

Luxembourg, 18 May 2020

Response to European Commission consultation on the MiFID II / MiFIR review

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?

Yes, we would support the creation of a consolidated tape. To the extent that some sort of mandate feels necessary, we would recommend that the EU authorities should structure or design any such mandate in a way that tries to build on existing data provided by investment firms without demanding more from market participants as there is currently extensive reporting being done.

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)	<input type="checkbox"/>	<input checked="" type="checkbox"/>				
Maintain the STO with adjustments (please specify)	<input type="checkbox"/>	<input checked="" type="checkbox"/>				
Repeal the STO altogether	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The STO was intended to promote investor protection by looking to ensure that European investors only access liquidity through “safe” trading spaces. However, the equivalence process is unwieldy and unable to keep up with market developments. Moreover, the STO may ultimately actually harm investors by undermining or confusing the best execution obligation on investment firms for their clients.

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.	<input checked="" type="checkbox"/>	<input type="checkbox"/>				
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input checked="" type="checkbox"/>	<input type="checkbox"/>				

The different components of the framework operate well together to achieve more investor protection.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
More investor protection corresponds with the needs and problems in EU financial markets.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The investor protection rules in MiFID II/MiFIR have provided EU added value.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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	No figures available
Costs	No figures available

MiFID II Level 1 framework contains balanced provisions in terms of investor protection and encouragement of investments, other than professional investors. However, the Implementing Directive and Regulations are too strict and would call for improvements.

Ex-ante and ex-post cost disclosures did not ensure appropriate balance of investor protection between retail and professional investors. More specifically, too much compulsory information must be provided to professional investors, who are frustrated by these obligations which do not meet their need. Such investors favour more specific and adapted reporting.

Moreover, the disclosure of implicit transaction costs does not necessarily produce the desired effect of rendering products more comparable for potential investors. For many investors, their disclosure tends to lead to less clarity than actually desired or even to more confusion.

One must add the fact that the disclosures in the KIIDS, PRIIP KIDs for retail investors and those prescribed by MiFID II are not harmonised, which may create confusion for retail investors and is exactly the opposite of the objective of MiFID investor protection rules. Therefore, an alignment between both regimes is necessary.

Finally, the European Commission's question seems to imply that 'more' investor protection is necessarily 'better' for investors. However, the added value of the investor protection rules is not necessarily automatic, as have shown some elements that clearly had a negative impact in this respect (e.g.; high regulatory burden eliminating actors and thereby decreasing customer choice of service providers, or poor harmonisation with PRIIPs rules as mentioned above). Investor confidence is critical and should be the primary measure in designing investor protection measures. I.e.: information for the sake of information adds no value and can lead to increased mistrust.

In particular ALFI suggests that 'per se' and 'elective' professionals should be granted the opportunity to opt-in or -out and retail clients to opt-out of the ex-ante cost disclosure according to Article 50 of the Delegated Regulation (we would like to refer to our answer to question 34 in this respect).

Furthermore, the ‘10% depreciation alert’ (as required by Article 62(1) of the Delegated Regulation and ESMA’s ‘investor protection’ Q&As on “post-sale reporting”) should in our view be deleted for ‘per se’ and ‘elective professionals as well as retail clients as it does not provide any added value and leads to increased costs on the compliance side.

Finally, it would be too narrow with regard to MiFID II / MiFIR to just focus on the benefits and costs of the implementation and the ongoing costs. The focus should also comprise the question of adequacy of investor protection rules on one hand and the complex, time-consuming, time-critical implementation and ongoing efforts for the industry on the other hand.

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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Costs and charges requirements	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conduct requirements	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

In our view some changes to allow for greater retail participation should be achieved by amending Level 2 measures, as well as ESMA guidelines and Q&As.

It must be noted that all products which are currently classified as complex are not necessarily risky. It should therefore be considered not to send the wrong message to investors and the general public that complexity, stemming from innovation in asset management, necessarily involves higher risks and a contrario that funds using less complex investment techniques and instruments are risk free, including potentially from an investment performance perspective. ALFI believes it is essential to make a clear distinction between the use of complex, innovative asset management techniques and strategies on the one hand and the risks that may be associated with complexity, if any, on the other hand.

Moreover, AIFMD and UCITS both incorporate high levels of investor protection at the product level and in terms of their transparency requirements to investors. Therefore Level 2 measures should be amended accordingly.

Question 32.1 Please explain your answer to question 32:

ALFI supports the EFAMA suggestions as regards specific amendments to the Level 2 framework and to product governance requirements (more flexibility for distributors with ultimate knowledge of the end-investor to advise on, select or offer products outside the manufacturer’s identified target market, and consideration of certain AIFs as non-complex under Article 57 of the MiFID II Delegated Regulation which would be an acceptable fall-back-option if the solution preferred by ALFI to apply a case-by-case analysis of each fund should not be endorsed).

Regarding costs and charges requirements, the MIFID II Delegated Regulation should be revised to provide more flexibility with regards to distinguishing between the different needs of retail, professional and eligible counterparties. In particular, for the latter two categories, it should be possible to opt-out of many of the ex-ante and ex-post requirements, if these do not provide additional value for the investors (or if they have already

agreed with the service provider on a different type of disclosure). In addition, it should be possible for non-EU investors to opt-out of the costs and charges requirements and request different disclosures, because the ones applied in their jurisdictions may differ from EU requirements and EU providers have to comply with them as well.

As mentioned above in our answer to question 31, we are of the opinion that the alert at 10% depreciation of the portfolio should be deleted for 'per se' and elective professionals as well as retail clients (as required by Delegated Regulation's Recital 95 and Article 62(1) and ESMA's 'investor protection' Q&As on "post-sale reporting"). Professional investors are mostly monitoring the valuation of their assets by other means, so a deletion would take into account the knowledge and experience of these types of clients and also avoid costs on the compliance side that are not necessary. In addition, a result of this reporting requirement is the daily valuation of all types of underlying assets which is not feasible. Finally, the reporting on 10% depreciation could even render especially retail investors more reluctant towards long-term investments and encourage pro-cyclical behaviour.

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 If your answer to question 33 is on the negative side, please indicate in the text box which amendments you would like to see introduced to ensure that retail investors receive adequate protection when purchasing products considered as complex under MiFID II/MiFIR:

Regarding the classification of complex products, in our view each fund should be subject to individual assessment and then appropriately classified based on the criteria of MiFID II. This we believe is the intention of Level 1. We would highlight that there are currently non-UCITS retail fund products available in a number of European markets (e.g. in Luxembourg this would be Part II funds) that, were they UCITS funds, would be considered as non-complex products. In addition, we would also highlight that Alternative Investment Funds ("AIFs") could also have UCITS-like investment restrictions or objectives but again, only because they are AIFs, would not be able to be considered as non-complex due to the ESMA Q&A on "MiFID complex and non-complex financial instruments for the purposes of the directive's appropriateness requirements" dated 3 November 2009.

AIFs should still be able to be qualified as non-complex, subject to an individual assessment of the characteristics of the fund under the MiFID II regime.

Question 33.1 Please explain your answer to question 33:

Please see our response above.

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.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Only ECPs should be able to opt-out unilaterally.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Professional clients and ECPs should be able to opt-out if specific conditions are met.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
All client categories should be able to opt-out if specific conditions are met.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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?

Although increased transparency of costs is of key importance, in most cases relationships between professional clients/ eligible counterparties and professionals submitted to the MiFID II rules are different from relationships between professionals and retail clients. Professional clients/eligible counterparties will individually negotiate advice and portfolio management services so they have other ways of being informed both in advance and permanently on financial instrument/investment services and to request the information they need. Therefore, professional clients and eligible counterparties should be granted the possibility to opt-out of ex-ante cost disclosures without any specific conditions.

In addition, we believe that also retail clients should be granted the possibility to opt out.

ALFI also agrees with EFAMA that the same flexibility should also be extended to non-EU clients as the standardized EU disclosures may not be in line with their national regulatory disclosure regimes or their needs.

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

We have been made aware that retail clients with high experience regarding financial markets, including (but not limited to) high-net-worth individuals, as well as certain non-IORP pension funds and family offices may perceive the existing client classification rules as not appropriate. There is indeed a tendency to reserve financially attractive products such as private equity and venture capital exclusively to professional investors, leaving all types of retail investors behind. While it is well understood that retail investors need enhanced protection, excluding the larger part of the population from potentially high performing products and confining them to a universe of “simple” products may not be conducive to a true Capital Markets Union.

Therefore, we suggest to lower the existing criteria in order for these types of clients to qualify under the professional investor status. We are, however, not in favour of a new category of semi-professional clients as its creation could lead to a large number of changes to the entire MiFID II framework. As a consequence, very high implementation costs for the financial industry could arise.

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:

With respect to the conservation of natural resources and from a cost perspective, ALFI is rather in favour of phase-out of paper-based information. However, it should be at the discretion of the investor to opt in or out as not every investor might endorse digitalisation in this respect.

With regard to the clients using e-mail and/or online banking it would be helpful if the documentation obligations for providing information non paper based are appropriate. For instance, the requirement according to Art. 63 paragraph 3 Commission Delegated Regulation (EU) 2017/565 that the firm needs evidence that the client has accessed this statement at least once during the relevant quarter contradicts providing documents in an electronic way since it is totally up to the client whether the client accesses documents. In addition, this approach is different to the one for paper based documents, where no requirement for assessment has been installed. We do not see any reason for a different legal/regulatory treatment as citizens are using electronic post boxes the same way like physical ones.

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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General phase-out within the next 10 years	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
For retail clients, an explicit opt-out of the client shall be required.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
For retail clients, a general phase-out shall apply only if the retail client did not expressly require paper-based information	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

As mentioned above, it should be at the discretion of the investor to opt in or out as not every investor might endorse digitalisation in this respect. So, a possible solution would be to refrain from paper-based information by default with the option to receive paper-based information upon request.

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:

N/A

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

The benefit of such database would have to be clearly assessed on the basis of several criteria, in particular the ambition of such a project, the exact contents, the technical approach and display of the data as well as a more precise scope. In addition, we would appreciate if it was considered that manufacturers of instruments should not be obliged to contribute to financing this initiative.

Question 37.1 Please explain your answer to question 37:

Please see our answer to question 37.

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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
All products that have a PRIIPs KID/ UCITS KIID	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Only PRIIPs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please specify what other products should be prioritised?

Please see our previous response.

Question 38.1 Please explain your answer to question 38:

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

- 1 - 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:

Should ESMA develop such a database, several factors would have to be taken into account, in particular costs, technical and operational aspects.

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:

As mentioned above, some retail clients have enough financial experience and can assess the value and risks of the product involved (it must be noted that similarly it is the client's responsibility to inform the intermediary about relevant changes in his personal situation that may require the investment firm to update their assessment). In that respect the current rules as regards the classification of clients may prove cumbersome.

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:

We agree with a lower threshold of EUR 200,000 instead of the current EUR 500,000 threshold.

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:

We refer to our answer to question 34 and 40.

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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information provided on costs and charges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Product governance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

As mentioned above, retail clients that could be considered as ‘semi-professional clients’ should be allowed to opt-up to professional client status. Professional clients should on their side be allowed to opt-out of the suitability or appropriateness test, to opt-in or -out of costs and charges disclosures and to opt-out of product governance rules.

In addition, rather than having the request to opt-up from the client, investment firms could suggest such an opt-up to their client (with a subsequent written confirmation by the client).

Furthermore, ALFI supports the EFAMA suggestion that the following additional clarifications should be made to the definition of “professional clients” with regards to Annex II of MiFID II to capture better all types of professional clients:

- Point (2) on should refer to ‘entities’ instead of undertakings’
- Point (3) should also refer to ‘funds’ (instead of only ‘debt’) being managed by national and regional governments
- Point (4) should be redrafted to encompass further financial activities along the following lines: “Other institutional investors who are investing in financial instruments, managing a portfolio of at least EUR 10 million.”

Question 43.1 Please explain your answer to question 43:

Please see our answer to question 43.

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:

N/A

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).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Semi-professional clients should be identified by a stricter financial knowledge test.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

In line with our previous answers, rather than creating a new semi-professional category, we would rather see these types of clients being able to opt-up to professional client status under the following conditions:

- Maintain the 10 transactions per quarter, i.e. 40 transactions over the previous year, but consider a lower threshold of 2 transactions per year in case of illiquid instruments.
- Reducing the threshold of the client's portfolio from currently EUR 500,000 to EUR 200,000.
- Sufficient financial knowledge and/or experience could should also consider a bachelor master-level diploma (or higher) in economics or finance or has managed a portfolio of more than EUR 500,000 over the last five years or has worked in fields that involve financial expertise for at least one year.
- Adding an additional condition that would classify the investors as professional if the transaction of a financial instrument is over EUR 100,000.

Two out of the (now) four conditions would have to be met before a retail client could be allowed to opt-up to becoming a professional client. Moreover, as now, the more detailed knowledge and experience test which first have to be carried out and met before the above conditions can be considered.

Please see also our suggested changes to the definition of 'professional investors' in our response to question 43.

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:

The additional threshold of EUR 100.000 would also be in line with the Prospectus Regulation which considers investments of this size as wholesale investments for certain issuances.

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. If the client wants to have that exposure they should not be precluded.

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:

We support the following statement by ESMA's Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II, dated 31 March 2020:

"Point 78: Based on feedback received from the majority of respondents and as already set out above, it seems that the MiFID II inducement disclosure rules have not had the positive impact expected. As already set out in paragraphs 36 to 38 above, ESMA suggests that the Commission first assess the impact the MiFID II inducements regime has had on the distribution of retail investment products across the Union and, second, what impact a ban would have on the different distribution models throughout the Union. The recent consultation launched on the review of MiFID II/MiFIR may offer the opportunity to the Commission to go more in depth in the analysis of these important topics. The Commission should also consider what potential actions could be taken to counterbalance or at least mitigate the risks of unintended consequences of a ban on inducements. As set forth above, in the meantime, clients' understanding of inducements and how the existing MiFID II regime works, should be improved. Lastly, ESMA suggests that the Commission evaluates the impact the inducements ban has had in the two jurisdictions which have already introduced it (the Netherlands and the United Kingdom) and whether the ban has had any unintended consequences for retail clients."

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:

We refer to our answer to question 50 and to the ESMA position in this regard.

A global ban of inducements will threaten the continuance of the open-architecture environment which is well known in the fund industry. Open architecture plays in favour of the end investor by driving competition, offering more choice and easy access to the best products available. An outright ban will potentially limit the investors' choice of the most appropriate investment fund to meet their investment requirements. A ban on the acceptance of monetary inducements for advice "provided on an independent basis" will lead to a reduction in competition among distribution channels and/or a reduction in the number of products offered to investors. It may result in a serious step backwards in terms of transparency and potential conflicts of interest if this leads financial groups to refocus their product offering on internally produced products with potentially all key functions such as product design, asset management, administrations, depositary and distribution being ultimately controlled by the same group.

ALFI believes that it is an overarching principle that each professional must act in the best interest of his/her clients and any assessment should be made taking this principle into account. It is the distributor's responsibility to ensure that they provide the right service to the end client. As regards collective investment undertakings in particular, boards of directors of management companies or fund promoters should in our opinion ensure that fees remain competitive and are paid in the interest of the fund, in accordance with applicable rules of conduct.

Additionally, it should be noted, that MiFID's suitability obligation already applies, therefore we fail to understand the conclusion that the quality of advice provided to a client should be depending on whether or not the advisor receives fees / commissions / benefits by any third party. We rather think that the quality of the advice is related to analysis to the advice. So, the suitability test in combination with appropriate disclosure around the characteristics of the advice should be the appropriate means to ensure high quality of advice.

In this respect we would also like to refer to ESMA's Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II, dated 31 March 2020 in which ESMA suggests the European Commission to supplement the MiFID II requirements around quality enhancing services (we refer to paragraphs 61 and following). The client could be made aware of certain quality enhancement services which he or she is already or could be benefiting from, in order not to spend inducements on such services without bringing them to the client's attention.

Therefore, in ALFI's view focus should rather be put on improving transparency to investors and enable them to better assess the quality of the service. This could include more disclosure on the amounts received from different product providers on the precise products recommended to the investor, and on the amounts being paid to intermediaries on an on-going basis as well as the services justifying these fees.

We would like to stress in this regard that ESMA also favours a better information and understanding of the client regarding inducements over a complete ban (we refer to paragraph 38 of the above-mentioned advice). It proposes e.g. an explanation in inducement disclosures, in layman's terms, of the terms used to refer to inducements (for instance, third-party payments). Such explanations could lead to a client's better understanding of the nature and impact of inducements.

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 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:

We support EFAMA's opinion that staff must be properly qualified in order to give high-quality advice. However, many governance requirements (including ESMA's guidelines) already exist to ensure that staff providing investment advice must be properly trained and knowledgeable.

In addition, one certification does not necessarily match the widely diversified qualifications, which are required, in particular, due to different markets, rules (tax, civil law and regulatory requirements), client needs and products.

We do not believe this should be a focus of a potential MiFID review.

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:

As mentioned above, we would not favour a certification based on an exam.

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:

The delayed provision of cost information in case of distant communication would be a welcome change (while remaining fully transparent towards customers), as this has been considered as quite burdensome e.g. in case of simple instructions over the phone.

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?

We disagree. The premise that you can provide an informative picture of execution in a simple and generic best execution report that an investor can pick up and read and find meaningful is misguided, since ultimately execution will depend trade by trade and client by client. Most firms that are monitoring execution have dedicated teams analyzing counterparties and execution, and they rely on significantly more data than is reasonable to require to be made public. To the extent a client wishes to understand the impact of execution on their portfolio, the existing costs and charges reporting is much more relevant and informative. For these reasons, the work required in preparing best execution reports is not justified for the benefit that they provide.

In addition, the data included in the top-5-venue-reporting is neither much considered, nor processed nor of specific significance to the investor.

Moreover, The RTS framework does not allow the necessary flexibility and complexity to analyse quantitative and qualitative judgement for best execution.

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?

We disagree. RTS 27 and 28 reports are too costly for firms given the extremely limited benefit they provide, for the reasons set out in response to question 55. Our members noted that with the onset of the COVID-19 crisis, the RTS 27 and 28 reports were amongst the first to be de-prioritized by the regulators, at a time when markets were particularly volatile and so best execution was particularly important. As such, we might understand the delays of these reports to reflect their relative unimportance to the market place and end investors. A reason for the lack of interest regarding these reports could be the poor quality of the data generated due to the format structure of RTS 28.

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

In general, investment firms paying for research from their own resources, is the way the market seems to be developing. This can minimize possible conflicts of interest.

From a buy side point of view notably, the implementation of unbundling has involved a rationalization of set-ups through a thorough review of needs, providers and tools as well as a review of research budgets.

End clients have benefited from an increased transparency as well as from prices pushed down by a stronger competition.

Overall, there was no drastic decline in the research offering nor a deterioration of its quality. The offer as a whole remains large and rich.

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 If you agree, which recommendations would you make on the form that such use of artificial intelligence could take and do you see risks associated to the development of AI-generated research?

N/A

Question 62.1 Please explain your answer to question 62:

AI could provide a good analysis of the current market scenario and financial situation of a company. But stock prices are mainly based on future expectations, which depend on a wide range of input factors. The intelligence on these input factors, especially strategic company decisions, might be hard to assess via AI.

AI might help production of research but not specifically on SMEs. In any case, that may not come in the short term and not necessarily enough for keeping on producing high quality research.

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 If you do agree that the creation of a public EU-wide SME research database would facilitate access to research material on SMEs, please specify under which conditions this database should operate:

Question 63.1 Please explain your answer to question 63:

The database could help to make better comparisons of similar companies as more listed companies would be covered. It could increase the access to research material on SMEs and aim at improving the broadcasting of sponsored research.

But there could be a challenge to update the research regularly to provide a robust information source to assess the attractiveness of SMEs. In addition, the costs of creating and operating this database should not be supported by investors and it should be limited to sponsored research.

Alternatively, and in order to avoid spending public money to create a new EU platform, SME research providers could be incentivized to distribute their research on existing research platforms which already broadcast, for free, issuer-sponsored research from their existing partners.

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?

We believe that the current regulatory framework is adequately calibrated. We also note the recently implemented FX Global Code of Conduct, and we would strongly encourage policy makers to see how this

settles down before taking further action. We would strongly argue against inclusion of FX spot transactions into the scope of MiFID as a financial instrument (since this would add enormous cost to the industry given that volumes are so large and we see little equivalent benefit given how relatively unproblematic FX spot markets are).