should be extended to ETFs in order to incentivise lit trading and investor protection in this growing asset class.

Q24: Do you consider that the status of systematic internalisers which are eligible venues for compliance with the STO, should be revisited and how?

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

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

For equity trading, we consider that SI activity should be limited to trades above LIS. Below LIS, this type of execution venue should operate as a trading venue, under non-discretionary and non-discriminatory rules, and comply with the tick size and transparency regimes. We would recommend retaining SIs as eligible execution places for the purposes of the share trading obligation but limiting the activity to trades above LIS.

In such a scenario the large in scale threshold would be used as the main tool to delineate lit and dark trading. Below LIS trading would be confined to Regulated Markets and MTFs exclusively. These trading venues would in principle always be subject to real-time pre- and post-trade transparency requirements thus creating a lit space for below LIS. The available waivers under the pre-trade transparency regime (Article 4 MiFIR) would be re-thought/limited with the LIS and OMF waivers needing to remain in place.

SI activity would be restricted to above LIS only. Above LIS trading would constitute a dark space in which trades would not be subject to pre-trade transparency and would benefit from delayed post-trade transparency. This would result in an appropriate limitation of SI activity and a welcome simplification of the fragmented execution landscape.

Q24.1: Please explain your answer to question 24:

The market share of SIs has grown from 15% to 25% in the first 9 months of application of the SI regime under the new MiFID II/MiFIR rules. A drop in lit book market share can also be observed over the same period. Against this backdrop, we suggeststo restrict trading in SIs to above LIS only for equity and equity-like instruments in order to preserve the price formation process all the while acknowledging the need for bilateral trading.

We believe that trading below LIS should only be allowed under the full pre-trade transparency scope. Whilst no waivers exist for SIs, and pre-trade transparency requirements are not comparable to those of trading venues. We would nevertheless question why trades below LIS should be taking place on SIs at all when they can be traded on a trading venue under full transparency. Such a measure will foster the robustness of lit order book systems. This is essential for investors that do not have access to SIs.

Using the LIS threshold as the main tool to delineate lit and dark trading would be highly beneficial from an investor protection perspective. Such a simplification of the market structure would not interfere with investors' choice of where to execute transactions as different types of execution venues are still available albeit subject to transparency requirements fundamentally different to the existing set-up. Of course, it makes sense for an individual to continue executing on less transparent markets if this is possible. However, this leads to a classic economic problem: the private gain of a market participant not sticking to the agreement will always be greater than the common loss. We would note however, this occurs at the expense of liquidity on public markets and threatens the price formation process.

Our proposal implies that the pre-trade transparency requirements will no longer apply for SIs as SIs will only be allowed to trade above LIS with no restrictions apart from fulfilling post-trade transparency requirements. This would render the concept of standard market size obsolete. This proposal would also greatly reduce complexity and provide for a much simpler market structure to everyone's benefit. This approach appears as the most pragmatic and effective way to address the existing failures of the SI regime.

It is commonly understood that publicly available orderbooks of regulated exchanges maximise transparency and hence benefits financial markets overall. Therefore, orderbook trading at regulated exchanges should be encouraged by financial regulation wherever possible.

The argument that the disclosed identity of the SI provides a higher level of transparency than trading in a regulated exchange's orderbook does not hold true for centrally cleared products, as for these products the identity of each trades' counterparty, namely the CCP, is also known to all market participants before any trade is executed.

The argument that SIs have to hold their own capital against trades executed on the SI, does not benefit the SI's customers other than by implicitly decreasing their SI's counterparty credit risk towards them. However, considering the stringent prudential framework applicable to all EU CCPs, it can be assumed that a centrally cleared trade bears lower counterparty credit risk than a trade executed on an SI, all other things equal.

Q25: Do you consider that other aspects of the regulatory framework applying to systematic internalisers should be revisited and how? Please explain your answer:

When it comes to pre-trade transparency requirements, we would first note that the current minimum quoting size of 10% of the SMS is too low. Compared to MiFID I the current threshold only increased by 250 EUR to 1,000 EUR. This is not enough to effectively increase transparency and even provides SIs with a competitive advantage. Requiring SIs to quote 10,000 EUR on each side as suggested in the ESMA consultation paper on equity transparency would be more appropriate.

When it comes to the instruments in scope, we would agree with ESMA's proposal in its consultation paper on equity transparency that an extension of the transparency obligation for SIs to illiquid instruments would be an effective way to improve market transparency and level the playing field between on-venue and SIs. Indeed, SIs currently benefit from a competitive advantage as trading in illiquid instruments is still not subject to any pre-trade transparency requirements. On the other hand, illiquid instruments are in scope for pre-trade transparency for all trading venues unless a waiver from pre-trade transparency is used. We are of the view that such new requirements would not be overly burdensome for SIs and would rather effectively foster lit trading and overall transparency.

Moreover, we would like to stress the importance of enforcement of existing rules. While SIs are regulated under MiFID II as execution venues providing bilateral trading, they provide less transparency than on-exchange trading. This can be problematic when the distinction between purely bilateral and hybrid multilateral trading is blurred. In theory, every trade in an SI must take place against the proprietary account of the operator. SIs are prohibited, when dealing on their own account, from entering into matching arrangements with entities outside their group with the objective of carrying out *de facto* riskless back-to-back transactions in financial instruments outside trading venues. However, some investment firms seem to have developed models by which third party trading firms are able to provide liquidity to the customers of SIs. Such activities must be monitored as there is a risk that trading takes place on a multilateral basis rather than on a bilateral basis.

Furthermore, details of the operation of the business model required seem to be lacking. This is in contrast with what MTFs and Regulated Markets need to fulfil. Hence, we would suggest levelling the playing field regarding the description of the business model and how regulatory compliance is maintained. In addition, there is no level-playing field with regard to flagging of SI trades at an EU level. Two years on from MiFID II implementation, the flagging remains unclear and inconsistent. One way to address this would also be a broader implementation of the Market Model Typology (MMT) which currently ensures consistency of exchange data. It is our view that the extension of the MMT would promote enhancing data consistency and contribute to increase regulatory oversight of SI activity.

For what concerns non-equity, the LIS threshold may be too high to require all trading below LIS to happen on a RM, MTF or OTF. Therefore, for bonds and securitised derivatives we would recommend using the 100,000 EUR denomination threshold to delineate lit (RM, MTF and OTF) trading from dark (OTC and SI trading) We would recommend allowing trading which takes place at and below a threshold of 100,000 EUR on transparent RMs, MTFs and OTFs only. This would significantly reduce market fragmentation, aggregate liquidity and increase pre- and post-trade transparency, in particular for retail investors. The delimitation based on the 100,000 EUR denomination threshold would be consistent with the threshold used for the wholesale disclosure regime defined by the Prospectus Regulation. Furthermore, this threshold would also be in line with the one currently used for the calculations to determine whether a bond is liquid or not.

Q26: What would you consider to be appropriate steps to ensure a level-playing field between trading venues and systematic internalisers? Please explain your answer:

There are several aspects that put SIs at a competitive advantage compared to trading venues (please see our response to Q25) When it comes to pre-trade transparency requirements the current minimum quoting size of 10% of the SMS is too low. Compared to MiFID I the current

threshold only increased by 250 EUR to 1,000 EUR. This is not enough to effectively increase transparency and even provides SIs with a competitive advantage. Requiring SIs to quote 10,000 EUR on each side as suggested in the ESMA consultation paper on equity transparency would be more appropriate.
When it comes to the instruments in scope currently, we would agree with ESMA's proposal in its consultation paper on equity transparency that an extension of the transparency obligation for SIs to illiquid instruments would be an effective way to improve market transparency and level the playing field between on-venue and SI trading. Indeed, SIs currently benefit from a competitive advantage as trading on most instruments is still not subject to any pre-trade transparency requirements. On the other hand, illiquid instruments are in scope for pre-trade transparency for all trading venues unless a waiver from pre-trade transparency is used. We are not of the view that such new requirements would be overly burdensome for SIs rather they would effectively foster lit trading and overall transparency.
Furthermore, we believe that ESMA should review how SIs operate by looking more deeply into the transactions they conclude and report. One issue results around riskless trading. Hubs that have the potential to link up SIs and counterparties should be monitored to guarantee that they always work on a bilateral basis, and in case they do not but operate an internal matching system they must operate an MTF. Such activities must be monitored as there is the risk that trading takes place on a multilateral basis rather than on a bilateral basis and hence would be in violation with the legislation.
Moreover, details of the operation of the business model required to run an SI seem to be lacking. This is in contrast with what MTFs and Regulated Markets need to fulfil. Hence, we would suggest levelling the playing field regarding the description of the business model and how regulatory compliance is maintained. In addition, there is no level-playing field with regard to flagging of SI trades at an EU level. Even more than two years after MiFID II got introduced the flagging is very unclear and inconsistent. One way to address this would also be a broader implementation of the Market Model Typology (MMT) which currently ensures consistency of exchange data. It is our view that the extension of the MMT would promote enhancing data consistency and contribute to increase regulatory oversight of SI activity.
That being said, we however believe that the most effective way to address the shortcomings of the SI regime when it comes to inconsistent flagging of trades or the question of riskless principal trading being based on a bilateral relationship and to create a level-playing field would be to restrict SI activity to above LIS trading. We believe that the approach mentioned above – i.e. limiting SIs to activity above the LIS threshold – would provide an adequate way of ensuring a level playing field between trading venues and SIs. Such enhancements to the SI regime are necessary in order to increase transparency as well as price formation and promote a level playing field between trading venues and SIs. Above LIS trading would thereby constitute a legitimate dark space in which trades across bilateral execution venues and multilateral trading venues are not subject to pre-trade transparency and would benefit from delayed post-trade transparency.

Q27: In your view, what would merit attention to further promote the price discovery process in equity trading? Please explain your answer:

In order to further promote the price discovery process in equity trading we suggest to work on a simplified market structure concept:

<u>1. SIs</u>

Restricting SI equity trading to above LIS only would be an efficient way to incentivise lit trading, ensure the quality and robustness of price formation, in line with the initial objective of MiFID II.

In such a scenario, the LIS threshold would be used as the main tool to delineate lit and dark trading. Below LIS trading should be confined to RMs and MTFs exclusively. We underline that rules applicable to MTFs should continue to apply, specifically operators of MTFs would still be prohibited from engaging in prop trading, running bilateral systems and applying discretionary and discriminatory rules. These TVs would in principle always be subject to real-time pre- and post- trade transparency requirements thus creating a lit space for trades below LIS.
SIs activity would be restricted to above LIS only. Above LIS trading constitutes a legitimate dark space in which trades are not subject to pre-trade transparency and would benefit from delayed post-trade transparency. This proposal applies to RMs, MTFs and SIs and it would result in an appropriate limitation of dark activity and a simplification of the fragmented execution landscape. Above LIS, transactions benefit from waivers to avoid market impact. To take away from the price formation process is only warranted when the potential market impact is sizable.

2. Dark/OTC trading

We suggest to limit dark trading by reducing the number of waivers to mainly LIS: The main purpose of the waiver regime is to protect market participants from adverse market movements following the execution of large orders.
OTC would be restricted to trades in shares not subject to the STO. We also suggest extending MMT to all execution venues as well as to OTC transactions under ESMA governance.

3. STO

We proposes to modify the STO regarding its third country dimension, scope, exemptions and application to asset classes:

- i) To address the third country impact of the current scope, the STO should apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State plus those starting with a non-EU country code but where the issuer has its primary (fully-fledged) listing within the EU27;
- ii) The STO should not apply to those shares with an ISIN starting with a country code corresponding to an EU27 Member State where the issuer has its exclusive listing in a third country;
- iii) In cases where the security is dual-listed on both an EU trading venue and a non-EU trading venue at the specific request of the issuer, we propose that the STO should still apply but that there is an exception in the provision to allow for trading to take place on the non-EU trading venue where the issuer has admitted the security, in addition to the EU venues;
- iv) Exemptions should be removed where trades are "non-systematic, ad-hoc, irregular and infrequent", instead exemptions should only apply for those trades that do not contribute to price formation based on a clear and consistent list of qualifying non-price forming trades.

The scope of the STO should be extended to ETFs in order to incentivise lit trading and investor protection in this asset class. "Listing" in this sense is always made upon the request of the issuer and involves various obligations for initial listing and for maintaining a listing.

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

Q28: Do you believe that the scope of the STO should be aligned with the scope of the consolidated tape?

☒ 1 - Disagree
☐ 2 - Not really
☐ 3 - Neutral

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

Q28.1. Please explain your answer to question 28:

No, the scope of the STO should not be aligned with the scope of the CT. As explained above we believe all instruments no matter if liquid or illiquid, if admitted to an EU regulated market of EU MTF or being simply included to trading (including those without a prospectus) should be included.

Q29: Do you consider, for asset classes where a consolidated tape would be mandated, that the scope of financial instruments subject to pre- and post-trade requirements should be aligned with the list of instruments in scope of the consolidated tape?

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

Q29.1: Please explain your answer to question 29:

Such an approach could introduce undue complexity and it is not clear what the rationale would be for including some instruments in the transparency regime and not others. Therefore, we would support retaining the current situation where all instruments trading on trading venues should be subject to pre- and post-trade transparency requirements, with appropriate calibrations, regardless of whether they are included in the consolidated tape.

Ultimately, the scope of the consolidated tape should align with the securities that are subject to pre-and post-trade transparency requirements, not the other way round.

4.3. Post-trade transparency regime for non-equities

Q30: Which of the following measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
Abolition of post-trade transparency deferrals					x	

Shortening of the 2-day deferral period for the price information					x	
Shortening of the 4-week deferral period for the volume information					x	
Harmonisation of national deferral regimes					x	
Keeping the current regime	X					
Other				X		

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?

We suggest that there should be a reduction in the number of options available in the transparency regime, in particular the deferrals that enable only partial publication or no publication of trades, as well as the 4-week deferral.

Q30.1: Please explain your answer to question 30:

Under the current regulation, there is hardly any sensible transparency in bonds available. Besides overly long delays, the possibility to publish selected data points of one single transaction in bonds over a certain period, is not only overly complex but it prevents usable transparency to the public rather than providing it. This is to the disadvantage of EU investors, as proper transparency data in bonds could enable passive investment as well in bonds for the benefit of investors and issuers alike.

MiFiD II contains multiple options for post-trade deferrals. As the fixed income market is fragmented and there is no “one-size-fit-all”, there should still be different options available, but we believe these could be reduced and simplified. It should be evaluated whether reducing the number of alternatives could be beneficial. One reason for this is that the more optionality, the higher the cost of adapting IT-systems and operational procedures. This will especially apply for service providers such as APAs as these will need to be flexible on their offering in order to attract business. Similarly, the more options, the more work market participants will need to put into their internal procedures as they would need to know which deferrals are used in each market they are trading on, in order to control their own risk. Another reason is that if publication of trades may be postponed significantly (e.g. 4 weeks or partial publication), the information is outdated at time of publication, except for compliance purposes. Similarly, the indefinite deferral for government bonds means that market participants will not have insight into these transactions. Market participants should, though, still have the possibility to defer publication, and a few various options should still be possible as there may be national needs that the regulators should be able to accommodate. Therefore, we do not recommend a full harmonization across all markets, but rather a more simplified framework.

II. Investor protection

5000 character(s) maximum

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

Q31 - Please specify to what extent you agree with the statements below regarding the experience with the implementation of the investor protection rules?

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

Q31.1 - Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative assessment:

	Estimate (in euro)
Benefits	
Costs	

Qualitative elements for question 31.1:

Q32 - Which MiFID II/MiFIR requirements should be amended in order to ensure that simple investment products are more easily accessible to retail clients?

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

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

Q32.1 – Please explain your answer to question 32:

Q33 - Do you agree that the MiFID II/MiFIR requirements provide adequate protection for retail investors regarding complex products?

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

Q33.1 - 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:

Q33.1 – Please explain your answer to question 33:

Q34 - Should all clients, namely retail, professional clients per se and on request and ECPs be allowed to opt-out unilaterally from ex-ante cost information obligations, and if so, under which conditions?

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

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

Q34.1 - Please explain your answer to question 34 and in particular the conditions that should apply:

Q35 - Would you generally support a phase-out of paper based information?

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

Q35.1 - Please explain your answer to question 35:

Q36 - How could a phase-out of paper-based information be implemented?

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

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

Q36.1 - 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:

Q37 - 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 – Disagree
☐2 – Rather not agree
☐ 3 - Neutral
☐4 – Rather agree
☐5 – Fully agree
☐ Don’t know / no opinion / not relevant

Q37.1 - Please explain your answer to question 37:

Q38 - In your view, which products should be prioritised to be included in an EU-wide database?

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

Please specify what other products should be prioritised?

Q38.1 - Please explain your answer to question 38:

Q39 - Do you agree that ESMA would be well placed to develop such a tool?

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

Q39.1 - Please explain your answer to question 39:

Q40 - Do you consider that MiFID II/MiFIR can be overly protective for retail clients who have sufficient experience with financial markets and who could find themselves constrained by existing client classification rules?

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

☐Don’t know / no opinion / not relevant

Q40.1 - Please explain your answer to question 40:

A definition for ‘experienced and knowledgeable High Net Worth investors’, for these to have tailor-made investor protection rules, should be introduced. This would apply to a category of investors that have sufficient experience and financial means to understand the risk attached.

Q41 - With regards to professional clients on request, should the threshold for the client’s instrument portfolio of EUR 500 000 (See Annex II of MiFID II) be lowered?

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

Q41.1 - Please explain your answer to question 41:

Q42 - Would you see benefits in the creation of a new category of semi-professionals clients that would be subject to lighter rules?

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

Q42.1 - Please explain your answer to question 42:

Yes, but such a definition should not be linked to profession but rather experience, knowledge and risk-profile. A definition for ‘experienced and knowledgeable High Net Worth investors’, for these to have tailor-made investor protection rules, should be introduced. This would apply to a category of investors that have sufficient experience and financial means to understand the risk attached.

Q43 - What investor protection rules should be mitigated or adjusted for semi-professionals clients?

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

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

Q43.1 - Please explain your answer to question 43:

Q44 - 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:

Q45 - What should be the applicable criteria to classify a client as a semi-professional client?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).						

Semi-professional clients should be identified by a stricter financial knowledge test.						
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.						
Semi-professional clients should be subject to a one-off in-depth suitability test that would not need to be repeated at the time of the investment.						
Other						

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

Q45.1 - 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:

Q46 - Do you consider that the product governance requirements prevent retail clients from accessing products that would in principle be appropriate or suitable for them?

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

Q46.1 - Please explain your answer to question 46:

The product governance obligations under MiFID II for the product life cycle put a number of requirements on investment firms which manufactures financial instruments for sale to end clients ("manufacturer") and on investment firms offering products to end clients ("distributors"). Some requirements have introduced significant administrative burden on manufactures and distributors alike without ensuring a higher level of investor protection.

There are Level 3 measures which offers certain exemptions for the non-advised client business and these rules should be taken into account in the MiFID II /R Level1 Review.
The concrete differentiation between a positive and a negative target market lead to practical difficulties in implementation. Since some criteria that refer to a negative target market cannot be used as a counter-argument to a positive. The requirement to define a negative target market should potentially be reconsidered.
Moreover, new provisions for product governance (Guidelines on MiFID II product governance requirements) extend the requirements for issuers and retail banks. Issuers must define a target market for every product. Retail banks must consider the target market for every buy order by comparing the target market data with the customer characteristics.
These provisions may further reduce retail investors' access to classic bonds. This also applies in cases where the bond issue lacks attributes which may not be suited for retail investors.
Retail investors' access to classic corporate or bank bonds is increasingly limited due to regulation. This is due to the inclusion of classic bonds in the PRIIPS regulation and the increasing number of bond issues availing of the wholesale bond regime for qualified investors with reduced requirements under the Prospectus Regulation, as well as new provisions for product governance defined in the "Guidelines on MiFID II product governance requirements" further reduce retail investors' possibilities to invest in classic bonds.
These guidelines for product governance require issuers to define a target market for every product, including classic bonds and retail banks must consider the target market for every buy order by comparing the target market with the individual customer's characteristics.
There is an increasing trend towards issuers of classic bonds defining the target market of their bond issuances as "institutional" irrespectively of whether the bonds are suited for retail investors or not. In this case, retail investors are not able to invest in these bonds as retail banks are not allowed to provide for retail investors to buy these bonds. The reasons why issuers choose to do this may vary (e.g. to reduce the risk of being sued by retail investors). However, regulators should ensure that the target market definition is not adversely used by issuers to prohibit retail investors from investing in products like classic bonds that otherwise suit them.

Q47 - Should the product governance rules under MiFID II/MiFIR be simplified?

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

Q47.1 - Please explain your answer to question 47:

Q48 - In your view, should an investment firm continue to be allowed to sell a product to a negative target market if the client insists?

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

Q48.1 - Please explain your answer to question 48:

Q49 - Do you believe that the current rules on inducements are adequately calibrated to ensure that investment firms act in the best interest of their clients?

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

Q49.1 - Please explain your answer to question 49:

Q50 - Would you see merits in establishing an outright ban on inducements to improve access to independent investment advice?

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

Q50.1 - Please explain your answer to question 50:

Q51 - Would you see merit in setting-up a certification requirement for staff providing investment advice and other relevant information?

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

Q51.1 - Please explain your answer to question 51:

Q52 - Would you see merit in setting out an EU-wide framework for such a certification based on an exam?

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

Q52.1 - Please explain your answer to question 52:

Q53 - To reduce execution delays, should it be stipulated that in case of distant communication (phone in particular) the cost information can also be provided after the transaction is executed?

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

Q53.1 - Please explain your answer to question 53:

Q54 - Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?

☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 - Neutral
☐ 4 – Rather agree

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

Q54.1 - Please explain your answer to question 54:

6. Reporting on best execution

Q55: Do you believe that the best execution reports are of sufficiently good quality to provide investors with useful information on the quality of execution of their transactions?

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

Q55.1: Please explain your answer to question 55:

Feedback from some members indicates that the current regulatory requirements for best execution reports are met by the providers of the reports as these rules have been in place for a sufficient time now. This allows to provide a satisfactory level of information.

Whilst it is understood that this question is targeted at investments firms in respect to the reports produced by those investment firms stemming from RTS 27 and RTS 28 we would nevertheless note that all trading venues are requested to produce Best Execution reports according to RTS 27. The purpose of such reports is to support the design of best execution policies established by investment firms and allowing ex post check for those investment firms.

We would underline that ATHEX along with all FESE Members have put significant efforts and resources towards the production and publication of RTS 27 reports. Exchanges, as well as all other institutions in the industry, such as execution venues or investments firms (including SIs), have made efforts to interpret associated regulatory requests. The data that requires processing and storing in the context of the RTS 27 reports is considerable. The RTS 27 reports are produced for every trading day and each traded instrument on a given trading venue and covers pre- and post-trade statistics, costs, qualitative information.

Regarding the content of the different reports, we have dedicated efforts towards understanding the relevant requirements as well as respecting the spirit of the regulation where interpretation of the texts has, on occasion, been challenging. In the absence of an industry led initiative on RTS 27 (the FIX Best Execution group being more focused on RTS 28), we are well aware that some discrepancies might arise between interpretations of statistics hence figures provided by trading venues. We understand this cause some confusion especially since most of the time the only support investors can refer to is text itself (RTS 27 and annex of RTS 27). That being said, we would encourage regulators to proceed with caution in this area since a complete revamp of RTS 27 and RTS 27 would be counterproductive. In any case, whatever the potential extent of the review, we ask that policymakers work closely with trading venues and investment firms on envisaged changes in order to ensure that they are meaningful and, where possible, non-disruptive (see our answer to question 56).

Q56: What could be done to improve the quality of the best execution reports issued by investments firms?

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

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

The quality of the data is paramount to an insightful report. Quality should be constant across best execution report providers to also ensure homogeneity of the results and allow for proper comparison between executing brokers.

Not all brokers access the same venues under the same conditions making comparison difficult sometimes and consistency across providers is important to allow meaningful comparison.

We would also reiterate that all parties, be it investment firms or trading venues, have put enormous efforts and resources in the production and publication of RTS 27 reports. Whilst some improvement might be desirable, exchanges would ask that policy makers keep in mind that the range and amount of data to process on a daily basis and for all traded instruments is considerable as it covers pretty much all aspects of trading (pre- and post-trade costs). Moreover, the large number of calculations requested in all RTS 27 tables as well as the storage capacity requested (daily reports shall be available for free for 2 years) imply significant IT capacities.

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?

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

Question 57.1 Please explain your answer to question 57:

As indicated in the previous responses, one-off costs for producing and publishing the RTS 27 were significant. Running costs must also be taken into account (storage, production) and still do not include following one-off costs to modify the reports, add tables, modify calculation logics which arise from the decommissioning or launch of new products, new pricings, creation of new market segments etc.

Benefits for investors are rather unclear and in any case not quantifiable regarding RTS 27.

While understanding the intention of the regulators to provide transparent and free information directly from the investment firms/execution venues to the final investor we do not believe best execution reports have significantly improved trading decisions.

III. Research unbundling rules and SME research coverage

Q58 - What is your overall assessment of the effect of unbundling on the quantity, quality and pricing of research?

Since January 2018, MiFID II has accelerated the reduction in equity research focusing on smaller issuers.
In Europe, 334 European smaller issuers lost coverage completely in 2018, 91% of which only had 1 analyst before the implementation of MIFID II.[3] Now, most small and mid-caps are covered by none or 1 analyst whilst large caps benefit from much wider coverage and better visibility to investors.
In Greece, where over 75% of the listed companies are considered SMEs with the the EU definition the reduction of the number of analysts covering middle and smaller caps (<€100 M market cap) has dropped significantly since 2015.
In order for SMEs to receive research coverage, they usually have to commission and pay for research themselves.
An increasing number of SMEs have found themselves in a position where they have to fund equity research, thereby justifying the increase in sponsored research. A survey led by the CLIFF showed that 80% of issuers with a market capitalization >€500 million used sponsored research in 2019 (compared to 60% in 2018). Two thirds of these issuers only rely on this sponsored research. As a result of the macro situation in 2018 and 2019 (where companies

[3] Bingxu, Fang, Hope, Ole-Kristian, Huang, Zhongwei and Moldovan, Rucsandra, Rotman School of Management Working Paper, 'The Effects of MiFID II on Sell-Side Analysts, Buy-Side Analysts and Firms', 2019.

where still kept expenses low as the economy was recovering) a large number of SMEs were not able to sponsor research.
The effect has also been negative in terms of the quality and regularity of reports. The deep downturn in the income of the local research providers (typically local brokers) has meant that less senior analysts produce the reports and less time is dedicated to SMEs.

Q59 - How would you value the proposals listed below in order to increase the production of SME research?

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

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

Pre-MiFID II, research was supplied as part of a bundled service, paid by execution fees. Research post-MiFID II is required to be unbundled and priced separately from execution of financial instruments.
A growing number of SMEs are paying independent research providers to write research and take the initiative in approaching investors directly. However, this is challenging due to potential conflict of interests and a lack of recognition and coverage limitations due to budget constraints. Some exchanges have launched programs to cover the costs of SME research coverage and the first results suggest that it can create additional liquidity for listed SMEs. However, this is costly - especially for smaller exchanges – and could also surface issues of neutrality.
A Pan-European program should be launched to cover the costs of research coverage based on the lessons learnt from these pilot programs.

Also a neutral mechanism that would score analysts (analyst ranking) and provide them with incentives to start/continue covering SMEs would be also beneficial for moving the focus of analysts from large caps to SMEs.

Q59.1 - 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:

Q60 - Do you consider that a program set up by a market operator to finance SME research would improve research coverage?

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

Q60.1 - 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:

This is, to a certain extent, already being done as some exchanges have launched programs to cover the costs of SME research coverage and the first results suggest that it can create additional liquidity for listed SMEs.
We see merit in creating a pan-European program to finance SME research that would improve research coverage. Whilst we agree that a program set up by market operators to finance SME research would improve research coverage, we do not see benefits in one market operator setting up a pan-European programme to cover the costs of SME research coverage. Issues of conflict of interest, reputational risk as well as possible distortion of competition between market operators are, in our opinion, good reasons to avoid that on a pan-European basis.
A pan-European program set up by a third, neutral party could allow and provide flexibility to trading venues to solve their respective issuers' research coverage issues, and meet their local investors' demands, which differ in each of their respective local financial ecosystems. In line with the Commission's priority to strengthen the Capital Markets Union, this pan-European program could also be part of the means dedicated to the private-public fund for SMEs' IPOs. Both initiatives can be complemented to cover the costs of research coverage of newly listed SMEs. In effect, this would further incentivise SMEs to raise funds via the use of public capital markets in line with their respective financing strategy.
It should be noted that market operators are currently facing regulatory burdens when distributing research reports originally provided by research firms for their listed SMEs. In addition to notification obligations with the NCAs, maintenance of insider lists and/or plausibility checks regarding the research reports can be a consequence of such distribution.

Q60.1 - Please explain your answer to question 60:

Q61 - 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:

Research firms providing research coverage for SMEs and midcaps listed on all trading venues could receive support from public funding. The research reports should satisfy certain criteria pre-developed by national or European associations for financial analysis.
However, if public funds were directly distributed to the companies, the perception of conflict of interest that many investors have with the issuer-sponsored research would remain. Moreover, if funds were to be distributed directly to the research providers, it may be difficult to monitor that adequate resources are dedicated to produce good quality research and its right distribution.
An optimal solution would therefore be that a third neutral entity assume the task of distributing the subsidies from a pan-European public funding program among the best providers under the criteria stated by EFFAS or other European associations for financial analysis. The analyst ranking for SMEs by a neutral entity could assist the distribution of such funds on result/reward basis.

Q62 - Do you agree that the use of artificial intelligence could help to foster the production of SME research?

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

Q62.1 - 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?

The use of artificial intelligence should be encouraged to help foster the production of SME research. However, this should be complemented by human-made research to meet market demand for qualitative investment research.
The use of AI should not restrict the research analysts' access to pre-AI analysed figures or make it more difficult for them to form an assessment based on data that can be used or delivered by the technology. The research analysts' qualitative assessment of its investment research is what investors value most.

Q62.1 - Please explain your answer to question 62:

Q63 - Do you agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs?

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

Q63.1 - 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 database would facilitate access to research material on SMEs, provided that it would not introduce additional cost or administrative burdens for listed companies covered.
However, a public research database may not be perceived by professional investors as the most reliable source to work with as it would be completely different from the traditional sources of information they are used to that are all offered by the private sector.

Q63.1 - Please explain your answer to question 63:

Q64 - Do you agree that ESMA would be well placed to develop such a database?

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

Q64.1 - Please explain your answer to question 64:

We believe that ESMA could be well placed to develop and implement such a database to foster cross-border investments. However, there is a need to ensure that the creation of such a database would not introduce onerous or costly requirements for issuers.

Q65 - In your opinion, does issuer-sponsored research qualify as acceptable minor non-monetary benefit as defined by Article 12 of Delegated Directive (EU) 2017/593?

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

Q65.1 - Please explain your answer to question 64:

This approach may increase the production of SME research but as this would be non-independent analysis, it may not be so attractive for the investors and not so effective in improving the liquidity.

Q66 - In your opinion, does issuer-sponsored research qualify as investment research as defined in Article 36 of Delegated Regulation (EU) 2017/565?

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

Q66.1 - Please explain your answer to question 66:

Q67 - Do you consider that rules applicable to issuer-sponsored research should be amended?

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

Q67.1 - If you do consider that rules applicable to issuer-sponsored research should be amended, please specify how:

Q67.1 - Please explain your answer to question 67:

Q68 - Considering the various policy options tested in questions 59 to 67, which would be most effective and have most impact to foster SME research?

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

Amend rules on issuer-sponsored research				X		
Other					X	

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

Creating an efficient scoring model for the research produced by analysts for SMEs and the distribution of reward to them based on this scoring will create more interest for SMEs research. A neutral entity should do this in order to clearly avoid any conflict of interest and reputation issues.

Q68.1 - Please explain your answer to question 68:

Authorising the bundling of SME research would be the fastest way to increase production and distribution of independent reports and may have the biggest effect on the liquidity of SME.
At the same time, creating a program to finance the initiatives of independent research set up by a neutral party would help to incentivise more research providers' interest in this segment of companies and improve quality of the reports. This along with the scoring model would bring more analysts to focus on SMEs.

IV. Commodity markets

Q69 - Please specify to what extent you agree with the statements below regarding the experience with the implementation of the position limit framework and pre-trade transparency?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N.A.
The EU intervention been successful in achieving or progressing towards improving the functioning and transparency of commodity markets and address excessive commodity price volatility.	X					

The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).		X					
The different components of the framework operate well together to achieve the improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility.	X						
The improvement of the functioning and transparency of commodity markets and address excessive commodity price volatility correspond with the needs and problems in EU financial markets.	X						
The position limit framework and pre- trade transparency regime for commodity markets has provided EU added value.		X					

Q69.1 - Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative elements for Q69.1:

	Estimate (in euro)
Benefits	
Costs	A medium-sized physical broker, with 20 employees, has to pay an average 150.000 – 200.000 EUR annual compliance cost, with a one-off IT cost of 100.000

	EUR. This cost is probably significantly higher for clearing members. There are also examples of market members interested in trading commodity derivatives who do not participate due to these high market-entry costs.

Qualitative elements for Q69.1:

We identified four main areas where negative consequences have materialised in terms of costs for European businesses and reduced economic activity, which may have resulted in a loss in tax revenues in Member States.
Firstly, the position limits regime has a material negative effect on less liquid and small contracts and the ability of exchanges to develop new benchmark contracts in the EU.
Secondly, it is hindering further growth and competition between trading venues within the EU trading commodity derivatives classified as liquid and which have the same physical underlying. Thirdly, the position limits regime results in significant costs in terms of lost opportunity when exchanges decide to launch contracts in other jurisdictions, which may otherwise be offered for trading inside the EU. Large exchange groups are active in multiple countries and can launch new contracts in varying locations depending on, amongst others, a favourable regulatory environment for commodity trading.
Lastly, to remain competitive a substantial number of commodity derivative contracts has been transferred to other jurisdictions due to the restrictive nature of the MiFID II position limits regime.
Despite the overall objective of MiFID II/MiFIR to 'improve the functioning and transparency of commodity markets and address excessive commodity price volatility', we feel these objectives have not materialised with the implementation of the position limits and pre-trade transparency regimes.
The establishment of, and compliance with, MiFID II has proven to be a burdensome and costly process for both commodity derivatives exchanges and market participants. This is in particular true for the implementation of the large number of reporting and transparency requirements.
It is important to note that the position limit regime has been introduced to meet the MiFID II / MiFIR objective of improving 'the functioning and transparency of commodity markets', and that the implementation of appropriate management controls for trading venues to 'address the excessive commodity price volatility'.
'Excessive commodity price volatility' has been addressed in Art. 58 of MiFID II on the position reporting regime, in which commodity contracts are subject to exchanges' pre-existing position monitoring and market oversight practices based on REMIT and MAR principles, to which the position limits regime offers little to no added value. Market operators possess the appropriate market supervisory tools to meet the MiFID II / MiFIR objective of addressing 'excessive commodity price volatility'.
While we believe the MiFID II position limits regime did not contribute to the prevention of market abuse, nor to the improvement of orderly pricing and settlement, we understand the view of policymakers that there might be a value in setting position limits to avoid excessive speculation adversely affecting prices. To achieve this objective - which is identical to the objective of the US position limits regime - it is sufficient to consider only those contracts that are relevant for the price formation in the underlying commodities markets (i.e. mature products which serve as a benchmark for the respective market). New and nascent products constitute a minor share of commodity markets and are unlikely to influence price movements in the underlying physical markets, and thus cannot negatively impact consumers in any ways. Therefore, new and illiquid products should be outside the scope of the position limits regime. They would still remain subject to the position reporting regime under Art. 58 MiFID II, the pre-existing position monitoring and position management measures by exchanges and the market oversight practices of the exchanges' market supervision and market surveillance departments that apply the principles laid down in REMIT and MAR.

In regard to transparency, the MiFID II position reporting framework has strengthened transparency by requiring OTC reporting. However, this has increased administrative burdens and costs to market members (see above). Additionally, pre-negotiated transactions that are subsequently formalised on a trading venue, often on a regulated market, are very common in commodity markets. However, as currently designed, the pre-trade transparency regime reduces the ability for such a formalisation on a trading venue and clearing to mitigate counterparty risk. Therefore, the pre-trade transparency regime should be better tailored to commodity markets and allow for a more natural move to on venue trading and central clearing.

Q70 - Can you provide examples of the materiality of the above mentioned problem?

☒Yes, I can provide 1 or more example(s)

☐No, I cannot provide any example

Please provide example(s) of (nascent) contracts where the position limit regime has constrained the growth of the contract:

The underlying physical markets are not efficiently reflected.
Since the application of the regime, growing liquidity in commodity derivatives classified as liquid traded on different venues with the same physical underlying has proven more difficult than in trading venues on which the benchmark contracts are traded. This is often due to higher position limits set in 'other months' for the benchmark contracts than for contracts listed on a second or third largest exchange. This challenge is equally important in order to create a level playing field for competing contracts classified as liquid. When position limits are materially different, there is a risk that traders and market makers will look to trade only on the largest market, where they have a lower risk of breaching the position limit. This may prevent the development of liquidity in smaller venues thereby reducing options available to market participants to manage their risks against the volatile day ahead prices on an exchange other than the exchange on which the 'benchmark contract' is traded. This is the case, for instance, of the German power contract listed by Nasdaq and by EEX, where the open interest in the contract is substantially larger in the latter.
For newly established energy markets such as the Hellenic Energy Exchange this is a crucial issue.

Size of the OTC space the contract(s) is/are trying to enter (in €):

Market share the nascent contract(s) is/are expected to gain (in %):

Contract(s) is/are euro denominated?

We welcome the recognition by the European Commission of the impact of European commodity markets in strengthening the role of the Euro and Euro-denominated instruments. For promoting new illiquid contracts and fostering liquidity in liquid contracts that are already denominated in Euro, it is key that the Eurozone as such is attractive for market participants and its regulatory framework is fit for purpose. At the moment, the framework rather weakens competitiveness of European commodity markets vis-à-vis global markets.

More proportionate and efficient position limits and pre-trade transparency regimes would contribute significantly to the European Commission's objective to strengthen the competitiveness of European commodity derivatives markets in the context of the international role of the Euro.

Q71 - Please indicate the scope you consider most appropriate for the position limit regime:

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

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

Q71.1 - Please explain your answer to question 71:

Q72 - If you believe there is a need to change the scope along a designated list of 'critical' contracts similar to the US regime, please specify which of the following criteria could be used.

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

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

Open interest:

Threshold for open interest:

Number of affected contracts in the EU for open interest:

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

Type and variety of participants:

Threshold for the type and variety of participants:

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

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

Other criterion:

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

Threshold for this other criterion:

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

Q72.1 - Please explain your answer to question 72:

Q73 - Do you agree that there is a need to foster convergence in how position management controls are implemented?

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

Q73.1 - Please explain your answer to question 73:

Q74 – For which contracts would you consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations?

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

	Yes	No	N.A.
Nascent			
Illiquid			
Other			

Please specify for which other contracts you would consider a position limit exemption for a financial counterparty under mandatory liquidity provision obligations:

Q74.1 – Please explain your answer to question 74:

Q75 - For which counterparty do you consider a hedging exemption appropriate in relation to positions which are objectively measurable as reducing risks?

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

Please specify for other which counterparties you consider a hedging exemption appropriate:

Q75.1 - Please explain your answer to question 75:

Q76 - Do you consider that pre-trade transparency for commodity derivatives functions well?

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

If you do not consider that pre-trade transparency for commodity derivatives functions well, please (1) provide examples of markets where the pre-trade transparency regime has constrained the offering of niche instruments or the development of new and/or fast moving markets, and (2) present possible solutions including, where possible, quantitative elements:

Q76.1 - Please explain your answer to question 76:

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

V. Derivatives Trading Obligation

Q77 - To what extent do you agree with the statements below regarding the experience with the implementation of the derivatives trading obligation?

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

Q77.1 - Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative elements for Q77.1:

	Estimate (in euro)

Benefits	
Costs	

Qualitative elements for Q77.1:

Q78 - Do you believe that some adjustments to the DTO regime should be introduced, in particular having regards to EU and non-EU market making activities of investment firms?

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

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

Q78.1 - Please explain your answer to question 78:

Q79 - Do you agree that the current scope of the DTO is appropriate?

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

Q79.1 - Please explain your answer to question 79:

Q80 - Do you agree that there is a need to adjust the DTO regime to align it with the EMIR Refit changes with regard to the clearing obligation for small financial counterparties and non-financial counterparties?

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

Q80.1 - Please explain your answer to question 80:

VI. Multilateral systems

Q81: Do you consider that the concept of multilateral system under MiFID II/MiFIR is uniformly understood (at EU or at national level) and ensures a level playing field between the different categories of market players?

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

Q81.1: If your response to question 81 is rather positive, please also indicate if, in your opinion, the current definition of multilateral system is adequately reflecting the actual functioning of the market:

Question 81.1 If your response to question 81 is rather negative, please indicate which amendments you would suggest and why:

We do not agree that the concept of multilateral system under MiFID II/MiFIR is uniformly understood and do not believe that there is a level playing field between the different categories of market players.

This question should be placed in the context of the objective of MiFID II/MiFIR and the problems that arise when the distinction between purely bilateral and hybrid multilateral trading is blurred. Indeed, the objective of MiFID II/MiFIR was to bring OTC multilateral trading (i.e. broker crossing networks or BCNs) to lit multilateral trading venues (i.e. RM and MTFs) in an attempt to increase transparency and improve price formation and investor protection. However, the market share of continuous lit order books is decreasing while the combined share of OTC and SI trading keeps growing. The aggregated levels of OTC and SI trading in terms of turnover represent 22% and 18% respectively for 2019 based on STOXX 600 data from Big xyt. This has led to increased complexity and opacity of equity markets with further fragmentation of liquidity – in stark contrast with the spirit of MiFID II/MiFIR.

While SIs are regulated under MiFID II as execution venues providing bilateral trading, they provide less transparency than on-exchange trading. This can be problematic when the distinction between purely bilateral and hybrid multilateral trading is blurred. In theory, every trade in an SI must take place against the proprietary account of the operator. SIs are prohibited, when dealing on their own account, from entering into matching arrangements with entities outside their group with the objective of carrying out *de facto* riskless back-to-back transactions in financial instruments outside trading venues. However, some investment firms seem to have developed models by which third party trading firms are able to provide liquidity to the customers of SIs.

VII. Double Volume Cap

Q82: Please specify to what extent you agree with the statements below regarding the experience with the implementation of the Double Volume Cap?

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

Q82.1: 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.

VIII. Non-discriminatory access

Q83 - Do you see any particular operational or technical issues in applying open access requirements which should be addressed?

☒Yes
☐No
☐Don't know / no opinion / not relevant

Q83.1 - If you do see any particular operational or technical issues in applying open access requirements which should be addressed, please specify for which financial instrument(s) this would apply and explain your reasoning:

The 'Non-discriminatory' access (NDA) provisions for ETDs would potentially constitute a serious risk to the EU27 financial stability and competitiveness as they would:

1. Endanger CCPs
2. Break liquidity
3. Undermine price discovery
4. Increase concentration
5. Harm innovation

1. Endanger the CCPs – A trading venue (TV) 'Non-discriminatory' access to CCPs would introduce risks to financial stability (not to mention the risk of legal challenge) arising from pooling of open interest of economically equivalent – but not identical – ETD contracts in the same CCP as a result of multiple trading venues gaining access to it. It would require such contracts to be treated as fungible, despite the fact that the contracts' legal basis (in terms of governing law and jurisdiction), governing authorities (in terms of the trading venue creating the contract and its regulator) and the arrangements for taking emergency action, e.g. in relation to force majeure and other market events) would differ. This would force CCPs to match positions that are not identical but 'economically equivalent' which means the CCP itself would be liable for any difference, thereby destabilizing the CCP and the ETD market it clears. Last but not least, we are particularly concerned by the potential impact of open access requests on the default management process and possible recovery of CCPs when market participants are spread across different venues.
2. Break liquidity – A CCP 'Non-discriminatory' Access to TVs would inevitably fragment liquidity and weaken the resilience of ETD markets as a result of multiple CCPs clearing a single TV's ETDs. If a TV has access arrangements with three CCPs, it would be forced to create three separate order books for any given product (as counterparties can only trade with those who wish to clear at the same CCP). This would result in an inefficient and costly system which would provide a misleading impression of choice while, in reality, fragment liquidity. The alternative, i.e. retaining a single order book to which all orders would be submitted irrespective of CCP, would be impracticable as users that intend to hold positions at different CCPs could not be matched in a single order book, and the trade would subsequently need to be reversed to prevent the long and the short being cleared by different CCPs.
3. Undermine price-discovery – Breaking the link between TVs and CCPs and the liquidity of ETD markets would disrupt the price discovery process across different exchanges. This would have an impact on the broader economy as ETD markets serve as a benchmark for a broad range of underlying and related assets (e.g. bonds, shares and commodities), as they reflect the market's expectations of future fluctuations of these underlying markets.
4. Increase concentration – Breaking the link between the TV and its CCPs could lead to a situation where the most attractive CCP for one specific ETD or asset class, becomes the single place for

central clearing across all asset classes. Such a high level of concentration would expose the financial system to a single point of failure with potential systemic consequences and the impossibility for market participants to efficiently move their positions to another CCP in case of failure. Beyond the concentration risk at the CCP level, the impact of NDA requests should be also considered at the clearing member level. The more links across TVs and CCPs will multiply, the more only a minority of structurally large banks will be able to afford the costs linked to maintaining the connectivity links and checks. This risk may increase the concentration of Clearing Members and create barriers to grow the next generation EU credit institutions that can handle the complexity of interlinkages between TVs/CCPs.

The scenarios described above could be further aggravated post Brexit as it is unclear how a competitive level playing field would be ensured in the event third country infrastructure gains access to EU CCPs and TVs. In our view, it would be inappropriate to impose wide scale market structure changes in the Exchange-Traded Derivatives markets - which may have significant financial stability consequences - while the EU/UK future relationship remains unclear.
In addition, the third country safeguards around the NDA provisions appear particularly weak. Under an equivalence determination limited to Art. 38(3) MiFIR, the 3C CCP is merely required to be 'subject to authorisation and to effective supervision and enforcement on an ongoing basis' and to have similar access provisions. There are no provisions in Art. 38(3) MiFIR to ensure a comparable trading environment in the third country, meaning the application of the same transparency and market structure requirements.

Q83.1 - Please explain your answer to question 83:

The EU has come a long way in increasing competition and transparency across market infrastructures, notably via MiFID I and MiFID II/R. As of today, with 137 RMs, 223 MTFs and 73 OTFs (for equity and non-equity instruments), and 16 CCPs (compared to 5 in the US), the EU is the most competitive market in the world. It is critical to realise that the 'Non-discriminatory' access provisions would result in unfairly forced and artificial competition via regulatory intervention.
Since June 2019, the only example of a voluntary interoperable link for ETDs in the EEA has ceased to exists as Oslo Børs and the London Stock Exchange Derivatives Markets announced they were ending the interoperability arrangement between Six x-clear (Norwegian branch) and LCH Ltd. Oslo Børs stated in its press release that the model of two interoperable clearing houses required such an increase in margin to balance the risk between the two clearing houses that the link was no longer viable.
We believe that including ETDs in the scope of the 'Non-discriminatory' access provisions under MiFID II/R will undermine the EU27 financial stability agenda and will damage its competitiveness at global level. As a quantitative financial stability impact assessment has never been carried out (and the basis for the qualitative impact assessment has ceased to exist) we urge the European Commission to run an impact assessment to gather further evidence on the negative impact of the provisions on the EU27 ETDs markets.
Finally, the current economic and financial crisis has demonstrated again the resilience of ETD markets under extreme stress scenarios. With the ongoing uncertainty around the current crisis expected to last, we do not believe it would be wise to risk destabilizing key euro-ETD markets at such a critical time.

Q84 - Do you think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas?

X 1 – Disagree
☐ 2 – Rather not agree

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

Q84.1 - If you do think that the open access regime will effectively introduce cost efficiencies or other benefits in the trading and clearing areas, please indicate the specific areas (such as type of specific financial instruments) where, in your opinion, open access could afford most cost efficiencies or other benefits when compared to the current situation:

Q84.1 - Please explain your answer to question 84:

We do not think it serves any public policy objectives to impose a fragmentary model on what are currently well functioning, inclusive ETD markets which generate prices that are viewed worldwide as representative. The provisions will not introduce cost efficiencies or other benefits but would rather make ETD markets less efficient.
While applying 'Non-discriminatory' access ('open access') under MiFIR to transferable securities and money market instruments poses little systemic risk, applying "open access" to ETDs would undermine the stability and liquidity of the European derivative markets. Derivative contracts can have a long duration (sometimes decades), are far more complex, and require much more stringent requirements and controls from CCPs as neutral and independent risk managers.
By design the contract specifications of ETDs are unique to the regulated market on which they are admitted to trading. This is primarily because regulated markets decide and determine the specifications of their derivative products in order to provide products most likely to be successful with customers, therefore building liquidity and offering an effective way to hedge risk. Their specifications relate not just to technical conditions but also to their legal status and the jurisdiction of any disputes arising and/or insolvency law that would apply.
By contrast, OTC derivatives are run by industry convention subject to ISDA specifications and are by nature much less liquid: trades are negotiated first bilaterally (incl. the choice of the CCP) before they are executed bilaterally or on an electronic venue and then cleared in the pre-agreed CCP without the use of the center limit order book.

Q85 - Are you aware of any market trends or developments (at EU level or at national level) which are a good or bad example of open access among financial market infrastructures?

Please explain your reasoning and specify which countries:

Currently, all relevant European NCAs have decided to follow the principle of precaution due to Brexit and have granted temporary transitional provisions to all CCPs and TVs that requested it. In addition, thorough consideration should be given on how the EU27 market will look like following the departure of the UK.
It appears counterintuitive and illogical to risk breaking Europe's most liquid and successful markets at the very moment when the EU ambitions developing a thriving Capital Markets Union (CMU) and increasing the international use of the euro, in order to increase its economic and financial independence. Importantly, with the ongoing uncertainty around the current crisis, we do not believe it would be wise to risk destabilising key Euro-ETD markets at such a critical time. Europe needs deep and liquid Euro-denominated ETD markets, ensuring the proper functioning of resilient private risk transfer mechanisms and limiting costs for investors and end-users in the Union.

Furthermore, no other major open-market economy outside Europe have pursued a policy of 'non-discriminatory' access for ETDs. Historically, when ETD markets are set up, the broad majority have preferred to create a link between the TV and the CCP for efficiency and safety purposes.
By contrast, competition across ETDs has and continues to thrive – in the past DTB (former Eurex) successfully competed with LIFFE on the Bund-Future thanks to innovation (electronic execution), while new products are regularly developed to cater for new market needs, to support futurisation or pick up in Environmental Social Governance (ESG) standards.
The alleged gains of 'non-discriminatory' access for ETDs are highly questionable in a global context where other jurisdictions do not pursue the same objectives but rather focus on size and scalability. ETD open offer systems are extremely robust and efficient systems which have been preferred models in jurisdictions with developed and liquid markets.

IX. Digitalisation and new technologies

5000 character(s) maximum

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

Q86 - Where do you see the main developments in your sector: use of new technologies to provide or deliver services, emergence of new business models, more decentralised value chain services delivery involving more cooperation between traditional regulated entities and new entrants or other?

Please explain your answer:

FinTech can help to expand access to financial services for consumers, investors and companies, bringing greater choice and more user-friendly services, often at lower prices. New financial technologies can help individuals as well as SMEs, including start-up and scale-up companies, to access alternative funding sources to support their cash flow and risk capital needs. Automation and standardisation have changed the way customers interact with market infrastructure providers, leading to an explosion in data volumes. Technological developments in relation to data analytics, Field Programmable Gate Array (FPGA), mobile technology, cloud computing, machine learning, artificial intelligence (AI) and blockchain are opening up new possibilities in relation to the services Exchanges use and provide to customers. Individually, these technologies have enormous potential and combined, they can offer an impressive array of new solutions for clients. However, it should be noted that for FPGA the related costs and complexity of implementation may for the moment prevent these technologies from playing a leading role in innovation.
An EU general regulatory framework needs to be geared towards fostering technological development and innovation. Technological developments are moving faster than the underlying legal and regulatory frameworks and in order not to impede innovation and investment, a rigid application of existing rules must be avoided. A predictable, consistent and straightforward legal environment should instead be promoted. Areas which would benefit from review include licensing requirement for FinTech companies, data protection, conflict of laws, outsourcing, cyber security, settlement finality and proper legal recognition of holding and transferring securities and other types of assets.

It is important to establish key principles upon which the EU can build a role in facilitating the development and implementation of FinTech.
These principles include the need for:

- **The application of the same rules for the same services and risks (including across different pieces of legislation) based on the principle of technology neutrality;**
- **A risk-based approach built on proportionality and materiality which allows for flexibility, particularly in respect of innovation with small groups of customers (i.e. sandboxes), while ensuring a level playing field across the EU;**
- **A balancing of the local (country) risks alongside the benefits of cross-border markets (i.e. scalability, interoperability and passporting of services).**

Financial Market Infrastructures (FMIs) use modern IT and technological solutions to operate, and service the financial sector worldwide. Technologies are at the core of their operations and an integral part of the regulated services they operate. FMIs ensure the efficient functioning of these markets; including but not limited to: market data, indices, clearing, securities custody, etc.
We observe that the digital economy through the use of DLT is on the road to decentralisation which is particularly true for the financial industry. In this regard, we would like to especially stress the importance of maintaining principles such as technology neutrality and "same business, same risks, same rules" to uphold transparency, fairness, stability, investor protection and market integrity. In particular, as some forms of DLT, such as public blockchains have no legally accountable entity to be held liable for failings to implement risk management procedures to address risks in financial markets.
In this regard a Trusted Third Party (TTP) is required in the financial industry to create trust in the market; and ensure investor protection. In a DLT environment, TTPs are building a bridge for the exiting financial instruments in the "traditional world" via DLT solutions, increasing market integrity by e.g. "OFF-Chain to ON-Chain bridging" and guaranteeing the substance of a token, which is backed by financial instruments that is kept off ledger/chain. TTPs will play the role of a gatekeeper for future native digital assets, which will be issued directly on the chain. In this regard, a TTP will be responsible for addressing functions such as:

1) Control access/admission
2) Set rules for the participating nodes
3) Address potential conflicts of interest and KYC and AML requirements
4) Apply risk management measurers
5) Be reliable for market integrity, security and other regulatory requirements

The TTP will check standards for admission and the eligibility of an asset on chain. For instance, it will check if the asset is a security and transform it to a security token. Another role that the TTP will play would be to check smart contract codes to assess adherence with international standards. A TTP should operate within a regulatory compliant framework and adhere to the relevant existing rules and regulation.

Q87 - Do you think there are particular elements in the existing framework which are not in accordance with the principle of technology neutrality and which should be addressed?

New technologies are used in different areas of application, with different goals in mind and within different regulatory frameworks. Amendments may therefore be needed in order to provide legal clarity and allow benefits of the technologies in the EU. As an overarching principle, a technology-neutral approach is very important, as regulation should be independent from the used technology.
However, for some areas, policymakers should consider the following technology specific challenges and how to address these:

1. Cloud: outsourcing of material functions, proper risk management, clarity of the liabilities on both sides and currently missing standard contract clauses to facilitate negotiations of compliant contracts with providers, especially for small/mid-sized institutions. As the importance of these services increase an overarching appropriate oversight paradigm is missing.
2. Big data / AI: quality, and source and ownership of data, data protection and data sovereignty as well as ethical questions (e.g. reconciliation of decisions, biases)
3. DLT/blockchain: liability and accountability in public permissionless chains, and smart contracts, material outsourcing considerations data protection and new IT-risks.

With regard to the existing framework, we find one example in the realm of DLT/Blockchain very important, where the principle of technology-neutrality should be upheld. Regulators should treat the technology itself as any other IT system, based on the principle "same business, same risk, same rules" regarding its use and connected risks. Further, regulators should focus especially on the "records" maintained in this environment, as they could be digital representations of different forms of assets, used in the financial industry.

Q88 - Where do you think digitalisation and new technologies would bring most benefits in the trading lifecycle (ranging from the issuance to secondary trading)?

In general, we think of new technologies as enabling new opportunities to the financial industry as a whole, including the trading lifecycle. At the same time, we expect an evolutionary process, rather than a revolution, due to the high level of financial stability standards and the importance of market integrity. Currently, depending on the technology, the financial industry is adapting and is still in an early stage. The benefits of the technologies differ, but are for example: increased transparency, cost reduction, speed of software development and quality by more extensive testing, increased geographical coverage, resilience etc. We are certain that new asset classes, procedures, services and actors are emerging.

Combining innovative technologies, for instance blockchain based technologies, with established, highly regulated market infrastructures would be the natural choice in order to ensure market stability while making use of the innovative potential brought about through FinTech.

DLT has the potential to accelerate, decentralise, automate and standardise data-driven processes and therefore to alter the way in which assets are transferred and records are kept. In particular, DLT allows cross-verification of information in a transparent and dependable way and can simplify complex verification and validation processes. Hurdles to wide scale adoption of DLT in securities markets are technical limitations, contextual aspects such as business model/market model design, technical integration/transition, legal/ regulatory complexity. For solutions based on DLT to reach actual implementation in securities market, visions for the future need to be broken down into defined descriptions of services and solutions that are accepted and desired by its intended consumers and meet legal, regulatory and technical requirements. DLT should not be considered a panacea that will replace all existing infrastructure in securities markets but rather DLT solutions need to be integrated into the existing ecosystem of infrastructure in securities market, which will require some efforts and time. Transition planning and execution is also important in DLT business cases when the intention is for DLT to replace legacy technology.

Q89 - Do you consider that digitalisation and new technologies will significantly impact the role of EU trading venues in the future (5/10 years time)?

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

Q89.1 - Please explain your answer to question 89:

New technologies and digitalisation seem to affect Europe's businesses in various ways. Not only has the European financial system been transformed significantly due to the introduction of digitalisation and new technologies but these initiatives have also made their first impacts on financial services throughout Europe. Despite the lack of specific laws and regulations in relation to all technological innovative related matters, the market is implementing new forms of digital products and services without a framework that provides legal certainty and trust.

By examining the current trends in the financial markets, it is expected that digitalisation, new technologies and artificial intelligence (AI) will continue to impact global capital markets while affecting at the same all financial participants, including trading venues. Based on the current trends in the financial markets, we could assume that machine learning and AI could be fully integrated into the trading space within five years and, as such, affect both services and financial instruments of exchanges throughout Europe.

Trade performance analytics, real time management as well as cyber security are and will continue to be considered quite important to both financial markets and most of the financial market participants especially in terms of their long-term defensive solutions.

Traders will focus and will continue to dedicate more time on strategies which allow them to create opportunities, in areas related to performance analytics and execution management systems (EMS). Traders believe that EMS will impact financial markets and as such the functions of the exchanges in Europe (and not only) within the next five years[4].

In addition, buy-side participants are expected to continue to use cloud adoption tactics. As such, the cost of ownership will decrease and more agile development methodologies will be adopted, increasing at the same time the innovation pace within trading venues as well.

A deeper understanding of the above-mentioned services is needed, along with clear legal definitions in order to provide trust and certainty to market participants. The scope of any future initiatives from the European Commission should take into consideration the tendencies described above and the dialogue with the market on specific proposals should be further enhanced.

[4] The Trade News, EMS Survey, 2017, available here.

Q90 - Do you believe that certain product governance and distribution provisions of the MiFID II/MiFIR framework should be adapted to better suit digital and online offers of investment services and products?

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

Q90.1 - Please explain your answer to question 90:

Q91 - Do you believe that certain provisions on investment services (such as investment advice) should be adapted to better suit delivering of services through robo-advice or other digital technologies?

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

Q91.1 - Please explain your answer to question 91:

X. Foreign exchange (FX)

Q92. Do you believe that the current regulatory framework is adequately calibrated to prevent misbehaviours in the area of spot foreign exchange (FX) transactions?

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

Q92.1 - 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?

Q92.1 - Please explain your answer to question 92:

Q93 - 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?

Section 3. Additional comments

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

Please, where possible, include examples and evidence.

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

In addition to the points raised in this CP, we would like to make the following observations:

1. Reference data and reporting: From our experience, operationally speaking, the main concerns raised by MiFID II/R are related to reference data and reporting, in particular RTS 23, among others. Actually, we revisited the inputs prepared for ESMA FIRDS/FITRS Workshop in 2018 (attached for convenience) and we realized that it still valid and updated. The problems raised by that paper, unfortunately, remain.

2. Interpretation: (i) Interpretation of certain terms: Exchanges have different interpretation of key concepts as, for instance, "maturity date". For instance, some Exchanges use the settlement date while others use the valuation date if the Final Terms do not mention explicitly maturity date. This can pose some problems. Guidance on these specific questions would be useful. (ii) Level 3 Q&As: Also, not only the questions submitted to the Authorities are replied in a satisfactory way.

4. CFI Code: In an ideal world, when the financial instrument is listed, the CFI Code should not change. However, that is not always the case. CFI Code can be modified and this can change everything on data validation (modification of MiFID II mandatory fields). The MiFID II data sent to ESMA changes according to the CFI code (CFI validation matrix). As CFI changes often on ANNA (e.g. from bond to warrant) it would have an impact on the information sent to ESMA and different fields should be completed. In an ideal case the original CFI code in ANNA should not be modified during the listing period to mitigate reporting issues and inconsistencies.

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

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

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