

# FIA EPTA response to public consultation on the review of the MiFID II/MiFIR regulatory framework – 18 May 2020

## About FIA EPTA

The FIA European Principal Traders Association (FIA EPTA) represents 28 independent European Principal Trading Firms (PTFs) that deal on own account, using their own money for their own risk, to provide liquidity and immediate risk-transfer in exchange-traded and centrally-cleared markets for a wide range of instruments, including shares, options, futures, bonds and ETFs.

As market makers and liquidity providers, our members contribute to efficient, resilient, and high-quality secondary markets that serve the investment and risk management needs of end-investors and corporates throughout the EU. Our members are active participants on almost all European exchanges and platforms. Moreover, our members are important sources of liquidity for institutional investors accessing liquidity pools across Europe.

FIA EPTA supports transparent, robust and safe markets with a level playing field and appropriate regulation for market participants.

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

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

- ☐ 1 - Very unsatisfied
- ☒ X2 - Unsatisfied
- ☐ 3 - Neutral
- ☐ X4 - 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:**

FIA EPTA members consider that MiFID II has greatly strengthened European secondary markets operational resilience, which has been borne out in the recent COVID-19 crisis where EU financial markets have

continued to operate in an orderly fashion in spite of very significant volatility and trading volumes. In this regard, we specifically applaud RTS 6 (organisational requirements of investment firms engaged in algorithmic trading) and RTS 7 (organisational requirements of trading venues) which have made market infrastructure much stronger. We observe that circuit breakers and system capacity worked as intended, even under high stress.

While welcoming the improvements that MiFID II has brought to European financial markets, we remain convinced that further improvements to the MiFID regime are possible and needed. We believe that greater price transparency will enable market participants to be better informed and reduce dependencies upon a limited number of large intermediaries. In particular, we would urge that the transparency regime needs additional consideration, in two main areas as set out below:

First, equities and equity-like instruments, where the main MiFID II goals of capping dark trading and moving OTC trading onto regulated execution venues have been a modest success. However, poor-quality post-trade transparency hampers efforts to fully assess the size and nature of EU equities markets and creates obstacles to measuring the effectiveness of the original MiFID II rule changes.

Second, the transparency regime for non-equities has failed to deliver any benefit to market participants while incurring higher compliance costs, particularly with respect to fixed income instruments and OTC derivatives, which remain largely opaque and where limited transparent, on-venue tradability is negatively impacting liquidity. This was evidenced in a concerning fashion during the recent COVID-19 crisis. Even for listed fixed income and derivatives instruments, post-trade transparency is hampered by, for instance, deferrals that are significantly longer than warranted.

For many MiFID II data obligations, the output is dependent on the input. We believe there should be more scrutiny on data quality as this would improve the holistic transparency framework in the EU, and trading venue and APA data should be disseminated in a uniform format.

Further, FIA EPTA supports the development of a real-time, post-trade European consolidated tape for the whole scope of equity, equity-like and non-equity instruments. We believe a well-functioning, high-quality Consolidated Tape will benefit all financial markets participants and act as a catalyst for further integration of European capital markets and the realisation of an EU Capital Markets Union (CMU).

As regards investor protection, we welcome MiFID II setting clear expectations regarding the prevention of conflicts of interest that may stem from bundled service offerings. This benefits end-investors and generates more trust in financial markets, which is crucial. However, we still observe some market segments which continue to suffer from undue conflicts of interest which are to the detriment of end-investors. This includes the markets for structured products (including CFDs, warrants and turbos/sprinters) and the continued existence in some Member States of de-facto payment for order flow practices. We would urge the Commission to address these conflicts of interest so as to ensure an open, competitive, transparent and multilateral execution environment which supports investor protection and efficient outcomes for end-users.

We consider that an efficient and well-functioning post-trading infrastructure is key for achieving the MiFID II objectives of orderly and transparent markets. We welcome CCP clearing and settlement to the widest extent practicable to promote systemic resilience. However, we observe that the EU post-trading infrastructure currently retains inefficiencies which stand in the way of a true single market for financial services. Processes in many cases remain largely manual and are non-compatible with localised idiosyncrasies intended to deflect competition which keep costs for investors and market participants unnecessarily high. Most concerningly, open access has remained a mirage more than 17 years after the last report of the Giovannini Group on cross-border clearing and settlement arrangements in the EU<sup>1</sup>.

To amend these shortcomings, the barriers identified in the European Post-Trade Forum<sup>2</sup> (2017) should be addressed as soon as possible to reduce counterparty and systemic risks, while Open Access to clearing should become a reality as soon as the delay period ends in July 2020.

## **Question 2. Please specify to what extent you agree with the statements**

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<sup>1</sup> [https://ec.europa.eu/info/publications/giovannini-reports\\_en](https://ec.europa.eu/info/publications/giovannini-reports_en)

<sup>2</sup> [https://ec.europa.eu/info/publications/170515-eptf-report\\_en](https://ec.europa.eu/info/publications/170515-eptf-report_en)

**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).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Further to the points made in Question 1.1, FIA EPTA members would highlight the following as key areas of concern and areas where we feel that MiFID II is either not delivering on its objectives or where the application of MiFID II is damaging broader EU goals, such as the development of the CMU.

- **Non-Equities market structure** – MiFID I created an initial round of opening up and enabling competition in EU equities markets leading to significant innovation, This trend has been continued in MiFID II with continued change and adaption in market structure towards different models to meet the differing needs of end-investors. However, the same cannot be said for non-equities markets where the much-heralded impact of MiFID II has failed to lead to substantive changes in non-equities market structure: Traditional legacy structures remain in place unchanged, with dealer-to-dealer and dealer-to-customer markets continuing to dominate and a patchwork transparency regime which benefits no one other than the incumbent dealer firms.
- **Non-equity transparency** – The regime as currently applied has not contributed to a meaningful improvement in the transparency of non-equity markets in the EU. Market participants have incurred substantial costs to ensure their compliance with MiFID II requirements and their ability to report and store the data redundantly while the same data is available at venues. However, to date, there has been little benefit derived from the transparency regime. The system of post-trade deferrals, in particular, has effectively negated the post-trade transparency requirements and allowed them to be systematically disapplied. FIA EPTA would strongly encourage the Commission to address the deficiencies of the post-trade transparency framework for non-equities. Academic

research has consistently shown that, in jurisdictions with fully operative and genuine post-trade transparency, there are significant advantages for both retail and institutional investors such as better, more reliable pricing, lower transaction costs and better liquidity.

- **Equivalence** – We note the intent behind the equivalence regime in protecting EU investors and markets while seeking to put in place a framework for the managed interaction between EU and third-country firms and markets. However, we note with regret that its practical application has largely been to the detriment of EU firms and investors. The lack of any meaningful progress towards considering any third countries as being equivalent and a drift towards more protectionist positions in areas such as clearing and third country access is concerning particularly in the context of Brexit. We also note that the decision to remove equivalence for the Swiss markets was ultimately to the detriment of EU end-investors while failing to bring about the desired policy concessions in other areas. Ultimately, if the EU is to realise its goal of creating deep and liquid capital markets for the benefit of EU citizens and companies it must make positive steps towards making EU markets a more attractive place to raise and invest capital. The intensifying politicisation of equivalence is contrary to the broader CMU goals of the EU and against the interests of EU firms and investors.
- **Market data** – MiFID II has failed to realise its goal of lowering the cost of market data with significant direct and indirect cost increases, and usage restrictions, notably in the area of equities market data, occurring both in the run up and following the implementation of MiFID II.

### 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:

FIA EPTA members are strong advocates for supervisory convergence. It is very important that rules are applied uniformly across Europe. Even small discrepancies in their application can have a big impact and create an un-level playing field across the Union. FIA EPTA members also vehemently believe that narrow national interests or idiosyncrasies should not interfere or undermine policies that will have a positive impact on EU capital markets as a whole.

FIA EPTA members have firsthand experience of impediments arising from national legislation, in particular in relation to the issues below:

- **Open access** – Although MiFID II includes open access requirements for listed derivatives based on solid considerations for ensuring greater capital markets efficiency and integration in the Union while mitigating undue risk, we observe that incumbent infrastructure operators continue to attempt to delay (by extending the period of the opt-out clause) or remove its introduction entirely. Operational risks have been raised as the rationale for this. However, FIA EPTA members consider that the operational risks are minimal and can be negated. We consider that these are masking essentially anti-competitive efforts to protect monopolistic legacy business models based on dominant market power. FIA EPTA members further believe that open access will bring much needed competition to the listed derivatives market where currently individual exchanges have a dominant market position. This will result in more optionality for end-investors and lower trading costs, while mitigating single-point-of-failure concerns.
- **Interoperability** -- While interoperability should be in place with T2S, local idiosyncrasies such as different national securities law prevent true freedom of movement/ transfer and unified trading across the Union. Because of this, the current post-trading infrastructure creates unnecessary

financial risks and, therefore, is detrimental to end-investors and a deterrent for full EU capital markets integration.

- **Post-trade name give-up** – Trading venues are required to provide non-discriminatory access to all market participants under Articles 18(3) and 53(1) of MiFID II. Unfortunately, the practice of “post-trade name give-up”, which is employed by certain MTFs and OTFs that offer trading of centrally-cleared OTC derivatives, acts as a discriminatory access barrier. “Post-trade name give-up” occurs when the identities of counterparties to an anonymous trade are subsequently disclosed. While necessary for non-cleared instruments, it serves no legitimate purpose for centrally cleared instruments: post-trade, the counterparties face the CCP, and do not have any ongoing exposure to each other (and under relevant straight-through-processing rules, counterparties face the CCP immediately post-trade). The continued use of “post-trade name give-up” serves the entrenched interests of incumbent dealers and blocks new entrants on relevant trading venues. We note that in the US the CFTC has proposed to prohibit “post-trade name give-up” for anonymously executed, cleared OTC derivatives, and we urge the Commission to follow suit.
- **STO** -- When Switzerland’s equivalence was revoked last July there was an un-harmonised approach taken across the Union to application of the STO and as to where Swiss stocks, that were dual-listed or primarily listed on an EU regulated market, could be traded. This caused significant confusion and resulted in an un-level playing field for EU firms dependent on their NCA’s individual interpretation (or lack thereof) of permissible trading scenarios.<sup>3</sup>
- **Position limits for commodity derivatives** -- We observe that NCAs and trading venues apply different position limits for comparable contracts while position limits rules differ from exchange to exchange. This creates uncertainty for market participants, unduly constraining efficient price formation

FIA EPTA members would, also, like to point out that there are impediments arising from existing market structure. For instance, it seems that some SIs display inflated statistics because non-price forming/non-addressable transactions (e.g. end of day give-ups) are reported as SI transactions as a result of not being explicitly excluded from the scope of the STO. We would, therefore, support a clearer scope to the exemption to the STO to ensure more legal certainty for market participants.

#### **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:**

While FIA EPTA members consider that transparency has improved in some areas, we observe that too many instruments and transactions continue to rely on a closed market structure or significantly deferred transparency. A welcome exception has been the greater acceptance of RFQ protocols replacing BCNs as an example of constructive market structure innovation in a trading venue context.

FIA EPTA members strongly support the application of pre- and post-trade transparency as a key

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<sup>3</sup> As a side note, in FIA EPTA members’ opinion, firms should be allowed to execute transactions in third-country shares on the venue with the main pool of liquidity. Any deviation from this would mean that EU firms would become less competitive in comparison with their third-country peers and unable to meet their best execution obligations as they would be forced to trade on less liquid venues therefore incurring increased costs.



mechanism to ensure efficient price formation across execution venues. As such, pre-trade transparency is essential for ensuring effective liquidity aggregation that enables best execution for end-investors while post-trade transparency provides an important overview of the whole market and is also instrumental in shaping the broader elements of EU best execution obligations.

FIA EPTA members consider that optimising market transparency for shares and equity-like instruments is essential for facilitating efficient price formation and enabling best execution in a competitive order execution market. All of this benefits end-investors by enabling trading interest to effectively interact, reducing search and trading costs. For a balanced outcome, any exemptions from the pre-trade transparency regime should be calibrated in a careful manner to ensure appropriate levels of market transparency facilitating best execution for end-investors including reasonable deferrals – not for days or weeks. FIA EPTA members consider it important, in that regard, that the ensuing waivers are used fairly and appropriately to their purpose.

While the transparency regime works for equities and equity-like instruments works reasonably well, transparency in relation to derivatives and bonds continues to be lacking. The inconsistent and liberal use of the post-trade deferral regime for non-equities has effectively denied the market meaningful post-trade transparency for non-equities. Currently, only 5% of off-venue trading activity in OTC derivatives is subject to post-trade transparency, due in large part to problems in the interpretation of the Traded on a Trading Venue (ToTV) concept. Furthermore, 90% of on-venue trading activity in OTC derivatives is being granted a four-week deferral while 85% of trading activity in EU bonds is not being published in real-time with full transaction details often absent when eventually published.

Finally, we see that the APA landscape is highly fragmented, and that APA outputs do not enable market participants currently to have a full view of the market as intended by MiFID II. Achieving data consistency and harmonisation of data formats and delivery methods should help make markets more transparent post-trade and enable APA outputs to be used for the purpose of a meaningful European consolidated tape.

**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:**

As liquidity providers, FIA EPTA members have adapted to the evolving European equities market structure and the regulatory changes thereto. Collectively, FIA EPTA members provide liquidity across all types of MiFID II execution systems (RMs, MTFs and SIs) and trading protocols (CLOB, RFQ, auction-based) for shares and equity-like instruments.

FIA EPTA members support a market structure where the trading of shares and equity-like instruments takes place, to the greatest extent, in an organised trading environment which is subject to calibrated transparency requirements. FIA EPTA members consider that optimising market transparency for shares and equity-like instruments is essential for facilitating efficient price formation and enabling best execution in a competitive order execution market. All of this benefits end-investors by enabling trading interest to effectively interact, reducing search and trading costs.

By way of general comment, FIA EPTA members note that the growth of SI based trading since the application of MiFID II has been partially driven by unintended consequences where some investment firms opted to become SIs purely in order to meet the demands of their clients to be responsible for post-trade reporting. FIA EPTA members would welcome a change to the post-trade transparency regime allowing

investment firms to take on the post-trade reporting obligation. MiFID II's intention was to enforce the seller's obligation in order to eliminate cases of double reporting, however, FIA EPTA members believe there are other ways to achieve this aim without putting the burden on buy-side firms or requiring sell-side firms to become SIs.

Further, regarding the assessment of the role of SIs within the wider MiFID II execution landscape and vis-à-vis trading venues, FIA EPTA members' views are informed by the fact that they use their own capital for their own risk to provide liquidity to end-investors and markets in a manner that conforms to their firms' objectives and how they can bring these to bear to optimally contribute to the price formation process.

In this regard, some of FIA EPTA's members believe that an all-to-all openly accessible multilateral trading environment leads to the best societal outcome. These members' particular concern in regard to SIs is that some SIs make use of public price information to gauge accurate quote valuation levels while not, or not sufficiently, contributing to the over-all price formation process and seeking to steer flow away from the public market.

By contrast, other FIA EPTA members do consider, however, that SIs offer a welcome and useful execution environment for institutional end-investors which should remain embedded in the EU market structure. In particular, these members consider that SIs enable market makers to provide liquidity to end-investors in a more targeted manner while helping to maintain a competitive order execution market in view of ongoing market structure consolidation. They consider that the added value of SIs is further exemplified by the positive experience of end-investors using these systems (either directly or through a broker). These members also consider that organised bilateral market making for a firm's own risk when operating an SI constitutes a fundamentally different business model from operating a multilateral matching system where the venue operator is not exposed to any market risk.

**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:**

**Non-equities**

Increased pre-trade and post-trade transparency in the historically opaque non-equities markets is designed to increase competition, liquidity and counterparty diversity, reduce systemic risk, and facilitate best execution. These objectives are important for expanding EU capital markets, including improving government bond markets. Regrettably, the MiFID II transparency regime for non-equities has failed to meaningfully increase transparency for end-investors. We see three main reasons for this outcome:

1. **The concept of "traded on a trading venue" (ToTV) is being interpreted too narrowly.** The ToTV concept seeks to assess which off-venue derivatives are substantially similar to derivatives traded on trading venues. At the moment, nearly each of the 48 reference data fields in RTS 23 is required to match in order for an off-venue transaction to be considered equivalent to an on-venue transaction and therefore subject to the MiFID II transparency regime. Data quality issues and a lack of validation rules around certain reference data fields are resulting in almost all off-venue transactions being considered out-of-scope for transparency.

We would recommend that the concept of ToTV either be re-interpreted or removed. Regulators

should assess the percentage of trading activity in a specific asset class that is considered ToTV on a regular basis.

2. **Too many waivers and deferrals.** Of the non-equities instruments that are being considered ToTV at the moment, most are eligible for waivers and deferrals from transparency requirements. This undermines the objective of increasing transparency, as liquid non-equities instruments are exempted from pre-trade transparency and are provided with four-week deferrals from post-trade transparency.

We would recommend assessing the percentage of trading volume that is currently eligible for each exception and recalibrate the regime accordingly. In addition, size specific to the instrument (SSTI) thresholds should be increased to expand the scope of the transparency regime. The post-trade deferral regime should be simplified by reducing the number of available options and reducing the extended deferral of four weeks to more reasonable levels, similar to those for equities above LIS.

3. **Poor publication practices of trading venues and APAs.** With respect to the few transactions that are currently subject to MiFID II transparency requirements, APAs and trading venues are making it difficult to access the transparency data free of charge 15 minutes after publication as required under MiFID II. With only delayed, fragmented and inconsistently formatted data provided by APAs and trading venues, market transparency goals remain unfulfilled and market participants are compelled to purchase expensive data packages from the APAs and trading venues.

We would recommend to ensure that relevant ESMA guidance is implemented in a consistent manner, as investors are unable to benefit from the MiFID II transparency regime without access to the available data. We would also recommend the creation of a consolidated tape for non-equity instruments in line with the successful U.S. TRACE system.

Finally, we would encourage the EC to set ambitious objectives for improving the competitiveness and liquidity of EU bond markets. We would support policy initiatives to ensure that bond issuances become more standardised in terms of duration and with larger issuance size and lower notional value, enabling greater tradability and liquidity. Also, the continued inaccessibility of primary market / interdealer networks for non-banks should finally be conclusively addressed.

### **Structured products**

FIA EPTA members remain concerned regarding certain listed structured products that are insufficiently transparent and deliver sub-optimal results for retail investors such as sprinters, turbos, speeders, warrants and CFDs. These products suffer from significant conflicts of interest: quotes are provided by only one market maker which is normally affiliated with the issuer of the product. In the absence of competition by other liquidity providers, these market makers have full discretion to set spreads and pricing rules in a manner that disadvantages retail clients.

We would recommend a comprehensive review of listed structured products focusing on non-compliance with multilateral trading rules and conflicts of interest issues.



## Section 2. Specific questions on the existing regulatory framework

### PART ONE: PRIORITY AREAS FOR REVIEW

#### I. The establishment of an EU consolidated tape

##### 1.1. Reasons why a consolidated tape has not emerged

**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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overly strict regulatory requirements for providing a CT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Competition by non-regulated entities such as data vendors	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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

FIA EPTA believes that the primary reasons why no consolidated tape provider (CTP) exists to date is that the cost to create a CT has been perceived as too high without adequate financial incentives. If the assumption is made that trading venues and APAs would charge the CTP for the provision of post-trade data this could hold true. However, we believe that in order to facilitate the viability of a CTP, it should be clarified that trading venues and APAs must as a first step mandatorily contribute post-trade data at no charge to the CTP provider. (Trading venues and APAs should subsequently receive a cost recoupment from the CTP based on its generated income and the contribution of the relevant submitted data to price formation). If trading venues and APAs provide the data free of charge, the price for consumption of the CT would also be positively impacted as the cost for running the tape would decrease. It is also true that the MiFID

requirements hold a CT provider to a significantly higher standard and would mean any CT, once produced, could be undercut by other data vendors providing less complete consolidated data.

**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?**

To FIA EPTA members it is clear that the current legislative framework has not succeeded in promoting the development of a consolidated tape. As detailed in other sections of our response, the reasons behind why a consolidated tape has not emerged is not solely legislative but also relates to other issues. When developing legislation to mandate a consolidated tape, we believe emphasis should be placed on the design and governance of the tape and ensuring that the tape provides access to a comprehensive set of post-trade and real-time data. In relation to which parts of the current consolidated tape framework should be incorporated, we believe this is secondary as long as it achieves the overall objective of delivering a post-trade and real-time tape.

## **1.2. Availability and price of market data**

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

FIA EPTA members largely agree with the proposed changes. In addition to this, we also believe increased emphasis should be placed on ensuring that the current rules in relation to publication of market data is followed by trading venues and APAs. Many trading venues and APAs are still not complying with the requirement to make transparency data available free of charge 15 minutes after publication. FIA EPTA members believe this is particularly problematic in the case of non-equities products, where we find that the lack of transparency information and the difficulty in accessing which information is available hurts competition and acts as a barrier for entry to new participants in these markets. In particular:

- Certain trading venues and APAs still do not provide any data free of charge.
- Certain trading venues and APAs are not publishing data free of charge in a format that can be easily read, used and copied and that is machine-readable. For example, one APA, widely used for fixed income and derivative trades continues to publish pre-trade data as an image file that cannot be copied and now publishes post-trade data in 2-minute slice files that are not machine-readable. As a result, users have to manually open each 2-minute slice file in order to access the published data. This directly conflicts with the ESMA supervisory guidance, which states that “Trading venues, APAs and CTPs should publish information in an electronic format that can be directly and automatically read by a computer, and that can be accessed, read, used and copied by any potential user through computer software that is free of charge and publicly available.”
- Certain trading venues and APAs prohibit (through terms of use) any copying or redistribution of the data provided free of charge, even if these redistributors/third parties are providing services free of charge. This directly conflicts with the ESMA supervisory guidance, which states that “Trading venues, APAs and CTPs may not impose redistribution fees or other similar restrictions on redistributors/third parties making available data free of charge 15 minutes after the initial publication.”
- Certain trading venues and APAs continue to provide “premium” access to market data for a fee where data is published in a different and more user-friendly format. This directly conflicts with the ESMA supervisory guidance, which states that “the data made available free of charge should be published in a similar format as real-time data published on a reasonable commercial basis

However, FIA EPTA members would like to highlight that requiring trading venues, APAs, SIs and CTPs to share information on the actual cost of producing and disseminating data, could introduce additional reporting requirements for trading firms earmarked as execution venues. We therefore urge the Commission to clarify standards on what qualifies as an execution venue and make sure that firms that disagree with this classification can more easily challenge such a qualification.

## 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)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Ensuring best execution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Documenting best execution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Better control of order & execution management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory reporting requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market surveillance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Liquidity risk management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Making market data accessible at a reasonable cost	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Identify available liquidity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Portfolio valuation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

FIA EPTA members see the following use cases: A CTP would provide consolidated post-trade data in a timely manner; invest in improving data quality; and make it viable to use post-trade data to view the liquidity landscape for the same (type of) instrument traded across fragmented venues. FIA EPTA members consider that while not every principal trading firm or other market participant would be interested to use such service to the same extent, the CT would bring best execution closer to investors: they can verify and monitor this better by having access to an effective CT.

While it can be argued that some of the cost of not having a CTP could be reduced simply by requiring trading venues and APAs to provide post-trade data in a more standardised format, this would not provide the benefits of a CTP. A real-time post-trade CTP provides a neutral and reliable source of the current market price, giving investors' confidence to trade and supporting best execution. It also consolidates EU financial markets, supporting a more integrated CMU.

In fact, a well-functioning, high-quality CT would act as a catalyst for further integration of European capital markets and the realisation of an EU Capital Markets Union (CMU). We believe a CT will stitch together Europe's fragmented equities market landscape and promote on-venue trading, particularly in ETPs not subject to the trading obligation. As such, a CT will benefit financial markets as a whole, including retail investors who (directly or indirectly) will have access to better prices and increased transparency. It is foreseeable that a CT would also help to counteract the growing European trend of volume consolidating at market close or in the end-of-day auction, by reinforcing the public's confidence in intraday prices.

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

FIA EPTA members believe a CT should ideally be a real-time, post-trade tape that allows relatively smaller (institutional) investors to have low-cost access to comparable information as large investors. This should contribute to creating a more integrated European market, ensuring that consistent and accurate data is made available to market participants, and allowing investors to obtain a full picture of the trading volumes of a product listed across multiple exchanges. A consolidated tape should help to stitch together Europe's fragmented equities market landscape and help more ETFs in Europe to be traded on exchanges.

We believe a CT will be a tool for investors and professionals alike to monitor executions and transaction costs. We see it being used primarily for best execution, transaction cost, and portfolio composition analysis as well as for regulatory compliance, but we do not underestimate the importance of properly sequenced, last traded price information for trading purposes. In this sense, we believe the post-trade CT may have value for informing pre-trade routing decisions for some investors.

## 2.General features of the consolidated tape

### 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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Mandatory contributions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Mandatory consumption	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Full coverage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Very high coverage (not lower than 90% of the market)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Real-time (minimum standards on latency)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The existence of an order protection rule	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Single provider per asset class	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Strong governance framework	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

FIA EPTA believes 100% coverage of all relevant asset classes is vital, as otherwise the added value of the tape would be limited and information would still be fragmented, as currently is the case. Moreover, with respect to equitylike instruments, it is already a legal requirement. The tape would also be relevant as a reference for non-liquid instruments.

We believe the CTP should begin with equities coverage, given the relative better quality of data, but should ultimately encompass other asset classes like bonds and OTC derivatives. An alternative is to allow different firms to start work on separate CTPs per asset class simultaneously, as the CTPs for non-equities and equities will likely be somewhat different in format anyway. Within each asset class it need not be considered a requirement for 100% of EU instruments be available immediately to make a CT viable and a phased implementation on a country of primary listing or issuance basis would still create significant added value for EU market participants from the first day of operation.

To provide a complete picture of liquidity across the fragmented European market landscape, it should absolutely capture SI and OTC activity. Even non-price forming trades should be included, provided they are flagged properly

FIA EPTA believes an additional element that has so far hindered the establishment of an equity CT is the complexity of exchange market data contracts. In establishing a CTP, we believe a more efficient model would be to harmonise a standard contract form and require input contributors to contract with a central CTP administrator, rather than requiring multiple, bilateral contracts with individual venues/APAs.

Further, FIA EPTA members consider that in order to make the CT robust and usable as a real-time tape, all the possible deferrals and delayed reporting periods of MiFID II should be revisited and reduced to reasonable levels including for non-equities. We believe real-time data is crucial if the CT aims to provide a neutral and reliable source of the current market price, giving investors' confidence to trade and supporting best execution. Providing a real-time view of trading activity also consolidates EU financial markets, supporting a more integrated CMU. Beyond this, we also believe there is no reason why the CT cannot be real-time given the technological sophistication of the market as a whole and the low burden, from a technology perspective, of republishing trade events. To the extent any systems would need to be adapted to accommodate real-time reporting, we believe the cost of that investment is more than worthwhile to promote a cohesive view of liquidity across European markets accessible to all investors.

FIA EPTA believes, fundamentally, in competition to promote innovation and prevent monopolistic structures from developing. However, we believe the primary benefit of a CT is to overcome the fragmentation of European markets and therefore support a single, reliable source for a consolidated overview. We also acknowledge that requiring trading venues and APAs to contribute input data on a mandatory basis would be an operational burden if data had to be directed to more than one CTP. Limiting the operation of the CT to a single provider minimises this potential burden and increases the economic viability of the CTP business model, in addition to preserving a single, "golden source." We do, however, envision that different asset classes may be able to be operated by different CTPs.

Finally, the top-level governance of any CTP remains critical. This should be required to include a diverse set of market stakeholders and avoid giving any group of (incumbent) stakeholders exclusive rights. This is the most important safeguard against the risks of monopoly or conflicts of interest.

### 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:**

FIA EPTA believes mandatory consumption would be misguided. We understand that some participants believe mandatory use of the CT would provide economic incentives to provide a CT, but we believe those incentives already exist under a model wherein venues and APAs mandatorily contribute input data. The use of the consolidated tape by market participants should be optional. We believe, rather, we should make the European CT a product of genuine utility and value for large and small investors, such that the demand for it arises naturally.

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

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

FIA EPTA members note that European Best Execution requirements are broad in nature and are not dependent solely on achieving the best possible price at the point of execution and instead oblige Investment Firms to consider a range of factors that deliver the best result overall for their customer. As such we would recommend avoiding the creation of an explicit link between a future CT and best execution. However, it is clear that a future CT, as a definitive tape of record reflecting all transactions in each instrument across all execution venues, would become a key aspect of Investment Firms' approaches to delivering and monitoring best execution.

**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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Fees should be differentiated according to type of use	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Revenue should be redistributed among contributing venues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
In redistributing revenue, price-forming trades should be compensated at a higher rate than other trades	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>



The position of CTP should be put up for tender every 5-7 years	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

While FIA EPTA members do not see the CTP as a pure public utility, we do believe it is appropriate that the CTP can and should have a different cost base than purely commercial data vendors – i.e. trading venues and APAs will be required to submit real-time post-trade data to the CTP data at no charge. CTPs should be allowed to recover the costs for consolidation and distribution of the data plus an appropriate margin to be further specified by ESMA. This should enable the CT to be accessible from a cost perspective for the majority of market participants and facilitate the viability of a CTP.

We believe revenues should be allocated back to exchanges/APAs based on contribution to executed liquidity, weighted by value (e.g. price-forming trades weighted more heavily than trades executed under a waiver or in auction (lesser value to price formation)). Coupled with this should be seriously deterrent penalties on trading venues/APAs for incorrect or late data (with APAs, in turn, policing SIs and OTC reporters for their post-trade reporting).

In any case, we would strongly caution against copying the US system of remunerating exchanges for contributing data to the tape, as that has created dysfunctional incentives for venues to register as exchanges in order to be eligible for tape revenues and even to game revenue allocation through specific order types or market data revenue sharing programs, without genuinely contributing executions.

A tape designed for post-trade use can be based on existing APA data, and should be low cost/carry no revenue as it is virtually already available for free (through the venues and APAs).

Any fee should be stemming from 'reasonable commercial basis'. There should be no additional revenues stemming from mandatory mandated dissemination of data, or re-use of such free data.

Pre-trade data should also not be mandatory consumption: it should be paid for by parties that want to use it. Exchanges/venues should make this data available, perhaps at slightly slower speeds, so it does not cannibalise their fast feed sales. That way there should hardly be any cost associated at their end: compared to their low-latency feed the exchanges and trading venues would be repackaging the same, but slower, data for more general use, benefiting investors at large.

**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):**

FIA EPTA members believe that CTPs should be allowed to recover the costs for consolidation and distribution of the data plus an appropriate margin. Specifically, we would expect the CT to charge for the provision of consolidated data and then redistribute part of the revenues to contributing entities. We believe revenues should be allocated back to exchanges/APAs based on contribution to executed liquidity, weighted by value (e.g. price-forming trades weighted more heavily than trades executed under a waiver or in auction (lesser value to price formation)). Coupled with this should be seriously deterrent penalties on trading venues/APAs for incorrect or late data (with APAs, in turn, policing SIs and OTC reporters for their post-trade reporting).

As stated above, we would strongly caution against copying the US system of remunerating exchanges for contributing data to the tape, as that has created dysfunctional incentives for venues to register as exchanges in order to be eligible for tape revenues and even to game revenue allocation through specific order types or market data revenue sharing programs, without genuinely contributing executions.

### 3. The scope of the consolidated tape

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

**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 <sup>3</sup>	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shares post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>
ETFs pre-trade	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ETFs post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>
Corporate bonds pre-trade	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Corporate bonds post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>
Government bonds pre-trade	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Government bonds post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>
Interest rate swaps pre-trade	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interest rate swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>
Credit default swaps pre-trade	<input checked="" type="checkbox"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit default swaps post-trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="checkbox"/>	<input type="radio"/>

<sup>2</sup> Pre-trade would not be executable but delivered at the same latency as the post-trade data. Pre-trade market data is understood to

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

FIA EPTA members consider that equity and other non-equity derivatives (both listed and OTC) should be considered for inclusion in a future consolidated tape such that it eventually covers all instruments under the scope of MiFID II.

### **Question 15.1 Please explain your answers to question 15:**

FIA EPTA members believe the CTP should begin with post-trade equities coverage, given the relative better quality of data, but should ultimately encompass other asset classes like bonds and derivatives. An alternative is to allow different firms to start work on separate CTPs per asset class simultaneously, as the CTPs for non-equities and equities will likely be somewhat different in format anyway. We believe that the added value of a consolidated tape will be highest for those instruments which are currently the most opaque and where timely, consistent, comprehensive and reliable availability of post-trade transparency data will make the greatest positive contribution to market quality, meaning non-equities (in particular, bonds).

To provide a complete picture of liquidity across the fragmented European market landscape, it should absolutely capture SI and OTC activity. Even non-price forming trades should be included, provided they are flagged properly.

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:**

Irrespective of a consolidated tape, FIA EPTA members consider there are several aspects of the current MiFID II rules around market post-trade transparency which are not working as intended due to fragmentation in formats and the different ways exchanges and trading venues make this information available. Currently, given that not all trading venues use a common standard, brokers have no standard to use which makes it more difficult to compare data. This is reflected in the lack of consistency between broker reports. A harmonised standard, such as the Market Model Typology (MMT), that would be enforced would be helpful. The long-term benefit would be worth the one-off cost for change (in particular IT cost). Moreover, it would improve data exchange in the future and thus reduce recurring costs.

However, we would not let “better” be the enemy of “good” and would recommend starting on a CTP as soon as possible, using its existence to further leverage and enforce data quality improvements and latency reduction. Data vendors already have demonstrated that post-trade data can be successfully consolidated.

- **Industry standard:** FIA EPTA believes one way in which to tackle these deficiencies would be to make compulsory the use of the MMT industry standard. MMT is an industry initiative that is overseen by the FIX Trading Community and adopted by trading venues such as exchanges and SIs.

Almost all exchanges contributed to the development of MMT, and it was developed by market data experts. MMT helps to pass the same information in the same format down the line to improve the visibility of data based on clear implementation documentation. It has been optimised for and is compatible with MiFID II RTS1 and RTS2, and the fact that there has been no need for change since MiFID II was introduced attests to its stability. It is already applied by almost all major European stock exchanges. One drawback may be that MMT is perceived as equity focused and not as generally adopted in fixed income. However, as above, we recommend the CTP look to the better data quality of equities as a way forward as the CT extends to additional asset classes.

- **Responsibility:** The quality of reference data (FITRS and FIRDS databases) also requires attention. In particular, errors in these databases, if unaddressed, feed through into further uses of the data. Another key way to tackle data deficiencies is to clarify who in the market is end-responsible for data quality. In this regard, we believe ESMA is best placed for the overall oversight of data quality. Currently, responsibility appears to reside with market participants.
- **Enforcement:** Finally, enforcement is another critical tool for obtaining data quality. Adapting IT systems may not be a priority for smaller market participants, but it should not be cheaper to pay a fine for not fulfilling the legal requirements on data than it is to comply. Likewise, we understand that, while quality is improving, the overall data quality of APAs is sub-par compared to exchanges. This is one reason we believe APA data is currently less in demand, as there is no guarantee regarding the overall data quality.

One reason for the inferior data quality is attributed to a lack of enforcement. Guidance by ESMA on appropriate flags would therefore be welcomed. Furthermore, FIA EPTA believes ESMA is the most appropriate body to supervise overall data quality, including mandating the use of MMT. The mandate should be complemented with proper standards on how to implement MMT to limit room for interpretation. In order to ensure a level playing field and the consistent application of the relevant rules across the Union, we believe ESMA should be charged with the supervision and enforcement of trade reporting and should carry out regular audits of trading venues and APAs.

Data quality should be safeguarded throughout the chain of transmission, with accountability at all levels (venue, APA, CTP). Situated at the end of the chain, a CTP would have no way to check and correct data that is handed to it. In this way, we believe we need cascading enforcement of standards: with overall responsibility vested in ESMA, and APAs, in turn, controlling and enforcing the data quality of SIs and OTC reporters

While we would be in favor of increased pre-trade transparency on a theoretical level, we believe it will be difficult to implement in practice. We would therefore urge the European Commission to first focus on a post-trade tape, before considering a pre-trade version. However, if the decision is made to move forward, we believe a pre-trade transparency tape should ideally have the same kind of features as a post trade tape. ]

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

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

Shares admitted to trading on a RM	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Shares admitted to trading on an MTF with a prospectus approved in an EU Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

FIA EPTA members believe there is scope to include international shares into a future consolidated tape and would prefer a broader definition based purely on admission to trading without the need for an approved prospectus.

**Question 17.1 Please explain your answers to question 17:**

FIA EPTA notes that in a number of cases these “international” listings may have reasonable liquidity in the Union and are also often traded by less informed retail investors looking to get access to global stocks, as such a CT providing a fuller view of available liquidity is likely to specifically benefit these investors. Furthermore, and as set out below EPTA would contend that there would be significant value in extending a future EU CT to cover certain other key regional markets, notably the UK and Switzerland.

**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:**

FIA EPTA would prefer for the CT to include all relevant listings to ensure the maximum amount of transparency. Hence, FIA EPTA considers that all instruments that are subject to MiFID II transaction reporting should be covered by the consolidated tape. However, if certain listings are clearly inactive, we think it is appropriate to exclude these.

**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:**

FIA EPTA members believe the CT will create a more integrated European market, allow investors to obtain a full picture of the trading volumes of a product listed across multiple exchanges, and help more securities and ETFs in Europe to be traded on exchanges.

FIA EPTA members would argue that most investors active in the European region would be very interested in a CT that included both UK (post Brexit) and Swiss instruments. FIA EPTA expects there to remain a significantly high level of UK listed instruments available on EU execution venues post Brexit (and vice versa with EU instruments available to trade in the UK) given the historic integration of the markets and it will be important for EU and non-EU investors to retain seamless access to all available liquidity in these instruments.

As such, a CT that included all available liquidity in these instruments, regardless of the underlying jurisdiction would have significant value and would represent an area where we would encourage significant co-operation between UK and EU authorities. In a similar vein, the Swiss equity markets were historically well integrated into European markets, and FIA EPTA hopes that a similar situation can be achieved again in the future.

A CT including the liquidity both in Switzerland and the EU would then be very beneficial. Creating a pan-European EEA-UK-Swiss consolidated tape will support a more vibrant and dynamic capital market, where the CT we believe will act as a “pull” factor, attracting more investors to participate on European financial markets generally.

## **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:**

FIA EPTA members seek to standardise and include as many assets as possible in the CT. By taking deliberate actions such as opening market structures and increasing transparency, this will help to increase liquidity in the markets. We believe that this will create a positive feedback loop in which markets become increasingly liquid and transparent.

We, therefore, think that the most appropriate way to define the scope of the CT is to include all listings that are primarily listed or have their most liquid market in the EU. Furthermore, it should be ensured that the CT covers and prints ETFs on an ISIN basis per currency. We think it is best not to print a converted price, but to print the prices of different currency in the same ISIN separately. Doing otherwise would centralise pricing and translating power with the CTP, which could lead to market distortions. We suggest to only exclude clearly inactive instruments or instruments for which it would be prohibitively expensive to source and print.

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

### **4.1. Equity trading and price formation**

**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:**

FIA EPTA members support the Share Trading Obligation as a mechanism to ensure that the trading of shares and equity-like instruments takes place, to the greatest extent, in an organised trading environment which is subject to calibrated transparency requirements. The STO has increased the shift to transparent markets for some products such as ETPs. FIA EPTA members consider that optimising market transparency for shares and equity-like instruments remains essential for facilitating efficient price formation and enabling best execution in a competitive order execution market. All of this benefits end-investors by enabling trading interest to effectively interact, reducing search and trading costs.

**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



☒ X 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:

FIA EPTA members would welcome a pragmatic approach to the scope of the STO to ensure that EU firms are able to access the main pool of liquidity for individual shares and the STO does not interfere with firms' ability to meet their best execution obligations.

Regarding third-country shares, FIA EPTA members agree that the STO should only be applicable to EU shares and the scope should be reduced to exclude third-country shares. EU investment firms should be allowed to execute transactions in third-country shares on third country venues and these should be as accessible as possible. Any deviation from this would mean that EU firms would become less competitive in comparison with their third-country peers as they would be forced to trade on less liquid venues and therefore incurring increased costs.

The key determinant as to whether an EU firm should be permitted to trade on a third-country venue, in our members' opinion, should be based on whether EU firms and end investors would be disadvantaged by not being able to access that third-country venue's liquidity (rather than the level of trading conducted in the EU). In our members' opinion, the identification of what is considered an EU share should be based on the first two letters of ISINs. Using this 'issuing country' designation, which is a readily identifiable method that is widely known, will be the most efficient method from an operational perspective. This could also potentially be supplemented by ESMA guidance referring to specific cases for EU ISINs that barely trade on EU venues based on input initiated by market participants or trading venues, this could be based around the methodology and process used in the EU Short Selling regulation to identify third-country shares where the primary pool of liquidity exists outside of the EU.

Regarding EU shares that are dual-listed or only listed on third-country venues: As pointed out, the main shortcoming of the ISIN approach is where an ISIN has been issued in an EU country and admitted to trading in a third-country regulated market which becomes its most relevant trading market. In the case of such EU shares, where an issuer has actively sought to have its shares admitted to trading on a third-country regulated market, FIA EPTA members support ESMA's proposal that there should be an exemption allowing EU firms to trade those shares on that particular third-country venue. The focus should be on making sure that firms can still access the most liquid market, regardless of where the first issuance was carried out.

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

### Question 23.1 Please explain your answer to question 23:

As stated above, FIA EPTA members see the contribution of the STO as positive and we are in favour of maintaining the STO, while ensuring unintended consequences in relation to third-country instruments are being addressed.

### 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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
SIs should no longer be eligible execution venues under the STO	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

FIA EPTA members' views are informed by the fact that they use their own capital for their own risk to provide liquidity to end-investors and markets in a manner that conforms to their firms' objectives and how they can bring these to bear to optimally contribute to the price formation process.

In that regard, it should be noted that some of FIA EPTA's members believe that an all-to-all openly accessible multilateral trading environment leads to the best societal outcome. This view reflects these members' focus to efficiently provide liquidity in CLOB-based systems through passive market making and/or through facilitating counterparties' immediate execution across different trading venues by aggressively crossing the spread in a very short time frame, facilitated by sophisticated trading technology. These members consider that purely bilateral execution systems hurt price formation by operating on an unlevel playing field with trading venues. (It should be noted that some other FIA EPTA members do consider that bilateral market making can facilitate choice and best execution for end-investors as long as this is organised in an openly accessible trading venue environment – through RFQ based trading protocols – rather than SIs).

These members' particular concern in regard to SIs is that SIs make use of public price information to gauge accurate quote valuation levels while not, or not sufficiently, contributing to the over-all price formation process and seeking to steer flow away from the public market (i.a., by not charging execution fees and applying a smaller tick size). These members consider that some SIs essentially internalise the flow that is the most profitable for the SI operator while externalising any unattractive ("toxic") flow to the public market. Consequently, these members favour removing SIs from the STO.

By contrast, other FIA EPTA members do consider, however, that SIs offer a welcome and useful execution environment for institutional end-investors which should remain embedded in the EU market structure. Consequently, these members consider that SIs should be maintained as eligible execution systems for the

purpose of the STO. In particular, these members consider that SIs enable market makers to provide liquidity to end-investors in a more targeted manner while helping to maintain a competitive order execution market in view of ongoing market structure consolidation. They consider that the added value of SIs is further exemplified by the positive experience of end-investors using these systems (either directly or through a broker). These members also consider that organised bilateral market making for a firm's own risk when operating an SI constitutes a fundamentally different business model from operating a multilateral matching system where the venue operator is not exposed to any market risk. They further note that FIA EPTA members' SI quoting behaviour is essentially the same as their on-exchange market making, with both contributing in their own way to the price formation process. Consequently, these members do not agree that SIs inherently pose an unlevel playing field risk to the EU market structure. These members do agree, that practical steps can be taken to improve order-level market micro-structural convergence between trading venue execution protocols and those of SIs, in particular through harmonising the applicable tick size regime, raising the level of the quoting obligation and recalibrating SMS. This should help to ensure that SIs can more fully contribute to the price formation process and dispelling concerns that order routing to SIs is driven by any other incentive than best execution considerations and end-investor preference.

## **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:**

FIA EPTA believes there is scope to materially increase the minimum quoting obligation that applies to SIs in liquid instruments. Whether this quoting obligation should be 50% or 100% (or another percentage) depends to a large extent on final decision on the methodology used for determining SMS.

Further, we believe that the quoting obligation could be extended for at least some illiquid shares and we would welcome policy action to review this with the aim to either further increase the number of shares that are classified as liquid or to identify another suitable metric that could be used to determine to which illiquid shares an SI public quoting obligation could reasonably be applied.

Finally, we consider that the current SMS buckets are unsatisfactory with too many instruments ending up in the lowest bucket. We would favour a recalibration of the existing SMS buckets using AVT to introduce a more meaningful and better-aligned SMS scale in liquid instruments. In doing so we would support an approach in regard to the minimum quotation size for SIs which ensures that SIs have a meaningful public quote that is proportionate to their role as bilateral market makers.

## **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:**

The views of FIA EPTA members are mixed on the question whether an un-level playing field exists between trading venues and SIs.

Some of our members consider that organised bilateral market making for a firm's own risk when operating an SI constitutes a fundamentally different business model from operating a multilateral matching system where the venue operator is not exposed to any market risk. They further note that FIA EPTA members' SI quoting behaviour is essentially the same as their on-exchange market making, with both contributing in their own way to the price formation process. Consequently, these members do not agree that SIs inherently pose an unlevel playing field risk to the EU market structure.

By contrast, other FIA EPTA members consider that purely bilateral execution systems hurt price formation by operating on an unlevel playing field with trading venues. These members' particular concern in regard to SIs is that some SIs make use of public price information to gauge accurate quote valuation levels while not, or not sufficiently, contributing to the over-all price formation process and seeking to steer flow away from the public market (i.e., by not charging execution fees and applying a smaller tick size). These members consider that SIs essentially internalise the flow that is the most profitable for the SI operator while externalising any unattractive ("toxic") flow to the public market. Consequently, these members favour

removing SIs from the STO.

Irrespective of their varying perspectives, however, our members agree on the practical improvements as outlined in our response to Q25 above.

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

**Please explain your answer:**

In FIA EPTA members' view, equity markets are operating relatively efficiently compared to the non-equity markets. We would caution, therefore, against stacking additional granular layers of regulatory complexity onto equity markets which are operating fairly well and are not characterised by significant market failures. By contrast, we would strongly encourage the Commission to focus its attention primarily on needed policy action to improve the efficiency and market quality in non-equity markets.

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

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

**X 1 – Disagree**

☐ 2 - Rather not agree ☐

3 - Neutral

☐ 4 - Rather agree

☐ X 5 - Fully agree

☐ Don't know / no opinion / not relevant

**Question 28.1 Please explain your answer to question 28:**

No, as set out above, FIA EPTA members believe the CT should be broad in its scope and should include both non-EU shares available to trade within the EU as well as EU shares trading on other relevant markets, meaning the UK and Switzerland. The STO however should be narrowly and pragmatically defined to include EU shares only as set out above.

**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?**

**X 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:**

FIA EPTA members do not consider that a pre-trade CT will have added value and would strongly caution the Commission against considering it. As stated above we think that including pre-trade into the CT will create imbalances within the European market structure. Including pre-trade into the CT would in our view have an undesirable impact on the business models of exchanges and we strongly policy efforts should only be directed to ensuring the creation of a real-time, post-trade tape.

#### 4.3. Post-trade transparency regime for non-equities

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Abolition of post-trade transparency deferrals	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening of the 2-day deferral period for the price information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Shortening of the 4-week deferral period for the volume information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Harmonisation of national deferral regimes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Keeping the current regime	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

**Please specify what other measures could in your view be appropriate to ensure the availability of data of sufficient value and quality to create a consolidated tape for bonds and derivatives?**

Specifically for OTC derivatives, FIA EPTA members offer the following solutions to address MiFID II post-trade transparency issues:

**ToTV:** Remove the ToTV concept for post-trade regulatory and public reporting so all non-equities transactions will be subject to post-trade transparency and the CT, providing market participants with a comprehensive view into overall trading activity. Consistent with the US regulatory framework, where all OTC derivatives and USD-denominated bonds are subject to the post-trade CT.

#### Deferrals:

- reduce the number of deferrals (e.g. one deferral for large-size transactions);
- eliminate the option to publish post-trade data on an aggregated basis across multiple transactions;

- add qualitative criteria (e.g. OTC derivatives subject to the clearing obligation should always be considered liquid)
- either remove deferrals based on liquidity assessments or significantly recalibrating liquidity thresholds using current market data (as well as taking into account any expected loss of UK data due to Brexit).

This would be consistent with the U.S. regulatory framework, where one standard deferral period of 15 minutes applies to a small number of transactions in both OTC derivatives and USD-denominated bonds.

### **Question 30.1 Please explain your answer to question 30:**

While the 15-minute deferral for LIS equity transactions seems to adequately protect buy-side and sell-side, FIA EPTA members believe that other current deferrals are significantly longer than needed (i.e., beyond an hour) and this is seriously undermining the value of the post trade transparency regime for non-equities. We view this to be contrary to the objectives of MiFID II and leading to undue information asymmetry between those availing of the waivers and other market participants. In turn, this will hamper any attempt to create a worthwhile consolidated tape for non-equity instruments given the large inclusion of essentially 'stale' data.

For example, looking at listed equity options and the 2-day deferral for price information, FIA EPTA members' experience suggests that two days' deferral is far too long and is not reflective of how the options market trades. FIA EPTA members understand the rationale for this deferred publication is to ensure the protection of firms taking on risk in thin markets. However, in practice, the impact of most trades can be absorbed within 15 minutes to an hour depending on the product and size of the trade. Hence, we see no justification for deferring publication beyond one hour and, in any event, within that timeframe the market has already moved (as it will be impacted by the hedging transaction of the initiator of the trade). A similar argument holds for most fixed income transactions.

Additionally, we would like to note that the most actively traded listed options products in the EU existed without limits to post-trade disclosure before MiFID II came into effect. Exchange participants were informed about every trade once it was crossed on the exchange. In this respect, T+2 deferred publication actually represented a decrease in trade transparency after the introduction of MiFID II. As an alternative to shortening the deferral periods, we would also be supportive of ESMA's current suggestion (detailed in its consultation paper on non-equities transparency) to adopt a U.S. style system of real time publication with volume masking.

Generally, given the very limited amount of post-trade data that is currently available given the shortcomings in the implementation of the MiFID II post-trade transparency framework for non-equities, the following issues must also be addressed to ensure that a post-trade CT will be successful:

- Deferral periods should be significantly shortened (e.g., to 15 minutes consistent with U.S. post-trade CTs for non-equities and the EU regime for equities trading above LIS)
- The dissemination of the reported notional amount of large-size trades should be capped at specified thresholds in order to reduce information leakage;
- The option for publication of post-trade price data on an aggregated basis across multiple transactions should be removed
- Deferrals should be harmonised across member states in order to prevent unduly long optional publication periods.

## **II Investor protection**

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### **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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more investor protection.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More investor protection corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The investor protection rules in MiFID II/MiFIR have provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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.**

### **Qualitative elements for question 31.1:**

While FIA EPTA members do not service retail investors directly, we believe that investor protection is essential to secure trust and transparency in Europe's financial markets. Products, as well as trading platforms, should be fair, transparent and conducive to investors' needs – at low costs.

Overall, we support the investor protection efforts and rules as stipulated by MiFID II but believe better calibration and cross regulatory alignment is needed to ensure effectiveness and avoid undue burden and costs on financial market participants and investors alike. There are still platforms and products that suffer from significant conflicts of interest, providing the issuer of the product or operator of the platform with pricing power and arbitrary control over how, and at what price and/or spread, an end-investor can trade. Additionally, some products comprise hidden costs, or full dependence on the issuer, where the issuer also controls market making, spreads and liquidity of the product to a large extent.

This includes, e.g., CFD platforms that suggest their clients are trading real shares and other instruments, on a live market. Some products, including warrants, and structured products such as turbos and sprinters, contain terms or trade in a manner that is opaque and advantages the issuer at the expense of the (retail) investor. While we welcome product innovation, any non-transparent products or platforms may reduce trust of retail investors in EU financial markets, whereas trust is a pre-requisite for achieving the CMU objectives and of creating a savings and investment union for citizens.

We refer also to our response to Question 81 on multilateral systems where we provide more detail in this regard.

### 3.Easier access to simple and transparent products

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

- ☒ X 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:**

Markets for structured products such as warrants, turbos, sprinters, speeders and CFDs which are listed and traded on multilateral venues but which essentially have a closed market structure where quotes are provided by, and retail orders matched against, only one market maker which is affiliated with the issuer of the product. This creates a market structure which inhibits competition and does not allow a fair price discovery process.

As the pricing of such structured products is in the hands of single, affiliated market makers, those are at an undue advantage by having more time and full discretion to set spreads and pricing rules in the absence of competition by other liquidity providers. We also observe the relevant venues creating an ecosystem which additionally advantages issuers or their associated market makers by providing them a last-look functionality and/or blocking automated trading. This prevents competition for order execution and further detracts from the multilateral character of the system.

These practices raise considerable investor protection concerns, as the closed and de-facto bilateral market structure for these products objectively raises trading costs and creates unnecessary greater losses for retail investors compared to other types of listed derivatives with a healthy level of competition amongst liquidity providers. – Retail investors pay more and are worse off trading these products than if they had traded, e.g., listed options with a similar risk profile.

FIA EPTA members consider that these markets need further transparency and competition to protect retail investors and promote competitive pricing in a multilateral setting for listed derivatives. FIA EPTA members have conducted in-depth analysis on, in particular, the warrants market and would be happy to share these findings with the Commission.

### 4. Product Oversight, Governance and Inducements

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

**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
- ☒ x 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:**

FIA EPTA members strongly believe that all inducements which create undue conflicts of interest on the part of providers of investment services to end-clients should be prohibited. We consider that in this regard MiFID II has not achieved an appropriate level of investor protection. We note, for example, the continued existence of payment-for-orderflow practices in several Member States, notably Germany. These practices lead to the disadvantaging of retail investors and distort the level playing field in the Union. We would strongly encourage the Commission to strengthen MiFID II investor protection rules in this area.

This being said, we do consider that the inducements rules in the area of research and execution have been useful and effective, as set out in our response below to Question 58 below.

**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
- ☒ x 4 - Rather agree
- ☐ 5 - Fully agree
- ☐ Don't know / no opinion / not relevant

[FIA EPTA members refer to our response to Question 49.1 above.]

## **5. Reporting on best execution**

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

### Question 55.1 Please explain your answer to question 55:

FIA EPTA members would like to draw the Commission's attention to the undue inclusion of investment firms which are market makers or liquidity providers into the scope of execution venues required to provide RTS 27 report. FIA EPTA would emphasise that firms that are market makers or liquidity providers on trading venues are fundamentally different from and should not be considered as execution venues. Requirements relating to 'quality of execution' are intended to help investment firms' selection of execution venues. The inclusion of market makers and liquidity providers should be considered out of scope for this purpose because reporting data stemming from such trades is duplicative of otherwise publicly available market data.

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

## III Research unbundling rules and SME research coverage

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

FIA EPTA members welcome the removal of an important potential conflict of interest and reinforcing the independence of research. Previously, pricing between research and execution services was often unclear and, in some cases, inflated. MiFID II has resolved this cross-subsidizing and increased pricing transparency. Research and value-added services are now priced independently so each service is rewarded and priced on the basis of quality and cost. We consider that this helps achieve a more level playing field for order execution as unbundling enables end-investors to have a better view of execution cost and to assess added value of high- versus low-touch execution for them. Observations in the market have shown that following the implementation of the MiFID II unbundling rules, end-investors have increasingly opted for low-touch execution on-exchange (including via RFQ platforms) or through an SI where they can trade directly with liquidity providers in a more transparent, efficient and low cost environment.

We appreciate the importance of research for asset managers and recognise that the level of coverage has dropped, in particular for SME stocks. While we believe that price discovery and asset valuation has not suffered significantly, this issue does merit attention and possibly policy action, given the need for smaller companies to attract capital through capital markets' listing. We would welcome targeted initiatives to that effect, provided that these adhere to the principles of transparent pricing, preventing undue conflicts of

interest between advisory and transaction services.

## IV Commodity markets

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

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention been successful in achieving or progressing towards improving the functioning and transparency of commodity markets and address excessive commodity price volatility.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to commodity markets are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The position limit framework and pre-trade transparency regime for commodity markets has provided EU added value.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



**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
- x 5 - Fully agree**
- ☐ Don't know / no opinion / not relevant

**Question 73.1 Please explain your answer to question 73:**

FIA EPTA members agree with the need for greater convergence in terms of the implementation of position management controls. Currently, we observe that NCAs and trading venues apply different position limits for the comparable contracts while position limits rules differ from exchange to exchange. This creates uncertainty for market participants, unduly constraining efficient price formation.

**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	<b>x</b>	<input type="radio"/>	<input type="radio"/>
A financial counterparty	<b>x</b>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

FIA EPTA members consider that, as a matter of principle, hedging exemptions from regulatory trading constraints, including position limits, should be available for risk management trades that reduce risk and, likewise, for market making trades undertaken by liquidity providers.

## V Derivatives Trading Obligation

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

	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.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits with regard to the DTO are balanced (in particular regarding the regulatory burden).	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency and competition in trading of instruments subject to the DTO.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency and competition in trading of instruments subject to the DTO corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

The DTO has provided EU added value.	X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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**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.**

### Qualitative elements for question 77.1:

FIA EPTA members consider that the DTO is critical to achieving the goals improving conditions for investors through increased transparency, more competition, and better pricing. We see three main areas for improvement:

- **Scope of counterparties covered.** The DTO still does not apply to clients that qualify for the exemption for “small financial counterparties” under EMIR. Exemptions from the clearing obligation for smaller financial counterparties should be appropriately calibrated and limited to only very small financial counterparties as they impact the eligibility of those firms to the DTO. Central clearing and DTO help mitigating systemic risk by reducing interconnectedness and eliminating the complex web of bilateral counterparty credit exposures by creating a centralized default management process, multilateral netting and compression opportunities, and transparent end-of-day pricing. We are concerned that there are large trading volumes with SIs in derivatives that are subject to the DTO. We recommend monitoring off-venue trading volumes in derivatives that are subject to the DTO in order to assess whether the thresholds for the “small financial counterparty” exemption are properly calibrated.
- **Scope of instruments:** additional instruments may be appropriate for the DTO in the future, including fixed-to-float swaps in additional currencies and certain commonly traded forward-starting swaps (e.g. 1Y1Y and 5Y5Y).
- **Pre-arranged trades.** Pre-arranged trading is currently permitted for derivatives subject to the trading obligation as long as the transaction is eligible for the large-in-scale waiver from pre-trade transparency. Given that the pre-trade LIS threshold is set at very low notional levels, a significant number of transactions subject to the DTO are permitted to be negotiated away from a regulated trading venue. In our view, allowing transactions to be entered into completely away from an MTF or OTF undermines the DTO, as bilateral off-venue trading can continue to occur. Therefore, we recommend that this topic be reconsidered. At a minimum, we believe that pre-arrangement should only be permitted above the post-trade LIS threshold, which would be more consistent with the U.S. approach.

**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 ☐
- X 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:**

We refer to our response to Q77.1

**Question 78.1 Please explain your answer to question 78:**

We refer to our response to Q77.1

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

- ☒ X - 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:**

We refer to our response to Q77.1

**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 X - Fully agree
- ☐ Don't know / no opinion / not relevant

**Question 80.1 Please explain your answer to question 80:**

FIA EPTA members consider that the definition of small financial counterparties and non-financial counterparties should be aligned under EMIR and MiFID II. And, as per our response to Q77.1, the scope of the small financial counterparties exempt from the clearing obligation (and, therefore, the DTO) should be limited to only very small financial counterparties.

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

## VI Multilateral systems

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

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

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

FIA EPTA members consider that the definitions and guidance as to what constitutes a multilateral system are clear. However, our members are aware, through public sources, of various systems and market practices which seem to conflict with MiFID II expectations for multilateral systems. We note that these in many cases also raise non-discriminatory access and investor protection concerns.

FIA EPTA members would encourage the EC to pass additional supervisory and enforcement powers to ESMA to ensure supervisory convergence and a level playing field across the Union.

FIA EPTA members have concerns in relation to the systems and practices set out below:

### **1. Investment firm-operated “shadow BCNs”:**

These are investment firms operating what appear to be multilateral automated crossing systems akin to pre-MiFID II Broker Crossing Networks (BCNs) for agency-type business in equities, with these trades being reported and brought onto exchange under the negotiated trade waiver. We very much doubt if this is a legitimate use of the negotiated trade waiver, as it is unclear what level of "negotiation" can effectively take place in an automatically matched trade.

### **2. ISV operated multilateral systems:**

These are systems operated by non-authorised third-party service providers (ISVs) which facilitate the multilateral matching of orders in a manner very similar to RFQ MTFs, allowing brokers to poll a number of market makers for quotes to determine best price. Such system operators offer a comprehensive handling of all elements of pre- and post-trade requirements while categorising themselves as purely a trading connectivity solution providing support for pre- and post-trading services.

### **3. Bilateral matching masking as multilateral trading:**

FIA EPTA members would call the EC's attention to two instances in particular:

- a. FIA EPTA members are aware that in Germany a significant number of smaller retail focused exchanges (RMs and MTFs) operate a single-market maker trading model, whereby only one market maker per product segment is responsible for the entire order book. While order execution ostensibly takes place within a multilateral system, in practice retail orders are matched bilaterally against only the one market maker who the exclusive counterparty to the retail orders. Hence, these systems appear to be a de-facto BCNs or SIs masquerading as RMs or MTFs. Such systems are further oftentimes characterised by payment-for-orderflow (PFOF) practices whereby the retail broker, in exchange for steering its clients' orderflow to a specific system, receives a monetary inducement from the relevant market maker on that system who will be the exclusive counterparty to the retail

investors' orders. In other instances, the broker passes on the trades exclusively to a market maker which is part of the same group as the broker, suggesting de-facto internalisation.

These practices appear to not be in line with MiFID II requirements for multilateral systems, non-discriminatory access to trading venues, best execution and inducements.

- b. Markets for structured products such as warrants, turbos, sprinters, speeders and CFDs which are listed and traded on multilateral venues but which essentially have a closed market structure where quotes are provided by, and retail orders matched against, only one market maker which is affiliated with the issuer of the product. Such a market structure inhibits competition and compromises fair price discovery. As the pricing of such structured products is in the hands of single, affiliated market makers, those are at an undue advantage by having more time and full discretion to set spreads and pricing rules in the absence of competition by other liquidity providers. We also observe the relevant venues creating an ecosystem which additionally advantages issuers or their associated market makers by providing them a last-look functionality and/or blocking automated trading. This prevents competition for order execution and further detracts from the multilateral character of the system. These practices raise considerable investor protection concerns. The closed and de-facto bilateral market structure for these products objectively raises trading costs and creates unnecessary greater losses for retail investors compared to other types of listed derivatives with a healthy level of competition among liquidity providers. Retail investors pay more and are worse off trading these products than with e.g., listed options with a similar risk profile.

FIA EPTA members consider that these markets need further transparency and competition to protect retail investors and promote competitive pricing in a multilateral setting for listed derivatives. FIA EPTA members have conducted in-depth analysis on, in particular, the warrants market and would be happy to share these findings with the EC.]

### **Question 81.1 Please explain your answer to question 81:**

We refer to our response to Question 81.1 above.

## VI Double Volume Cap

**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.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more transparency in share trading.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More transparency in share trading correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The DVC has provided EU added value	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**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.**

### Qualitative elements for question 82.1:

FIA EPTA members strongly support the application of pre-trade transparency as a key mechanism to ensure efficient price formation across execution venues. As such, pre-trade transparency is essential for ensuring effective liquidity aggregation that enables best execution for end-investors. For a balanced outcome, it is important that any exemptions from the pre-trade transparency regime are calibrated in a careful manner and that the ensuing waivers are used fairly and appropriately to their purpose. The MiFID II waiver regime is intended to protect market participants from undue adverse market movements following the execution of orders.

However, some of our members are concerned that the reference price (RP) and negotiated trade (NT) waivers have been overused since the application of MiFID II, in particular for trades in smaller sizes, leading to an undue deterioration of the price formation process. These FIA EPTA members would support, therefore, removing the RP and NT waivers.

By contrast, other FIA EPTA members support the continuation the RP and NT waivers and consider that these afford greater flexibility in achieving best execution for end-investors while still ensuring that the price discovery process is not unduly compromised.

More specifically, as regards the Double Volume Cap mechanism, FIA EPTA members feel that the DVC has not entirely delivered on its promise. FIA EPTA members recognise several flaws of the DVC mechanism in terms of its complexity, calibration and the apparent unintended consequences flowing from its application. However, an alternative approach has not readily presented itself.

FIA EPTA members, on the one hand, believe that the application of the NT waiver should be as limited as possible to promote maximum transparency to support efficient price formation, particularly below wholesale sizes. In that regard, extending of the DVC may be warranted.

However, on the other hand, FIA EPTA members also recognise that illiquid instruments that cannot attract sufficient liquidity in the order book may benefit from the NT waiver and that limiting its use for such specific instances may not be desirable especially where it pertains to shares of SMEs. In that sense, changes to the DVC regime may be warranted.

In sum, if the reference price and negotiated trades waivers were to be maintained, then FIA EPTA would likewise support the maintenance of the DVC whilst suggesting to remove the 4% trading venue threshold.

FIA EPTA members consider that the 4% trading venue specific cap adds unnecessary complexity to the DVC process and penalises venues without providing any tangible benefit to the market structure or end-investors. Lower liquidity names are usually only listed on one or two dark venues despite all venues being able to list those securities if they so wished. As a result, these names can reach the 4% relatively quickly.

## IIX Non-discriminatory access<sup>11</sup>

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

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

**Question 83.1 If you do see any particular operational or technical issues in applying open access requirements which should be addressed, please specify for which financial instrument(s) this would apply and explain your reasoning:**

**1. Listed derivatives:** FIA EPTA members strongly support open access and consider that this should become a reality as soon as the MiFIR delay comes to an end in July 2020. FIA EPTA members see only minor operational or technical issues in relation to open access.

Specifically, in relation to listed derivatives, we have the following two main observations:

- Article 35 MiFIR: Non-discriminatory trading venue access to CCPs will permit multiple derivatives exchanges to clear their listed derivatives through an incumbent CCP. Thus, their products will become fungible with those of the incumbent exchange associated with the incumbent CCP, introducing significant netting efficiencies, as those products can now be aggregated or off-set against each other. This will bring much needed competition to the listed derivatives market, where currently individual exchanges have a monopolistic market position, blocking competition by not allowing access to their own CCP to protect their silo model, leading to inefficiencies, hindering innovation and creating unnecessarily high (data) costs which weigh down EU capital markets development.
- Article 36 MiFIR: Non-discriminatory CCP access to trading venues will enable a derivative exchange's products to be cleared by multiple CCPs. FIA EPTA members are of the opinion that trading venues should allow multiple authorised CCPs to clear transactions in financial instruments traded on their trading venue if so requested by those CCPs. This would enable an extension of the equity market interoperability between CCPs which has worked well and created significant benefits for EU markets. We further consider that the number of CCPs that could request access to a particular trading venue should not be limited. We believe this will promote healthy competition and innovation while discouraging incumbent CCPs to use their dominant market power to set clearing fees in an arbitrary manner. It will also mitigate single-point-of-failure risk. We consider all of this to be in the best interest of the wider EU capital markets ecosystem including for end-investors and consistent with the original MiFID objectives. Any operational aspects which we observe mostly relate to the efficient handling of ad-hoc events during the lifecycle of the product (such as corporate actions in relation to underlying shares linked to equity derivatives). If, for instance, a corporate action was handled differently by various CCPs this could cause confusion and potentially market dislocation. To effectively mitigate such operational concerns, we would welcome ESMA guidance clarifying that all CCPs must follow the instructions of the incumbent CCP with regard to processing corporate actions and other lifecycle events. This should alleviate the main operational concerns that market participants may have about the introduction of the open access requirements.

**2: Cash markets:** FIA EPTA members consider that in the cash markets more competition via widely applied open access and true interoperability facilitated by open access could help solve many hurdles that currently prevent the establishment of a true Capital Markets Union.

Like for listed derivatives markets, FIA EPTA members experience various hurdles stemming from legacy

structures – and in some cases – protectionism in the cash markets. This renders the post-trading infrastructure unduly inefficient, stifles innovation and creates unnecessary risks to the financial infrastructure in the Union.

Many of the problems identified by the European Post-Trading Forum<sup>4</sup> have remained unresolved, in spite of improvements such as T2S and convergence practices in the ETF industry driven by private initiatives. We note, e.g., that shares which are traded simultaneously on different venues across Europe still retain different settlement prices where these price differences are not arbitrated away. Likewise, booking a transaction (realignment) in a single stock, bond or ETF from a CCP in one Member State to another in a different Member State is still highly time-consuming and operationally complex despite the instruments being identical with the same ISIN. These issues can only be explained by the non-harmonised nature of post-trading processes (including different securities or insolvency laws and/or settlement cycles). We observe that these discrepancies are oftentimes maintained in order to protect the position of incumbent infrastructure operators.

Consequently, we would ask the Commission to consider ways to harmonise the securities law across the Union, potentially through ratification of the Geneva Securities Convention and The Hague Securities Convention at EU level. In EPTA members' opinion this would make the EU capital market more attractive and should result in lower trading costs for EU and non-EU investors.

### **Question 83.1 Please explain your answer to question 83:**

We refer to our response to Question 83.1 above.

### **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 ☐
- X 5 - Fully agree**
- ☐ Don't know / no opinion / not relevant

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

We refer to our response to Q83.

### **Question 84.1 Please explain your answer to question 84:**

FIA EPTA members strongly support central clearing as the cornerstone for high quality capital markets by mitigating systemic risk while enabling a more standardised and efficient secondary markets trading environment that benefits end-investors. We have consistently applauded the extension of central clearing following the 2011 G-20 commitments. However, FIA EPTA members at the same time hold a long-standing belief that enabling competition amongst CCPs is essential for balancing the extensive market power held by incumbent CCPs operating a silo model with their associated derivatives exchanges that are part of the same group. This market power has only grown with the greater reliance on central clearing after the last financial crisis.

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<sup>4</sup> [https://ec.europa.eu/info/publications/170515-eptf-report\\_en](https://ec.europa.eu/info/publications/170515-eptf-report_en)

Consequently, FIA EPTA members consider that Open Access to clearing must become available without further delay. As a result of Open Access, new and innovative trading protocols can emerge across a wider range of trading venues facilitating price discovery and risk transfer among a more diverse set of counterparties. Collectively, these developments deliver better pricing, deeper liquidity, greater transparency while removing the existing single-point-of-failure risk.

Currently, FIA EPTA members experience hurdles stemming from legacy market structures and de-facto monopolistic practices by incumbent CCPs. Hence, FIA EPTA members consider that the MiFIR open access requirements should be applicable as soon as the transition period ends in July 2020.

Such steps to provide open access in listed derivatives will support efforts to strengthen the EU Capital Markets Union (CMU) by minimising the impact of existing clearing fragmentation between silos, allowing for smoother cross border capital flows and easing market access as a consequence of being able to net across CCPs.

FIA EPTA members would further encourage the Commission to promote or enforce central clearing through CCPs for as many asset classes as possible including for primary market transactions (such as creations and redemptions in ETFs and new issuances). This should include bonds (unlocking new liquidity by opening up this segment for non-banks) and ETFs (reducing counterparty risk for creation and redemption transactions for eligible instruments such as ETFs and ultimately mutual funds). This should be supported by full open access and much improved interoperability to achieve full efficiency across all European markets.

**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:**

We refer to our response to Q83.1.

## IX Digitalisation and new technologies

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**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:**

FIA EPTA members represent one of the most technologically advanced sub-sectors in financial services. One of the areas where we believe there is significant potential for deployment in the financial sector is the use of Distributed Ledger Technology (DLT). For instance, DLT could greatly improve the speed and reliability of clearing and settlement processes. Immediate or real time settlement – at least among CCP nodes and GCMs - could dramatically reduce systemic risk and counterparty risk, reducing unnecessary capital requirements and promoting liquidity. For an inspiring initiative, we refer in this regard to ASX's (Sydney Exchange) efforts in this respect: <https://www.asx.com.au/services/chess-replacement.htm>

Crypto assets are also starting to play a bigger role in financial markets and there are examples of how these could be used as financial instruments with a traditional asset as underlying. In such cases, and provided that appropriate regulation and supervision is in place, crypto assets could be viable instruments for new ways of efficient investment and trading, effectively becoming new manifestations of currently existing assets – particularly for security tokens.

FIA EPTA members are monitoring the developments related to new technology in the financial sector closely. At this stage we believe it is too early to say which ones of these developments will be the “winners”, although we see great potential in DLT in particular also for incumbent infrastructure providers. Currently, we see a mix of both new and existing businesses entering this space.

**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:**

FIA EPTA agrees with the European Commission's technology neutral approach. We do not believe there are elements in the existing framework which hinder this at the current stage but would urge the Commission to closely monitor relevant developments and keep an open dialogue with market participants to address any potential shortcomings going forward.

**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:**

We refer to our response to Q86.

**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
- ☒ X 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:**

FIA EPTA members believe that new technologies for trading should be equivalently regulated to currently existing manifestations. We believe that exchanges can embrace such developments – these are not necessarily a threat to incumbent platforms, although we believe innovation should always be encouraged to maintain a healthy level of competition and efficiency.



## X Foreign exchange (FX)

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**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?**

- ☒ x 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?**

FIA EPTA members believe that FX markets would benefit from leveling the playing field by introducing more competition, transparency and openness than is currently the case. FX markets often remain dominated by a limited number of incumbent participants, and price formation is relatively opaque.

Due to Spot FX not being in-scope of a statutory regulatory regime, this market segment currently lacks enforceable market integrity and transparency safeguards. Spot FX trading is predominantly a bilaterally agreed form of trading across a large number of globally distributed matching platforms or technology providers. Consequently, there is currently no way for National Competent Authorities to monitor this trading for a number of reasons including:

- While some central limit order books (CLOBs) for Spot FX trading do exist, the majority of trading volumes is still being conducted via bilateral agreements, that are not subject to trade reporting requirements;
- The globally distributed nature of Spot FX trading platforms means that a trade executed in one jurisdiction can be filled by resting orders on matching engines in a number of other (third country) jurisdictions;
- Where Spot FX trading is conducted on a technology provider's platform, those platforms are not in the scope of NCA oversight.

However, due to FX markets' global nature, we believe it will be difficult to tackle these issues without taking a global approach. We therefore consider that as a first point of action, the existing self-regulatory regime for Spot FX, which relies on the voluntary Global FX Code, should be strengthened. We would encourage the European Commission to engage in dialogue with other jurisdictions to target a framework of statutory regulatory oversight of the Spot FX markets. Under such a global framework we consider that a separate EU legal instrument for the regulation of Spot FX could be envisioned.

In order to strengthen regulatory oversight of the Spot FX markets a number of principles would need to be addressed, such as the following:

- To implement structural measures to encourage the trading of Spot FX on regulated trading platforms;
- To implement fit-for-purpose trade reporting obligations for Spot FX to provide visibility of Spot FX trading for the entire market;
- To implement fit-for-purpose transaction reporting obligations for Spot FX trades;
- To implement fit-for-purpose market surveillance obligations.

The above-mentioned statutory obligations should take into account the global nature of the Spot FX market and consequently will require an outcomes-based equivalence framework deferring to third-country

authorities. In order to minimise compliance and administrative costs as much as possible for end-users, we would envision a central reporting and surveillance role for both bilateral and multilateral trading platforms and systems.

In general, FIA EPTA believes that FX trading, and more opaque markets in general like bonds, should be subjected to the same standards of open access, transparency and fairness that govern equity markets.

**Question 92.1 Please explain your answer to question 92:**

Please see our response to Q92.1 above.

**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:**

Please see our response to Q92.1 above.