The CNMV's Consultative Board (or Committee) has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc) and its opinions are independent from those of the CNMV.

The European Commission submits to public consultation this document regarding the review and/or modification of the MiFID Directive. The document comprises the following nine sections:

I. Introduction.
II. Developments in market structures.
III. Improvements in pre- and post-trading transparency in Equity Markets; and new measures in the pre- and post-trade transparency in Non-Equity Markets.
IV. Implementation of measures to achieve market data consolidation.
V. Specific measures for the commodity derivatives market.
VI. Clarifications and required extension of the obligation of transaction communication.
VII. Investor protection and provisions on investment services.
VIII. Fostering of convergence within the regulatory framework and supervisory practices.
IX. Strengthening of supervisory powers.

The introduction mentions spread reduction as an effect of the application of the MiFID. We believe that the reduction of the spread between supply and demand has indeed taken place in the market, but that the cause is not a direct effect of the application of the MiFID directive, but rather a result of the introduction in trading of orders with prices quoted with more than two decimals, which would naturally lead to a narrowing of spreads.

This Consultative Committee is in agreement with the factors and objectives of the review of the MiFID, and as such, with the appropriateness of undertaking a reform of the current regulatory framework contained in the MiFID.
2. DEVELOPMENTS IN MARKET STRUCTURES

2.1. Defining admission to trading.

(1). What is your opinion on the suggested definition of admission to trading? Please explain the reasons for your views.

The suggested definition must be qualified. If we take into account the non-necessity for consent from the issuer of the financial instrument subject to admission to trading, it is clearly appropriate that trading conditions should be the same as those in the market in which the financial instruments are being traded, and that proper coordinated supervision exists between the trading centres in question.

In the event that trading conditions were different to those of the market on which the issuing entity - voluntarily – has listed its financial instruments, and with the aim of preventing any irregularities, the need for consent from the actual issuing entity should be assessed.

2.2. Organised trading facilities.

(2). What is your opinion on the introduction of, and suggested requirements for, a broad category of organised trading facility to apply to all organised trading functionalities outside the current range of trading venues recognised by MiFID? Please explain the reasons for your views.

We think that the order of the questions is not correct; that is, before issuing an opinion on the requirements or the suggested definition, it is more logical to reply first to question 4.

(4). What is your opinion about creating a separate investment Service for operating an organised trading facility? Do you consider that such an operator could passport the facility?

If we take into account that two of the main objectives of the review of the MiFID are: a) Investor protection, and b) the establishment of a market with the same Trading functionalities (tending towards an absolute levelling between MTF (Multilateral Trading Facilities and Regulated Markets), we cannot conceive the establishment of a new investment service aiming at avoiding the requirements currently met by the trading centres that are currently regulated: Regulated Markets, Multilateral Trading Systems and Systematic Internalisers.

The establishment of this new investment service is in complete discord with one of the main factors behind the review of the MiFID, a single “Level playing field”. In this case, the
breach of the same level of working rules would not arise from the discretionary competition of European Union Member States, but as a result of the regulations of the MiFID.

The Organised Trading Facilities must become Multilateral Trading Facilities; failure to do so would imply, for instance, difficulty in applying the best execution principle, and would undoubtedly lead to the creation of a risk environment open to potential market abuse.

On the other hand, it must be taken into account that for OTFs to become part of the MTFs, the MTF concept may need to be broadened, for instance, not insisting on the obligation of non-discretionary access.

(3). **What is your opinion on the proposed definition of an organized trading facility? What should be included and excluded?**

In our opinion, questions 2 and 3 are irrelevant in light of our reply to question 4.

(5). **What is your opinion about converting all alternative organized trading facilities to MTFs after reaching a specific threshold? How should this threshold be calculated, e.g. assessing the volume of trading per facility/venue compared with the global volume of trading per asset class/financial instrument? Should the activity outside regulated markets and MTFs be capped globally? Please explain the reasons for your views.**

As we have previously stated, we believe that an organised trading facility should always be an MTF. In the event that the investment service company should carry out a small number of transactions and/or volume, the logical conclusion would be to not develop such an activity for obvious reasons.

The fact that reaching a specific threshold should become a legal component that implies a change in the legal figure is an argument that lacks any grounds whatsoever.

Financial activity may be a form of investment service, but there is no basis on which the distinguishing element between one investment service and another should be the level and/or volume of trading in that activity.

Every investment service implies a certain financial function, with its own special nature and characteristics, and in no case is the level of activity of the financial function inherent to each investment service a part of its special nature and characteristics.

(6). **What is your opinion on the introduction of, and suggested requirements for, a new subregime for crossing networks? Please explain the reasons for your views.**

We believe that this special regime is not applicable in light of what we have already explained.

(7). **What is your opinion on the suggested clarification that if a crossing system is executing its own property share orders against client orders in the system then it
would prima facie be treated as being a systematic internaliser and that if more than one firm is able to enter orders into a system it would be prima facie be treated as a MTF? Please explain the reasons for your views.

The descriptions above leave no room for doubt: in the first instance we would be speaking of a Systematic Internaliser, and in the second, of a Multilateral Trading Facility.

On the contrary, that is, if the abovementioned Systems should not be applied to these two forms of trading, we would be breaching not only the literal interpretation of current regulations, but be would also be contravening the will and objective of the MiFID.

Not only would investor protection be reduced, but there would be a weakening of the working rules of the competition between different liquidity points. The former, subject to strict rules and the latter subject to much lighter regulation, which could lead to a reduction in the liquidity for the main trading centres with the ensuing damage to market depth and the proper development of the principle of best execution.

(8). What is your opinion of the introduction of a requirement that all clearing eligible and sufficiently liquid derivatives should trade exclusively on regulated markets, MTFs or organized trading facilities satisfying the conditions above? Please explain the reasons for your views.

We believe that derivatives that meet the abovementioned conditions are financial instruments to be traded either on a Regulated Market or on an MTF.

Derivatives traded on a trading platform means greater transparency for the investor and a suitable instrument for risk assessment.

Nevertheless, we believe that this trading must only apply to liquid and standardised financial instruments. A derivative with no intrinsic liquidity whose trading scenario is that of an OTC may turn out to be unsuitable to be traded on a venue.

(9). Are there above conditions for an organized trading facility appropriate? Please explain the reasons for your views.

As we have already mentioned, we believe that an Organised Trading Facility is not appropriate.

(10). Which criteria could determine whether a derivative is sufficiently liquid to be required to be traded on such systems? Please explain the reasons for your views.

We believe that the liquidity of the underlying asset is a decisive factor, and criteria are: a) trading volume, b) number of transactions, c) trading frequency, d) reduced spreads and e) market depth.
(11). Which market features could additionally be taken into account in order to achieve benefits in terms of better transparency, competition, market oversight, and price formation? Please be specific whether this could consider for instance, a high rate of concentration of dealers in specific financial instruments, a clear need from buy–side institutions for further transparency, or on demonstrable obstacles to effective oversight in a derivative trading OTC …

A transparent price formation system in derivatives trading could add positive effects to those indicated in question (8) – the possible implementation of the liquidity of the financial instrument itself would be added.

(12). Are there existing OTC derivatives that could be required to be traded on regulated markets, MTFs or organized trading facilities? If yes, please justify. Are there some OTC derivatives for which mandatory trading on a regulated market, MTF, or organized trading facility would be seriously damaging to investors or market participants? Please explain the reasons for your views.

The so-called Contracts for Difference could be subject to trading on one of the two trading systems established by the MIFID directive.

If the derivatives are liquid, we do not believe this will cause any damage to market members or investors; on the contrary, we think this type of trading would generate positive effects.

2.3. Automated trading and related issues.

(13). Is the definition of automated and high frequency trading provided above appropriate?

Yes.

(14). What is your opinion of the suggestion that all high frequency traders over a specified minimum threshold would be required to be authorised?

We think that a special authorisation for this type of trading is not necessary. Trading systems are capable of handling mass orders, without this having negative effects on the electronic processing of the transactions.

Trading strategy is to be decided by the traders; in the event that the strategy could lead to a potential manipulation in price formation, this would involve the alternation of Market regulations and be considered Market abuse.
Therefore, it does not seem logical for investment service companies and/or any other traders to require special authorisation to trade on the market as a result of using sophisticated technological instruments.

**15. What is your opinion of the suggestion to require specific risk controls to be put in place by firms engaged in automated trading or by firms who allow their systems to be used by other traders?**

Although currently any entity capable of trading on the markets is subject to strict internal control requirements and procedures, we think it is a good idea to implement specific controls for this type of trading.

Risk control and assessment (reputation, financial, systemic, solvency) is the main basis of all control requirements and procedures, not just internal, but also external. This does not prevent the installation of activity volume controls per customer, in real time, to help prevent and assess risk situations.

**16. What is your opinion of the suggestion for risk controls (such as circuit breakers) to be put in place by trading venues?**

This Consultative Committee considers the establishment of circuit breakers very appropriate. There are currently some measures in place designed to prevent extraordinary quotation changes, to regulate exceptional volatility situations and to reduce imbalances between supply and demand.

It is evident that although the current measures have performed correctly, the introduction of new preventive measures might be appropriate if required by market operation.

As a result of the events of 6 May 2010 in the U.S. markets, HFT (High Frequency Trading) has been subject to analysis due to the possible implication of such trading systems in these events.

Everything points to the fact that the trigger factor of the events was not the specific activity carried out by the HFTs, but the problems arising from the existence of several venues on which the same financial instruments were traded.

The appearance - as a result of competition – of different trading centres has had negative effects on market solidity (fragmentation of the market, different trading rules, etc…). The coordination between different trading points is essential. Supervisory decisions made by regulated markets (suspension, volatility auctions) must be applied to all venues where the affected financial instruments are traded. And in those cases in which it is deemed unlikely that a minimum degree of equalisation could be achieved, the possibility of introducing regulations in this regard should be considered.

If, in the face of irregular situations, the trading system is endowed with preventive and effective measures (range limits, volatility auctions, interruption and/or suspension of
trading), the very operation of the system ensures the proper development of trading in the financial instruments.

(17). What is your opinion about co-location facilities needing to be offered on a non–discriminatory basis?

We believe the offer of non-discriminatory service basis is appropriate.

(18). Is it necessary that minimum tick sizes are prescribed? Please explain why.

Yes. The setting of minimum tick sizes has a transcendental effect on the value of a security, and even for the costs of trading investors.

In order to determine a minimum tick size, the liquidity of a security must be taken into account; in highly liquid securities tick reduction may prove profitable, and in those with low liquidity it may have a negative effect.

Therefore, for the purposes of the good operation of the market and of financial instruments, the different venues must work together to quantify tick sizes.

In regulated markets and MTFs in the European Union there is an agreement in place to regulate the minimum tick size.

(19). What is your opinion of the suggestion that high frequency traders might be required to provide liquidity on an ongoing basis where they actively trade in a financial instrument under similar conditions as apply to market makers? Under what conditions should this be required?

We believe there are no legal grounds to meet this requirement. If the trader does not have any contractual relationship with the issuer or the market, we believe that the obligations inherent to a market maker or similar figure cannot in any way whatsoever be transferred onto other traders.

(20A). What is your opinion about requiring orders to rest on the order book for a minimum period of time?

We believe that it is not essential to establish a minimum period of time for the orders to remain in the order book. In exceptional cases in which the effectiveness of the system may be affected by the mass and systematic use of the “enter and cancel” orders in an almost simultaneous manner, the system itself has the facility to restrict or limit such mass cancellations.

(20B). How should the minimum period be prescribed?

Not applicable.
(20C). What is your opinion of the alternative, namely of introducing requirements to limit the ratio of orders to transactions executed by any given participant?

Market access channels must limit the number of orders that can be entered into the system, so that the market is able to regulate the level of use of the aforementioned channels. Such limits ensure the efficient use of the system.

(20D). What would be the impact on market efficiency of such a requirement?

We ratify what we have stated above.

2.4. Systematic internalisers.

(21). What is your opinion about clarifying the criteria for determining when a firm is a SI? If you are in favour of quantitative thresholds, how could these be articulated? Please explain the reasons for your views.

In the event that sporadic transactions are executed between a company and a customer, such transactions shall be OTCs, with no requirement other than that provided in the legislation in force on the conditions and requirements that regulate a certain sphere of action.

If the Company should have a system to process and respond to customers, separate from its trading threshold, this company shall be deemed to be a Systematic Internaliser.

(22). What is your opinion about requiring SIs to publish two sided quotes and about establishing a minimum quote size? Please explain the reasons for your views.

We believe it is positive that the Systematic Internaliser should publish both purchase and sale positions. To show two-sided quotes to counterparties means offering a more integrated and structured liquidity, as well as a higher degree of transparency.

We also consider it appropriate to introduce the obligation of a minimum quote size, a measure which in fact is coherent with the very basis of the Systematic Internaliser, that is, to offer an exchange to its customers aside from a Regulated Market or a Multilateral Trading Facility. It would not make any sense if this alternative to multilateral systems should be used to process quote sizes that were not representative of the real positions held by the Systematic Internaliser.

2.5. Further alignment and reinforcement of organisational and market surveillance requirements for MTFs and regulated markets as well as organised trading facilities.
(23). What is your opinion of the suggestions to further align organizational requirements for regulated markets and MTFs? Please explain the reasons for your view.

There is no doubt whatsoever that entities (Regulated Markets or MTFs) whose objectives are to offer the same service (trading platform), on the same products (financial instruments), should be subject to the same requirements in terms of organisation and operation.

The opposite would result in the incoherent situation of promoting competition between the various liquidity points with different organisational requirements, which in itself is a contradiction that merits no further comment.

(24). What is your opinion of the suggestion to require regulated markets, MTFs and organised trading facilities trading the same financial instruments to cooperate in an immediate manner on market surveillance, including informing one another on trade disruptions, suspensions and conduct involving market abuse?

The need for coordination and exchange information between the different venues on which the same financial instruments are traded is unquestionable.

Not only from the perspective of investor protection and/or that of market abuse, but also in terms of the solidity and strength of the markets. A lack of coordination would imply irregular situations which would seriously damage the reputation and confidence of the financial system itself.

2.6. SME markets.

(25). What is your opinion of the suggestion to introduce a new definition of SME markets under the framework of regulated markets and MTFs? What would be the potential benefits of creating such a regime?

We think the introduction of the figure of the SME in the MiFID Directive is a fundamental and positive step.

The possibility of obtaining funds from the financial markets, the possibility of being able to use the most suitable tool for raising funds, should be accessible by so-called small- and medium-sized enterprises.

In light of the special characteristics of these businesses, the operational system of these special markets must be adapted to the specific conditions of these types of companies. Current experience shows that within the European Union positive solutions are emerging for these markets, with trading platforms administered by MTFs.
A document other than the traditional information prospectus should be mentioned. A document which, although containing sufficient information, is more suited to the size of these companies.

We think that this document, with its unique features, should also be used for admission to trading and in cases of capital increases.

(26). Do you consider that the criteria suggested for differentiating the SME market (i.e. thresholds, market capitalisation) are adequate and sufficient?

The two criteria suggested are of an entirely different nature. The suggestion that companies capitalise less than 35% of the average of those traded is an approach that may be mistaken and highly dependent on market conditions.

We believe that an SME included in the prospectus Directive is a more appropriate and flexible criteria and guideline.

This definition of an SME applied with a flexible and interpretive criterion, and adapted to economic reality, may prove substantial to qualify a company as an SME.

3. PRE- AND POST–TRADE TRANSPARENCY.

3.1. Equity markets.

(27). What is your opinion of the suggested changes to the framework directive to ensure that waivers are applied more consistently?

We believe the suggested changes to be very appropriate. Any measures designed to strengthen the integrity of the market help to consolidate greater legal security, thus preventing “Interpretation” conflicts among European Union Member States.

(28). What is your opinion about providing that actionable indications of interest would be treated as orders and required to be pre-trade transparent? Please explain the reasons for your views.

We believe that the Commission’s suggestion is appropriate.

The figure of indication of interest is not applicable; the intention to buy or to sell must be made via an order, with the same characteristics and requirements as all other orders.

(29). What is your opinion about providing the treatment of order stubs? Should they not benefit from the large in scale waiver? Please explain the reasons for your views.
Order stubs that cannot be completely traded via block transactions, must be treated with all the requirements and obligations of information disclosure under the pre-transparency system.

These are orders that do not achieve the scale required for that type of transaction and must not, therefore, benefit from the aforementioned waiver.

(30). What is your opinion about prohibiting embedding of fees in prices in the price reference waiver? Please explain the reasons for your views.

This Consultative Committee deems the abovementioned prohibition to be appropriate; otherwise it would be impossible to accurately know a price reference and this could lead to several price references for one single security, in turn leading to the breakdown of the concept of “price reference”.

We also deem it appropriate that the order to be executed should have a minimum quote size. The application of waivers to pre-transparency must be applied as an exception and for quotes of a certain size.

(31). What is your opinion about keeping the large in scale waiver thresholds in their current format? Please explain the reasons for your views.

Yes, we agree on maintaining the current thresholds for these kinds of operations; if these should fall, it would lead to a drain in the current level of transactions and the undermining of the basic principle of pre-transparency, as well as an impediment in the application of the best execution principle.

(32). What is your opinion about the suggestions for reducing delays in the publication of trade data? Please explain the reasons for your views.

We are totally in agreement with the suggested reductions in delays in the publication of trade data. Publication of executed transactions is necessary to assess trading development; the sooner the information is disclosed, the greater its positive effect in getting a more accurate picture of the market.

3.2. Equity – like instruments.

The initial paragraph of this section includes a mention of the need to broaden the scope of transparency to these financial instruments, but it indicates if and when these are admitted to trading on a regulated market.

We understand that these transparency requirements should be applicable if admitted on a Regulated Market and/or a MTF.
(33). What is your opinion about extending transparency requirements to depositary receipts, exchanged traded funds and certificates issued by companies? Are there any further products (e.g. UCITS) which could be considered? Please explain the reasons for your views.

Transparency requirements must be extended to the aforementioned instruments.

These are financial products that have similar characteristics to equities when traded and thus must be subject to the same rules of transparency. As for UCITS, only those subject to trading on the aforementioned markets should be considered.

(34). Can the transparency requirements be articulated along the same system of threshold used for equities? If not, how could specific thresholds be defined? Can you provide criteria for the definition of these thresholds for each of the categories of instruments mentioned above?

We understand that the same criteria and/or thresholds as those for equities should be applied; as has already been pointed out, these are financial products on a par with equities, and should thus be subject to the same transparency rules.

3.3. Trade transparency regime for shares traded only on MTFs or organised trading facilities.

(35). What is your opinion about reinforcing and harmonizing the trade transparency requirements for shares traded only on MTFs or organized trading facilities? Please explain the reasons for your views.

As has been argued so far, one of the essential requirements for proper competition is that the various agents involved are subject to the same organisation and operational requirements.

As such, we deem it convenient and appropriate for MTFs and/or organised trading facilities to have the same pre- and post-transparency rules.

In addition to being obvious that different venues should be governed by the same rules, the fact that more opaque venues might exist could lead certain issuers to choose those liquidity centres to the detriment of more rigorous systems, thus undermining transparency for investors.

As a result thereof, the aforementioned transparency requirements must be the same as those required on regulated markets; and not only for equities, but also for equity-like financial instruments.

(36). What is your opinion about introducing a calibrated approach for SME markets? What should be the specific conditions attached to SME markets?
This Consultative Committee believes that it is not necessary to introduce exceptions to transparency, even if these are specific conditions for the SME markets.

3.4. Non equity markets.

(37). What is your opinion on the suggested modification to the MiFID framework directive in terms of scope of instruments and content of overarching transparency requirements? Please explain the reasons for your views.

This Consultative Committee is in agreement with the modifications suggested designed to include the entire Market under the protection of transparency. Liquidity in these instruments - by being subject to transparency - would not be undermined: on the contrary, investors would have more information and greater confidence in the system.

(38). What is your opinion about the precise pre-trade information that regulated markets, MTFs and organized trading facilities as per section 2.2.3. above would have to publish on non-equity instruments traded on their system (e.g. order or quote drivers)?

Irrespective of the trading executed via entering orders or setting prices, pre-trade information must provide enough data so as to ensure price setting or reliable trading and in line with market valuation.

(39). What is your opinion about applying requirements to investment firms executing trades OTC to ensure that their quotes are accessible to a large number of investors, reflect a price which is not too far from market value for comparable or identical instrument traded on organised venues, and are binding below a certain transaction size? Please indicate what transaction size would be appropriate for the various asset classes.

We think that these requirements are appropriate in light of what the end objectives are, although we must be aware of the difficulties involved in the application of pre-transparency requirements in OTC markets which have practically no comparable instruments to use as reference points.

Transaction size must be adapted to the special characteristics of each financial instrument in question.

(40). In view of calibrating the exact post-trade transparency obligations for each asset class and type, what is your opinion of the suggested parameters, namely that the regime be transaction-based, and predicated on a set of thresholds by transaction size? Please explain the reasons for your views.
We believe post-trade transparency to be essential, with the pertaining transaction size thresholds for each financial instrument traded.

(41). What is your opinion about factoring in another measure besides transaction size to account for liquidity? What is your opinion about whether a specific additional factor (e.g. issuance size, frequency of trading) could be considered for determining when the regime or a threshold applies? Please justify.

Bearing in mind the different natures of the types of financial instruments, the addition of criteria other than transaction size for determining thresholds is deemed appropriate.

3.5. Over the counter trading.

(42). Could further identification and flagging of OTC trades be useful? Please explain the reasons.

We think that the degree of complexity of the derivative should not be an impediment to the application of transparency requirements (pre- and post-trade).

4. DATA CONSOLIDATION.

4.1. Improving the quality of raw data and ensuring it is provided in a consistent format.

(43). What is your opinion of the suggestions regarding reporting to be through approved publication arrangements (APAs)? Please explain the reasons for your views.

We believe there must be a system and/or procedure to ensure the dissemination of information in a secure and reliable manner. As such, we deem it appropriate to establish Approved Publication Arrangements, with the requirements and characteristics set by the Commission.

(44). What is your opinion of the criteria identified for an APA to be approved by competent authorities? Please explain the reasons for your views.

As we have already mentioned, we think the suggested requirements are suitable; we also agree that information dissemination systems should be subject to approval by competent authorities.

The scope of market information dissemination is a basic and essential component to ensure the good operation of the markets. Therefore, information systems must meet standardised conditions and/or formats, and be solid systems with sufficient back-up. The effects of
disseminated information and their very working characteristics and requirements render it necessary to have prior and reasonable supervision by the authorities.

(45). What is your opinion of the suggestions for improving the quality and format of post trade reports? Please explain the reasons for your views.

Information dissemination, as we have already mentioned, must be carried out in a clear, coherent and solid manner. As such, we support the suggestions put forward by the Commission.

(46). What is your opinion about applying these suggestions to non-equity markets? Please explain the reasons for your views.

The suggestion of the Commission is fair, designed to achieve a suitable level of transparency for these financial instruments.

However, the principle of transparency should be applied taking into account the specific characteristics of each financial instrument.

4.2. Reducing the cost of post-trade data for investors.

(47). What is your opinion of the suggestions for reducing the cost of trade data? Please explain the reasons for your views.

Information dissemination is currently carried out in a separate and/or fragmented manner.

The sale and distribution of the information already separates pre-trading from post-trading. And post-trade information dissemination with a 15 minute delay at no cost is widely used in the market.

This post-trade information is an efficient tool for small investors to ascertain market development.

The concept of “reasonable costs” is difficult to define.

(48). In your view, how far would data need to be disaggregated? Please explain the reasons for your views.

Segregation of the content of the data is a positive objective, helping to prevent superfluous costs.

But this division of the content of the data must be subject to certain commercial restrictions. That is, the ‘packets’ to be sold must meet certain business criteria.
In the event of the obligation to disseminate information on even the smallest record and/or datum, it might lead to the unwanted effect of extra cost in terms of design of the information dissemination systems.

(49). In your view, what would constitute a "reasonable" cost for the selling or dissemination of data? Please provide the rationale/criteria for such a cost.

We believe it is very difficult to define ‘reasonable cost’. We can begin with the provision that it should be acceptable to the user and not lead to a distortion of costs within the overall cost.

(50). What is your opinion about applying any of these suggestions to non-equity markets? Please explain the reasons for your views.

We think that the application of the suggestions proposed for non-equity markets are appropriate.

But, as we have already pointed out, the special characteristics of these financial products must be taken into account.

Not only because of the diversity and different nature of non-equity products, but also because of the practical difficulties that may arise when applying the same principles of transparency of equity products on these products which (in many cases) lack the liquidity and quotation size of equity products.

4.3. A European consolidated tape.

(51). What is your opinion of the suggestion for the introduction of a European Consolidated Tape for post-trade transparency? Please explain the reasons for your views, including the advantages and disadvantages you see in introducing a consolidated tape.

We believe that the introduction of a European Consolidated Tape for all European Union markets is a desirable objective, but it poses certain challenges of a technical nature that must be taken into account.

Although the suggestion of its creation and implementation may in principle have a positive impact on the European market, the implicit complexity and the highly likely low earnings (post-trade information) are impediments that must be properly assessed.

(52). If a post-trade consolidated tape was to be introduced which option (A, B or C) do you consider most appropriate regarding how a consolidated tape should be operated and who should operate it? Please explain the reasons for your view.
Any option that is selected must take into consideration the technical implications to be addressed in order to provide a rigorous and continuous service. This means calculating an economic estimate of each of the proposals, to then select the most feasible from a technical and economic perspective.

(53). If you prefer option A please outline which entity you believe would be best placed to operate the consolidated tape (e.g. public authority, new entity or an industry body).

Not applicable.

(54). On Options A and B, what would be the conditions to make sure that such an entity would be commercially viable? In order to make operating a European consolidated tape commercially viable and thus attaining the regulatory goal of improving quality and supply of post-trade data, should market participants be obliged to acquire data from the European single entity as it is the case with the US regime?

We do not believe that obliging members of a Market to acquire date from a European single entity is a reasonable measure.

(55). On Option B, which of the two sub-options discussed for revenue distribution for the data appears more appropriate and would ensure that the single entity described would be commercially viable?

We consider the first to be more viable, given that the second involves a complexity which would affect the possibility of its implementation.

(56). Are there any additional factors that need to be taken into account in deciding who should operate the consolidated tape (e.g. latency, expertise, independence, experience, competition)?

As we have already mentioned, service providers should meet certain professional and technical requirements, that is, market experience. We believe that the existence of a certain amount of competition is an important element to take into account. The concurrence of several agents providing the aforementioned service is a factor that will work in favour of the efficiency and functionality of the information dissemination system.

(57). Which timeframe do you envisage as appropriate for establishing a consolidated tape under each of the three options described?

We cannot establish a timeframe for implementation of the suggestions proposed.

The financial, technological and human resources required for this purpose are extremely difficult to estimate.
(58). Do you have any views on a consolidated tape for pre-trade transparency data?

We believe that a consolidated tape for pre-trade information is practically unfeasible at this time.

(59). What is your opinion about the introduction of a consolidated tape for non-equity trades? Please explain the reasons for your views.

Please see reply to question 51.

5. MEASURES SPECIFIC TO COMMODITY DERIVATIVE MARKETS.

5.1. Specific requirements for commodity derivative exchanges.

(60). What is your opinion about requiring organised trading venues which admit commodity derivatives to trading to make available to regulators (in detail) and the public (in aggregate) harmonised position information by type of regulated entity? Please explain the reasons for your views.

This Consultative Committee deems it appropriate that the commodity derivatives trading venues should make information available on the open positions held by type of regulated entity.

It is essential for the regulator to be aware of the scope of open positions (i.e. for risk assessment) and to have information on the type of entities holding such positions.

(61). What is your opinion about the categorisation of traders by type of regulated entity? Could the different categories of traders be defined in another way (e.g. by trading activity based on the definition of hedge accounting under international accounting standards, other)? Please explain the reasons for your views.

The typology of Regulated Entities currently in effect is deemed sufficient to determine the nature of the commodities derivatives traders. However, the information of whether the trade is part of a hedge operation or another type would be useful to have.

(62). What is your opinion about extending the disclosure of harmonised position information by type of regulated entity to all OTC commodity derivatives? Please explain the reasons for your views.

We consider this appropriate, for the same reasons we have already explained.

(63). What is your opinion about requiring organised commodity derivative trading venues to design contracts in a way that ensures convergence between futures and spot prices? What is your opinion about other possible requirements for such venues,
including introducing limits to how much prices can vary in given timeframe? Please explain the reasons for your views.

Commodities derivatives contracts must be in line with the necessary integrity of the market. As such, we deem appropriate the requirement suggested with regard to establishing a correlation between spot prices and derivatives prices, as well as introducing limits on price variations within short timeframes.

5.2. MiFID exemptions for commodity types.

(64). What is your opinion on the three suggested modifications to the exemptions? Please explain the reasons for your views.

We are in agreement with the three modifications proposed in Directive 2004/39/EC. The non-application of the content of the MiFID regulations should only affect commodities derivatives trading that is executed for hedging purposes.

(65). What is your opinion about removing the criterion of whether the contract is cleared by a CCP or subject to margining from the definition of other derivative financial instrument in the framework directive and implementing regulation? Please explain the reasons for your views.

We agree.

5.4. Emission allowances.

(66). What is your opinion on whether to classify emission allowances as financial instruments? Please explain the reasons for your views.

We believe it is appropriate to classify emission allowances as financial instruments. These are standardised products that could even be traded multilaterally.

About the next part of the document, the Committee wishes to state its doubts regarding the timing of the proposal for amending legislation relating to rules of business conduct contained in the European Commission document. This is a complex area of regulation, which has required all market participants to make a significant effort to adapt to the formalities required by the MiFID, both in terms of time and effort and in terms of costs, the results of which cannot be seen in the very short period of time since its implementation.
Furthermore, firms have not perceived any imbalances or problems in relations with their clients which justify amending the current regulation. In the Committee's opinion, it would only be justified to amend such recently implemented legislation in those aspects in which practical application problems have been identified and for which a significant, generally applicable need has been detected.

6. TRANSACTION REPORTING

6.1. Scope

(67) What is your opinion on the extension of the transaction reporting regime to transactions in all financial instruments that are admitted to trading or traded on the above platforms and systems? Please explain the reasons for your views.

The Committee considers that the same reasons which apply for submitting securities traded on regulated markets to transparency rules also apply to securities traded on other types of trading systems. Therefore, we consider that the proposal makes sense.

(68) What is your opinion on the extension of the transaction reporting regime to transactions in all financial instruments the value of which correlates with the value of financial instruments that are admitted to trading or traded on the above platforms and systems? Please explain the reasons for your views.

The Committee considers that preventing Market Abuse justifies submitting transactions in these types of securities to the transparency regime.

(69) What is your opinion on the extension of the transaction reporting regime to transactions in depositary receipts that are related to financial instruments that are admitted to trading or traded on the above platforms and systems? Please explain the reasons for your views.

The answer to the above question also applies here, although with greater justification, as the purpose of depositary receipts is specifically the trading of the deposited asset, that is, the original financial asset.

(70) What is your opinion on the extension of the transaction reporting regime to transactions in all commodity derivatives? Please explain the reasons for your views.

As explained in Section 9.2 of the Public Consultation, trading in commodity derivatives is a concern from a supervision point of view because of their capacity to affect or manipulate the prices of the underlying assets. It is, therefore, a concern which goes beyond that of the regulation of financial markets. However, providing the reporting obligation is effective for this purpose, the Committee sees no problem in extending the transaction reporting regime to transactions in all commodity derivatives.
(71) Do you consider that the extension of transaction reporting to instruments and to all commodity derivatives captures all relevant all correlated OTC trading? Please explain the reasons for your views.

In the Committee's opinion, including OTC products referenced to traded financial instruments and to commodities sufficiently covers the scope of transactions which should be reported in accordance with the purpose of transaction reporting.

Other types of OTC instruments, such as forex and interest rate derivatives, however, should not be subject to the transaction reporting regime. An information regime on the position would be a better control tool for these products.

(72) What is your opinion of an obligation for regulated markets, MTFs and other alternative trading venues to report the transactions of non authorised members or participants under MiFID? Please explain the reasons for your views.

The Committee understands that it makes sense for non-authorised members under MiFID to report transactions under the same conditions as authorised participants as the same reasons for knowing about transactions apply to both.

With regard to establishing the obligation for trading venues instead of for the members themselves, we consider that, in principle, the general rule should be for reporting to be an obligation for members and not for the market. Notwithstanding the fact that the obligation may be channelled through the specific trading system which, for these purposes, would be a service provider for the corresponding members.

(73) What is your opinion on the introduction of an obligation to store order data? Please explain the reasons for your views.

We see no problem in markets and trading systems storing this information and making it available to supervisors as these are the places where this type of information can be found. However, it should be clarified that this initiative should under no circumstances involve added storage or reporting obligations for intermediaries.

(74) What is your opinion on requiring greater harmonisation of the storage of order data? Please explain the reasons for your views.

Harmonising initiatives in this regard are welcome.

6.2. Content of reporting

(75) What is your opinion on the suggested specification of what constitutes a transaction for reporting purposes? Please explain the reasons for your views.
The committee considers that no problems have been identified in the current situation. At any event, the proposed definition seems reasonable.

(76) How do you consider that the use of client identifiers may best be Further harmonised? Please explain the reasons for your views.

Identifying the principal is an important element. Identification of the final client should be requested, where appropriate, from the participant acting for the client. This information should not be requested from the participant executing the transaction when the final client is not theirs, as this would involve participants submitting client data to other participants, which may affect legitimate commercial interests and introduce distortion with regard to the liability regime for potentially inaccurate data.

Furthermore, this type of obligation may be incompatible with national legislation regarding both personal data protection and non-disclosure when applied to cross-border scenarios.

At any event, the cost increase that this would mean for participants needs to be quantified and taken into account as some of the proposed measures would probably not stand up to a cost-benefit analysis.

(77) What is your opinion on the introduction of an obligation to transmit required details of orders when not subject to a reporting obligation? Please explain the reasons for your views.

The Committee does not believe that this is a proportionate measure considering its purpose. When a supervisor has all the information on the executed transactions, it also has the capacity to request information *ad hoc*, for example within the context of an investigation, from the participant which received and transmitted the order.

If an obligation is established to transmit all the details from the intermediary to the executing participant, apart from the very important cost issue, this would lead to the undesirable consequences indicated in the response to the above question (commercial implications, distortion with regard to the liability regime and incompatibility with national regulations on data protection and non-disclosure).

(78) What is your opinion on the introduction of a separate trader ID? Please explain the reasons for your views.

All developments toward Europe-wide standardised mechanisms in this area are welcome, providing they follow a suitable prior cost benefit analysis.

(79) What is your opinion on introducing implementing acts on a common European transaction reporting format and content? Please explain the reasons for your views.
As in the response to the above question, the Committee believes that technical harmonisation in this area is positive, but not so much as to justify a significant cost.

6.3. Reporting channels

(80) What is your opinion on the possibility of transaction reporting directly to a reporting mechanism at EU level? Please explain the reasons for your views.

The Committee believes that such a situation requires that obligations and responsibilities of firms are clearly identified as well as to whom they are responsible. The current situation, in which firms report to the national supervisor, is sufficiently clear in this respect and has not created problems for firms.

Therefore, no need has been detected for this centralised mechanism.

(81) What is your opinion on clarifying that third parties reporting on behalf of investment firms need to be approved by the supervisor as an Approved Reporting Mechanism? Please explain the reasons for your views.

The Committee agrees with the Commission that the reporting mechanism should not affect compliance with reporting obligations or their quality. Therefore, intermediary steps in this type of report should be subject to supervision geared to this purpose. Therefore, the idea of subjecting them to a specific status, such as the ARM, seems correct. However, the rules for authorising an ARM must be clear and transparent, bearing in mind that these are activities subject to legitimate commercial competition.

(82) What is your opinion on waiving the MiFID reporting obligation on an investment firm which has already reported an OTC contract to a trade repository or competent authority under EMIR? Please explain the reasons for your views.

Establishing a transaction reporting obligation involves a cost for investment firms. This cost must be limited as much as possible, as long as said obligation serves its purpose. Therefore, we believe that avoiding double reporting is positive.

The Committee believes that the Commission's position in this aspect is reasonable.

(83) What is your opinion on requiring trade repositories under EMIR to be approved as an ARM under MiFID? Please explain the reasons for your views.

There do not seem to be any objections to adding the function of being an ARM to the original function of the trade repositories from the perspective of transaction reporting regulations.
7. INVESTOR PROTECTION AND PROVISION OF INVESTMENT SERVICES

7.1. Scope of the Directive

7.1.1. Optional exemptions for certain investment service providers

(84) What is your opinion about limiting the optional exemptions under Article 3 of MiFID? What is your opinion about obliging Member States to apply to the exempted entities requirements analogous to the MiFID conduct of business rules for the provision of investment advice and fit and proper criteria? Please explain the reasons for your views.

The Committee believes that the initiative is correct as it will lead to fairer competition.

7.1.2. Application of MiFID to structured deposits

(85) What is your opinion on extending MiFID to cover the sale of structured deposits by credit institutions? Do you consider that other categories of products could be covered? Please explain the reasons for your views.

The Committee believes that this issue is being discussed within the context of the PRIPS initiative, and it is not useful to duplicate opinions on this matter.

7.1.3. Direct sales by investment firms and credit institutions

(86) What is your opinion about applying MiFID rules to credit institutions and investment firms when, in the issuance phase, they sell financial instruments they issue, even when advice is not provided? What is your opinion on whether, to this end, the definition of the service of execution of orders would include direct sales of financial instruments by banks and investment firms? Please explain the reasons for your views.

The Committee believes that offering securities, whether issued by the firm itself or by another firm, should be subject to the same rules of conduct and levels of information. However, we also believe that it is very important to give firms clear indications about the difference between product sale or advisory services with regard to product acquisition.

In this regard, clarification of this issue could come from regulation measures which clarify when there is an advisory relationship between a firm and its clients within product marketing processes.

7.2. Conduct of business obligations
(87) What is your opinion of the suggested modifications of certain categories of instruments (notably shares, money market instruments, bonds and securitised debt), in the context of so-called "execution only" services? Please explain the reasons for your views.

In our opinion, the current situation has not been shown to be particularly inadequate in known situations. Therefore, we do not believe that a change is required in this matter.

7.2.1. "Execution only" services

(88) What is your opinion about the exclusion of the provision of "execution-only" services when the ancillary service of granting credits or loans to the client (Annex I, section B (2) of MiFID) is also provided? Please explain the reasons for your views.

Granting credits or loans for acquiring securities is an ancillary service in accordance with MiFID and not an investment service. The provision of these services does not require preparation of a client appropriateness test, probably because clients are generally familiar with what a loan or credit is and what it means.

Accordingly, the Committee does not believe the fact that the acquisition has been made with a loan or credit by the firm should always require an appropriateness test, as this is limited to the client's knowledge and experience about the investment product, but not about whether the client understands the meaning of receiving a loan.

(89) Do you consider that all or some UCITS could be excluded from the list of non-complex financial instruments? In the case of a partial exclusion of certain UCITS, what criteria could be adopted to identify more complex UCITS within the overall population of UCITS? Please explain the reasons for your views.

UCITS are excluded from the category of complex products as this type of product is subject to a specific regulatory regime, with a strengthened information, control and supervision regime. In the Committee's opinion, these are the aspects which make it recommendable to treat this type of product in a homogenous manner, with similar levels of protection for potential retail buyers. Therefore, we believe it is clear that UCITS, as a category, fall within in the scope of non-complex securities.

(90) Do you consider that, in the light of the intrinsic complexity of investment services, the "execution-only" regime should be abolished? Please explain the reasons for your views.

The Committee is totally against this proposal. No need has been detected to change the current regulation system for "execution-only" transactions which reflect a market reality, which is the initiative of clients considered individually with regard to investment decision-
making. We believe that this regime continues to be valid, both in its structure - not applying an appropriateness test - and in its scope which extends to securities with high information and transparency levels and, consequently, a high level of protection for the investors which invest in those securities.

7.2.2. Investment advice

(91) What is your opinion of the suggestion that intermediaries providing investment advice should: 1) inform the client, prior to the provision of the service, about the basis on which advice is provided; 2) in the case of advice based on a fair analysis of the market, consider a sufficiently large number of financial instruments from different providers? Please explain the reasons for your views.

The Committee believes that the proposal to require advisory firms to explain the basis on which they provide advice is not realistic or practical. Requiring firms to provide clients with an explanation of the basis of the advice implies that clients are able to understand it. Otherwise, it makes no sense to have an obligation of this type. Clients specifically use the advisory service to apply professional and technical criteria to their investment decisions so as to cover their lack of knowledge in this area. We consider that it is not realistic to expect a client to be able to understand significant aspects of the advisory service such as the macroeconomic environment, market trends, expectations by sector etc.

Another thing is for firms to be able to demonstrate that they have matched the recommendations made to the results of the specific appropriateness test for each client.

Furthermore, the Committee does not consider it necessary to add the specific requirement of proposing a minimum number of options to clients, as current regulation already requires professional, honest and fair dealings with the client in providing investment advisory services, which the Committee considers is a sufficient regulatory framework.

The obligations which the Commission document suggested be added to advisory services stem from considering the advisory relationship as accepted, known and identified previously by the parties and not an ex-post recycling of a marketing relationship based on the words used in said marketing, as shown in the current broad interpretation of the concept of advisory services in the corresponding document produced by the CESR.

In the Committee's opinion, this issue - the difference between marketing and advisory services - is not clear in the regulation, or its interpretation and application by CESR and national supervisors.

Furthermore, the Committee considers that the levels of information proposed by the Commission would not have the same importance depending on the type of client. Advisory services for professional clients and eligible counterparties are often merely for information purposes, and in the end they will take their own decisions based on their own knowledge.
and information gathered from different firms. Any obligation with regard to advisory services, as well as the establishment of the advisory relationship itself, should take into account the professional or eligible counterparty profile of the client in question.

(92) What is your opinion about obliging intermediaries to provide advice to specify in writing to the client the underlying reasons for the advice provided, including the explanation on how the advice meets the client's profile? Please explain the reasons for your views.

The Committee believes that the above response is applicable to this question. Therefore, the Committee does not believe that this initiative is necessary.

(93) What is your opinion about obliging intermediaries to inform the clients about any relevant modifications in the situation of the financial instruments pertaining to them? Please explain the reasons for your views.

This type of obligation should only exist when included in a specific contract between the parties. The Commission's proposal is not an obligation which derives from the definition of advisory services. This would be an additional service and not an investment advisory service. As such, it should be left to the parties to freely decide its provision and remuneration.

Furthermore, an obligation of this type is particularly inapplicable in the events in which, in accordance with the broad interpretation of advisory services contained in CESR documents, a relationship which is initially based on marketing becomes an advisory relationship without the knowledge or intention of the firm in question.

Finally, if an obligation of this type is established, it must be absolutely clear that it would not apply to simple intermediary situations, but only when there has been an advisory relationship accepted as such by the firm and the client.

(94) What is your opinion about introducing an obligation for intermediaries providing advice to keep the situation of clients and financial instruments under review in order to confirm the continued suitability of the investments? Do you consider this obligation be limited to longer term investments? Do you consider this could be applied to all situations where advice has been provided or could the intermediary maintain the possibility not to offer this additional service? Please explain the reasons for your views.

This obligation to the client should only be imposed when it has been accepted in writing by the firm.
The purpose of the advisory firm is not to substitute monitoring of the investments by the investors - it is not part of the investment service, which consists of recommendations. It is an additional service and, accordingly, should be agreed between the parties.

7.2.3. Informing clients on complex products

(95) What is your opinion about obliging intermediaries to provide clients, prior to the transaction, with a risk/gain and valuation profile of the instrument in different market conditions? Please explain the reasons for your views.

The Committee believes that the current information requirements are sufficient. It is already a requirement to inform clients about investment risks.

Furthermore, information obligations which should be the responsibility of product issuers or originators should not be applied to intermediaries. The PRIPS initiative moves in this direction.

(96) What is your opinion about obliging intermediaries also to provide clients with independent quarterly valuations of such complex products? In that case, what criteria should be adopted to ensure the independence and the integrity of the valuations?

Once again, this type of obligation should only exist if it is assumed by the firm in a legal contract with the client and not whenever an acquisition is made through an advisory service.

Furthermore, there are already obligations to report the position of the securities in safekeeping to clients, the content of which is considered sufficient for the information purposes referred to by the Commission.

(97) What is your opinion about obliging intermediaries also to provide clients with quarterly reporting on the evolution of the underlying assets of structured finance products? Please explain the reasons for your views.

The response to the above question is applicable here.

In addition, this measure does not seem to be effective as these types of products can lose part of their value suddenly, as has occurred in the past. Consequently, a quarterly valuation would not provide the client with significant additional information.

(98) What is your opinion about introducing an obligation to inform clients about any material modification in the situation of the financial instruments held by firms on their behalf? Please explain the reasons for your views

The above response is applicable here. This type of obligation should only exist when conventionally agreed between the firm and the client.
What is your opinion about applying the information and reporting requirements concerning complex products and material modifications in the situation of financial instruments also to the relationship with eligible counterparties? Please explain the reasons for your views.

The Committee believes that the regime for eligible counterparties is a flexible regime which allows a flowing relationship without unnecessary added costs between investment service providers and this type of client, which does not usually need the protection of a regulatory framework with regard to certain rules of conduct. In the Committee's opinion, the system has functioned well, both for firms and for clients.

The current regulatory framework allows this type of client to request application of the retail client regime if considered necessary, both relating to the full relationship with the firm and relating to certain assets, services or products.

Therefore, the current regime is appropriate and this type of client should internally analyse what type of protection it wants and request treatment as a retail investor when considered appropriate. In this regard, these clients have a sufficient size so as to require that they use suitable diligence in requesting a greater or lesser level of protection.

What is your opinion of, in the case of products adopting ethical or socially oriented investment criteria, obliging investment firms to inform clients thereof?

The Committee considers that this type of information should not be given generally and only when requested by the client. The client which wishes to invest in these types of products will request them naturally. It is not information which is aimed at protecting the client.

Another issue is determining which products fall in the category of socially and ethically oriented products.

7.2.4. Inducements

What is your opinion of the removal of the possibility to provide a summary disclosure concerning inducements? Please explain the reasons for your views.

The Committee is firmly against this possibility. The summary information regime on inducements has proved to be very useful for firms and clients. We see no need to modify it. As of today, weighing up the effects of this new regulation and gauging the manner of applying it correctly with regard to supervisor and client, we do not believe that now is the right time to modify the regulation in this matter.

Furthermore, practically no clients have requested more detailed information.
(102) Do you consider that additional ex-post disclosure of inducements could be required when ex-ante disclosure has been limited to information methods of calculating inducements? Please explain the reasons for your views.

The current regime allows clients to request details on a specific inducement. This possibility includes requesting ex-post disclosure. Therefore, the current regime is appropriate with regard to safeguarding the possible interest of the client in having more detailed ex-post information.

(103) What is your opinion about banning inducements in the case of portfolio management and in the case of advice provided on an independent basis due to the specific nature of these services? Alternatively, what is your opinion about banning them in the case of all investment services? Please explain the reasons for your views.

The Committee considers that there are many firms in which advisory services are provided by different persons and departments from those which deal with issuers. Therefore, it is perfectly possible that a firm advises a client and that its portfolio includes securities of an issue from which the firm receives income for other items (investment advice, investment banking, security placement, etc.).

We do not believe that because a firm has securities from an issuer in its clients' portfolios, that it may not provide, or should provide at no charge, the corresponding services to the issuer, including that of placement. This would be a consequence arising from the proposed ban.

Furthermore, smaller firms are in a similar situation. The fact that they have fewer employees and smaller departments should not prevent them from providing services to issuers and investors at the same time (specifically, advisory services for the latter).

In the Committee's opinion, there are three important elements to bear in mind regarding this issue:
- Appropriate management of potential conflicts of interest.
- Appropriate application of the inducement regime.
- Appropriately professional, honest and fair dealings with the client.

Banning is not the appropriate way to deal with these types of situations. If they are banned, the consequences could be very serious for firms with different business lines orientated towards the issuer and towards investors - as well as for open architecture structures. There is no sound reason for a ban as there are suitable ways of dealing with this situation with existing regulatory instruments, as mentioned above.

It is important to bear in mind that marketing the products of third parties is positive to the extent that (i) it widens the range of investment possibilities for clients and (ii) it reduces the potential conflict of interest which could arise when placing only the firm's products.
Furthermore, there are situations in which the payment of the inducement is the only way of functioning correctly. In this regard, when a Group wants to create a UCITS, it must create an *ad hoc* entity, a UCITS Operator. The marketing of these UCITS must be carried out through the sales force which the group has, and which the UCITS Operator does not have. This marketing is carried out by paying inducements for the use of said sales force.

### 7.2.5. Provision of services to non-retail clients and classification of clients

(104) **What is your opinion about retaining the current client classification regime in its general approach involving three categories of clients (eligible counterparties, professional and retail clients)? Please explain the reasons for your views.**

The current client classification expresses the different statuses which a client may have from the perspective of the protection of the rules of business conduct. In this regard, no circumstances of situations have been identified which justify an amendment to the current regime, which, furthermore, is very recent and has involved significant internal adaptations and costs for firms.

(105) **What are your suggestions for modification in the following areas: a) Introduce, for eligible counterparties, the high level principle to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading when informing the client; b) Introduce some limitations in the eligible counterparty regime. Limitations may refer to entities covered (such as non-financial undertakings and/or certain financial institutions) or financial instruments traded (such as asset backed securities and non-standard OTC derivatives); and/or c) Clarify the list of eligible counterparties and professional clients per se in order to exclude local public authorities/municipalities? Please explain the reasons for your views.**

With regard to clarifying that dealings with eligible counterparties must be honest, fair and professional, the Committee considers that this already results from current regulation and therefore no modification is required. At any event, there are no problems in doing so.

With regard to establishing limitations in the eligible counterparties regime, both relating to assets - relating to complexity criteria - and to some subjective exclusion - local public authorities/municipalities - we believe that both aspects are suitably dealt with at the moment as the regulation allows an eligible counterparty to request treatment as a professional or even as a retail investor for some or all the transactions, services or products.

In this regard, the type of entities which are included under the category of eligible counterparties should have sufficient criteria so as to request this added protection when considered necessary. In this case, regulation does not seem to be the appropriate instrument to protect this type of entity from its own decisions in this matter.
(106) Do you consider that the current presumption covering the professional clients' knowledge and experience, for the purpose of the appropriateness and suitability test, could be retained? Please explain the reasons for your views.

This presumption, supplemented with the current possibility that a professional client may request treatment as a retail client, in general or for specific products and services, is sufficient regulation. No need has thus been seen to modify the current regime which in the Committee's opinion achieves two important aims:
- Not overprotecting, with what this means in terms of adjusting regulatory costs, through unnecessary regulatory requirements for clients who do not need them, and
- Having the appropriate level of regulatory protection available for all clients.

7.2.6. Liability of firms providing services

(107) What is your opinion on introducing a principle of civil liability applicable to investment firms? Please explain the reasons for your views.

The civil liability regime far exceeds the regulatory regime and general principles of client relations. It is a matter which affect issues such as the contractual nature, or other, of that liability, the level of non-compliance, levels of compensation to be established, whether a judge participates in the process, etc., which differ significantly from one State to another.

Therefore, achieving a similar level of legal reaction to regulatory non-compliance by a firm would involve carrying out an in-depth study on the differences in the Member States in this matter if very different results are being obtained and unification is required.

This issue is for national regulation, and any attempt to unify at a Community level should be preceded by an in-depth analysis.

Therefore, under current conditions, the Committee is against an initiative of this type.

(108) What is your opinion of the following list of areas to be covered: information and reporting to clients, suitability and appropriateness test, best execution, client order handling? Please explain the reasons for your views.

See answer to above question.

7.2.7. Execution quality and best execution

(109) What is your opinion about requesting execution venues to publish data on execution quality concerning financial instruments they trade? What kind of
information would be useful for firms executing client orders in order to facilitate compliance with best execution obligations? Please explain the reasons for your views.

The Committee considers that the current regime provides sufficient information to firms for designing and reviewing their best execution policies.

At any event, if an obligation of the type proposed for execution venues is established, the relevant information for firms would be that referring to executed transactions, prices, volumes and speed of execution.

(110) What is your opinion of the requirements concerning the content of execution policies and usability of information given to clients should be strengthened? Please explain the reasons for your views.

The Committee believes that the current regime, which makes it necessary to have an execution policy and best order execution and to report on some aspects of this to retail clients, does not need to be modified. Professional clients can request treatment as retail clients and benefit from the regime applicable to the latter. Therefore, in general we do not believe it is necessary for professional clients to receive detailed ex-ante information. Their status as professionals, on the other hand, enables them to assess their level of satisfaction with one service provider or another.

We believe that the considerations reflected in the Commission's document - level of detailed information for professional clients, treatment of portfolio management and receipt-transmission - are aspects to be covered more within the scope of supervision than in highly detailed regulation.

We therefore consider that it is not necessary to introduce modifications to the current regulation.

7.2.8. Dealing on own account and execution of client orders

(111) What is your opinion on modifying the exemption regime in order to clarify that firms dealing on own account with clients are fully subject to MiFID requirements? Please explain the reasons for your views.

The Committee believes that the commission's proposal in this section is correct. It should be clarified through regulation that whoever deals on its own account with a client is subject to MiFID requirements.

However, these requirements should only apply when the firm is providing an investment service to the client (or an order receipt and transmission or transaction execution) and this leads to it dealing against its own account with the client.
On own account transactions on the open market or at the direct request of a third counterparty, we believe that this situation does not require application of the MiFID regime in favour of such counterparty.

(112) What is your opinion on treating matched principal trades both as execution of client orders and as dealing on own account? Do you agree that this should not affect the treatment of such trading under the Capital Adequacy Directive? How should such trading be treated for the purposes of the systematic internaliser regime? Please explain the reasons for your views.

We believe that the Commission's proposal is correct when the important aspect is the management of an order from a client which requests an execution from the firm. If this transaction is implemented in two transactions in which the firm is counterparty (buyer and seller respectively), this does not alter the nature of the receipt-transmission service and even order execution.

Furthermore, the fact that it refers to properly matched transactions means that there should be no consequences from the perspective of the Capital Adequacy Directive 2006/49/EC.

7.3. Authorisation and organisational requirements

7.3.1. Fit and proper criteria

(113) What is your opinion on possible MiFID modifications leading to the further strengthening of the fit and proper criteria, the role of directors and the role of supervisors? Please explain the reasons for your view.

We believe that the current regime is appropriate. A possible improvement could be to require specific experience from the majority of the Board of Directors, but not from all the directors. This would guarantee that decisions can be taken with a suitably experienced majority. However, the nature of some of the smaller firms should allow realistic good governance criteria, where there may be persons with a significant role in the firm (owner or salesperson) who do not necessarily have a high level of specific experience but who do have a legitimate role on the Board of Directors.

7.3.2. Compliance, risk management and internal audit functions

(114) What is your opinion on possible MiFID modifications leading to the reinforcing of the requirements attached to the compliance, the risk management and the internal audit function? Please explain the reasons for your view.
The Commission's proposals seem reasonable to the extent that they promote greater involvement of the Board of Directors in monitoring the internal control of firms.

Both reporting at the highest level, and involvement in managing clients' claims, are important aspects for internal control functions.

However, organisation of the internal reporting system should be left for each firm to organise so as to avoid duplication (for example, in those firms which have a specific customer service report).

7.3.3. Organisational requirements for the launch of products, operations and services

(115) Do you consider that organisational requirements in the implementing directive could be further detailed in order to specifically cover and address the launch of new products, operations and services? Please explain the reasons for your views.

It is appropriate for firms to have a specific procedure for launching new products and services. Similarly, it is important that this procedure links the firm's different internal control areas.

However, the Committee considers that it should be left to each firm to organise itself internally.

(116) Do you consider that this would imply modifying the general organisational requirements, the duties of the compliance function, the management of risks, the role of governing body members, the reporting to senior management and possibly to supervisors?

No. See answer to above question.

7.3.4. Specific organisational requirements for the provision of the service of portfolio management

(117) Do you consider that specific organisational requirements could address the provision of the service of portfolio management? Please explain the reasons for your views.

The general principles applicable to all the firms’ activities, such as adequate internal control, a register of performed transactions, a regime for reporting to clients the aspects relating to each service provided, etc. are sufficient so as to require firms to have suitable organisation with regard to portfolio management.
The Committee believes that the manner in which these principles are materialised in portfolio management, and their progressive harmonisation on a European level, is more a matter of execution and supervision than of regulation.

7.3.5. Conflicts of interest and sales process

(118) **Do you consider that implementing measures are required for a more uniform application of the principles on conflicts of interest?**

The Committee does not believe that regulation decisions need to be taken. However, progressive harmonisation in this area on a European level could be achieved through the publication of guidelines from the supervisor.

7.3.6. Segregation of client assets

(119) **What is your opinion of the prohibition of title transfer collateral arrangements involving retail clients' assets? Please explain the reasons for your views.**

The Committee strongly supports a regime for protecting the clients' ownership position with regard to its securities which is clear, efficient and solid and orientated towards protecting said right in all situations.

However, we believe that Recital 27 of Directive 2004/39/EC is still conceptually valid. We do not believe that there should be a ban for retail clients to use their securities as collateral in transactions with a financial institution. Therefore, we do not believe that this situation should always be banned.

Suitable treatment of this type of situation should be based on sufficient information for the client regarding the use of the values as collateral, the effect that this has on the client's ownership of the securities, on the collateral received on the client's behalf and legal status, ownership and execution mechanisms, etc.

This should always require the client's prior express agreement. In addition, the Committee believes that clients should receive remuneration for use of their securities.

(120) **What is your opinion about Member States be granted the option to extend the prohibition above to the relationship between investment firms and their non retail clients? Please explain the reasons for your views.**
As indicated above, we do not believe that prohibition is the solution. At any event, it generally makes sense for the protection measures for clients' assets to be extended to professional clients, given that the level of investment experience and knowledge is not as important in this matter as the direct knowledge of what the custodian does or may do with the securities owned by the professional client.

Therefore, there is no clear justification for treating professional and retail clients differently with regard to the protection measures for clients' assets.

(121) Do you consider that specific requirements could be introduced to protect retail clients in the case of securities financing transaction involving their financial instruments? Please explain the reasons for your views.

As indicated in the response to question 119, suitable treatment of this type of situation should be based on sufficient information for the client regarding the use of the values as collateral, the effect that this has on the client's ownership of the securities, on the collateral received on the client's behalf and legal status, ownership and execution mechanisms, etc., where appropriate.

(122) Do you consider that information requirements concerning the use of client financial instruments could be extended to any category of clients?

Yes. For the reasons given in the answer to question 119.

(123) What is your opinion about the need to specify due diligence obligations in the choice of entities for the deposit of client funds?

We believe that the due diligence process should in general be left to the choice of each firm. Therefore, we do not consider that the introduction of specific due diligence measures is a good option. Example measures could be mentioned in a non-regulatory text (for example, a Recital).

7.3.7. Underwriting and placing

(124) Do you consider that some aspects of the provision of underwriting and placing could be specified in the implementing legislation? Do you consider that the areas mentioned above (conflicts of interest, general organisational requirements, requirements concerning the allotment process) are the appropriate ones? Please explain the reasons for your views.
The measures proposed in the Commission's document could be positively included with regard to general principles. For example, it would be sufficient to give a reminder that the regime for conflicts of interest and transparency must be applied to this type of activity.

However, the Committee believes that great care should be taken when classifying specific practices as undesirable. The regulation should avoid introducing the proscription of certain practices, which should be determined in more detail, where appropriate, at a supervisor level.

8. FURTHER CONVERGENCE OF THE REGULATORY FRAMEWORK AND OF SUPERVISORY PRACTICES

8.1. Options and discretions
8.1.1. Tied agents

(125) What is your opinion of Member States retaining the option not to allow the use of tied agents?

We have no objections to the Commission's proposal.

(126) What is your opinion in relation to the prohibition for tied agents to handle clients' assets?

We have no objections to the Commission's proposal.

(127) What is your opinion of the suggested clarifications and improvements of the requirements concerning the provision of services in other Member States through tied agents?

The Committee fully supports all measures aimed at increasing transparency with regard to provision through tied agents. We therefore believe that Commission's proposal is correct in this manner.

(128) Do you consider that the tied agents regime require any major regulatory modifications? Please explain the reasons for your views.

No.

8.1.2. Telephone and electronic recording

(129) Do you consider that a common regulatory framework for telephone and electronic recording, which should comply with EU data protection legal provisions, could be introduced at EU level? Please explain the reasons for your views.
Yes. The Committee believes that in a Single Market it makes no sense to subject some firms and not others to costs as a result of implementing mechanisms ultimately aimed at market supervision.

(130) If it is introduced do you consider that it could cover at least the services of reception and transmission of orders, execution of orders and dealing on own account? Please explain the reasons for your views.

Yes. The application of portfolio management poses additional questions which means that the recording obligation should not be extended to this service.

(131) Do you consider that the obligation could apply to all forms of telephone conversation and electronic communications? Please explain the reasons for your views.

If this recording obligation is established, it makes no sense to limit it to certain communication mechanisms and not to others. However, at any event, it should be limited to those forms through which order reception is accepted and not to all means of communication between firms and clients.

(132) Do you consider that the relevant records could be kept at least for 3 years? Please explain the reasons for your views.

The Committee believes that storing these records is very expensive. Therefore, a suitable cost-benefit analysis would make it possible to eliminate these records when they have been substituted by other permanent records (for example, on paper). In this regard, the mechanism which consists of sending the clients the note of the transaction performed, with a positive silence deadline, would make it possible to delete the recordings in a significantly shorter period (6 months) linked to the subsequent existence of such confirmation in another format.

This is without prejudice to the fact that recordings linked to litigation processes or investigation by the supervisor should be kept over a longer period.

8.1.3. Additional requirements on investment firms in exceptional cases

(133) What is your opinion on the abolition of Article 4 of the MiFID implementing directive and the introduction of an on-going obligation for Member States to communicate to the Commission any addition or modification in national provisions in the field covered by MiFID? Please explain the reasons for your views.

In general, we consider that it is positive to eliminate discretionary action by Member States with regard to access to the activity.
8.2. Supervisory powers and sanctions

8.2.1. Powers of Competent Authorities

8.2.2. Sanctions (definition, amounts, publication)

(134) Do you consider that appropriate administrative measures should have at least the effect of putting an end to a breach of the provisions of the national measures implementing MiFID and/or eliminating its effect? How the deterrent effect of administrative fines and periodic penalty payments can be enhanced? Please explain the reasons for your views.

The Committee believes that authorities should have the measures necessary to act in such a way that they can effectively eliminate illicit and illegal actions. In this regard, the measures given as examples in the Commission's document may be adequate.

However, a link in all situations should be considered on a regulatory level between the use of certain measures and the purpose for which they were established, so as to avoid distortions. This necessary link should in turn be mandatory for the authorities.

(135) What is your opinion on the deterrent effects of effective, proportionate and dissuasive criminal sanctions for the most serious infringements? Please explain the reasons for your views.

The Committee believes that the sanction regime with regard to financial markets is an issue which should be analysed thoroughly so as to avoid very different sanctions for similar infringements in different Member States. This issue does not only affect the specific sanction, but also the determination of the type of infraction and the method for assessing whether they have occurred or not. Therefore, it is a much more general aspect than the specific sanction in question.

In this regard, the Committee believes that proposing criminal sanctions with regard to an infringement of MiFID, when referring to a recent regulation, for which common criteria still need to be set in many areas (of which the current Commission proposal is an example) is a precipitated measure and one which is not suitably backed up by the necessary aforementioned prior analysis.

Therefore, we believe that a reference to this matter should not be introduced in MiFID.

(136) What are the benefits of the possible introduction of whistleblowing programs? Please explain the reasons for your views.
In general, we do not believe that this type of system significantly increases the supervisor’s capacity to react to rule infringement.

Its scope of application must be very well-defined, and even so it may lead to numerous false reports which would lead to a potentially useless cost in terms of time and effort by the supervisor, and unnecessary and/or unfair implications for the firm’s reputation.

(137) Do you think that the competent authorities should be obliged to disclose to the public every measure or sanction that would be imposed for infringement of the provisions adopted in the implementation of MiFID? Please explain the reasons for your views.

In general, we believe that the imposition of very serious sanctions - always with scrupulous respect given to the prior corresponding procedure with all its guarantees - is information which could be important for the market and therefore should be disclosed.

8.3. Access of third country firms to EU markets

(138) In your opinion, is it necessary to introduce a third country regime in MiFID based on the principle of exemptive relief for equivalent jurisdictions? What is your opinion on the suggested equivalence mechanism?

(139) In your opinion, which conditions and parameters in terms of applicable regulation and enforcement in a third country should inform the assessment of equivalence? Please be specific.

The Committee believes that this is an issue in which national regulation should have a prevalent role, bearing in mind that these service providers from third countries are not favoured by the European passport as a result of being able to provide services in one Member State.

(140) What is your opinion concerning the access to investment firms and market operators only for non-retail business?

The Committee believes that accepting this type of limitation is very much linked to the real capacity to verify effective compliance. In this case, a non-identifiable infringement by a third country firm may involve serious consequences for clients within the area of the European Union.

(141)

N/A
9. REINFORCEMENT OF SUPERVISORY POWERS IN KEY AREAS

9.1. Ban on specific activities, products or practices

(142) **What is your opinion on the possibility to ban products, practices or operations that raise significant investor protection concerns, generate market disorder or create serious systemic risk? Please explain the reasons for your views.**

The Committee is not in favour of banning specific products or practices from the point of view of firms' activities. Introducing this possibility may unnecessarily limit the possibilities for actions and innovation by firms and the market.

In this regard, we believe that verification of the MIFID principles of adapting products to clients, together with the authorities' supervision capacity, should be sufficient with regard to products which may be particularly risky.

(143) **For example, could trading in OTC derivatives which competent authorities determine should be cleared on systemic risk grounds, but which no CCP offers to clear, be banned pending a CCP offering clearing in the instrument? Please explain the reasons for your views.**

For specific cases, suitable prudential regulation may limit certain activities or products for a firm, based on the risk which that activity or product may have for the firm, but provided there are clear and previously established criteria.

(144) **Are there other specific products which could face greater regulatory scrutiny? Please explain the reasons for your views.**

N/A

9.2. Stronger oversight of positions in derivatives, including commodity Derivatives

(145) **If regulators are given harmonised and effective powers to intervene during the life of any derivative contract in the MiFID framework directive do you consider that they could be given the powers to adopt hard position limits for some or all types of derivative contracts whether they are traded on exchange or OTC? Please explain the reasons for your views.**

We believe that the answer to question 143 is applicable in this matter.

(146) **What is your opinion of using position limits as an efficient tool for some or all types of derivative contracts in view of any or all of the following objectives: (i) to combat market manipulation; (ii) to reduce systemic risk; (iii) to prevent disorderly**
markets and developments detrimental to investors; (iv) to safeguard the stability and delivery and settlement arrangements of physical commodity markets. Please explain the reasons for your views.

See answer to question 143.

Therefore, these types of measures should be applied, where appropriate, at an individual level and on a previously defined and justified basis.

(147) Are there some types of derivatives or market conditions which are more prone to market manipulation and/or disorderly markets? If yes, please justify and provide evidence to support your argument.

(148) How could the above position limits be applied by regulators:

(a) To certain categories of market participants (e.g. some or all types of financial participants or investment vehicles)?
(b) To some types of activities (e.g. hedging versus non-hedging)?
(c) To the aggregate open interest/notional amount of a market?

For questions 147 and 148, see answer to question 146.