CNMV supports in general the proposals of the European Commission on investor protection and provision of investment services as well as on new market structures and their developments. This Authority believes that the modifications and clarifications of the MiFID pointed out in the document would be very helpful in order to better fulfil with the objective of investor protection and orderly and efficient functioning of the market.

In the last years, CNMV experience has shown differences in the application of the MiFID regulations by investment firms and also between different countries, notably in investment advice, inducements, and transaction reporting.

### 2. DEVELOPMENTS IN MARKET STRUCTURES

#### 2.1 Defining admission to trading—Question (1)

CNMV agrees with the proposals stated in 2.1 since the concept updates MiFID including also organised trading platforms. It will provide for a wider and more transparent frame in the securities market encompassing all trading systems, avoiding risks not taken into account previously.

#### 2.2 Organised trading facilities

##### 2.2.1 General requirements for all organised trading facilities—Questions (2), (3), (4), and (5)

CNMV supports the definition of organised trading facility and it being considered as a new investment service for which authorisation is required. Including OTFs under MiFID and making them subject to similar requirements such as the ones that apply to RM and MTFs is welcome.

However, there should be a careful assessment of their characteristics and the instruments
Therefore, we are of the opinion of strongly limiting this new figure to avoid harmful regulatory arbitrage with RM and MTFs, and restrict them to trading platforms of reduced size with the only aim of providing for a service to their clients and not trying to become a unregulated kind of MTF. That is why CNMV considers insufficient the notification and description of the facility to the competent authority. We are of the opinion that the competent authority should have powers to deny or to require further modifications in the case the new OTF does not comply with MiFID objectives: fair and orderly trading of the markets and investor protection.

Under our point of view it is appropriate to require that an OTF becomes an MTF when certain threshold is reached, establishing such threshold over the trading volume of the facility (to be developed by Level 2 or ESMA in such a flexible way that it does not hamper its activity nor it creates confusion among the investors). In our view, the threshold will have to be set a very low levels.

The CNMV would like to propose that OTFs are only allowed to admit to trading those instruments that are previously admitted to trading on RM and MTFs (and their derivatives) and other derivative instruments such as CDS. Under no circumstances do we consider appropriate that such OTFs admit to trading shares or debt not previously admitted to trading elsewhere (under its own decision) with a lower level of regulation and requirements. In fact, the variety of different trading platforms with their own characteristics and requirements is already diversified enough, and adding a new figure broadly defined could be harmful for the retail investors.

2.2.2 Crossing systems– Questions (6) and (7)

CNMV agrees with the recognition of crossing systems as a sub-regime of organised trading facility and the suggested requirements are considered appropriate except for the TREM one for being redundant (it is already considered in the Commission proposal in par 6.1). We also support the suggestion of treating crossing systems as systematic internalisers or MTFs under the conditions described by the Commission.

2.2.3 Trading of standardised OTC derivatives– Questions (8) to (12)

Although the Commission is mirroring the G20 recent agreements on this issue, the suggestion to require all trading in derivatives which are eligible for clearing and sufficiently liquid to trade exclusively either on RM, MTFs or a specific sub-regime of OTFs, CNMV considers that this proposal goes too far beyond the rationale behind the Commissions general proposal of MiFID review. Depending on the criteria chosen to determine the liquidity of the instrument, this could hinder the level playing field for the OTC space.

2.3 Automated trading and related issues– Questions (13) to (20)
The CNMV agrees on the usefulness of addressing this concept under MiFID but finds the definitions (Automated Trading and Algorithmic Trading) not clear enough. Nevertheless, we support all the proposals with the exception of the notification of the computer algorithm to the regulator, where we think that the disposal of it for when it could be required by the regulator is enough.

The requirements described, under the regulator's perspective, would demand a new monitoring activity and thus a notably personnel and investment effort.

CNMV does not agree with the consideration of high frequency traders as market makers in order to provide to the market liquidity. There is no compromise from HFT with the market nor with the issuers, as opposed with true market makers. Therefore, since HFT do not hold any kind of commitment, they should not be granted any kind of specific treatment. On the other hand, we are of the opinion that requiring orders to rest on the order book for a minimum period of time could be positive but needs an assessment; otherwise, undesired harmful effects could be driven (cut of the number of orders in the book and move to the OTC space).

2.4 Systematic internalisers – Questions (21) and (22)

The lack of SI in Spain and the lack of evidence of investment firms providing this service in an opaque manner, prevents the CNMV from having a strong view on this issue. In spite of this, implementing any objective criteria and other improvements aiming clarification of the regulation is welcome.

2.5 Further alignment and reinforcement of organisational and market surveillance requirements for MTFs and regulated markets as well as organised trading facilities– Questions (23) to (24)

CNMV is in favour of harmonising the organizational requirements of all the types of venues. However, we find difficult to implement a mandatory cooperation among the different types of venues, due to confidentiality problems (client IDs, etc.). We also think this issue concerns more to the Market Abuse Directive than to MiFID.

2.6 SME markets – Questions (25) to (26)

CNMV supports all improvement in the legislation that promotes and develops SMEs, and this being achieved in a harmonised manner across the EU. The proposal follows the amendments regarding size and tailored requirements in Prospectus Directive CE/2010/73. However, we are not of the view that SME venues should be considered and labelled as regulated markets, since the requirements are, in practice, lower than ordinary RMs. These segments or venues, with different regulatory requirements, should be clearly distinguished (labelled) to avoid confusion to investors.
3. PRE- AND POST-TRADE TRANSPARENCY

3.1. Equity markets
3.1.1. Pré-trade transparency– Questions (27) to (31)

CNMV welcomes the changes proposed in waivers and agrees on giving ESMA a role in monitoring their use to ensure a consistently application.

3.1.2. Post trade transparency– Question (32)

CNMV is in favour of reducing delays in the publication of trade data for this will benefit efficient price formation and facilitate best execution.

3.2. Equity-like instruments - Questions (33) and (34)

CNMV is concerned over the definition given to Certificates, which in our view is quite general and not clear enough. In this sense, they would encompass Spanish Preferent Shares (ie Participaciones Preferentes) when, according to ESMA assessment given to the Commission last summer (CESR/10-799), these instruments are considered for transparency purposes as non-equity instruments (par 3.4 of the proposal).

3.3. Trade transparency regime for shares traded only on MTFs or organised trading facilities - Questions (35) and (36)

CNMV does not consider appropriate to accept equity instruments admitted to trading only on OTFs, as explained previously (see response to par 2.2) when there is a broad variety of options of where an equity instrument can be traded, such as RMs, MTFs, SI:s and probably SME venues. With regards with a tailored transparency regime for SME platforms, we find it redundant taking into account that the general regime already includes thresholds and delays in relative terms, which means that capitalisation is already being considered.

3.4. Non equity markets– Questions (37) to (41)

CNMV supports the scope and content of the proposed mandatory pre trade transparency regime for RM, MTFs and OTFs, in real time and in a continuous manner, depending on the nature of the system and asset class. However, regarding OTC trades, we disagree on making mandatory to display quoted prices not significantly diverted from pre-trade available information. The rationale behind this is that not always the market where the instrument is admitted to trading provides its market value (low liquidity, frequent in non-equity instruments). In the same way, the CNMV does not support the quotes be binding
below a certain transaction size, otherwise opposite effects (no quoting at all) could come out.

Regarding post-trade transparency CNMV agrees on the proposed scope, to be implemented depending on the type and asset class, and the regime being transaction-based and predicated on a set of thresholds by transaction size. Other parameters being used to calibrate the regime could be relevant (size of the issue, frequency of the trades) but would made it burdensome to implement for investment firms and regulators.

3.5. Over the counter trading – Question (42)

CNMV supports the Commission proposal and ESMA’s recommendations to publish OTC transactions.

4. DATA CONSOLIDATION

4.1. Improving the quality of raw data and ensuring it is provided in a consistent format – Questions (43) to (46)

CNMV supports the introduction of APAs, as a new figure that will provide consistent and harmonised post-trade information across Europe. Authorisation from competent authorities is considered relevant and assuring APAs are subject to on-going supervision is also needed. Applying to non-equity markets this new figure will also be beneficial for investors.

4.2. Reducing the cost of post trade data for investors – Questions (47) to (50)

CNMV agrees on the Commission proposals and is in favour of applying them also to non-equity markets.

4.3. A European Consolidated tape – Questions (51) to (59)

CNMV supports the introduction of a European CT, and considers option A to be the more appropriate: an unique European entity run in a non-profit way an appointed by legal act. However, we do not consider reasonable that trading platforms and APAs providing the data are paid back the remaining benefits once the costs have been covered: these should remain in the CT. In our view, APAs should get their income from only one side: either their customers (firms and venues which are obliged to publish) or the consolidated tape operator. Getting income from both raises issues related to conflict of interest that should be avoided. Therefore, we propose a model where APAs earn their income from regulated
firms or venues and provide the data, for free, to the European CT. All the income received by the CT (typically from data vendors, agencies and alike) would be used for covering its costs.

In our opinion, the consolidated tape should be subject to on-going supervision by ESMA, likewise APAs, to ensure MiFID objectives are achieved continuously. CNMV also welcomes extending a consolidated tape to non-equity instruments.

5. MEASURES SPECIFIC TO COMMODITY DERIVATIVE MARKETS

5.1. Specific requirements for commodity derivative exchanges– Questions (60) to (63)

CNMV agrees with the Commission’s proposals but considers relevant to assess whether reporting by Trade Repositories or CCPs on position reporting obligations for commodity derivatives would be more useful, due to the fact that the markets lack, in some cases, the information regarding final clients. This would also be consistent with the Commission proposal on transaction reporting (see par 6.2 below). Furthermore, the segregation of the information by categories of traders should be defined in a broad way factoring in the type of entity (not only financial firms) and taking into account the sense of the transaction (not only based on accounting principles).

5.2. MiFID exemptions for commodity firms– Question (64)

CNMV agrees on the Commission proposals on the understanding that a cost-benefit assessment would be performed considering the objective of the financial markets on commodity derivatives, the characteristics of the participants trading on them, the market size and degree of development, to avoid undesirable collateral effects. As a general principle, though, no firm should be able to perform investment services or activities without being authorized.

5.3. Definition of other derivative financial instrument– Question (65)

CNMV considers reasonable the European Commission definition as far as the EMIR is approved in its current form.

5.4. Emission allowances– Question (66)

CNMV does not consider emission allowances (spot contracts) as financial instruments, and therefore considers the financial regulators are not the adequate competent authority to supervise them.
6. TRANSACTION REPORTING

6.1. Scope—Questions (67) to (74)

CNMV supports the extension of the transaction reporting regime to all the transactions on instruments admitted to trading on RM, MTFs or OTFs, according to the MAD new requirements. Nevertheless, we wonder why transactions on commodity derivatives that are not admitted to trading or traded on the above mentioned venues should be reported, taking into account that their underlying assets are not either admitted to trading and thus not subject to report. We do not oppose to extend the regime to financial instruments the value of which correlates with the value of a financial instrument traded on a RM, MTFs or OTFs as far as the Commission (or ESMA at a later stage) specifies which instruments would be encompassed; the term correlates is too wide to enforce without further detail.

The CNMV also agrees on extending the reporting obligations to RM, MTFs and OTFs that offer access to firms not authorised as investment firms or credit institutions as a way to complete the reporting on all the trades executed on those venues. Finally, the mandatory storing of order data for the markets in a harmonised format would undoubtedly contribute to a better monitoring of the market, since there is no need to execute a trade to manipulate a financial instrument; the introduction of orders, in some cases, could be enough.

6.2. Content of reporting—Questions (75) to (79)

CNMV considers the definition of transaction is not clear enough to achieve the Commission’s aim: determining which legs of the order chain and whether the aggregation of orders constitutes executing a transaction.

The CNMV thinks that mandatory transmission of the order details (ie client identification) along the execution chain instead of allowing the investment firms to chose whether they would rather transmit this piece of information directly to the regulator as described in ESMA’s advice (CESR/2010-808), will be rejected by the industry, due to business reasons. We would support both alternatives as valid, to the choice of the investment entities, but we think that it is crucial, to avoid confusing data, that reports on transmission of client orders are clearly flagged and distinguished from normal executions.

Although client identification is considered relevant for market abuse purposes, the CNMV is of the opinion that trader identifier in transaction reporting is not that necessary for monitoring the market (only for front running, which can be detected through other means).

6.3. Reporting channels—Questions (80) to (83)

CNMV does not see the benefits on the possibility of transaction reporting directly to a reporting mechanism at EU level; competent authorities will have a new reporting channel,
besides ARMs and reporting entities, which would need some extra control. On the other hand, we find it useful to make it compulsory for all transactions, irrespective of where (country) the trade was executed or by whom (investment firm). In the same way, it is appropriate requiring Trade Repositories under EMIR to be approved as ARMs under MiFID.

CNMV supports that third parties reporting on behalf of investment firms need to be approved by the supervisor as an Approved Reporting Mechanism, as part of the entities participating in the financial markets. Notwithstanding this, it is probably advisable to allow that one firm in a group is able to report on behalf of some or all entities in that group without the need of getting an ARM status.

7. INVESTOR PROTECTION AND PROVISION OF INVESTMENT SERVICES

7.1 Scope of the Directive

7.1.1. Optional exemptions for some investment service providers – Question (84)
7.1.2. Application of MiFID to structured deposits – Question (85)
7.1.3. Direct sales by investment firms and credit institutions – Question (86)

CNMV agrees with the proposals stated in 7.1.1 –narrowing the scope of the exemptions- and 7.1.2, –application of MiFID to structured deposits- since they will entail a higher level of investor protection. Concerning the proposal stated in 7.1.3 –direct sales by investment firms and credit institutions-, CNMV considers current wording of rules is clear enough to understand that direct sales by investment firms and credit institutions are included in the scope of the MiFID; nevertheless, CNMV is not opposed to this clarification if it is considered appropriate.

7.2 Conduct of business obligations

7.2.1. “Execution only” services – Questions (87), (88), (89) and (90)

CNMV supports more the option A -amending Article 19 (6). The option B -abolition of the execution only regime- seems too drastic and not enough justified, especially with regard to transactions on liquid shares trading on a regulated market.

It seems appropriate to limit the scope of the execution only regime in order to avoid potential abuses. In this sense, CNMV considers that it would be convenient to specify what categories of complex products must not be sold without a suitability assessment. Therefore, CNMV supports to identify more complex UCITs within the overall population of UCITs.
Regarding the exclusion of the provision of execution only services when the ancillary service of granting credits or loans to the client is also provided, CNMV does not believe this feature changes the consideration as complex of the financial instrument. The purchase of the product and the provision of credit or loans are different transactions that can be properly understood separately.

7.2.2. Investment advice – Questions (91), (92), (93) and (94)

CNMV supervisory experience establishes that investment advice is being provided by investment firms following different models. Therefore, CNMV supports the European Commission proposal of requiring intermediaries to inform the investor whether they give advice on the basis of an independent and fair analysis. CNMV also agrees with, in that case, investment firm is obliged to assess a sufficiently large number of financial instruments available on the market and it is prohibited from accepting any payments or benefits from any product providers (inducements).

Requirement of reporting to the client in writing the underlying reasons for the advice provided is deemed proper in order to reinforce investor protection.

CNMV considers that longer term assistance from intermediaries providing investment advice should be applied only to ongoing investment advice. By contrast, this requirement does not seem proper in cases of punctual investment advice.

7.2.3. Informing clients on complex products – Questions (95) to (100)

CNMV supports the strengthening of the information obligations on OTC complex products and tailor-made products by investment firms. Notably, it would be necessary to require, prior to the transaction, a risk/gain profile of the instrument under different market conditions. This would improve risks information which is particularly important in this kind of financial products.

It is also supported to require quarterly reporting on valuations in the post-contractual information.

7.2.4. Inducements – Questions (101), (102) and (103)

Supervisory experience by CNMV verified that information on inducements provided to clients by investment firms is clearly not enough. Thus, CNMV totally agrees with all the modifications proposed by the European Commission. It is strongly believed that the possibility of disclosing inducements in summary form, even in cases without the exact amount, should be eliminate. In our opinion, this possibility does not respect the obligations of keeping clients properly informed in order to enable them to understand the nature of the risks in the investment service and in the specific type of financial instrument being offered.
At the same time, CNMV considers that taking into account its supervisory experience, it is difficult for an investment firm to address properly conflicts of interest when incentives have been created. Therefore, CNMV supports banning third party inducements in the case of independent investment advice and in portfolio management except if those payments are backing down the client.

7.2.5. Provision of services to non-retail clients and classification of clients – Questions (104), (105) and (106)

CNMV agrees with the proposed amendments. They will strengthen investor protection level in all the categories of clients, not just retail clients but also professionals and eligible counterparties. Notwithstanding, CNMV thinks that the proposal c) would not be very reasonable.

7.2.6. Liability of firms providing services – Questions (107) and (108)

CNMV is not opposed to introduce a principle of civil liability to investment firms since this enable to ensure it will be applied in all the European jurisdictions. This would be aligned with the professional liability requirements stated in the Alternative Investment Fund Managers Directive (AIFM).

7.2.7. Execution quality and best execution – Questions (109) and (110)

CNMV supports the proposals. An increase in the post- trading transparency will help to comply with the best execution obligations. At the same time, CNMV believes the information on best execution policies could be clearly improved provided that it is understandable, simple and clear. Drawing up a template with key information on best execution policies is one option to consider.

7.2.8. Dealing on own account and execution of client orders – Questions (111) and (112)

CNMV agrees with the proposed amendments since they will provide a clearer way to comply with the regulations.

7.3 Authorisation and organisational requirements
7.3.1. Fit and proper criteria – Question (113)

CNMV supports the proposed modifications since we consider them necessary in order to achieve a maximum convergence at this regards. Historically, the definition of senior management as “persons who effectively direct the business of the investment firm” do not include the non-executive directors. Such fact has lead to some divergences along the EU. In consequence, strengthening the fit and proper criteria and expanding it to all members of the board of directors (both executive and non-executive) will be welcomed by the CNMV

However, we consider disproportionate to require experience to all members of the board of directors. At this regards, we believe that professional experience in the financial field should be distinguished from the remaining aspects of the fit & proper criteria. As an intermediate approach, CNMV will support to require experience to the majority (half plus one) of the members of the board, except the cases where the board of directors is composed only by three members (experience should be required to all members in such a case).

7.3.2. Compliance, risk management and internal functions. – Question (114)

CNMV considers that the proposal of the European Commission concerning the involvement of the board members in the functioning of the three internal functions is appropriate, since it will provide further convergence along the EU as regards to the firm’s structure of responsibility.

The proposed strengthen of the current framework for the handling of client complaints is also welcomed by this CNMV, in view of necessary harmonizing criteria along the EU.

However, CNMV does not consider appropriate the firm’s notification to the supervisor regarding the removal of the officers responsible for the internal control functions. On the one hand, whether the aim of the establishment of this requirement is the maintenance of a public register CNMV does not believe that this information may be useful for investors. On the other hand, whether this requirement intends to facilitate the firm’s supervision, CNMV does not consider the utility of such information.

7.3.3. Organisational requirements for the launch of products, operations and services- Questions (115), (116)

CNMV supports the proposed modifications in sake of the reinforcement and harmonization of the organisational requirements at European level. It is a fact that some EU supervisors are more demanding than others, as regards to the organisational requirements imposed to the firms when launching of products, operations and services. Obviously this is generating competitive disadvantage between EU firms. In consequence, CNMV considers crucial further harmonization at this regards. To achieve such objective, the implementing directive should be further detailed in order to cover and address the launch of new products, operations and services.

7.3.4. Specific organisational requirements for the provision of the services of portfolio management – Question (117)
CNMV believes that establishing specific organisational requirements on the basis of the nature of the investment service may not be appropriate, as long as it could prompt legal uncertainty. The establishment of organisational requirements exclusively addressed to the providers of certain investment services may be (mis)understood as an (unacceptable) lack of organisational requirements when providing the other investment services.

7.3.5. Conflict of interest and sale process – Question (118)

CNMV agrees with the European Commission approach. CNMV supports introducing specific rules in the implementing directive in order to achieve consistency between regulatory regimes.

7.3.6. Segregation of client assets – Questions (119), (120), (121), (122), (123)

CNMV agrees with the proposed measures in order to strengthen investor protection uniformly along the EU.

7.3.7. Underwriting and placing – Question (124)

CNMV supports the establishment in the implementing directive of specific requirements addressed to the providers of the investment services of underwriting and placing.

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

8.1 Options and discretions

8.1.1. Tied agents – Questions (125), (126), (127), (128)

CNMV supports the proposed changes, as long as they will reduce divergences between Member States, increasing legal certainty, in particular concerning the tied agents established in the host Member States. However, we do not agree with the proposal with regard to the assimilation of the tied agent as a branch when the investment firm has already established a branch in the host Member State. In this case, and in order to ensure a simplified and efficient supervision, CNMV believes that tied agents should be considered as part of the branch, just as they have been considered so far.
8.1.2. Telephone and Electronic recording – Questions (129), (130), (131), (132)

| CNMV considers that the proposal of the European Commission is appropriate, in view of harmonizing criteria along EU, although, in our opinion, it may not achieve enough consistency between regulatory regimes, as it leaves a certain degree of discretion for Member States when adopting the implementing measures. |

8.1.3. Additional requirements on investment firms in exceptional cases – Question (133)

| CNMV supports the deletion of the mentioned article 4 of the MiFID implementing Directive and the introduction of the obligation for Member States to communicate to the European Commission any addition or modification in national provisions in the field covered by MiFID, in view of achieving greater convergence along the EU as regards to the authorisation process and the investment firms requirements. |

8.3 Access of third country firms to EU markets – Questions (138) to (141)

| From CNMV’s point of view, legal provisions in MiFID on sanctions and supervisory powers should be established only after a thorough impact assessment in the jurisdictions of each Member State. |

9. Reinforcement of supervisory powers in key areas

9.1 Ban on specific activities, products or practices – Questions (142), (143) and (144)

| CNMV supports the European Commission proposal. |