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

Fields marked with * are mandatory.

Introduction

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

SECTION 2 will be available in English only.

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

Background of this public consultation

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

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

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

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

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

Responding to this consultation and follow up to the consultation

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

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

This consultation document contains three sections.

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

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

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

This consultation is open until 18 May 2020.

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

More information:

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

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

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

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

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

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

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

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

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

The NSA welcomes the opportunity to respond to COMs consultation regarding Mi-FID/MiFIR review and we appreciate the COM's intention to make the process fast and efficient. However, the COVID-19 situation puts significant operational stress on all stake-holder organizations, and the degree of participation by members is limited under the current, and prevailing, circumstances. We would like to underline the importance of taking a cautious approach to any legal changes now. and, if amendments are made, it is crucial that the need for adequate implementation time is considered. The NSA also underlines that any changes must be seen in terms of their costs implications as our members have incurred significant expenditures in readying

operations and IT-systems to meet MiFID/MiFIR requirements. New changes must be of material importance to justify new, additional costs to our sell-side members.

- Too many issues were not clarified at level 1

MiFIDII/MiFIR is one of the most comprehensive and complex files within EU secu-rities markets legislation and has caused a not insignificant number of imple-mentation challenges for investment firms and their clients. Some of these chal-lenges are a direct result of the legislative process and could probably have been avoided. In our view, too many issues which could not be agreed by co-legislators on level 1 were pushed down to level 2 and 3 (e.g. transparency rules in MiFIR including liquidity calibrations). Also, there were a significant number of new proposals introduced during the trialogue that were not subject to a proper consultation or cost/benefit analysis (e.g. product governance and double vol-ume cap). Finally, the fact that so many new rules and interpretations were intro-duced very late in the process – some even after 3 January 2018 - created a lot of implementation challenges and legal uncertainty e.g. SI regime, unbundling requirements, reporting, definition of algo trading, cost & charges.

- Problematic with changes around new year

From a practical perspective, requiring the application of such a significant framework as MiFID/MiFIR around a new year is critical as IT-development is sub-ject to a “frozen period” from early December to late January. Those restrictions are there for a reason as a lot can go wrong when IT-systems are changed around year-end. The NSA would therefore like to urge the co-legislators to con-sider these practical implications in future legislative work.

- Disregard of Better Regulation

In accordance with the Commission’s better regulation agenda, it is always im-portant to ensure that significant changes to EU legislation are made subject to a thorough analysis of the implications for firms and end-users. A recent, problem-atic example of implementation problems has resulted from the amendments to the tick size regime, which was introduced through a fast track procedure, us-ing the Investment Firm Review as a vehicle. This procedure did not allow for an impact assessment of the proposals which is very unfortunate as it can lead to unintended consequences.

- Where is the level playing field?

Additionally, we are one European market and we could and should expect a level playing field. That is not necessarily the case when some member states are very fast and comply with deadlines for application whilst others are not. Some even add a certain national flavor even on Regulations. This creates un-certainty and undermines a level playing field. We see a need for a more strin-gent single rulebook approach and more regular peer reviews.

- Implementation time

The NSA encourages a process where level 1 and level 2 texts are final, clear and unambiguous before the deadline for application is set. The timespan from final level 1 and level 2 rules should at least be 1,5-2,5 years depending on the magnitude of the legislation. Please be aware that sufficient time is crucial since the value chain involved in implementing of new legislation is long (vendors, producers, venues, CCPs, investment firms, etc.).

- Take clients’ needs into account

Many implementation problems could have been avoided if the rules had been better calibrated taking the needs of the type of client (wholesale vs. retail) and type of instrument (investment product vs hedging instrument) into account. If consumer testing had been performed in relation to information requirements it would have been clear from the beginning that the information to clients is too complex and leads to information overload.

- Different rules for the same business – horizontal alignment

It has been very challenging for investment firms that MiFID II was not properly coordinated with other pieces of EU legislation such as PRIIPs, MAR and the pro-spectus regulation. This has led to overlaps and contradictory information re-quirements and definitions which make it more difficult for clients to understand and compare products.

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

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

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

5000 character(s) maximum

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

The purpose of MiFIDII/MiFIR was, in particular, to address shortcomings in the securities markets in the wake of MiFID I and the financial crisis and to improve the transparency and oversight of those securities markets. Additionally, MiFIDII/MiFIR aimed to enhance investor protection and improve conduct of business rules as well as conditions for com-petition in the trading and clearing of financial instruments.

- Calibration and simplification of investor protection rules. In the experience of NSA members and as confirmed in the Ruhr Study , MiFID II/MiFIR has made it more difficult to provide some investment services to clients and as a result of this, some clients have withdrawn from the capital markets. Moreover, whole-sale clients, which are generally capable of looking after their own interests, find the very extensive requirements in MiFID II burdensome and time-consuming whilst at the same time, retail clients find it difficult to understand the complex and lengthy information that they receive. Many of the rules in MiFID II /MiFIR have been drafted in a one-size fits all approach, and not taking the type of service, product or client into account. This has resulted in a lot of requirements which do not really make sense. Also, there have been significant implementation chal-lenges caused by data quality issues which have made it difficult to deliver reli-able information. The NSA also notes that the complex legal framework in MiFID II/MiFIR has created entry barriers for smaller investment firms which have had negative effects on the competition.
- Poor data quality disguise the effect of MiFIDII/MiFIR

With these aims in mind, NSA is first and foremost of the opinion that poor data quality has undermined the possibility for MiFIDII/MiFIR to prove its worth. For example, the liquidity calibrations reveal that Denmark should have around 38 liquid covered bonds in stage 1 . In fact, Denmark has 2. The NSA takes the view that a higher degree of standardization of the CFI codes would be helpful in order to improve the data quality.

- Market data costs continue to increase – and a CT will not solve this!

Additionally, NSA has observed a continuous increase in market data costs which is not in line with the stipulations of MiFIDII/MiFIR. We note that ESMA in its final report confirms the problems and suggests various initiatives to mitigate them. The NSA fully supports these steps. However, if these steps are not sufficient within a reasonable period of time, additional steps must be taken. This is agreed by both buy- and sell side participants . It is important to underline that NSA in general finds it hard to identify any valid business case for a Consolidated Tape and in particular we do not agree that a Consolidated Tape will solve the problems with market data costs. On the contrary, it will most likely increase market data costs and, on these grounds, must not be subject to mandatory con-sumption.

- More standardization, please

The current data register (FIRDS) presents some challenges. In order to make the register more user friendly for investment firms and their clients, the liquidity as-sessment should be available in both human readable and machine-readable format. Moreover, additional measures should be taken to improve the quality of pre trade data. NSA considers that a higher degree of standardization would be helpful in this respect e.g. as regards ISINs and CFI codes. In addition, further analysis needs to be made of the “ToTV” concept. To our understanding, the cur-rent interpretation implies that a new ISIN will be created each day for some de-rivatives. This process means that comparisons between instruments will not be possible, and hence that the resulting information has little or no value to clients.

- The low quality of trading venues order books is a key problem

Another challenge is an increasing problem with the quality of the trading ven-ues’ orderbooks. Due to fragmentation and the competition between trading venues to attract liquidity, market participants experience a decreased possibil-ity to execute larger orders with minimal market impact. This development has been accelerated due, for example, to too low tick sizes, inappropriate fee-structures which do not support genuine trading interest (such as maker-taker fees), high order/trade size, too much volume in the closing auctions and so forth which is hampering continuous trading during the day.

- Remove the DVC for the NTW

In addition, even as NSA recognizes the purpose of the Double Volume Cap, we believe it is an inappropriate and complicated tool. We suggest removing the DVC for the Negotiated Trade Waiver (NTW) as NSA considers the NTW as an im-portant tool for clients to achieve better “on-venue” execution and could also be a tool to limit the SI market share.

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

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

Question 3.1 Please explain your answer to question 3:

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

In NSAs view the main impediments to the effective implementation of MiFID II/MiFIR do not come from national legislation or existing market practices. Instead, many challeng-es stem from the fact that the rules from the beginning were very unclear and that na-tional competition authorities in some areas have made different interpretations. To some extent ESMA has tried to address these problems at level 3 by issuing Q & A. Alt-hough this has brought some clarity, it has also meant that many of the MiFID II/MIFIR rules have continued to evolve after 3 January 2018 which, per se, has been a challenge to the implementation.

Another area where existing market practices have been a challenge relate to the im-plementation of rules on inducements and cost & charges since pricing models are very different on local markets.

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.

NSA is of the opinion that the level of transparency has increased in some markets. How-ever, it should have increased significantly more as:

- OTC transactions are published via APAs,
- There are new transparency requirements for non-equities
- There is more stringent post trade transparency for equities (from 3-1 minute) etc.

However, as initially mentioned, data quality is not yet to the standard expected and should attract more attention as the level of transparency does not truly reflect what it might be.

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.

First and foremost, it is important to stress that trading venues and systematic internalisers are characterized by different business models. A trading venue provides multilateral trading with matching of orders, whereas systematic internalisers offers bilateral execu-tion against its own capital. Trading venues are most efficient when there are overlap-ping, opposite orders, which can be matched according to certain criteria, whereas sys-tematic internalisers can acts as “buffers” if for example all want to sell/buy, if the size of the order is too large to be executed on a trading venue without significant market im-pact, if a client needs immediate execution and so forth. Both business models serve a purpose for end-users and should be able to co-exist on the EU market.
With these differences in mind there are, however, still unlevel playing fields in certain areas. For instance, trading venues monopolized the supply of market data, a problem still to be solved. This market power can be seen, for instance, in the fact that many trad-ing venues charge SIs for distributing and publishing their quotes, which hampers compe-tition between trading venues and SIs. This is not in line with MiFIDII/MiFIR.
Additionally, in the non-equity space the unlevel playing field still exists in the current pre trade transparency for SIs. Unlike trading venues, SIs trade against their own capital which expose them to risk. That makes SIs more vulnerable to pre- trade transparency than trad-ing venues, since SIs must disclose their identity when making these quotes public.
In particular, NSA members are concerned with the requirement in MiFIR article 18(6) that SIs shall allow other clients to execute transactions on the same terms. SIs should not be forced by regulation to provide quotes. Therefore, we urge to delete this requirement and in connection hereto, to also delete MiFIR article 18(7) and 18(5) to ensure that quotes are not to be given to other clients. In case article 18(6) and article 18 (7) are de-leted, the present requirements for SIs to publish quotes with name/MIC should also be abolished.
In the equity space, the former unlevel playing field between SIs and Trading venues in respect of tick sizes has now been resolved due to the requirement of tick size validation up to LIS.
Furthermore, the trading venues increasingly move away from continuous trading by in-troducing auctions, which increases in particular the incumbent exchanges’ market power compared to other trading venues. This lowers the quality of the overall trading venues’ order books even more as well as affect the price discovery during the day. NSA is concerned with this development, firstly because this development undermines the continuous transparency and price discovery during the day by trading venues. This means that SIs are compelled to take over the role as execution venues, providing the requested execution, transparency and price discovery during the day as liquidity pro-viders. However, such a development is clear evidence of the poor quality of the trading venues orderbooks.
Secondly, the concentration of volume during closing gives the trading venues – and in particular the incumbent exchanges – even more significant market power, as the need to participate in these auctions is self-fulfilling as the volumes increase.
Thirdly, it should be considered to introduce a limit on the share of trading allowed in the closing auction. If this development continues, we believe something must be done.

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

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

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

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

The barriers have changed behaviour from both manufacturers and distributors as a re-sult of the legal obligations in MiFID II/MiFIR. There are also reasons to believe that the complexity of the rules has led some retail investors to withdraw from the capital markets.
The high and increasing market data costs. Investment firms are forced to scale back their market data purchases deselecting certain, smaller markets or products. This harms transparency and limits at an increasing pace the type of instruments and markets that investors access. Such development harms the less significant markets and companies and compromises market integration and transparency.
Product governance and target market requirements have narrowed the scope of fi-nancial instruments that can be distributed to retail clients.
To some extent the cost & charges requirements have also had this effect since invest-ment firms have been required to obtain data from third parties which are not subject to the regulation. Where not reliable data could be obtained, many investment firms stopped distributing the affected products.
The lack of clarity regarding the scope of PRIIPs has led many manufacturers to restrict products to professional investors e.g. corporate bonds. The product governance regime has had similar consequences. It has effectively created an investor suitability obligation, not just at the point of sale (the approach taken in the past by regulation), but also impos-ing this obligation on issuers, underwriters, and secondary market sellers over the entire lifetime of the instrument. The practical burden of compliance with product governance has caused many EU-originated issues to refrain from placement of bonds to retail inves-tors. It has also restricted secondary market access for retail investors as the prospectus for non-financial corporate bond issuers regularly includes a rider (based on ICMA stand-ards) stating that the target market is eligible and professional investors only, even though the bonds as such are very simple in their construction (basic fixed or floating rate notes). For corporate issuers that do have a need to have features in their bonds that like-ly qualify those bonds as PRIIPs, there is great uncertainty as to how the obligation to pro-duce and update the KID should be catered for in particular regarding updates during the life time of the note. This has created a barrier for retail investors. Moreover, the cur-rent drafting of the opt-up possibilities in annex II MiFID 2 makes it very difficult for even sophisticated investors to opt-up to become professional investors in order to buy those products.
Also, the language requirements in PRIIPs can be seen as a barrier. Many of the global product manufacturers may provide KID only in English or German. Local distributors in many other EU countries do not have the possibility to have these KIDs in their local lan-guage, with a result that these packaged products, including many global investment funds, are not offered to retail clients.

Section 2. Specific questions on the existing regulatory framework

The EU has a competitive trading environment but investors and their intermediaries often lack a consolidated view of where financial instruments are traded, how much is traded and at what price. Except for the largest or most sophisticated market players (who can purchase consolidated data pertaining to the different execution venues from data vendors or build their own aggregated view of the market), investors have no overall picture of a fragmented trading landscape: while the trading often used to be concentrated on one national exchange, notably in equities,

investors can now choose between multiple competing trading venues, which results in a more fragmented and hence more complex trading landscape. At the same time, fragmentation per se should not be discarded as it is inherent to the introduction of alternative trading systems (MTFs, OTFs) which has led to a significant increase in competition between trading venues with positive effects on trading costs and increased execution quality. This section seeks stakeholders' feedback on how to improve investors' visibility in the current trading environment via the establishment of a consolidated tape.

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

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

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

PART ONE: PRIORITY AREAS FOR REVIEW

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

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

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

1. Current state of play

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

1.1. Reasons why a consolidated tape has not emerged

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

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

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

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

Question 7.1 Please explain your answers to question 7:

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

The NSA is of the opinion that the main impediment for the creation of a CT is the cost of market data. A consolidator will need to receive data from all TVs and APAs in order to be able to consolidate the information. The cost of obtaining all of this information will be prohibitive. Considering the existing high price levels and market data policies from the trading venues, we believe that the costs of creating a viable CT would be extremely high and, as a consequence, that the data will not be affordable for end-users. In order to be a success, we think the CT should free of charge for users without any mandatory con-sumption.

We also note that question 10 in the Commissions consultation lists a number of different problems which the establishment of a CT potentially could solve. However, as stated initially, the NSA does not consider that a CT in any form would be a comprehensive solu-tion to all of these problems since there will always be a need to purchase access to proprietary data. However, if the problems with high and increasing market data costs were solved, industry driven solutions would appear concurrently with the handling of the data quality issues and data standardization (e.g. MMT, FIX).

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

Please explain your answer:

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

The NSA does not consider it meaningful to mandate a consolidated tape at this stage and we are concerned with the apparent, political eagerness to move on with a CT even without an in-depth and documented proposal to base such decision on.
Before any further steps are taken, the NSA urges the Commission to develop a concrete proposal for a CT and thereafter to carry out comprehensive consultation of this pro-posal. The consultation should include:

- Purpose of a CT (including target group(s) and potential use cases)
- Governance
- Concrete proposal for the construction of a CT (including but not limited to scope of the CT and instruments, purpose, level of information, data require-ments and data standards. costs (costs of construction a CT, cost of day-to-day operation, funding model)
- Market data costs (including connectivity costs) associated with usage including potential limitations in usage etc.)
- Requirements for contribution/reporting
- Requirements for consumption (not mandatory)
- Timeline
- Impact assessment including cost/benefit analysis

The NSA underlines that there features of the CT should not include mandatory consump-tion.
When looking at the current problems in the US, it is fair to say that the construction and governance of a CT is of vital importance in order to add value. For CT to facilitate e.g. transparency, significant legal changes to the current regime will be required:

1. The CT may cover equity- and equity like products (post trade) as well as bonds (post trade). Derivatives are too complicated to include at this stage. (However, the legislation may be prepared to include this at a later stage, if needed.)
2. The CTP must be a public, not-for-profit utility, preferably within ESMA
3. All venues and all APAs must be mandated to send data in a non-discriminatory way to the CTP. To ensure that the information if of value to the end-users, the da-ta quality must be improved. One model is to consistently require the Market Model Typology (see https://www.fixtrading.org/mmt/). As mentioned above, there should be no requirement of mandatory consumption of the CT.
4. There must be no preferential treatment of trading venues' proprietary infor-mation.
5. It would be preferable if market data from the CTP is of sufficient high quality to be included in the "best execution" assessment for instruments covered by the CT.

6. It follows a reasonable cost-based approach in the fee/reward structure (mean-ing the CE approach stands) – both for CTP data as well as proprietary data. In order for the cost assessment, there is a need to implement a cost benchmark approach in order to verify and control the CT, the trading venues (and APAs) market data pricing meaning “step 0” must be enforced (every price change must be substantiated with a cost benchmark as a starting point).
7. CT data must be able to be used in all applications without any limita-tions/restrictions including no restrictions in usage and distribution.
8. In contractual terms, CT data is considered unique and independent, not a sub-stitute for data obtained directly from a trading venue in order for trading venues not to claim additional fees for CT data.
9. Governance of the CTP should be in the hand of ESMA and include an inde-pendent body consisting of elected experts representing various views with a proven record.

1.2. Availability and price of market data

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

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

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

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

Please explain your answer:

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

The NSA fully agrees and supports the conclusions in ESMAs final report on market data and the proposed measures as a first step to solve the problems with the increased costs of market data (as described in the EC consultation page 14 and 15).

However, the NSA would like to stress that we do not consider that the establishment of a CT is a solution to solve the market data problems.

Also, the steps described by ESMA on page 14-15 are important initial steps and if signifi-cant results are

not observed within a reasonable period of time, additional steps should be taken.

As for the concrete proposals, the NSA urges that the proposal to add a mandate to the Level 1 text empowering ESMA to develop Level 2 measures specifying the content, format and terminology of the RCB information includes power to standardize definitions, terms and audit procedures.

However, if these measures do not work within a reasonable period of time, additional steps must be taken. Please note that this has been highlighted by both buy- and sell side trade associations in EU (EFSA and EFAMA). See https://efsa-securities.eu/wp-content/uploads/2020/02/200207_EFSA_Joint-Statement-on-Market-Data-Costs.pdf and https://www.efama.org/Pages/Submitted%20after%202018-03-12T16%2022%2007/Reasonable-Market-Data-Costs-Benefits-the-Real-Economy.aspx

The NSA agrees that the level 1 changes must be as specified by ESMA. Moreover, we suggest the following changes to the existing regulatory requirements (MiFIR, art. 13, Mi-FIDII, art. 64-65, Delegated Regulation (EU) 2017/567 art. 6-11 plus Delegated Regulation (EU) 2017/565 art. 84-89):

- Level 1 and level 2 changes To add a mandate in the level 1 text, empowering ESMA to develop draft Technical Standards specifying the content, format and terminology of the RCB information as described in MiFIR, art. 13.
- To amend the level 1 texts regarding access and publication of market data, stating in a coherent and consistent form that RCB that market data is to be pric-es based on cost of producing and disseminating the market data plus a rea-sonable mark-up.
- To amend art. 4 of MiFIDII and art. 2 of MiFIR by adding definitions of market data.
- Remove art. 7.2 as costs of producing and disseminating market data will cover relevant costs. The present art. 7.2. opens a barn door for all kinds of costs with no relevance for market data production and dissemination. The trading venues will collect a revenue via the term “reasonable margin” in art. 7.1. Include a new art. 7.2 in which it is required an obligation to document that the price of market da-ta (as defined as raw market data) is based on costs as defined in a new art. 7.3. Art. 7.3 either stipulates the cost benchmark or a reference to the relevant cost benchmark how it should be complied with.
- Art. 8.1 and 8.2 should be removed as these are a “barn door” to create an unlevel playing field and complex data policies with considerable limitations in market data usage. Art. 8.3 should be extended with requirements to provide market data on standardised basis, ensuring uniform definitions, pricelists and usage policies across all trading venues in the Union. Such requirements would increase the transparency and enable comparison across trading venues.
- In case there is a wish to implement LRIC+, art. 9 would be superfluous. In any case for the time being there is a need to investigate the required due diligence when entering into a per user program as this at present preclude potential cli-ents or inflict these with unproportionate burdens.
- Market data should be made available without being bundled with other ser-vices. However, disaggregated market data is in general not being requested as the disaggregated market data is relatively more expensive than bun-dled market data. As long as this is the case, the demand will be limited. This is a problem for smaller data users. i.e. data users which only need a limited amount of market data but are forced by buy bundled market data. This limits the data use and harm transparency. Therefore, art. 10.2 should be rephrased and should state that prices should be at the same relative level as if the data was pur-chased in a bundled version.

For transparency purpose, it appears that article 11 is not clear enough as trading venues do not comply. Also, historical price lists and market data policies must be available (at least for the past 5 years). If LRIC+ model is introduced a significant simplification will be the outcome. As for art. 11.2 (d) it should be specified more clearly, what is to be understood with market data revenue in order to ensure comparability. As for art. 11.2 (e), the CE proposed cost benchmark should serve as the basis for this infor-mation. The information

should be published with figures in order to make it comparable.

1.3. Use cases for a consolidated tape

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

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

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

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

The NSA is of the opinion that a CT cannot solve any of the scheduled problems. There will always be a need to buy access to proprietary data and therefore a CT cannot be used to ensure ”reasonable cost of market data”.

In this context, the NSA is of the opinion that a CT to a limited extent could be included as one factor in the best execution control with the important point in mind that best execu-tion is not only about price, but also costs, likelihood of execution etc. Additionally, it should be considered that even using a CT as a component in best execution control could be problematic as a timestamp is not just a timestamp as the same exact time does not equate to the same accessibility. The location is too important today. Latency in between geographies means, by necessity, that two trades done at the exact same in-stant would be seen in a different order depending on your location. A transaction in London would be seen later in Stockholm and vice versa. This also means that the actual accessibility would be in a different order as a function of location. Therefore, a Europe-an CT cannot, with fairness, be used for controlling execution quality. Please also see our response to Q8.

2. General features of the consolidated tape

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

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

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

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

- **Whether pre-trade data should be included in CT**: the argument has been made that the US model for a consolidated quotation tape comprises pre-trade quotes because of the **order protection rule** contained in Regulation National Market System (NMS). The order protection rule eliminated the possibility of orders being executed at a suboptimal price compared to orders advertised on exchanges and it established the National Best Bid and Offer (NBBO) requirement that mandates brokers to route orders to venues that offer the best displayed price. Although some stakeholders strongly support a quotation tape, others have expressed reservations, either because there is no order protection rule in the European Union or because they do not support the establishment of such a rule in the EU which could be encouraged by the establishment of a pre-trade tape. Stakeholders also argue that a quotation tape will be very expensive and that latency issues in collecting, consolidating and disseminating transaction data from multiple venues will always lead to a co-existence of the CT and proprietary exchange data feeds.

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

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

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

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

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

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

The NSA is of the opinion that a CT cannot solve any of the scheduled problems in Q10. There will always be a need to buy access to proprietary data and therefore a CT cannot be used to ensure ”reasonable cost of market data”.

That said, in case a CT will be created, the NSA is of the opinion that the following re-quirements are crucial:

- A high level of data quality including identifiable instruments
- Mandatory contribution
- No mandatory consumption
- Full coverage within the chosen asset classes
- Time Stamp
- Strong governance

Is key in order to increase the likelihood of success for the CT. Please also see our re-sponse to Q8.

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

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

The NSA believes that most of the factors are easy to perceive, However, as for the need for full coverage – this is due to the consequences for the venues that are left out in case of not full coverage. These venues will be “faded out” as relevant venues going forward.

Please also see Q8 for further elaboration.

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

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

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

No. As the use case is not evident and investments firms have different needs, the con-sumption must not be mandatory since this will only add to the problems with increasing market data cost.

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

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

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

None. Best execution is not only about price, but also costs, likelihood of execution etc.
Investment firms will need additional information to include in the best execution as-sessment.

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

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

The position of CTP should be put up for tender every 5-7 years	○	○	○	○	◉	○
Other	○	○	○	○	○	○

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

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

The NSA is of the opinion that a CT cannot solve any of the scheduled problems in Q10. There will always be a need to buy access to proprietary data and therefore a CT cannot be used to ensure ”reasonable cost of market data”.

In case the construction of a CT will continue, the NSA is of the opinion that a CT needs to be funded by user fee. There is a need for a tender every 5-7 year to ensure that the CT is always “on the top”. It is important that there is no requirements for mandatory consump-tion. And if there is no use, there is no user fee to be paid. Please also see our response to Q8 for additional input.

3. The scope of the consolidated tape

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

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

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

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

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

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

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

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

Covered bonds post trade
Equity derivatives, post trade
IBOR fixing

Question 15.1 Please explain your answers to question 15:

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

The NSA is of the opinion that a CT cannot solve any of the scheduled problems in Q10. There will always be a need to buy access to proprietary data and therefore a CT cannot be used to ensure ”reasonable cost of market data”. In case the construction of a CT will continue despite the poor use cases, It is the assessment of NSA that:

- An equity post trade CT can be used for transparency purposes
- A post trade bond CT can be used to facilitate transparency
- An IBOR fixing could add some value, and if so, as a minimum the below fixings should be included:
  - EONIA
  - €STR
  - SOFR
  - CIBOR
  - STIBOR
  - NIBOR

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

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

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

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

The NSA is of the opinion that a CT cannot solve any of the scheduled problems in Q10. There will always be a need to buy access to proprietary data and therefore a CT cannot be used to ensure ”reasonable cost of market data”. In case the construction of a CT will continue despite the poor use cases, it is the assessment of NSA that the following infor-mation should be consolidated in the CT:

- If a Post-trade CT is created, the needed information is:

Venue, Traded Price, Size, Time Stamp, Trade Type, Deferral flag,
Instrument ID (ISIN+ TV MIC + XOFF + currency) – No SI identity.

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

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

Shares

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

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

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

Question 17.1 Please explain your answers to question 17:

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

The NSA is of the opinion that shares admitted to trading on a Regulated Market as well as shares admitted to trading on an MTF with a prospectus approved in an EU member state is relevant to include in the Official List of shares defining the scope of the EU Con-solidated Tape.

We do not see a need to include third country shares as this will minimize the usefulness of the tape as NSA also proposes to remove the STO (if SIs are excluded as eligible exe-cution venues for the STO) or limit the scope and exclude third country shares (if SIs are still encountered as eligible execution venues for the STO).

Question 18. In your view, should the Official List take into account any additional criteria (e.g. liquidity filter to capture only sufficiently liquid

shares) to capture the relevant subset of shares traded in the EU for inclusion in the consolidated tape?

Please explain your answer:

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

No. In case there is a wish to move on with the CT, all shares must be included as the less shares and information that is included, the bigger the need for buying the proprietary market data from the trading venues.

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

Please explain your answer:

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

No flexibility, cf. Q17.

ETFs, Bonds, Derivatives and other financial instruments

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

Please explain your answer and provide details by asset class:

5000 character(s) maximum

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

The NSA supports a phased in approach, starting with post trade CT for bonds. (See also our response to Q16). The NSA does not consider it feasible to include derivatives at this stage.

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

4.1. Equity trading and price formation

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

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

Please explain your answer:

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

The purpose with the STO is to force as much share trading on trading venues and SIs as possible in opposition to MiFID I where a significant part of trading occurred OTC and via BCNs.

According to own experiences and the ESMA consultation on the transparency regime for equity and equity-like instruments, the STO has – not surprisingly – resulted in more trad-ing via trading venues and via SIs than before and therefore more transparency. Appar-ently, SIs are facing an increasing market share of the trading at the expense of the trad-ing venues and the question is why the latter is the case:

The trading venues ability to facilitate trading efficiently and with minimal market impact is reduced due to low quality of the trading venues order books and the development is self-perpetuating: As the market players algorithms increasingly deselect venues with low execution quality, the ability for these venues to support good execution quality de-creases even further.

The NSA believes that the quality of the trading venues' order books has decreased con-siderably since the application of MiFID I in 2007. This is e.g. due to the fragmentation and the trading venues' unhealthy

approaches to attract liquidity from each other. For ex-ample, the usage of maker-taker fee attracts only shortsighted liquidity which disappears in times of distress and the “one-size-fits-all” tick size table in MiFIDII /MiFIR (RTS 11) has re-sulted in too low tick sizes in some markets and too high tick sizes in other markets.

Also, the general market quality and transparency is compromised due to the increasing importance of closing auction for incumbent exchanges.

First, this development undermines the continuous transparency and price discovery dur-ing the day by trading venues. Thereby, the SIs are compelled to take over the role as execution venues which provides the requested execution, transparency and price dis-covery during the day as liquidity providers. However, such development is another clear evidence of the poor quality of the trading venues orderbooks, which should be taken seriously instead of blaming the SIs in general.

Second, the concentration of volume during closing gives the trading venues – and in particular the incumbent exchanges – even more significant market power, as the need to participate in these auctions are self-fulfilling as the volume increases.

Third, it should be considered to introduce a limit on the share of the trading allowed in the closing auction. In case the share is exceeded, the usage of closing auctions should be limited even further.

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

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

Question 22.1 Please explain your answer to question 22:

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

The Swiss model is clever in that sense as the trading restriction of article 23(1) MiFIR will no longer apply to EU investment firms, because the Swiss shares are no longer "admitted to trading on a regulated market or traded on a trading venue" in the EU (except for any 'grandfathered' dual-listed shares). So, in short, it could be considered to reduce the scope of the trading obligation via excluding third country shares.

However, in case this is not the chosen path, we still face the problem of shares admitted to trading on a regulated market or traded on a trading venue in the EU and which still are traded in third countries and therefore also subject to the trading obligation., Equiva-lence allows firms to access this liquidity in order to ensure clients best execution. With absence of equivalence it is expected that this liquidity will seek to EU (some UK based MTFs have already operations within EU), and over time, the problem is expected to solve itself. However, there will be a period where investment firms cannot access third coun-try liquidity which must be taken into account by the supervisors.

As for longer term fears – we direct your attention to the ESMA proposal of removing SIs as eligible

execution venues under article 23 of MiFIR. In short. This is not in the interest of the clients and will lead to de facto exchange monopolies not only in market data as we face now, but also in trading. And please bear in mind that exchanges and MTF are for profit companies. We see this proposal as highly inappropriate and this will certainly not benefit the development of a Capital Markets Union. We strongly believe that SI must be maintained as eligible execution venues and in Q21 there is an activity-based descrip-tion of what Sis can do, as we do recognize that SIs may not become multilateral venues. In case SIs are removed as eligible execution venues, the Share Trading Obligation must be removed as well to avoid a concentration rule and to ensure clients best execution and choices.

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

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

Question 23.1 Please explain your answers to question 23:

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

NSA strongly urges that the STO must only continue if SIs still are considered as eligible execution venues under the STO. If this is not the case, the STO must be repealed all to-gether to avoid concentration rules.

If SIs are included as eligible execution venues the STO should be amended and not in-clude third country as argued under Q22.

Also, it should be considered to follow the ESMA proposal in their consultation on equity market transparency to remove “carried out between eligible and/or professional coun-terparties” in exemption b) in the STO, as non-price forming trades are not only carried out between eligible and/or professional counterparties.

Please beware that in order to accommodate the apparent concerns of some SI behavior, we have provided a suggestion on how to clarify the SI activity in Q21 and Q24. It is very important that the SI activity is not limited further than described in order to ensure appropriate and efficient client execution.

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

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

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

Question 24.1 Please explain your answers to question 24:

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

The NSA understands that there is a concern that the SIs market share has increased too much and that SIs are acting multilaterally rather than bilaterally.
Firstly, we do not see a problem with an increasing role of SIs as long as the SIs business model is complying with the requirements in MiFIDII/MiFIR. One of the fundamental rea-sons for introducing quantitative requirements and opt-in possibilities for becoming an SI in MiFIDII/MiFIR was to move trading away for pure OTC/BCNs and to increase the num-ber of SIs to strengthen the competition between execution venues to the benefit of the clients and the efficiency in the capital market. The NSA finds it very important that the legislative framework support the establishment of execution venues in order to increase competition in the European markets.
Secondly, we are missing documentation of the apparent, multilateral business model of some SIs. From a Nordic perspective we cannot recognize this behavior. NSA is, howev-er, open towards strengthening the description of the compliant SI activity and include this in level 2 regulation rather than in Q&As, if so needed.
Thirdly, as for the SIs market share of trading, ESMA should bear in mind that the success of SIs to a great extent is due to the poor quality of the trading venues order books which is not supporting on-venue trading, and in particular not for larger size orders.
SIs provide clients with more efficient execution, more choices and at lower costs than trading venues. For retail clients, SIs can provide immediate execution at a known price. For wholesale clients – such a pension funds - SIs can minimize market impact when exe-cuting larger orders, which trading venues in general are unable to support. This is not at least due to the in general poor quality of the trading venues order books with low vol-ume and undue interference from non-genuine “liquidity-providers” which is a conse-quence of e. g. inappropriate incentive schemes and insufficient tick sizes.
For all clients there is a wish to minimize costs and maximize return. There is no reason in punishing investors by forcing them to accept higher costs due to lower execution quality. This is not proper investor protection. Additionally, eliminating SIs as eligible execution places will diminish investor choice and increase costs for end-users which is also not in line with MiFIDII/MiFIR.
Rather, NSA suggests enhancing the description of the SI activity in order to eliminate any doubts of what

proper SI activity is. This should be implemented on level 1 or 2 instead of Q&As as is the case now, particular in trading sizes below Large In Scale.
Part of being a systematic internaliser and acting in the best interest of the clients is to bring together trading interests when this can be done without establishing a system re-sembling the functioning of a trading venue. Key to defining this role is to define what constitutes “an internal matching system”. Trading venues have automated systems which assure that multiple trading interests can interact and be combined without human intervention. Thus, this should not be allowed when acting as a systematic internaliser. This would include automated systems which defer the trading so that the buying and selling interests are not combined directly and simultaneously, but where a very short latency is added.
What should continue to be allowed is the manual handling where systematic internaliser finds an opposite trading interest and combines a buy and a sell order. Such processes should not be seen as “a system” since the processes are not automated and since by nature, they will always be ad hoc.
This situation will occur if for instance an investment firm is approached by a client that wants to sell shares. To act in the best interests of the client the systematic internaliser shall decide whether to route the order to a trading venue, whether to buy the shares to its inventory or whether to try to find a suitable buyer. Trying to find a buyer in such a situa-tion via a manual process does not resemble the way a trading venue functions in the trading of shares and it cannot be defined as meeting the definition of multilateral trad-ing, nor will there be any rules that govern such matching of opposite trading interests. The clients do not face each and have no access to a system where they can see each other orders.

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

Please explain your answer:

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

NSA considers that if the suggested changes in Q21 and Q24 are implemented, it should also embrace the apparent problem with low latency firms, opting in as SIs and only providing risk capital for micro or nano seconds.

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

Please explain your answer:

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

Please see Q21 and 24 for our proposal.

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

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

Please explain your answer:

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

NSA would like to stress that price discovery is, among other things (such as both firm specific information, micro and macro event), based on trading on execution venues where the price is not taken directly from other sources. That implies that price discovery not only can be attributed to trading via Regulated markets, but also via multilateral Trading facilities and via Systematic Internalisers and other liquidity providers/mm.
As described in Q21, the incumbent exchanges are increasingly using auctions and in particular the closing auctions attracts a lot of liquidity. This increases the market power for the incumbent exchange and leaves a vacuum in the on-venue continuous trading during the day and compromises the price discovery that stems from this kind of trading. This implies that the price discovery increasingly depends on other execution venues, such as SIs.
In this context, NSAs suggests the following measure to increase the price discovery pro-cess:

- Remove the Double Volume Cap (DVC) as the DVC is an inappropriate and complicated tool. Keep the NTW unrestricted as the NTW is an important tool for clients to achieve better “on-venue” execution and could also be a tool to limit the SI market share.
- Increase the minimum quoting size for SIs from 10% to 50% as this will lead to in-creased transparency and contributed to better price discovery.
- Limit the share of the trading volume allowed in the closing auction as too much volume in the auctions hampers the price discovery process during the day. In case the share is exceeded, the usage of closing auctions is limited even further.

NSA agrees that steps should be taken to incentivize lit trading as there is a common in-terest in supporting trading venues’ ability to support the order flow and to offer execution with minimal market impact. However, the trading venues ability to facilitate this is reduced and the development is self-perpetuating: As the market players algorithms increasingly deselect venues with low execution quality, the ability for these venues to support good execution quality decreases even further.
NSA believes that the quality of the trading venues’ order books has decreased consid-erably since the application of MiFID I in 2007. This is e.g. due to the fragmentation and the trading venues’ unhealthy approaches to attract liquidity from each other. For ex-ample, the usage of maker-taker fee attracts only shortsighted liquidity which disappears in times of distress and the “one-size-fits-all” tick size table in MiFIDII /MiFIR (RTS 11) has resulted in too low tick sizes in some markets and too high tick sizes in other markets: Research reveals that, for instance, in the Nordic market, the present tick size tables have challenged the

ability to provide good execution quality in the shares which faced a tick size decrease under RTS 11:

- In shares where the tick sizes declined, the spreads also declined
- In shares where the tick sizes declined, volumes on the best price level declined
- In shares where the tick sizes declined, the BBO price update frequency in-ceased

All of these factors make it more difficult for market players to execute large orders with minimal market impact.

- NSA proposes to revise RTS 11 so that shares in the EU face tick sizes which sup-port liquidity and volume on all EU trading venues and increase the execution quality to the benefit of clients:. Turnover velocity (turnover/free float market capitalisation) is a better proxy for liquidity than an average number of trades. •
- Each venue (most liquid/the incumbent exchange) should be able to determine the relevant tick size based on a tick size table with i.e. 3 options. The tick size must be respected by all (in particular relevant if the proposed new tick size ta-ble is two dimensional like the FESE tables or if creating options for the most liquid market is not doable)

We are aware that the AMF study based on Euronext data apparently supports the “one-size-fits-all” approach. Looking at page 4 and 5 in the study, it illustrates a significant change – and mostly an increase - in tick sizes on Euronext compared to the previous FESE tables. With this in mind, the proposal from ESMA to change RTS 1 to tick size validate SI quotes up to Standard Market Size, was as far as we know mainly based on a study on Euronext data. Apparently, this study revealed a significant increase in SI trading at sub-tick below SMS as clients requested price improvement.

With this new information in mind, NSA believes that the reason for the increase in SI trad-ing at sub-tick could be due to the tick size increase at Euronext compared to the FESE tables. NSA recommends that this study from Euronext should be replicated for other exchanges as well, since we believe the conclusions will substantiate our claim

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

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

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

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

Question 28.1 Please explain your answer to question 28:

5000 character(s) maximum

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

As the use case for the CT is very limited, the NSA does not see any idea in aligning this with the scope of the STO.

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

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

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

Question 29.1 Please explain your answer to question 29:

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

The NSA does not support this as the use case for the CT is limited.

4.3. Post-trade transparency regime for non-equities

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

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

	1	2	3	4	5	

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

Question 30.1 Please explain your answer to question 30:

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

The NSA is of the opinion that a CT cannot solve any of the scheduled problems in Q10. There will always be a need to buy access to proprietary data and therefore a CT cannot be used to ensure ”reasonable cost of market data”. In case the construction of a CT will continue despite the poor use cases, It is the assessment of NSA that a CT should ensure to include various deferral flags in the CT in order not to expose the SIs to undue risks.
As mentioned above, the NSA is skeptical towards the establishing a CT for non-equity as we fear that it will be of limited use and increase market data costs. If established, we believe that it should be phased-in and limited to post trade data for bonds only. Moreo-ver, also with a CT, it is important to maintain a deferral regime that is appropriate in or-der to achieve the policy objectives, i.e. to balance the need of transparency and liquid-ity.

The NSA supports full-harmonization of national deferral regimes only if it can be ascer-tained that it protects liquidity providers and clients against undue risk. In particular for smaller or new markets which are dependent on a limited number of SIs also the price information is very sensitive for an SI and it is therefore not sufficient to only defer the vol-ume. Therefore, we do not support the shortening of the 2-day price deferral or to re-place it with volume omission only. Moreover, for very large transactions and transac-tions in illiquid instruments which do not even trade on a daily or weekly basis, it is im-portant to keep a supplementary longer deferral regime in the harmonized regime.

The NSA urges the co-legislators to be very cautious when considering amendments to the deferral regime in order not to negatively impact the liquidity of EU bond markets, in particular considering that the effects of the COVID-19 crisis is not yet known.

II. Investor protection[4]

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

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

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

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

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

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

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

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	
Costs	The study by Ruhr University from February 2019 called “MiFID II/MiFIR/PRIIPs Regulation Impact Study: Effectiveness and Efficiency of New Regulations in the Context of Investor and Consumer Protection” show that the average implementation costs of MiFID II and PRIIPs has been 3.7 million euros and running costs 508.000 euros p. a. per bank. These fig-ures are based on survey answers from a total of 153 German banks covering all sizes and both private (21), public (86) and corporate banks (46). The implementation and run-ning costs vary significantly depending on the bank’s size. Particularly small banks with total assets of less than EUR 1 billion quantifies direct implementation costs at EUR 218,000 on average and running direct costs of EUR 44.000, whereas medium-sized banks - with total assets of between EUR 4 billion and EUR 8 billion – where imposed a direct cost at an average of EUR 911,000 and a direct running cost of EUR 182.000. The largest banks (total assets >EUR 30 billion) quantify direct implementation costs at an average of EUR 35.6 million and direct running costs of EUR 4.247 million. Having discussed these estimates from the German market with NSA members they generally confirm these cost levels.

Qualitative elements for question 31.1:

5000 character(s) maximum

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

NSA would like to underline that the costs for complying with MiFID II/MiFIR requirements - both in the implementation phase and on an ongoing basis – have been very high for EU investment firms. A lot of resources that could be used for business development has been spent on huge regulatory projects, IT development and staff training. It is therefore important to ensure that all amendments which are proposed following a review are made subject to a thorough cost/benefit analysis, including consumer testing. Focus should be on simplifying and to remove unnecessary regulatory burden rather than creating new rules.

The complex legal environment created by MiFID II/MiFIR has made it difficult for very smaller investment firms to stay in business. New barriers of entry have been created which is not a desired development for the well-functioning of EU capital markets. It is important to ensure that requirements are proportional, taking into consideration the type of services provided.

In some areas the implementation costs have clearly been unproportional compared to the benefits of the regulation. Two important examples are in the NSA's view the rules on cost & charges and RTS 27 and RTS 28. Evidence show that clients have very little use of this information. In fact, retail clients do not read the information which they find too comprehensive, detailed and complex whereas wholesale clients find the data to be of low quality and administratively burdensome to receive.

To illustrate, one of NSA members with 900 000 clients have provided the following statis-tics:

- Best execution policies (downloaded 42 times during 2019)
- Best execution information (downloaded 33 times during 2019)
- RTS 28 information (downloaded 48 times during 2019)

While transparency on certain aspects of costs, advice and conflicts of interest might benefit clients and make them more aware and better investors, a majority of the re-quirements have no relevance to them. Instead, too much information confuses clients and makes them less interested in learning about how to invest responsibly an improve their finances. Since each information requirement must be built into the digital solutions, every piece of information takes technical resources in request, resources that could have been used to build tools the clients can use to improve their financial decisions instead. One NSA member witness that during the implementation period significant amount of the technical resources was used to build the digital solutions required to comply with the MiFID II requirements. Looking at to what extent clients actually used this information shows us that the information has had no impact on the trading patterns or on the decisions clients make.

According to NSA, there are several parts of the MiFID II/MiFIR rules on investor protec-tion that do not operate well together. There are several reasons for this:

a) MiFID II/MiFIR have not been sufficient calibrated for different types of financial instruments. In particular, the uniform approach causes a flood of information for products where the information has no value. For example, it is not reasona-ble that the detailed cost & charges rules apply in the same manner for pure in-vestment products and hedging products (e.g. issues with percentage calcula-tions and disclosure of cumulative effect of costs on return)

b) Different types of clients have different needs of information. Professional clients and experienced retail clients have enough knowledge and experience to act on their own. On the other hand, retail clients need more simple information than is currently provided according to MiFID II (e.g. total cost figure is more rel-evant than detailed itemised breakdowns).

c) Conflicting and overlapping information requirements in EU, such as different disclosure regimes in MiFID II, PRIIPs and the Prospectus regulation. These rules make it difficult for clients to use the information to make an informed invest-ment decision while creating liability concerns and high costs for investment firms

d) Other inconsistencies e.g. what is a "cost" is interpreted differently in different parts of the MiFID /MiFIR framework.

According to investment firms inegal and compliance costs related to the implementation of MiFID II/MiFIR have been significant. In this connection, the NSA would like to underline the importance of supervisory convergence. For investment firms that provide services on a cross-border basis it is very expensive to have different legal requirements in different Member States. Areas which have been particularly challenging from a cross-border perspective are inducements/quality enhancement and product governance.

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

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

1. Easier access to simple and transparent products

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

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

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

The NSA takes the view that a review should also include:

- Client categorization. The opt-up rules for retail clients in Annex II are not well-adapted for many types of instruments such as plain vanilla corporate bonds. Due to the lack of clarity around PRIIPs scope and the burden of product gov-ernance rules many issuers offer these instruments only to professional clients. However, it is difficult for retail clients to get access to these instruments by opt-ing up as professional clients. The main problem is the criteria in Annex II relating to trading frequency does not work well for illiquid instruments that are traded bi-laterally with market makers (RFQ) rather than in not a regulated market. The NSA would therefore support a review of Annex II which includes a calibration of the requirements taking the characteristics of different asset classes into account. (see Q 41).
- Execution-only. In our view not all non-UCITS should be considered as complex per se. Many non-UCITS in Sweden (Sw. specialfonder) are simple products that are very similar to UCITS. Provided that the requirements in article 57 MiFID II del-egated regulation are complied with, we see no reason why such products should not be distributed to retail clients. However, ESMA seems to have taken another view (ESMA Q&A on investor protection and intermediaries, section 10 question 1 dated 6 June 2017) and in some Member States this statement makes it more difficult for retail clients to access these products.
- Information to clients. The NSA would support a general review of requirements in MiFID II/MiFIR

regarding the formats and timing for providing information to cli-ents, including the concept of durable media. It must be ensured that the provi-sion of information work from a practical perspective when communicating with digital means. This in particular important considering that paper-based infor-mation is likely to be used less in the future (see Q 35).

- Inducements. Supervisory authorities in some Member States have provided dif-ferent guidance which means that the rules are implemented and enforced dif-ferently throughout EU. Very strict interpretations of what constitute proportionali-ty and quality enhancing services result in de-facto inducement ban in some ju-risdictions and de-facto no-rule regime in others. A ban or very strict interpreta-tions of the partial ban will indeed lower the product supply and the access to advice as seen in UK countering the CMU project. A simpler inducements regime combined with supervisory convergence would enhance the legal certainty, re-duce compliance risks as well as facilitate cross border business in EU.
- RTS 27 and RTS 28 (best execution reporting). The reporting requirements are too complex and do not fulfil their objective of providing clients with a tool for eval-uating best execution. The scope of the requirements needs to be clarified and the requirements calibrated taking different types of financial instruments and types of trading into account. The problem of data quality also needs to be ad-dressed e.g. by a higher level of standardisation regarding CFI codes etc.
- PRIIPS KID obligation to provide KID in retail clients' home language: Many of the global product manufacturers provide KID or may provide the KID only in English or German. The local distributors in many EU countries do not have possibilities to have these KIDs in their local language so therefore these packaged products, such as many global investment funds, are outside of retail client in smaller jurisdictions (such as Finland and Denmark) If English would be accepted because it is widely known language in EU, this would have a big effect on product scope to retail clients.

Question 32.1 Please explain your answer to question 32:

5000 character(s) maximum

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

According to statistics which NSA members received from last year reporting, many re-tail clients find the cost & charges information burdensome, difficult to understand and therefore they do not read the information received. Very few reactions have been de-tected across all client segments to the new cost & charges reports. Moreover, statistics show that retail clients are more interested in the total cost figures than in granular item-ized breakdowns. Out of those few questions firms have received, most of them appear to be caused by confusion from the granular itemized breakdowns. A speaking example can be presenting ex post costs as a percentage (%). A percentage figure is a number relative to another number, so expressing a cost as a percentage means that the cost must be compared with something, which for the Ex-ante is naturally the investment amount. However, for the Ex-post disclosure, to find a relevant denominator is impossible. Some costs, such as commission costs and entry/exit costs are related to the amount of the transactions (i.e. total turnover during the year for the Ex-post report), whilst other costs, as example ongoing costs for instruments are related to the client´s holding (i.e. average AUM during the year for the Ex-post report). You cannot sum percentage with different denominators and present it in the same table, since it is mathematically incor-rect. The theoretical calculation models are not well understood and of little use. Based on these considerations, we support a simpler cost disclosure regime which in our opin-ion would be more likely to help retail clients to make informed investment decisions.

Distance communication. Since time if often of essence to clients, it should be consid-ered to introduce a type of one-off cost & charges disclosure for clients who trade fre-quently, in some cases several times during the same day. Furthermore, it should be pos-sible to provide clients with ex ante cost & charges on the same conditions as the provi-sion of the suitability report and the KID when using distance communication. This is also a proposal by ESMA.

The application of the product governance rules and cost & charges rules in MiFID II re-quire that firms get data from third parties which often are not MiFID firms. If such data is not delivered, firms need to restrict access to the products which is not to the client's benefits.

The restrictions on third party payments, and particularly the divergent interpretations of the rules have meant that such pricing models are questioned, even though such models are cost efficient to small clients on a trading platform. Changing the pricing models into direct charging of the clients would mean higher costs to end clients and limit access to investment products.

It should be possible for retail clients to opt-out of the suitability report. In particular for clients which trade very frequently based on investment advice, these requirements make very little sense. The opt-out must be possible to agree on in advance e.g. in standard agreement.

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

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

Question 33.1 Please explain your answer to question 33:

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

The NSA does not support additional investor protection requirements for complex prod-ucts.

The NSA takes the view that the rules for complex products are adequate. We do not support additional investor protection requirements. The current regime is centred around an information flow and knowledge and experience assessments for complex products. The product intervention measures have shown a strengthened effort towards retail clients by limiting distribution of speculative product such as binary options and CFDs to this category of clients.

Moreover, we think that there are parts of the investor protection rules for complex prod-ucts that could be simplified.

a) Experienced retail clients should be able to opt-up to professionals in order to be able to invest in complex products. The criteria in annex II needs to be made subject to a review and better calibrated for different types of finan-cial instruments, in particular the requirement on trading frequency (see Q 40 - 41).

b) Derivatives are considered to be complex products under MiFID II. However, some of the requirements in MiFID II do not take into consideration that many OTC derivatives are in fact bilateral contracts which are used by clients to for hedging purposes i.e. to protect against risk and not as an investment. As a consequence, some of the investor protection requirements (such as the il-lustration of the cumulative effects on return, product governance, RTS 27, PRIIPs) make very little sense for OTC derivatives and the information is even misleading for clients.

c) Too many standard products are considered as complex. The NSA considers that units in non-UCITS should not be considered as complex instruments if the requirements in article 57 Delegated Act MiFID II are complied with.

d) The 10 % Loss Threshold Reporting for portfolio management (all clients) and leveraged instruments (only retail client), currently required according to ar-ticle 62 of the Delegated Regulation should be reviewed. These reports lead to very little real protection of clients. Preferred solution would be to delete both requirements. Second best alternative is to introduce opt-out possibili-ties for clients. In addition, professional clients do not need this information with regard to portfolio management and the rules assumes daily valuations for all types of securities which is not always possible. The European Commis-sion should also consider whether these '10% warnings' within the context of portfolio management services run counter to the notion of long-term in-vesting for retail clients, effectively encouraging pro-cyclical behavior.

2. Relevance and accessibility of adequate information

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

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

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

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

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

5000 character(s) maximum

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

The preferred solution would be to exempt ECP and professional clients from the manda-tory ex ante cost information obligations. If an exemption is not possible, we support a unilateral opt-out regime for all types of professional clients and ECP. However, unlike ESMA, the NSA takes the view that such opt-out possibilities should apply to all investment service (also investment advice and portfolio management)

For retail clients we agree that an opt-out possibility is more appropriate and that certain conditions should apply. Retail clients which are sophisticated should also have in-creased possibilities to opt-up as professional clients (see Q 40-41).

The above comments apply to both ex ante and ex post requirements.
However, it should be made clear that service providers can choose if they want to give this opt-out possibility to their clients or not. Service providers should be also be able to choose to send the same information to all clients, e.g. if they have the same electronic web solution to provide this information to all the client categories.

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

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

In NSA's opinion, the mandatory cost & charges disclosure regime for eligible counter-parties and professional clients is not proportional. Such clients have the knowledge and experience that is needed to look after their own interest when purchasing investment services from investment firms and/or making investment decisions. Also, in the experi-ence of the NSA, many eligible counterparties and professional clients find it unhelpful to receive large volumes of MiFID data on costs, in particular as the calculation methodol-ogy does not always reflect market practice or applicable accounting principles. It is a problem that the rules have not been developed with the characteristics of different fi-nancial instruments in mind (e.g. hedging products).

In our experience, many retail clients do not want to receive the ex-ante information re-quirements. In particular this applies to more sophisticated retail clients which trade fre-quently or to clients that enter into transactions by distance means such as telephone. Therefore, NSA thinks that also retail clients should be able to opt-out of the detailed in-formation requirements under certain conditions. As mentioned under Q 41 we are also in favor of facilitating for retail clients to opt-up as professional clients.

In combination with a possibility to opt-out one could consider to further analyse in-creased possibilities (ESMA Q&A on investor protection and intermediaries, section 7 question 23 dated 28 March 2019) of using an initial price agreement/grid/list as a one-off disclosure towards the clients who choose to opt-out (Add reference ESMA Q & A). This would be particularly helpful in situations where clients trade with relatively high frequency.
As regards the conditions the NSA would like to stress that it is important to avoid too extensive administrative burdens to firms and clients.
The exemption and opt-out possibilities should be available for both for products and investment services and irrespective of which type of service that is provided.

We agree with ESMA that the opt-out possibilities should be the same for all professional clients, i.e. both per se professionals and elective professionals.

Moreover, please note that the above comments apply to both ex ante and ex post re-quirements.

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

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

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

Question 35.1 Please explain your answer to question 35:

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

The NSA generally supports amendments to MiFID II which reduces the need for paper-based information. We would therefore welcome amendments that enable investment firms to provide information to clients electronically per default,). Thus, any mandatory requirements to provide information in paper format should be abolished but paper for-mat should still be considered as a durable medium.

Moreover, as regards the concept of “durable medium”, many NSA members have wit-nessed that the “two tier” approach which require firms to deliver a specific notification to make clients aware of information provided though the internet bank mailbox makes digital communication with clients more difficult (C-375 /15). It should be clarified that the requirement to “make available” is fulfilled when publishing information in the inter-net bank mailbox. Investment firms also have some security concerns relating to the use of SMS notification of clients that should be addressed.

Finally, the NSA would welcome clarification that an investment firm should always be able to consider the client’s provision of an e-mail address and/or that they sign up for services at a digital platform as proof that the client is willing to accept electronic communication.

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

	Yes	No	N. A.
General phase-out within the next 5 years	◉	○	○

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

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

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

The NSA agrees with ESMA that investment firms should be able to provide all the infor-mation and communication electronically per default. A short transition period may be granted, it could be even shorter than suggested 5 years.

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

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

It should be clearly stated in the MiFID rules that an investment firm is able to provide all the information and communication electronically per default. Moreover, it should be possible for an investment firm to have as a part of their business model to only provide information electronically which should be clarified to the client.

It is advised that a phasing out should be gradual and not dictated by an overall time plan but left at the discretion of the implementing entity. For a foreseeable future infor-mation giving, gathering and storage will be done with a combination of mediums, methodologies and technologies. The implementation will require substantial invest-ments in client communication, information systems, new processes and operational procedures. It should however be noted that in a post implementation environment cost benefits could be extracted in the areas of printing, storage and postage.

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

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

- ◉ 1 - Do not support
- ○ 2 - Rather not support

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

Question 37.1 Please explain your answer to question 37:

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

The NSA does not see any need for such EU wide database. Retail clients are mainly in-vesting in domestic investment products, mainly due to language barriers and differ-ences in product markets. The comparison of the different products designed for the dif-ferent markets might be challenging. It should therefore be carefully investigated if the benefits for setting up such a database outweighs the costs of setting such a database.

A lesson should be learned from the comparison website for the fees charged by pay-ment service providers (Directive 2014/92/EU). Given the complexity and issues when aiming to create fully harmonised KIDs in PRIIP, it can be assumed that it would be even harder to create a database capable of presenting a meaningful comparison of invest-ment products. Other recent experience with EU wide databases (such as FIRDS and the data hubs created to comply with MiFID/PRIIP requirements on product governance) show that it is very complicated to set up and expensive to implement. There are also concerns regarding data quality.

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

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

Question 38.1 Please explain your answer to question 38:

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

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

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

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

Question 39.1 Please explain your answer to question 39:

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

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

Moreover, recent experience with EU wide databases (such as FIRDS and the data hubs created to comply with MiFID/PRIIP requirements on product governance) show that it is very complicated to set up and expensive to implement. There are also concerns re-garding data quality.

3. Client profiling and classification

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

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

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

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

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

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

Question 40.1 Please explain your answer to question 40:

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

Many non-professional clients do have the knowledge and experience to invest in financial instruments but are prevented from doing so due to their classification as retail clients under MiFID II. As a result, some sophisticated and experienced clients are not able to implement an investment strategy that is optimal for their needs.

• The current client classification regime in MiFID II creates certain undesired bal-ances. In a prolonged low yield environment, we are seeing clients moving away from fixed income asset classes and seeking yields in more illiquid income gen-eration investments. Common for these investments is that we are looking at products only available for professional clients. This will typically be illiquid infra-structure or secured debt structures but there are also structures which are highly secured and with liquidity (e.g. yearly). This situation leaves sophisticated retail clients behind and "stuck" with fixed income products sometimes yielding nega-tive returns. In conclusion, the current regime goes against the thought of financial inclusion as well as the ambition to open up financial markets for all types of clients.

• As a general remark we think that the opt-up criteria to move from retail to pro-fessional status should put primary focus on the client’s knowledge rather than criteria targeting trading frequency and portfolio size thresholds. Arguably, the most important aspect is whether or not a client has a good understanding of the investments which the client wants to enter into.

o The opt-up criterion concerning trading frequency does not work in prac-tice, given that it treats all instruments in the same manner and causing several situations where the criterion cannot even be used in practice. Looking at bond transactions or illiquid products, these are not in general traded at the level of frequency indicated in the opt-up criterion. Fur-thermore, a criterion related to trading frequency carries a risk of creat-ing incentives to increase the number of transactions so that the client can be reclassified. It is important that this type of criteria is not set up as a one size fits all approach, and they should rather be based on a divi-sion between instruments or instrument types and considering their cat-egorisation as non-complex or complex instruments.

o The criterion on knowledge/experience that relates to a person having worked in the financial industry is often irrelevant. The majority of profes-sions within the industry does not mean that the client knows about spe-cific products (e.g. an equities trader doesn’t necessarily have knowledge about exchange traded products or bonds). It is more rele-vant whether the client understands the product and the risks involved. This requirement is also interpreted differently in different countries, which creates difficulties for firms and clients operating in multiple juris-dictions. It should be the investment firm’s responsibility to be transparent and provide proper and not misleading information, but it should be the client’s decision what to trade. It does not make sense that the client is allowed to put all their money in crypto currencies or online casinos but cannot access financial products that they have acquired an under-standing for and knowledge about the product and the risks involved. It creates an element of over-protection and paternalism.

• Given that sophisticated retail clients are more like certain professional clients, there is currently an information overload when dealing with these clients. For example, the suitability report should be possible to opt out from – especially for non-complex products. A client that does multiple trades in equities based on in-vestment advice, will get a suitability report for each trade. This creates unnec-essary administrative burdens both for the firm and the client, and we do have clients who do not want to receive the suitability report. In terms of documenta-tion, an equities trade is followed by a trade confirmation and the broker com-mission is fully transparent for each trade.

• The lack of clarity regarding the scope of PRIIPs has led many manufacturers to restrict products to

professional investors e.g. corporate bonds. The product governance regime has had similar consequences. It has effectively created an investor suitability obligation, not just at the point of sale (the approach taken in the past by regulation), but also imposing this obligation on issuers, underwriters, and secondary market sellers over the entire lifetime of the instrument. The practical burden of compliance with product governance has caused many EU-originated issues to refrain from placement of bonds to retail investors. It has also restricted secondary market access for retail investors as the prospectus for non-financial corporate bonds regularly includes a rider that the target market is eligible and professional investors only.

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

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

Question 41.1 Please explain your answer to question 41:

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

The NSA is in favor of the proposal to review the requirements in Annex II in order to facili-tate for experienced retail clients to opt-up to professional clients on request.

We are not opposed to lowering the EUR 500 000 threshold. However, we think that the opt-up criteria to move from retail to professional status should put primary focus on the client's knowledge rather than criteria targeting portfolio size thresholds. Should a portfo-lio size threshold be kept, it is important that a firm is able to consider and include both internal and external assets (i.e. the client's total portfolio even though all the assets may not be held within the firm itself).
Moreover, also the rrequirement regarding frequency of trading should be made subject to review. In this connection it is important to consider the trading structure of different types of financial instruments. For illiquid instruments, such as corporate bonds, the re-quirement to trade in significant size more than "10 per quarter over the previous four quarters" is very difficult to fulfil. Since the lack of clarity around the PRIIPs scope and the product governance obligations have made many issuers limit the offerings to profes-sional clients, this has had practical implications.

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

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

Question 42.1 Please explain your answer to question 42:

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

The NSA recognises the information requirement challenges with experienced retail cli-ents and also see challenges in the way the opt-up mechanism has been implemented in its current form, as described under Q40.1.
The NSA therefore thinks that it is positive that the Commission has acknowledged that there is an issue regarding the client classification regime.
However, it should be noted that the introduction of a new and additional semi-professional client category would require quite large IT system and process changes, as well as changes to the industry's self-regulation initiatives like the EMT etc. This is simply because firms' infrastructures and the data exchange in the market are built on the basis of the existing three categories. Based on this, the NSA is of the opinion that the first priori-ty should be to make changes to the existing opt-up regime and the criteria used for re-categorisation retail clients to professional clients, as it would be equally efficient ap-proach to address the issues perceived by both industry and clients. The main issues that we see with the current opt-up criteria have been described under question 40.1.
Also, it is important to consider this issue in connection with the proposals for allowing clients to opt-out of some of the investor protection rules in MiFID II. If a retail client can opt-up to be treated as a professional client, he or she should also be able to opt out of some of the information requirements.

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

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

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

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

The NSA recognises the information requirement challenges with experienced retail cli-ents and also see challenges in the way the opt-up mechanism has been implemented in its current form, as described under Q40.1.

Given the response to Q42 and 42.1, the NSA would like to point out that the answer to Q43 and 43.1 should be read in the way that if the Commission would not consider changes to the existing opt-up regime, and rather go for an introduction of a new and additional semi-professional client category, the following points are deemed to be rel-evant:

- Ability to bear loss – loosening up the ability to bear the loss assessment related to the relevant transactions. This could be based on market conditions and at a given frequency rather than at each transaction.
- Putting a larger responsibility on clients to actively inform the investment firm when changes occur, in order to make a larger difference compared to retail clients
- Removal of the requirement to produce a suitability report
- Removal of Loss Threshold Reporting for leveraged instruments, currently re-quired for retail clients according to Article 62 of the Delegated Regulation
- Limit the scope of the product governance TM rules to products covered by PRIIPs
- Removal of the obligation to provide the client with PRIIPS KID/KIIDS. This would add more variety to packaged products.

Question 43.1 Please explain your answer to question 43:

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

One of the main challenges in the current classification regime is that it might restrain the investment universe of a non-professional client that has knowledge and experience. As a result from the current EU regulation certain products such as corporate bonds and AIFs are only made available to professional clients and ECPs. The introduction of a new cat-egory could potentially solve this challenge. However, a more simple solution is probably to improve the opt-up rules in annex II.

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

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

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

An additional client category would need to be catered for through system support as well as front line work and then the background quality control environment. This will de-mand significant implementation resources and development, and then ongoing maintenance costs. As stated under question 42.1, we foresee large IT system and pro-cess changes, as well as changes to the industry's self-regulation initiatives like the EMT etc. This is simply because firms' infrastructures and the data exchange in the market are built on the basis of the existing three client categories.

One-off implementation:

- Back-end infrastructure
- Data bases including both product and client data
- Front-end tools used when interacting with clients, such as investment advisory tools and trading platforms
- Client information packages, including terms & conditions and other forms
- Client reporting systems
- Data exchange processes, both internal within company groups as well as exter-nal due to self-

regulatory initiatives like the EMT as an example

Recurring:

- Maintenance of all the above points. The introduction of a new client category would introduce a larger complexity which would carry maintenance costs
- Updates based on regulatory initiatives or supervisory activities

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

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

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

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

Given our response to Q42 and 42.1 the NSA would like to point out that the answer to Q45 and 45.1 should be read as to apply to a semi-professional client type if it were to be introduced.

If a trading frequency criterion would be considered, it cannot be applied in a uniform manner across all types of products, like the current opt-up professional criterion. See our statement under question 40.1.

A minimum size of investable portfolio could work in the sense that the industry is used to working with such a criterion for opt-up professional clients already. If the existing opt-up professional criterion would be kept at 500.000 €, a suggestion could be to set the threshold at 100.000 € for semi-professionals. It is important that a firm can consider and include both internal and external assets (i.e. the client's total portfolio even though all the assets may not be held within the firm itself).

When classifying if a client should be considered to be included in the potential semi-professional client category two relevant parameters to consider are knowledge and experience as well as suitability. Hence, tests that verify the knowledge and experience would be the applicable criteria. Our preliminary view is that a one-off in-depth suitability test could also be relevant when re-classifying a retail client.

4. Product Oversight, Governance and Inducements

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

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

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

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

Question 46.1 Please explain your answer to question 46:

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

Product governance rules are a barrier to an open platform. Before MiFID II investment firms provided clients with the instruments they asked for. Clients were considered ma-ture and in control of their own investment decisions. After MiFID II, firms need to screen all investments before even considering providing them on an open platform. Some firms have desisted to provide a range of products that clients previously had access to because of the product governance rules.
Some manufacturers choose to offer their products only to professional clients because it is easier or in order to avoid liability, i.e. not because the products are not typically suit-able for retail clients. This has the effect of preventing retail clients from accessing prod-ucts that would in principle be appropriate or suitable for them.
Access to third country products (like US ETFs) have been restricted since those manufac-turers do not deliver product governance data and/or KIDs, and there is no possibility for EU distributors to take these obligations on themselves.

Manufacturers not delivering full or comprehensible TM data or unwilling to deliver TM data cause product restrictions on the distributor side. Given the magnitude of TM data maintenance, this is by no means a small exercise for firms, especially for non-MiFID firms such as fund companies.

Given how the ESMA Guidelines have been structured around distribution outside of posi-tive and inside negative TM, the product governance rules create a stricter approach than what the suitability and appropriateness requirements do. Basically, because the latter are based on alerting and warning the client of potential outcomes, whereas the former is based on justifying the actual situation around the sale of the product (see point 71 in the ESMA Product Governance Guidelines).

As elaborated on under question 40.1, PRIIPS and the product governance obligations have created unwanted product offering restrictions on the MiFID distribution side for corporate bonds. When coupled with MiFID's opt-up professional criteria, product re-strictions are inevitable.

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

	Yes	No	N. A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	◉	○	○
It should apply only to complex products.	○	○	◉
Other changes should be envisaged – please specify below.	◉	○	○
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	○	◉	○

Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	○	◉	○
The regime is adequately calibrated and overall, correctly applied.	○	◉	○

Question 47.1 Please explain your answer to question 47:

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

The NSA takes the general view that if the MiFID II suitability and appropriateness rules are properly implemented and enforced, the product governance rules add little value. In addition, the delineation between these parts of the regulation is unclear which leads to unnecessary complexity and compliance risks. For example, the practical implication and treatment of negative target market for services only requiring an assessment of knowledge and experience and client type. Changes should be made so that the rules more clearly separate product governance from issues which are in fact already regu-lated through the suitability and appropriateness rules.
Moreover, it should be noted that the original proposal of product governance rules in MiFID II referred to “investment products”. “Investment products” were defined with a reference to PRIIPs. However, since the PRIIPs regulation was delayed, the scope of the product governance rules in MiFID II changed to include all financial instruments and to other types of clients than retail clients. In the opinion of the NSA this was unfortunate and one of the reasons why the rules have become so complex and difficult to apply for some types of instruments. The Level II rules and ESMA Guidelines got a too broad scope to cover all products and all services. Thus, in our view the rules should be limited to PRIIPs products offered to retail clients as was the original intention. However, given the nature of products used for hedging purpose, NSA firmly thinks that such products should be ex-cluded from the scope of PRIIPs.

Whereas it makes sense to have product governance obligations as a manufacturer of products which the investment firm itself puts together (e.g. structured products) it does not make sense to apply the same rules when an investment firm merely assists a corpo-rate issuer in a new issue (see recital 15 to delegated act 2014/575). The NSA strongly suggests that the scope of the product governance rules is made subject to the MiFID review. Non-packaged products such as shares, and bonds should not be included in the product governance regime under MiFID II.

We consider the specific requirements on the Compliance function and their reporting as already embedded in the general duties of the Compliance function and their work through a risk-based approach. Therefore, we question the specific integration and men-tioning in the Delegated Regulation of the role of the compliance function. Also, as un-derlined in our response to ESMAs Q & A on compliance function, mandatory reporting requirements which do not actually relate to the work conducted by the Compliance function during the reporting period but are more of a general and static nature (such as organisation, staff etc.), should be avoided. There is no need to include general infor-mation on the Compliance function’s role in the product governance process in every quarterly report. (point 33 a).
Secondly, there is no need to repeat the monitoring obligations in guideline 33. This fol-lows from article 22 Delegated Act as well as guideline 32.
As regards the reporting on financial instruments (point 33 c), the NSA strongly advices against a requirement to report on ISIN level. This would be far too detailed information for the senior management to receive - for a large investment firm such information could easily amount to over hundred pages. In order to ensure that the content of the report is relevant, the focus should be to describe the new types of instruments which have been produced during the period (or significantly amended). Information on finan-cial instrument must be able to be presented on an aggregated level.

We also note that the product governance rules are interpreted very differently by com-petent authorities and that an increased level of supervisory convergence would be welcome.

From a manufacturer's point of view, it has shown to be difficult to monitor compliance with the target market in the distribution chain.

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

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

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

Question 48.1 Please explain your answer to question 48:

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

The question is somewhat ambiguous, since the meaning of SELL is not defined. Moreo-ver, it is not clear to us to whom such written explanation should be provided. The SSDA does not support a proposal that the distributor should provide a written explanation to the manufacturer for each sell within the negative target market.

If the question refers to a situation when a client asks to execute a trade in negative mar-ket and whether the distributing entity should execute the trade the answer is yes. A trade by a professional client, or an ECP, that has made an investment decision and that is in-formed about that they are in negative target market and has made the active decision to continue with the trade should be executed. The NSA members would like to be able to meet our clients' requests and trust that our clients can make their own investment decisions, subject to the rules on suitability and appropriateness. There is no need for a written explanation to the client in addition to existing rules.

The concept of negative target market could be debated, since it adds an unnecessary level of complexity to both firms' processes and the client experience when interacting with firms. One should either be within the target market or outside of the target market. Whether the latter would be suitable or appropriate in the distribution of a product should be regulated through conduct rules.

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

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

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

Question 49.1 Please explain your answer to question 49:

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

The purpose of MiFID II was not to completely ban inducements, but rather to strengthen client interests and make sure that clients are recommended financial instruments that are suitable for the them. Inducements are not designed to enhance the quality of some-thing other than the service itself. It is an alternative way of remunerating the distributor for the service, where no fee is charged from the client. However, it is an important factor that firms should be able to provide clients with clear information on which services are provided to the client and what the client pays for them.

The provisions on inducements in MiFID II were already introduced by MiFID I. The provi-sions were however not widely applied. The reason for this was that the provisions were too complicated to apply. This is still true as the current regime provides a lot of room for Member States to set out local standards, and this also contributes to an unlevel playing field. The interpretations that the NSA has seen made by some NCAs makes this even more evident. There is an issue with very strict interpretations of what constitute propor-tionality and quality enhancing services, which in effect results in de-facto inducement bans in some jurisdictions and quite loose regimes without guidance in others. Trying to apply the quality enhancement requirement and the proportionality test also in a closed architecture is not the way forward.

To illustrate the issues with how the current regime is calibrated we want to highlight some of the concrete examples that actors in the Nordic markets have encountered and where interpretations are not coherent:

- The NSA sees that there is uncertainty regarding the proportionality requirement and how quality enhancements should be relevant for individual clients. Discus-sions are ranging from how broad client segmentation can be done to issues of whether service packages can be bundled or whether firms have to draw a dis-tinct line between quality enhancements and separate them between different investment services as well as how clients make use of the different services. Traditionally firms have operated with quite a broad basis of services for all cli-ents, starting from the bottom. Requiring a strict take on the proportionality crite-ria effectively leads to that firms start to shift and pushing more quality en-hancement features up the service ladder, in order to ensure that the upper cli-ent segments are safeguarded, leading to that the services for mass retail clients get hollowed out.
- There is an interpretation in Denmark that balanced investment funds (i.e. prod-ucts where re-allocation /re-balancing is performed automatically within the fund by the fund manager) within the same distribution channel should have the same level of inducements. This is based on a line of arguments that the service provided by the distributor to the clients is exactly the same irrespective of the nature and characteristics of the investment funds.
- The Norwegian authorities have recently communicated that the main rule is that distributors shall charge direct fees for investment services, which leads to the reverse conclusion that the application of an

inducements and quality en-hancements regime is an exception even though the EU regime clearly designates two equal regimes.

• It has been suggested that management companies subject to the UCITS regula-tory regime have a legal obligation to ensure, at a certain level, that their dis-tributors fulfil their respective MiFID obligations. In both cases the arguments have been connected to general rules of fiduciary duties in the local investment fund legislations in an attempt to expand MiFID obligations.

Due to the current regime, we have seen certain national regulators pushing for re-strictions on one-off/up-front inducements, even though they are a natural component from a product issuance perspective.

In light of the above, it is important that the EU rules focus on harmonizing principles of how the inducements rule should be read and interpreted for different types of investment products and services.

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

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

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

Question 50.1 Please explain your answer to question 50:

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

The NSA is opposed to the introduction of an outright inducements ban and does not see that it would improve the access to independent investment advice.

MiFID should, like it does today, enable both an inducements-based distribution model as well as an inducement-free distribution model in order to have more variety on the mar-ket. An outright ban would have severe implications on the distribution of different finan-cial instruments by investment firms. It would indeed lower the product supply, since there is a lot less incentives for distributors to include products from external product manufacturers in their product offering, if they are not able to utilise inducements in the form of distribution fees. Naturally, this would lead to diminishing product diversity, fewer products for the clients to choose from and create barriers for smaller manufacturers to get a foothold on the market. An outright ban would also risk reducing the access to in-vestment advice for regular retail segments since the current regime of cross-subsidisation entails that wealthier clients help to fund services for the wider community. As a consequence, the NSA sees a risk of that an outright ban on inducements would create a situation where less people are investing in investment products. Together, these points would act against the goals of the Capital Markets Union.

The NSA is rather of the opinion that inducements help finance European distribution net-works, promote a wider range of products as well as access to investment advice. Today, inducements also cover the infrastructure around investments e.g. fixed costs, significant IT costs and administration. The cross-subsidisation regime effectively helps to promote a broad access to investment services, particularly investment advice, also for clients with small investable assets. In this light it is interesting to see that the ban on inducements for independent investment advice has not produced encouraging results in the Nordics, and especially not in Sweden where the gold-plated definition in itself has rather limited the possibility of firms to become independent.

To mitigate the investor protection risks inherent with an inducement regime, firms should be able to provide clients with clear information on which services are provided to the client and what the client pays for them. Furthermore, firms shall avoid conflicts of inter-ests, manage them and inform clients about them. There is also a clear obligation and a set of rules to ensure that firms provide clients with suitable financial instruments (product governance, suitability and appropriateness) as well as provisions on internal remunera-tion schemes. The financial industry builds on trust. Therefore, these measures should be enough to make sure that client's interests are cared for. If something needs to be changed it is rather to focus on the culture of misbehaving firms that have come to wrongly set the standard for the whole industry.

In light of the above, it is important that the EU rules focus on harmonising principles of how the inducements rule should be read and interpreted for different types of invest-ment products and services.

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

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

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

Question 51.1 Please explain your answer to question 51:

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

The NSA does not support a European wide certification. Such requirement should be defined rather at Member States level due to the national differences in product uni-verse, use of investment products, education systems, tax environments etc.

Investment providers should be responsible for the competence of their employee. We see that the level of knowledge skills and experience was increased significantly in MiFID II. There has been lots of internal and

external training relating to this level increase. Thou-sands of employees were retrained based on MiFID II changes. The level is adequate now and there is no need for setting-up a further certification requirement for staff.

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

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

Question 52.1 Please explain your answer to question 52:

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

As stated in question 51.1, a certification requirement should be defined rather at mem-ber states level due to the national differences in education systems, product universe, taxes etc. We see that the level of knowledge skills and experience was increased signif-icantly in MiFID II. There has been lots of internal and external training relating to this level increase. Thousands of employees were retrained based on MiFID II changes. The level is adequate now and there is no need for setting-up a further certification requirement for staff.

5. Distance communication

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

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

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

Question 53.1 Please explain your answer to question 53:

5000 character(s) maximum

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

Flexibility should be provided regarding distance communication in order to avoid un-necessary delays in orders. When clients place an order by phone, there is no real room to give detailed ex-ante cost and charges information. Service providers should be able to give ex-ante cost and charges information in more general way when parties agree about the services provided to clients. Another possibility would be to give the infor-mation after the transaction e.g. into clients' web-bank solution. This should apply not just telephone orders, but any order given by other distant communication method as e.g. web-based client (video) negotiation, or other systems where order is given electronical-ly. That would correspond to the rules regarding suitability report. However, it could be questioned the merits of providing ex ante cost information on an ex post basis. Preferred solution is to allow standardized ex ante cost information in advance (e.g. grid /table) as well as allow retail clients to opt-out. Wholesale clients and professional clients should be exempted.

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

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

Question 54.1 Please explain your answer to question 54:

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

No, the NSA does not see taping as a necessary tool to reduce the risk of product mis-selling, but it is a valuable evidence tool. Further, these provisions where mainly intro-duced as market abuse provisions.

The record keeping requirements could be clarified though – "intended to lead to a transaction" could be interpreted both very widely and quite narrowly and is always rising question as to which staff functions and what kinds of discussions are hit by the require-ments.

6. Reporting on best execution

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

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

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

Question 55.1 Please explain your answer to question 55:

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

RTS 27
The new reporting requirements in MiFID II regarding execution quality (RTS 27) intend to enable clients as well as investment firms to compare and monitor execution venues and to evaluate if best execution requirements are met. However, the current reporting requirements have been drafted according to a “one-size-fits-all” approach and has resulted in the publication of very large volumes of unhelpful data.

The RTS27 report gives no value at all when selecting a broker or a venue.
a) For selecting brokers,
- description of the routing rules for the Smart Order Router
- the execution policy and
- a post-trade summary report on execution
- RTS28 report (even if the RTS28 can be improved)

is enough information to select a broker.

b) For selecting a venue (trading venue or SI),
- a description of the market model
- protocol (e g FIX connectivity)
- pricing structure
- market share
- list of participants

is enough information to select a broker.

RTS28
The RTS28 provides limited value when selecting broker for a specific market. Since CBOE (BATS and Chi-X) is used by all participants, for all EEA markets, those venues are likely to end up on top of the RTS28.

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

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

Question 56.1 Please explain your answer to question 56:

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

The RTS27 report should be removed from the Best execution framework. If kept, we believe that the following amendments should be made: In order to provide meaningful execution quality report, the characteristics of different asset classes and how the instruments are traded needs to be considered and RTS 27 amended accordingly.
There is significantly more data available on liquid equities which are traded on a venue than for OTC traded instruments. For non-standardised or bespoke products, the information required under RTS 27, have only little or no comparative value for clients. This fact is also problematic consider-ing that other parts of MiFID II in fact require firms to take the RTS 27 report into account. The Commission should make necessary amendments to the RTS 27 in order to ensure that it only applies to products where adequate and meaningful data is available, such as instruments traded on a trading venue ("ToTV").

For SI trading the NSA considers that several of the fields in the annex to RTS 27 is not relevant:
Table 1:
- "Scheduled Auctions" is not relevant for SI trading
- "Market segment" is not defined. To let each SI define creates legal uncertainties and makes comparisons more difficult.

Table 2:
- ISIN is not a good identifier for OTC-derivatives. A written description does not create compa-rability between instruments. RTS 27 should be limited to ToTv.

Table 3:
- As a general point, table 3 has very little value from an execution quality perspective.
- Intra day price information (0930, 1130, 1330 and 1530) is not relevant for many asset classes nor for SI trading which often is on a RFQ basis.
- Trading Mode as defined in article 2 i) is generally not generally applicable for SI trading.
- Best Bid & Offer is generally not applicable for SI trading.
- In many cases, no market price is available that can be used as reference price for OTC de-rivatives.

Table 5:
- "Rebates" and "discounts" are generally not relevant for SI trading.

Table 6:
- "Number of Designated Market Makers" is not relevant for SI trading.

Table 7:
- The non equity market Is characterised by RFQ trading though SIs. As an RFQ is not "continous quotes", table 7 is generally not applicable to such trading.
- "Book depth within 3 price increments" is not relevant for SI trading

Table 8:
- The non equity market Is characterised by RFQ trading though SIs. As an RFQ is not "continous quotes", table 8 is generally not applicable to such trading.

Table 9:
- The costs which are associated with the collection of data required in Table 9 for SI trading is unproportionate to the usefulness of this information.
- Availability/costs related to the collection of data differs depending on how the instrument is traded, e. g. electronic, telephone.

There are still legal uncertainties as to the scope of the RTS 27: ESMA has stated in a Q&A that for instruments not subject to the trading obligation and transactions conducted pursuant to pre-trade

transparency waivers in article 4 and 9 MiFIR, both trading venues and market makers/other liquidity providers shall account for those in RTS 27 reports. If investment firms are to include negotiated trades in their RTS 27 report they have to include prices that are not “theirs”. Therefore, for such types of transactions, only the trading venue is subject to RTS 27 requirements. The introduction of duplicative reporting requirements will distort the data and make it more difficult for clients to analyse the execution quality.
The exemption for intra-day publication for SI in RTS 27 needs to be clarified to achieve consistency with the post trade transparency rules in MiFIR. In recital 10 it is noted that, for transactions subject to deferral at the time of publi-cation, SIs should be exempt from providing point-in-time transaction data for transactions over SSTI and SMS. The definition of SSTI in article 2b RTS 27 is limited to transactions for which there is not a liquid market and the transaction is made subject to deferred publication in accordance with article 11 MiFIR. This limitation is not consistent with the post trade deferral regime in MiFIR which applies for illiquid instruments regardless of transaction size and also to transac-tions in liquid instruments above SSTI. Also a problem with different definitions of SSTI in RTS 2 and RTS 27. The definition of “price” and “cost” is not coherent through-out MiFID II. In our view, an “all in” approach to determine price is not suitable for OTC-derivatives where the price is unique for each client, taking into account the counterparty risk etc.
Additional guidance is needed on how RTS 27 report shares traded in more than one currency which have the same ISIN. RTS 28 report should be structured as top 5 venues

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

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

Question 57.1 Please explain your answer to question 57:

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

The RTS 27 reports have been very costly to produce for investment firms. According to the information we have received from members almost no clients are interested in re-ceiving the reports.

In fact, at the end of 2018, the NSA conducted a survey amongst its members regarding the RTS 27 report. The result of the survey revealed that most firms had no or very few clicks on the website where the report was being published. The benefits for clients is therefore highly questionable.

Our preferred solution is that the RTS27 report should be removed from the Best execution framework, or at least reduced in complexity, since it brings little value for a very large cost.

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

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

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

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

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

There are several important unintended consequences of the unbundling regime we are encouraged that the Commission is now attempting to rectify. The demise of investment research coverage on small- and midsize companies is a well-known effect from the unbundling rules, which has led to less SME investments, less secondary trading liquidity and less IPOs. The unbundling rules have caused a concentration of research (and spillo-ver to execution) towards large sell side firms with the possibility of economy of scale compared to smaller, local sell side firms, contrary to the objective of stimulating diversi-ty in the market.

The NSA is concerned about the depressed profitability in the equity business which forc-es members to continually evaluate their SME coverage. The secondary equity business, consisting of sales, trading and research, was struggling with low profitability before 2018. The MiFID II unbundling rules have led to a continuation of this trend which has, in large part, been driven by the technological shift, particularly in liquid large cap issues. Trading in large cap equities has become a winner-takes-all technological race and the com-missions were pressured down to low double-digit basis points before 2018.
Nordic investment banks had therefore already partially downsized and restructured their equity business, research included, when MiFID II unbundling came into force. These pres-sures have been intensified as secondary equity commissions, including payment for re-search, have declined by another 25% since 2018. Any decision by firms to cut or reduce research coverage, is not only detrimental to the market, but is also of strategic importance to the firms themselves, as any such reduc-tions or cuts of coverage will either limit the firm's ability to provide certain investment services or reduce the quality of the services provided. Heads of Research and Heads of Equity have therefore found other ways to keep up coverage so far

- They have forced analysts to cover more securities (up 50-70%)
- They have recruited younger, less expensive, analysts and try to keep the turno-ver up to keep cost of coverage down (this in addition to keeping a core of 'star analysts' to keep up impression of quality)
- They have offered sponsored research to SME's to get revenue into research to keep net costs down (particularly in Sweden and Denmark)

Many members point out that from 2010 to 2020, the markets were strong and the prima-ry/investment banking business was profitable. This allowed research departments to maintain coverage. In a prolonged downturn, Heads of Research are concerned that there will be new cuts in their departments.

The unbundling rules have led to a string of unfortunate changes on the buy-side. Fund managers have streamlined their operations, as they have widely adopted the cost of unbundled research into their own accounts and cover the costs themselves. On this background, they have cut down on the number of banks they have contact with dra-matically. The average appears to be a 35% decline in number of research providers, but the larger UK and US fund managers have cut even more dramatically in the number of Nordic banks they have on their 'approved list'. As an example, one Nordic member re-ports a decline in the number of fund managers they are in contact with in London from 65 to 23.

Another effect along the same lines is that even ‘active MiFID II fund managers’ are re-luctant to receive services as that would require them to compensate for «payment for interaction/services».

This reduction in the number of counterparties has an important effect on our ability to place primary risk capital issues in the market. The primary market is becoming much more challenging for parts of the Nordic Investment banks due to lack of investor con-tact points.

Against this background, the NSA makes these comments:
- All our members are concerned about the depressed profitability in the equity business
- We prefer market-based solutions, not public solutions such as funding SME re-search with public money
- The reduction in the number of international clients is a strategic challenge im-pacting our ability to raise capital for Nordic businesses.

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

1. Increase the production of research on SMEs

1.1. EU Rules on research

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

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

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

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

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

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

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

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

Please see below regarding issuer sponsored research.

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

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

The NSA welcomes the initiative by the Commission to rectify the challenges with declin-ing research coverage of SMEs by the sell side. It should be noted that Nordic countries overall are characterized by a high number of SMEs, which makes the region more ex-posed to the above-mentioned negative consequences of unbundling.

The NSA supports market-based solutions to the issue and our members are primarily promoting further development of two of the initiatives

1. Bundling of SME research
Bundling of SME research would imply that the fee for the research is bundled with the trading fee into one

single fee, and then the research can be distributed without re-strictions. This could be a solution addressing the pressing, strategic issue of re-establishing contacts with international investors for smaller equity issues. The reduced number of contacts impacts the sell-side's ability to place primary issues and to raise risk capital for innovation and growth on SMEs in the EU economy. Introducing a bundling regime for SMEs would require a thorough analysis of the definition of a SME and where to set the limit. Under a two-lane research regime, where investors must pay a fee to ac-cess all services relating to listed instruments and especially large caps would presuma-bly be very similar to the system which has already been established in the market. Most asset managers are solely paying research fees today for access to listed instruments and especially large cap research and service. Within the definition of a SME, research on SMEs could, under such a regime be distributed, and received by all buy-side opera-tors, from the largest down to retail, without any restrictions.
This solution would not improve the profitability of delivering SME research directly, but the reopening of access to a broad investor-base is fundamentally important for the functioning of the primary markets. Improved primary business would naturally improve the overall profitability for the equity business on the sell-side, and thereby improve cov-erage of SME's. Potential adverse unintended consequences, and the operational issues, of this solution would have to be thoroughly assessed before implementation. For exam-ple, such a solution would likely require an improved IT set-up to handle different fee structures. It could also be problematic to have several different research business mod-els versus one client. If bundling for SME research is allowed it will be important to take local differences of SME definitions into account.

2. Issuer sponsored research
NSA sees that issuer sponsored research can have several positive effects, given sound regulations. This way a SME will have the possibility to engage with an investment firm if they see a need for raising awareness of their company in order increase investments, liquidity etc. Issuer sponsored research differs from other research since it is paid for by the issuer. Therefore, this conflict of interest must clearly be addressed in the regulation by stating under which conditions issuer sponsored research can be drafted to ensure a level playing field. Such conditions could be that the relationship between the issuer and the investment firm is clearly disclosed, that it must be clearly marked as sponsored re-search, that it cannot include any target price or recommendation etc. However, pro-motion of sponsored research will not solve the fundamental issue that the MiFID II un-bundling rules having caused a concentration of research (and spillover to execution) with large sell side firms with the possibility of economy of scale compared to smaller, local sell side firms. We therefore suggest that the Commission look at this fundamental unintended consequence of the current unbundling regime.

Exclude independent research providers' research from Article 13
Independent research on SMEs will not fill the gap created by the unbundling rules. There are no strong reasons which can justify creating an uneven playing field between inde-pendent research providers and the sell-side. We strongly oppose this proposal.

1.2. Alternative ways of financing SMEs research

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

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

- 1 - Disagree

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

Question 60.1 Please explain your answer to question 60:

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

The NSA is in favor of market-based solutions. Real investment research must be pro-duced by the sell-side on commercial terms.

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

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

The NSA is in favor of market-based solutions. Real investment research must be pro-duced solely by the sell-side on commercial terms, and this is not a task for either the marketplaces or the public. We strongly oppose a public funding program.

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

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

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

- Don’t know / no opinion / not relevant

Question 62.1 Please explain your answer to question 62:

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

The NSA acknowledges that artificial intelligence can be used as a tool to create statis-tics on certain figures for comparable SMEs within the same sectors. Such statistics can give investors an overall and general comparison of key figures, but we do not see that this statistic can be equated with research. Research include long term strategic views which cannot be reflected in a statistic. Therefore, the use of artificial intelligence can be a supplement to research but not a substitute. Finally, reports produced solely based on artificial intelligence must be labelled as such and not labelled as a research.

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

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

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

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

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

Question 63.1 Please explain your answer to question 63:

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

An EU database could be useful, but it is unlikely that the investments and running costs of such a system would be justified. There are several commercial operators, such as Bloomberg, in this market already.

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

- 1 - Disagree
- 2 - Rather not agree

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

Question 64.1 Please explain your answer to question 64:

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

Please see our response to Q63.

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

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

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

Question 65.1 Please explain your answer to question 65:

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

If the relationship between the investment firm and the issuer is clearly disclosed, we do believe that issuer-sponsored research qualifies as an acceptable minor non-monetary benefit.

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

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

Question 66.1 Please explain your answer to question 66:

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

Sponsored research, marked clearly as such and containing no investment rec-ommendation does not qualify as ‘investment research’.

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

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

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

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

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

The NSA believes the rules applicable to issuer-sponsored research could be amended to address the conflicts of interest embedded in the set-up. Such amendments could be disclosure requirements such as the relationship between the issuer and the provider of the research must be clearly stated, no target price, no recommendation, and it must be clearly labelled as issuer sponsored research.

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

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

Question 68.1 Please explain your answer to question 68:

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

Please see our responses to the above questions.

IV. Commodity markets[8]

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

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

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

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

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

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

	1	2	3	4	5	

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

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

Quantitative elements for question 69.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 69.1:

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

1. Position limits for illiquid and nascent commodity markets

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

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

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

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

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

Question 71.1 Please explain your answer to question 71:

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

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

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

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

Question 72.1 Please explain your answer to question 72:

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

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

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

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

Question 73.1 Please explain your answer to question 73:

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

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

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

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

Question 74.1 Please explain your answer to question 74:

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

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

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

Question 75.1 Please explain your answer to question 75:

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

2. Pre-trade transparency

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

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

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

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

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

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

V. Derivatives Trading Obligation[9]

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

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

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

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

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

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

Quantitative elements for question 77.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 77.1:

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

The NSA members do not have much experience form the DTO and have difficulties to see the added value at this point in time.

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

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

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

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

The NSA is not certain that we understand the meaning of this question.
We do agree that there are reasons to look into Brexit implications e.g. to avoid a possi-ble collision between EU and UK derivative trading obligations.

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

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

Question 79.1 Please explain your answer to question 79:

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

The NSA is not in favor of including more instruments in DTO at this point in time.

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

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

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

Question 80.1 Please explain your answer to question 80:

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

NSA fully supports this.

VI. Multilateral systems

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

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

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

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

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

Question 81.1 Please explain your answer to question 81:

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

Please see Q21, Q24 and Q25 where you will also find a specification of the compliant SI activity.

The NSA considers that SI networks in some countries should be considered as multilateral activities. However, in our view the problem is an enforcement issue. There is no need for more rules.

To our knowledge there are no SI networks in the Nordics. Nordic SIs are bilateral and take risk when executing clients' orders against their own account.

VII. Double Volume Cap[10]

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

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

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

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

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

Quantitative elements for question 82.1:

	Estimate (in €)
Benefits	
Costs	

Qualitative elements for question 82.1:

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

NSA strongly urges to remove the DVC as the cap is an unnecessarily complicated in-strument, which increases the uncertainty in the markets. The Negotiated Trade Waiver (NTW), however, should not be limited in usage as this waiver is an important tool not at least in smaller markets and markets with lower liquidity levels and indeed to the benefit of retail clients, where many are directly affected via investments in pension funds. Fur-thermore, to our knowledge, the NTW has not been a source of misuse as the case has been for the RPW.

Smaller markets may not have sufficient depth of liquidity on the order book to match orders above a certain size at a particular point in time. This means that orders even slightly larger than average (but below a size which would qualify for the large in scale waiver) can negatively impact on the market resulting in increased price volatility to the detriment of clients. Even shares classified as “liquid” under MiFIDII/MiFIR can still go through periods of lower liquidity when the use of the NTW becomes more critical in or-der to reduce increased price volatility and support trading activity.

Increasing the possibility of using the NTW for liquid shares during lighter trading periods will have the effect of increasing the client’s appetite in such shares, at least in the smaller markets.

Negotiated trades are recognized as on-exchange transactions which are handled sub-ject to the rules of the trading venue as supervised by the relevant regulator. In the Nor-dic regions, the negotiated transactions are made at or within the volume weighted spread on the lit order book of that trading venue. All negotiated transactions in equities are:

- Supervised by the same surveillance department that is also supervising the transparent order book,
- Reported in immediately to the trading venue and executed subject to the trading rules of the market, and
- Published immediately in the trading venue’s post-trade system and inte-grated into one data feed with order book deals, thereby included in all price statistics, including index calculations and the official closing price.

This demonstrates that negotiated transactions are a reliable and transparent trading method which provides benefits to the client but also supplements the price formation process in the transparent order book and provides additional liquidity to the equity mar-kets.

Having regard to the pursuance of the policy goals of price formation and best trading outcomes for clients, the following specific conditions should be attached to the execu-tion of NTW assisted transactions:

- NTW should only be used by trading venues that have lit order books, so that it can provide additional liquidity to that trading venue
- It should only be used for trades that are done on a bilateral basis and re-ported in immediately to the trading venue’s system, so that it is included in index calculations and price statistics
- It must be done under the rules of the trading venue and be subject to full market surveillance
- The trading venue must be obliged to react on any misuse and if the price formation is negatively affected, and to report the same to the competent authority,
- The competent authority, when approving the waiver for the trading venue and also when supervising the activity on the trading venue, retains the rights to withdraw or modify the approval for the waiver, and

- ESMA could be given a coordinating role and, if deemed necessary, could be provided with mandate to introduce restrictions such as requirement on the trading venue that offers the NTW.

By clarifying these specific features for negotiated transactions in MiFIR it will be ensured that the NTW cannot be abused to create new separate dark pools or OTC-trading that could have negative effects on the price formation process.

VIII. Non-discriminatory access[11]

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

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

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

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

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

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

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

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

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

among financial market infrastructures?

Please explain your reasoning and specify which countries:

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

IX. Digitalisation and new technologies

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

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

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

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

Please explain your answer:

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

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

Please explain your answer:

5000 character(s) maximum

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

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

Please explain your answer:

5000 character(s) maximum

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

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

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

Question 89.1 Please explain your answer to question 89:

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

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

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

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

Question 90.1 Please explain your answer to question 90:

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

The NSA rather agrees 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.

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

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

Question 91.1 Please explain your answer to question 91:

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

The NSA agrees.

X. Foreign exchange (FX)

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

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

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

Question 92.1 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?

5000 character(s) maximum

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

General
The NSA does not think it is appropriate to include non-financial instruments in MiFID-II/MiFIR

1 Investor protection
With respect to investor protection topics, a potential regulatory gap might exist on FX spot transactions. However, ACI Global Code of Conduct covers many of those topics. In addition, the FX spot market is one of the most, if not the most, liquid market in the world. Furthermore, FX spot transactions are often executed on platforms, even for retail clients, giving a perfect pre-trade price disclosure.

2. BestEx and Post trade price disclosure
Best execution on FX spot transaction is included ACI Global Code of Conduct.
FX Spot rates changes instantaneously, therefore RTS 27 reports and post trade price dis-closure does not provide any useful information.

3. Transaction Reporting
From a Transaction Reporting perspective, one could argue that it might be interesting to disclose the volume of FX spot transactions. Because of the nature of FX spot transactions with a very short maturity, it probably wouldn't make much sense.
From our point of view the benefits would be limited compared to the resources spend.

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

Please explain your answer:

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

Section 3. Additional comments

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

Please, where possible, include examples and evidence.

5000 character(s) maximum

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

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

Please explain your answer:

5000 character(s) maximum

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

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

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

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

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

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

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

Contact

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