Amafi > Association française des marchés financiers
FINANCIAL MARKET PROFESSIONALS

AMAFI / 16-08b
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CALL FOR EVIDENCE
EU REGULATORY FRAMEWORK FOR FINANCIAL SERVICES
-
AMAFI's contribution

Attached documents:

AMAFI / 16-08a - Appel à témoignage - UMC - Note de couverture.pdf

AMAFI / CMU - Call for evidence - Issue 2 example 2 Market liquidity.pdf

AMAFI / 15-03 - Tenue de marché - Market making - FR-EN.pdf

AMAFI / 15-0454 - Lettre Jean-Claude Juncker - Remuneration EBA guidelines.pdf

AMAFI / 15-0499 - Courrier - M. Niall Bohan - EC - MiFID II.pdf

AMAFI / 15-05 - ESMA's Technical Advice to the Commission on MiFID II and MIFIR - AMAFI's analysis.pdf

AMAFI / 15-10 - AMAFI - ESMA - MIF2 - Mesures d'application Paiement de la recherche.pdf

AMAFI / 15-27 - EC Consultation on the review of the Prospectus Directive - AMAFI's contribution.pdf

AMAFI / 15-40 - ESMA Consultation on draft RTS on the CSD Regulation - AMAFI's response.pdf

AMAFI / 15-48 - The question of market liquidity - Taking the measure of current developments to respond accordingly

AMAFI / 15-53 - TTFE - Illustrations_EN-FR.pdf

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A. Rules affecting the ability of the economy to finance itself and grow

Issue 1 – Unnecessary regulatory constraints on financing

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)

MiFID 2 (Directive 2014/65/UE), article 24 (7) et 24 (8) and ESMA Technical advice currently redrafted by the European Commission.

ESMA's proposal to characterise investment research as an inducement.

* Please provide us with an executive/succinct summary of your example:

ESMA's approach (applied to portfolio management and/or to collective investment schemes) would jeopardise the current business model of investment research. Our analysis is that it would inevitably lead to a deflation of research provision, given the extreme complexity of the proposed provisions which are concretely unworkable. The fall of investment research production would be especially important in relation to the coverage of SMEs, as in this area the demand for research comes mainly from small and medium-size asset management companies specialized in this asset class which would be unable to comply with these requirements.

As academic research shows it, there is a close link between research coverage and the appetite for investors to invest in SMEs. The current proposal would inevitably adversely affect the financing of SMEs, in contradiction with the main objective of the CMU initiative.

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
(please give references to concrete examples, reports, literature references, data, etc.)

AMAFI / 15-05 : ESMA's Technical Advice to the Commission on MiFID II and MiFIR - Outline of AMAFI's main concerns

AMAFI / 15-10 : MiFID II Implementing measures
Paying for research - The macroeconomic issues raised mean an in-depth debate is needed

AMAFI's letter 15-0499 on MiFID II.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

It is crucial to reject ESMA's proposal considering that:

Coverage of securities by financial analysts is acknowledged as being a factor that contributes to both the financing of issuers and the liquidity of markets. It is therefore necessary to ensure that new rules do not suddenly disrupt the funding of financial analysis, which is an intellectual service with high value added. The funding model is already weak, particularly for the less liquid securities, which are often those issued by SMEs and mid-tier firms.

This makes it extremely hard to understand the desire for an extensive revision of the mechanism used to fund financial analysis across all asset classes through MiFID 2 implementing measures, severing the link between remuneration and trading volume, particularly when considered in the light of the priorities stated by Europe through the CMU initiative.

The goal of protecting investors is a legitimate one, but so is that of funding SMEs and mid-tier firms. The challenge is therefore to weigh correctly the various factors at work in order to strike an appropriate balance, even if this means setting different rules based on the nature of the affected companies (SMEs and mid-tier firms warrant ad hoc treatment) and instruments (since research on instruments other than equities is not paid for by commission, it does not raise the same challenges in terms of risks of inducement and investor protection).

At least, the new MiFID rules 2 should be based on the following principles:

a) It should be clearly stated that the current "Commission Sharing Agreement" model as it is put in place in France and in the UK complies with the new rules.

b) In order to avoid unnecessary costs and constraints for small and medium size asset management companies, a safe harbour should be put in place, based on the total amount of execution and research fees they compensate per year. Besides, this would only be an application of the proportionality principle.

c) The new regime should not apply to the research on fixed income and credit (FICC) without any comprehensive regulatory impact analysis. Indeed, the nature of the FICC market structure (as these markets are price-driven, not order-driven) means that the risk that the provision of research would distort execution to the detriment of investors is low in the case of FICC research. As such, any benefits achieved by the proposed requirements are outweighed by the adverse unintended consequences when applied to FICC research.

Example 2

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Prospectus Directive (PD, 2003/71/EC and 2010/73/EU) and Proposal for a Regulation on Prospectus (COM(2015) 583 final).

* Please provide us with an executive/succinct summary of your example:

When a prospectus is needed: The cost of producing a prospectus is significant and for SMEs, particularly the smallest ones, it is prohibitive. Therefore, the exemption thresholds should be set at levels which strike an appropriate balance between investor protection and alleviating the administrative burden particularly for small issuers and small offers and these thresholds should be harmonized throughout the EU with no possibility for Member States and/or local NCAs to lower such thresholds in certain cases (notably for SMEs, making it even more costly for them to raise capital) Secondly, the way in which the threshold is calculated over a period of 12 months should also be modified as it is currently damaging for SMEs which try to raise capital to finance their development. Thirdly, the scope of the exemption should also be reviewed so as to extent to situations, such as secondary issuances, where the need for a prospectus is not justified. To achieve these objectives, three modifications are proposed (taking into account the proposals made in the PRP which certainly contains some improvements but is still insufficient in a number of respects).

Level of exemption and maximum harmonization: We do not understand why, in the context of the CMU, no harmonization is proposed regarding the exemption thresholds which appear in the PRP. If raising the 100,000€ threshold to 500,000€ is a good decision, we deeply regret the option given to Member States to have an exemption up to 10M€ (such exemption being in addition only for domestic offers which in fact is a setback compared to the previous 5 M€ threshold applicable to offers in the EU). If this is maintained (but we do hope that this point will be reviewed by the European authorities), it will affect significantly the level playing field which should exist between Member States. Our proposal is to raise the exemption threshold to an harmonized figure of 10M€ for all offers in the EU with no national options. As regards non-equity securities of high denomination per unit, we disapprove the proposal in the PRP to remove this exemption altogether. This will increase the cost and complexity of issues of debt securities which were previously exempted with no guarantee at all that in return issues to retail investors will be encouraged. Regarding the current 100,000€ threshold of article 3(2)(c) and (d) of the PD, our proposal is to keep such exemptions but lower them to 50,000€ to facilitate the marketing of debt products to a category of investors, the high net worth individuals who are not “normal” retail investors and who invest most of the time through portfolio managers who are professionals.

Method of calculation: The way in which the 5 M€ threshold is calculated over a period of 12 months by reference to the amount offered rather than to that effectively subscribed (and there is no change in the PRP in that respect) is particularly damaging for SMEs which try to raise capital to finance their development but can’t afford to fall within the scope of PD (or the PRP). If they need to call for capital again during the same 12 month period (particularly as it is not unusual for this type of company to be in a situation where, for a variety of reasons, a first offer has not been fully subscribed), it may be vital for such companies to be allowed, during the same 12 month period, to make a new offer for the unsubscribed balance. We propose therefore that reference be made to the amount effectively subscribed during a 12 month period (Please see in that respect our letter of 14 February 2013 to Commissioner Barnier with attached AMAFI document – AMAFI / 13-10).

Scope of exemption: It is unnecessary to require a prospectus for a further admission on a RM of fungible securities of same issuer (whose securities are already listed on the RM) unless concurrently offered to the public in which case, a prospectus could be required but with a "lighter regime" (simplified process and proportionate disclosure regime). If it is proposed in the PRP to alleviate the disclosure regime for secondary issuances, which is a positive move, AMAFI regrets that no distinction is made between the situation where securities are offered to the public (in which case a lighter disclosure regime is justified) and that where there is only a further admission to trading of securities with no offer to the public. In the latter case of further admission to trading on a RM of securities which are fungible with securities of the same issuer which are already listed on the RM, no prospectus should be required at all as the issuer is already subject to the Transparency and Market Abuse directives (regulation).

Another point is the **approval process of prospectuses** which is far too heavy and costly and unjustified for regular issuers. This is why AMAFI's suggestion is to adopt an ex-post system of approval which could be inspired from the WKSI (*Well Known Seasoned Issuer*) SEC status. Such a system could usefully be put in place in the EU for regular issuers, e.g. those having filed a registration document for three consecutive years and not been subject to certain specified sanctions. Such a system (possible both for issues of fungible or non fungible securities) would allow eligible issuers to seize favorable market conditions without having to wait for the approval of the prospectus and make it much easier for them to raise financing on capital markets. The frequent issuer system proposed in the PRP constitutes an improvement on the current system (with the fast track approval procedure that it entails). But this improvement is too limited since even for frequent issuers, the prospectus – i.e. all the documents being a part of it - must still be approved ex-ante. This includes the Universal Registration Document even when such Document will have been filed without prior approval (article 10 (2) of the PRP). This limits considerably the benefit of such a system which, if adopted, will remain a costly and time consuming process and will not allow frequent issuers to seize favorable market conditions for their financing operations. AMAFI does not understand why a system inspired from the WKSI system in place in the US (under strict conditions) could not be similarly put in place in the EU.

Another example of unnecessary constraint, still in relation to the PD but deriving from the Delegated Regulation n°759/2013 amending Regulation n° 809/2004 as regards **the disclosure requirements for convertible and exchangeable debt securities** is the requirement to provide a working capital statement and a statement of capitalization and indebtedness of the issuer of the underlying shares. The preparation of such documents is very costly whereas it is not really useful for the subscriber, as those instruments generally have a maturity of 3 to 7 years and in practice it is very unlikely that such subscriber becomes a shareholder before several years.
In that respect, see AMAFI's response to ESMA's consultation paper in July 2012 (AMAFI / 12-35).

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
(please give references to concrete examples, reports, literature references, data, etc.)

On those points and more generally on a number of suggested improvements to the PD, see also AMAFI's response to the EC consultation of May 2015 on the review of the PD AMAFI / 15-27. And also AMAFI / 12-35 and AMAFI / 13-10.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

See comments above.

Example 3

* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)

Proposal for a Council directive implementing enhanced cooperation in the area of financial transaction tax - « FTT » (Com(2013) 71 final).

* Please provide us with an executive/succinct summary of your example:

The contemplated (now EU-10) FTT is in total contradiction with the very idea of a CMU: First, its direct effect will be to increase the cost of capital for issuers subject to the tax as well as the hedging costs of economic agents (businesses and investors), and thus undermine their competitiveness. Second, in the affected Member States at least, the tax would directly impede the development of market financing. Third, the proposal also represents an ugly break in harmonisation efforts on the single European market; its likely effect, notably in the case of derivatives, will be to cause business to relocate outside the affected area.

* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)

The negative effects of an ill-calibrated Financial Transaction Tax have already been documented through several in-depth studies.

For instance, Oliver Wyman ((2013) 'Impact of the EU11 FTT on end-users' report) studied the impact of the proposed FTT on end users and highlighted that, due to cascading effects and reduced liquidity in the system, the tax would have quite significant material costs on end-users:

- Corporates would face annual costs of €8–10 BN, equivalent to 4–5% of post-tax profits in the impacted economies
- Governments would face annual costs of €15–20 BN, equivalent to ~1% of their annual debt issuance
- Investors would face a one-off decline in the value of their investments of 4–5% (equivalent to a €260–340 BN decline in asset values). Additionally, they will face annual costs of €5–15 BN in increased risk management costs

  In addition, the contemplated EU 11 FTT would likely to have side effects on the bank funding markets, on monetary policy transmission, and on the competitiveness of EU-11 banks in derivative markets and corporate banking.

From that standpoint, even though they depart from the initial EC proposal (as bonds and repos markets could be exempted), the elements in the statement made on the 8th of December 2015 by the remaining 10 countries in the EC initiative remain highly worrying. Indeed, a tax based on the retained features would (i) severely impact the liquidity of financial markets, as no sufficient market making exemption would be granted, (ii) harm investors and issuers, especially for their access to capital and (iii) make it more expensive for all parties to manage their financial risks, to such an extent that systemic risk would increase across Europe.

See also AMAFI's notes:
AMAFI / 15-53: European FTT - Illustrated examples of how the tax will have a negative impact on hedging;

AMAFI / 15-03: Market making - Key for efficient markets that finance economic activity;

AMAFI / 15-48: The question of market liquidity - Taking the measure of current developments to respond accordingly.

See also Example 5 for Issue 2.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

The economic damage of the contemplated (now EU-10) FTT would by far outweigh the long-term gains that could arise from CMU. We hence strongly recommend the withdrawal of the proposal for a EU-10 FTT (unless it can be extended to all Member states of the European Union).
In any case, urge the Commission to cease providing any support (notably through the TAXUD) to the initiative.

Example 4

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2013/36/EU on capital requirements (CRD IV).
Regulation (EU) No 575/2013 EU of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR).

* Please provide us with an executive/succinct summary of your example:

SMES' Financing:

Following the introduction of stricter capital rules by the Capital Requirements Regulation (CRR) and Capital Requirements Directive (CRD IV), and in the context of credit tightening after the financial crisis, a capital reduction factor for loans to small and medium enterprises (SMEs) – the so-called SME Supporting Factor (SF) - was introduced by the CRR in January 2014 to allow credit institutions to counterbalance the rise in capital to provide an adequate flow of credit to SMEs.

Putting in place **special rules in order to encourage the financing of SMEs** is a very positive initiative but it should not be limited to the banking book but **extended to the trading book for non-systemically important assets.**

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
(please give references to concrete examples, reports, literature references, data, etc.)

AMAFI / 15-03 : Market making - Key for efficient markets that finance economic activity.

AMAFI / 15-48 : The question of market liquidity - Taking the measure of current developments to respond accordingly

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

Non-systemically important assets. In any event, non-systemically important assets held as part of market making activities, especially those issued by SMEs and mid-tier firms, should be subject to streamlined prudential treatment. By their very nature, these assets do not pose a risk to the financial system, yet the support of liquidity providers is particularly necessary to keeping this market healthy and ensuring its liquidity. Strengthening this support would therefore help to relaunch growth and ensure the orderly functioning of the economy.

Example 5

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Proposal for a regulation of the European Parliament and of the Council on structural measures improving the resilience of EU credit institutions (COM(2014) 43), known as Banking Structural Reform - BSR.

* Please provide us with an executive/succinct summary of your example:

The Commission's proposal was aimed at addressing the "too-big-to-fail" risks. Yet, it does not take into account of, and is duplicative with, the recent regulatory developments.

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
(please give references to concrete examples, reports, literature references, data, etc.)

First, BSR proposal fails in acknowledging that the “too-big-to-fail” risk has already been addressed through several regulatory reforms that have been initiated since the outburst of the financial crisis:

- the implementation of CRD IV / CRR and EMIR has already significantly increased the strength and resilience of the European banking industry,
- strong, transparent supervision combined with effective resolution regimes (BRRD), including creditor bail-in, also substantially address “too-big-to-fail” risks,
- the coming implementation of TLAC - whose final standards were published on November 9, 2015 by the Financial Stability Board (FSB) – will complete the set-up to address that risk. As recalled by Mark Carney, Chair of the FSB, the “*agreement on proposals for a common international standard on TLAC for G-SIBs is a watershed in ending “too big to fail” for banks”*”

In addition, the text is not only complex but, given the work underway in Basel on the “Fundamental Review of the Trading Book” (FRTB), could lead to significant, duplicative and potentially inconsistent measures to address the same risks. The FRTB will notably achieve a greater consistency in risk-weighted assets outcomes across banks , produce better incentives for traders than VAR as it will capture tail risk and include the market liquidity risk, all being assessed at the desk level ; diversification benefits across risk factors and trading desks are also materially limited in the new regime. Defining a new regulation aimed mainly at tackling excessive risks prior to introducing such a major overhaul of the prudential treatment of trading activities as well as other recent evolutions (SREP, stress tests, strengthened ICAAPs…) would be ill-considered and ill-timed;

Last, as the main rationale of this proposed regulation is to prevent the failure of systemic entities, it should be reminded that business models or banking structures per se did not cause the financial crisis. It is a matter of fact that specialized institutions – pure retail or investment banks - were the most severely hit by the 2007-08 crisis. Following a basic analysis of the 2006-2007 financial statements of those universal banks that would be covered by the current scope of the EU draft legislation, it appears that none of these institutions would have been captured by the ratios proposed by the Hökmark-von Weizsäcker compromise.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

As the objectives of the BSR proposal have already been met by both existing and pipeline reforms, and considering the economic costs of the proposal, we urge the Commission to re-evaluate the economic rationale for continuing with the BSR regulation, and ultimately to remove the proposal.

Issue 2 – Market liquidity

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Accounting Directive. The adverse impact of IFRS 9.

* Please provide us with an executive/succinct summary of your example:

Accounting standards have a cross-cutting impact insofar as they apply to all the participants, i.e. investors, issuers and financial institutions. As a result, efforts to curb liquidity requirements must include limiting the procyclical effects of these standards in a crisis situation. This in turn entails thinking about valuing assets as a function of the holding period. Such an adjustment is vital to making these investments less sensitive to short-term variations and to mitigating the procyclical effects otherwise created. In this respect, there are questions over the impact during times of stress, particularly on low-liquidity securities, of the international financial reporting standards (IFRS) that have applied in Europe since 1 January 2005. IFRS notably introduced fair value (IAS 32 and 39), a concept which introduces a major driver of procyclicality.

Systematic use of mark-to-market measurement can lend added momentum to a downward spiral. The consequences of these new standards, some of which are still in the process of being drawn up (IFRS 9), have definitely not been adequately taken into account and need to be reconsidered in all cases where an immediate market value is not a key determining factor in the investment horizon (i.e. in practice for the vast majority of investors other than CIS).

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

Recognise that some instruments are illiquid:

Mark-to-market measurement may be inherently inappropriate. Some instruments, despite all efforts, will remain inherently low on liquidity. In this sense, they are less consistent with the ideal definition of a market instrument. The market is only meaningful when it brings buyers and sellers together, as this is what gives reality to the prices that it determines. It is therefore natural that the rules applicable to institutions and instruments alike should recognise this specificity, without excessively penalising these instruments, which play a vital role in enabling certain companies and projects to access market financing.

This is why, alongside efforts to improve the liquidity of each market segment where possible, regulations need to be steered towards a clearer and more explicit recognition of the fundamental lack of liquidity of certain instruments. This could be achieved through appropriate “market” regulations for these products and through improved recognition by institutional investors of the true liquidity level of instruments, ensuring consistency with their financing approach and valuation and investment horizon. This will promote the emergence of longer-term solutions that are consistent with this weaker liquidity (the European long term investment fund (ELTIF) format is obviously be a first step in this regard).

Example 2

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Prudential rules, understood in the broad sense to include not only those that came out of **the Basel Accords, and particularly the Basel 3 packag**e, which applies to the solvency and liquidity of financial institutions, but also **banking structure** and **resolution reforms**.

* Please provide us with an executive/succinct summary of your example:

A tougher regulatory framework is causing liquidity providers to retrench.

Numerous regulatory requirements were stiffened in response to the crisis, while some new rules were introduced. In particular, steps were taken to improve the systemic resilience of financial institutions (banks and investment firms) by strengthening the prudential framework.

While these developments have differing impacts, together they materially change the economic equilibrium of a number of activities. As a result, institutions that are active in these areas have been forced to abandon activities whose profitability has fallen too low under the new capital requirements, as well as those that, to be profitable, would entail resources that are no longer consistent with strategic guidelines. Banks are right at the heart of the review process, which has resulted in some drastic changes, including a massive withdrawal from market making, an activity that is chiefly comprised of high-volume, low-margin flow business.

Prudential rules are the main reason for the retrenchment. New requirements either ahead or already in effect their effects differ across asset classes and businesses, but all of them contribute to reducing the capacity of affected institutions – and especially banks – to provide liquidity to the markets.

Banking structure reforms: separate market activities. Banking structure reforms have been launched in various countries, including the Volcker rule in the USA, which bans pure proprietary trading, the Vickers reform in the UK, which requires banking groups to ring-fence retail operations, and the European Union's Barnier proposal, which draws on the findings of the Liikanen Report and which, as it stands, calls for a structural separation of trading activities from deposit, payment and credit operations.

Reforms linked to bank recovery and resolution.

Dealing with bank failures. The pointed question of ensuring the orderly resolution of bank failures was raised in the wake of the financial crisis after governments were forced to step in to inject liquidity and even capital into banking systems. To be able to respond more effectively and swiftly in the event of a new crisis, measures were taken to set up resolution authorities, to require banks to draw up credible recovery and resolution plans, and to impose minimum requirements in terms of debt instruments eligible for a bail-in (as opposed to a bail-out using taxpayers' money) so that a failing institution could be recapitalised using its own resources in an emergency.

The first measures were introduced in the USA through the Dodd-Frank Act and in Europe through the Bank Recovery and Resolution Directive – BRRD (Directive 2014/59/EU of 15 May 2014). The impact of these measures on market making has been felt primarily through strengthened prudential requirements relating to TLAC and the resolution fund.

TLAC. In the case of the 30 or so global banks identified as systemically important, the Financial Stability Board (FSB) proposed in November 2014 to set a minimum level for the items available to absorb losses in the event of a bail-in, known as total loss-absorbing capacity (TLAC). According to this requirement, from 2019, total capital and eligible debt must be equal to at least (i) 16% to 20% of RWAs and (ii) twice the leverage ratio of these institutions.

For a large proportion of these institutions, adjusting to this new constraint will mean (i) issuing new debt, so increasing the cost of doing business and creating the need to review the minimum levels of profitability required of these activities, and/or (ii) optimising the size of operations (putting the accent on RWAs or balance sheet size as applicable). In all cases, the adjustments will impact market activities (notably liquidity provision) that are the least profitable with respect to their RWAs or balance sheet size.

Creation of a Resolution Fund. The fact that the largest financial institutions in the euro area will have to contribute to the Single Resolution Fund (SRU) will necessarily affect their strategy in terms of market activities. This contribution, which is estimated at EUR 55 billion between 2016 and 2024, is an additional charge for financial institutions and, since it is based on balance sheet size, will hit market activities especially hard, giving an incentive to scale them back.

Basel 3 has considerably raised solvency and liquidity requirements:

The new rules include the following:

- A requirement to raise the quality and level of capital to cover risk-weighted assets (RWAs). This has pushed up the cost of capital and prompted a withdrawal from businesses offering inadequate profitability relative to capital consumption (cf. illustration 14 on the next page). Thus, Core Equity Tier 1, which used to be set at 2%, has been increased to 4.5%, while the required level of Tier 1 capital, which was around 4% before the crisis, will be raised to more than 8% in 2019, including a “conservation buffer”. Supplementary bank-specific buffer requirements are also in place and could reach 5% in 2019.

- A capital charge for variations in counterparty risk (Kcva), which severely restricts exposures linked to long-dated derivatives, uncollateralised exposures and exposures to counterparties with a high credit risk or those without a liquid CDS market to hedge the risk .

- A leverage ratio designed to cap the leverage of financial activities. This ratio, which has been disclosed by banks since early 2015, will be included in capital standards in 2018 (at least 3% of Tier 1). Because it is based solely on balance sheet size rather than on the risk associated with the business, it encourages banks to withdraw from activities that are objectively low-risk and correspondingly generate little income, but that, owing to the leverage ratio, consume too much capital.

Expected effects of the FRTB. More recently, the Basel Committee undertook a Fundamental Review of the Trading Book (FRTB) to look at the rules in this area. These rules are scheduled to be finalised at international level in late 2015 for implementation in 2018. The purpose is to obtain a more refined and stable definition of assets assigned to the trading book and the banking book, but also, and more importantly, to overhaul the methods used to recognise risk, with models applied at trading desk rather than institutional level.

Since capital requirements are expected to increase as a result, financial institutions have built this aspect into their reviews .

LCR and NSFR. The 2007-2008 financial crisis revealed that, overall, before tackling solvency issues, banks had to deal with liquidity problems, which, in some instances, had spilled over significantly to the wider financial system. Basel 3 thus introduced two ratios aimed at limiting bank exposure to liquidity risk: the liquidity coverage ratio (LCR) and the net stable funding ratio (NSFR).

- The LCR is designed to promote banks' short-term resilience by ensuring that they have sufficient high quality liquid assets (HQLAs) to cope with a serious liquidity crisis lasting 30 days. This ratio is being phased in and will be increased from 60% in 2015 to 100% in 2019. It forces banks to tie up large amounts of instruments on their balance sheets, diverting significant resources (in terms of total assets and allocated capital), which are no longer available for traditional liquidity providing activities, and also, ironically, turn banks into liquidity consumers.

- The NSFR seeks to reduce funding risk over a longer horizon by requiring banks to fund their activities through sufficiently stable sources to mitigate the risk of subsequent financing difficulties. The mechanism is expected to enter into force in 2018 and its procedures have not yet been determined.

Based on the currently proposed procedures, however, the ratio would severely impact repo activities, which are vital to the liquidity of market trading, and derivatives activities

Banking structure reforms: separate market activities.

While they take different approaches, all of these reforms seek to introduce a more or less strict separation of market and retail banking activities. However, the fairly broad ban on banks' pure proprietary activities has already caused:

- The disappearance of flows that, regardless of banking resilience considerations, contributed objectively to market liquidity, notably through arbitrage activities, even though arbitrage, according to its basic definition, carries little or no risk.

- Increased management complexity and regulatory risk for international banks that are subject to several similar but not identical frameworks and that must track certain specific indicators (portfolio age and turnover, reasonable near term demand of clients), which, overall, exerts downside pressure on inventories.

- An increase in costs associated with the market activities kept on by banks, including those relating to market making. In particular, the implementation of audit and compliance frameworks to differentiate market making from discontinued or ring-fenced pure proprietary trading has automatically pushed up market making costs and cut into return on equity (ROE).

Application of ratios to market activities only. Furthermore, while these structural reforms were supposed to ensure compliance with Basel ratios only within market activities rather than at group level , the changes will inevitably force affected banks to cope with additional constraints in these activities and correspondingly to increase the restrictive nature of their strategic approach to market making.

* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)

In terms of providing liquidity to the markets, banks now play a fraction of the role that they used to play before the 2008 crisis.

Decline in capital allocated to market making.

Since 2008, banks have steadily withdrawn from the market making activities that used to see them play a major role in providing liquidity to the markets and with respect to their clients. This retrenchment, which individual banks have steered through the amount of capital they allocate to market activities, is primarily visible through reductions in balance sheets and trading book inventories.

The large investment banks have drastically reduced their market activities. In their fixed income operations, where market making plays an especially vital role, balance sheets have shrunk by around 30% since 2010 and a further 10%-20% potential reduction is forecast in the coming years.

Reflected in reduced inventories.

This is leading to a sharp decline in the securities inventories held by investment banks, which are needed for market making.

And fewer market makers.

This retrenchment has also translated into a decline in the number of market makers doing business in a given financial instrument. In European corporate bonds, for example, the average number of market makers per instrument more than halved between 2009 and 2013, falling from nine to four. In the USA, out of the eight main dealers in US Treasuries today, just two are banks acting as market makers.

Liquidity and market making: correlated factors.

This withdrawal by market makers is impacting liquidity. The IMF notes a positive correlation between the number of market makers in a bond and that bond's liquidity resilience, estimating that the presence of an additional market maker increases a bond's relative performance by 15%.

See also AMAFI / 15-48: The question of market liquidity - Taking the measure of current developments to respond accordingly.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

A monetary policy challenge.

The regulatory constraints placed on traditional liquidity providers, i.e. “market intermediaries”, and particularly banks, were introduced with the legitimate goal of strengthening financial stability.

But by doing this, since regulators were not primarily concerned about market liquidity questions, these restrictions introduced new risks, which were partly masked by the "liquidity illusion" created by exceptional market conditions and action by central banks. It has now become vital to more effectively address factors that weaken the markets.

The need for an assessment.

With this in mind, and given the importance of market liquidity to orderly markets and, ultimately, to financial stability, it is essential to conduct a cost/benefit analysis of these rules, looking at the role played by liquidity providers, the analytical data now available on the effects of the stricter rules placed on these providers, and the impact in terms of fragmentation. This analysis should be performed at a sufficiently granular level and take account of the impact of the various rules on different financial asset classes and on the different market activities performed by "market intermediaries".

In other words, market liquidity is a major factor that should be taken into account more systematically by central banks (in their dual role as monetary policymakers and bank supervisors) and also by the authorities with responsibility for systemic risk (in practice central banks would be largely involved in this capacity too). Central banks and authorities are increasingly doing this, but this role needs to be more clearly defined.

The restrictions on banks' liquidity provision functions should be re-examined

Identify excessive effects.

While there is no question of rolling back the major progress made in recent years in terms of strengthening the stability of the financial system, the fact is that the cumulative impact of the new standards either already in place or on the way has not been examined as such. Specifically, the ability of the financial system in general and of the market in particular to play their role in financing the economy as efficiently as possible has not been truly taken into account. Restoring the resilience of financial institutions was the overarching need and overshadowed other considerations but their importance to orderly modern economies and social cohesion can no longer be ignored.

An in-depth review is therefore needed to identify any excessive and unwanted effects of certain rules. This review, which will require cooperation by prudential regulators, market supervisors and affected participants, should seek to identify those rules within the body of prudential standards that, either alone or cumulatively, have a disproportionately negative impact on market liquidity relative to the gains obtained in terms of financial stability. More generally, in future rulemaking, regulators need to give more thought to managing the continuum between market liquidity (which exists under "normal" market conditions) and "prudential" liquidity (which exists in a "stressed" situation), by adopting more holistic approaches and measuring interactions between different sets of standards.

Carefully weigh the choices currently being made. As part of this, the prudential standards presently at the drafting stage need to be recalibrated to provide a "sanctuary" for market making activities that are still viable. These activities, whose usefulness to financing the economy and hedging risk has been demonstrated would benefit enormously from an exemption within reasonable limits (i.e. without a systemic impact) from the requirement to calculate certain ratios.

In any case, for the standards that are still under discussion, and as long as the crucial in-depth study has not been carried out, the principle of neutrality in terms of equity and funding costs should be applied going forward – most probably at regional level and at the level of each family of instruments – since it seems that any additional requirement is likely to be at the expense of orderly markets and, ultimately, of financing for the economy.

Example 3

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments – Current provisions on markets transparency
Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments
Articles 8, 9 10, 11 on transparency for non-equity instruments
ESMA/2014/1570 Consultation paper MiFID II / MiFIR of 19 December 2014

* Please provide us with an executive/succinct summary of your example:

The European Union MiFID 2 is expected to materially change the requirements applicable to the business of liquidity provision, first through the transparency provisions, that will significantly increase the probability that firms' positions will be revealed and the speed with which this happens, and second, by subjecting firms to specific restrictions in terms of presence, access to quotes, and even the aggressiveness of prices offered. Although graduated according to asset liquidity and order size, these requirements will surely change the nature of liquidity provided to the markets, by promoting the rise of high-frequency traders on markets that they have been absent from until this point and, conversely, by discouraging traditional liquidity providers from trading in large quantities on behalf of their customers.

In addition, ESMA final proposals on liquidity's definition and calibration and on the transparency requirements for non-equity financial instruments, notably bonds, still do not adequately reflect the actual reality of the bond market.

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
(please give references to concrete examples, reports, literature references, data, etc.)

According to MiFIR Article 2/1(17) a bond market is considered liquid if there are "*ready and willing buyers and sellers on a continuous basis*". The article also states that "*the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instruments*" should be taken into account.

ESMA's technical advice to the European Commission (a) defines a bond as liquid if it trades on average twice a day, over 80% of time and in average daily nominal amount of EUR 100.000 and (b) provides for a more regular follow-up of the liquidity as well as more dynamic liquidity thresholds, which will allow for a more regular adjustment of pre and post-trade transparency requirements imposed on transactions on non-equity financial instruments.

ESMA's final proposals to the Commission do not address all the major issues:

First, the liquidity remains somehow wrongly calibrated. As an example, ESMA still removes trades below EUR 100,000 from the calculation of the liquidity thresholds, in spite of the industry's request. In this respect, we remind that non-equity markets are mainly quote-driven markets and that an inappropriate calibration of the liquidity would result in significant unintended consequences for the real economy, contrary to the European Commission's growth and Capital Markets Union objective to build an efficient and un-fragmented EU market, with capital markets playing an increasing role in the provision of financing. An inappropriate regime would indeed make it more difficult for liquidity providers to commit capital to facilitate trades, resulting in less depth of liquidity and wider spreads.

Secondly, the pre-trade and post-trade transparency constraints, even being improved, remain also somehow wrongly adjusted, notably for "*Request-for-quotes*" (RFQ) systems that have been developed for non-equity financial instruments for several years. Indeed, the transparency guidelines that are currently being finalised will, notably as regards non-equity financial instruments, undermine the operating conditions of liquidity providers doing large trades by increasing the risk of disclosure of their positions to third parties. Without disputing the need to strengthen transparency, it is crucial to ensure that this transparency does not raise any risk for market-makers to be subject to arbitrage by third financial intermediaries having been informed that a trade may be executed within a short time-period. Otherwise, market-makers would be induced not to commit any longer in order to avoid any such risk. In this case, end-investors (pension funds, insurance policy holders …) would be impacted as investment firms would find it more difficult and expensive to manage their portfolios; and issuers would be discouraged from issuing bonds since investors would require higher yields.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

Careful trade-off between transparency and liquidity.

Transparency is a response to asymmetry.

After informational asymmetries were pinpointed as one of the major causes of the 2008 crisis, the authorities made financial market transparency the central plank for a number of reforms. Within Europe, MiFID 2 is the key regulatory instrument taking this action forward.

The introduction of enhanced transparency obligations for trading venues, with caps on the amount of equities and equivalents that can be traded in dark pools, and the extension of pre- and post-trade transparency obligations to non-equity instruments (chiefly bonds and derivatives) are the most noteworthy examples of changes that will profoundly alter the way that certain market segments operate.

Potentially severe problems.

The transparency guidelines that are currently being finalised will, notably in the case of non-equity instruments, whose markets are essentially price-driven, undermine the operating conditions of liquidity providers doing large trades by increasing the risk that their positions could be revealed to third parties.

Without disputing the vital need to strengthen transparency, it is nevertheless crucial to ensure that this transparency is suited to the way in which the markets to which it is applied actually work. Otherwise, particularly in the case of large trades, there is a danger that the functioning of affected markets might be disrupted, hurting investors and indirectly issuers through the impact on transaction prices.

Parameters used to define liquidity in bond markets (average daily notional amount traded, and average daily number of trades) should adequately reflect market liquidity and should be in line with Level I requirements. Industry analysis considers therefore that the daily number of trades should be set 4 times a day, for notional amounts of 5M€ should be considered.

The need for an impact study.

While the impact studies conducted in the lead-up to the Level 2 measures deserve serious criticism, MiFID 2's effect on market liquidity does need to be the subject of an in-depth impact study. This should be done fairly promptly after the new arrangements are implemented, so that provisions that turn out to be counterproductive can be quickly revised. Since the goal is to ensure orderly markets, close monitoring is especially necessary because European standard-setting procedures do not support quick turnaround times.

Such a study should consider the following in particular: the criteria for measuring the liquidity of different families of instruments, the requirements placed on liquidity providers (acting on-exchange or bilaterally), calibration of thresholds for pre-trade transparency exemptions and access to post-trade deferrals, along with the duration of these deferrals. Note also that these questions need to be examined in conjunction with those relating to the development of high-frequency trading which is supported, in contrast to large-volume liquidity provision, by the widespread introduction of pre-trade transparency and execution on electronic trading platforms.

Example 4

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

The CSD Regulation 648/2014

* Please provide us with an executive/succinct summary of your example:

Article 7 of CSDR provides for a settlement discipline regime that contains an extension period between 4 and 7 days according to whether the securities are liquid or not. **This time difference is extremely narrow** and whilst 2 + 4 days could be realistic for normally liquid securities, “illiquid” securities are often more difficult to find than within 2 + 7 days.

And above all, putting the charge of a mandatory buy-in on the CSD for OTC transactions too, is not realistic as in these transactions, the seller and buyer know each other and a buy-in can be executed at trading level.

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
(please give references to concrete examples, reports, literature references, data, etc.)

AMAFI / 15-40 : ESMA Consultation on draft RTS on the CSD Regulation - AMAFI's response.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

The CSDR should be redrafted in order to make sure that the mandatory OTC buy-in procedure is carried out at the trading level.

Moreover, the settlement discipline regime should be put in place only after the full implementation of T2S and ideally developed at the T2S level rather than be each CSD in order to avoid unnecessary costs of developing and maintaining various systems.

Example 5

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Tax rules.

* Please provide us with an executive/succinct summary of your example:

The major difficulties faced by many financial institutions during the financial crisis prompted some governments to take vigorous action to ensure their long-term survival and avoid a major systemic crisis. Although other factors played a part, these measures, which involved taxpayers' money, were unable to prevent the financial crisis from turning into an economic crisis. As a result, spurred on by public opinion, governments took a punitive stance in the post-crisis period, toughening the tax rules applicable to financial institutions and financial transactions, which were combined with fiscal targets and, in some cases, with the idea that tax mechanisms could also support financial regulation objectives by containing market activities that were deemed not to be useful. As a result, in several countries, the profitability of market activities was affected by a growing tax burden.

Accordingly, the financial sector was asked to make a contribution, in some cases a fairly heavy one, via balance sheet taxes such as the UK bank levy or France's systemic tax. Furthermore, following the introduction of a financial transactions tax (FTT) in France and Italy, ~~11~~ – now 10 – EU countries are currently working on an initiative that would introduce a shared FTT under enhanced cooperation arrangements. While the outlines of this project are still being sketched out, there is a significant risk that associated market making, inventory and hedging activities might only receive reduced waivers, making them less profitable and hence less sustainable for affected firms.

* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)

On FTT, see Example 3 for Issue 1.

On market making activities, see AMAFI / 15-03: Tenue de marché - Market making

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

The economic damage of the contemplated (now EU-10) FTT would by far outweigh the long-term gains that could arise from CMU. We hence strongly recommend the withdrawal of the contemplated EU-10 FTT. Were the proposal to move further, it would be of paramount importance to exempt market making activities (including inventory activities and hedging).

Issue 3 – Investor and consumer protection

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
  (If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

* Please provide us with an executive/succinct summary of your example:

The progressive attenuation of the calibration of the obligations according to the client category is considerably increasing the constraints on financial intermediaries and clients (retail / professional – professional / eligible counterparts).

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
  (please give references to concrete examples, reports, literature references, data, etc.)

New requirements from MiFID II such as Product governance apply to Professional Clients as well as to retail clients. Organisational requirement from Product governance could even apply to Eligible counterparties.

All new requirements from MiFID II for best execution purposes (especially level 2 measures) apply to Professional clients whereas MiFID I focused much more on retail clients.

Same comment for Client Complaints that will apply to all clients under MIFID II and for Information on costs and charges where the so called "limited application" of requirements for Professional and Eligible clients is quite insufficient and makes the requirements very burdensome for such clients.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

Level 3 guidelines from ESMA or national guidelines that would be provided for Investor Protection rules under MIFIDII should take into more account the classification of clients and allow light touch implementation for wholesale business in general.

Issue 4 – Proportionality / preserving diversity in the EU financial sector

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2013/36/EU, on capital requirements (CRD IV).

Regulation (EU) No 575/2013 EU of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (CRR).

* Please provide us with an executive/succinct summary of your example:

Proportionality

Contrary to other economic zones and in particular the US, Europe has incorporated almost automatically the Basle requirements to the European framework. It has lead to the application of almost all the Basle rules, which are only elaborated for large and international banks to small and mid size entities, banks and investment firms.

As a result all investment firms have to comply with a very burdensome regulatory framework which is very difficult to understand and which, in most cases, does not fit the reality of the activities they carry out and the nature of the risk they have to deal with. For example the application of the Leverage Coverage Ratio (LCR) to investment firms is not workable given the nature of the activities they carry out.

The only limit is the proportionality principle. Pursuant to Article 5, paragraph 4, of the Treaty on European Union: "*Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.*"

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
(please give references to concrete examples, reports, literature references, data, etc.)

European Banking Authority (EBA) "Report On Investment Firms" (EBA/Op/2015/20);
Legal opinion on an issue raised by the implementation of the proportionality principle within the EU (http://www.banque-france.fr/fileadmin/user_upload/banque_de_france/HCJP/Avis_01_A.pdf).

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

AMAFI fully supports the content and the recommendations of the EBA's Report On Investment Firms (EBA/Op/2015/20). In particular it is crucial to put in place a new prudential regime which distinguishes:

a) systemic and 'bank-like' investment firms to which the full CRD/CRR requirements should be applied;

b) other investment firms ('non-systemic') with a more limited set of prudential requirements;

c) and very small firms with 'non-interconnected' services.

Example 2

* To which Directive(s) and/or Regulation(s) do you refer in your example?
  (If applicable, mention also the articles referred to in your example.)

Directive 2013/36/EU, on capital requirements (CRD IV).
Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013 (EBA / GL / 2015 / 22).

* Please provide us with an executive/succinct summary of your example:

Proportionality:

In its Guidelines on remuneration policies and practices as mandated by the CRD4, the European Banking Authority adopts an interpretation of the proportionality principle which would result in requiring all institutions, whatever their size, organisation or activities to comply, for all identified staff, with the limitation of the maximum ratio between the variable components of remuneration and the fixed components to 100% (200% with shareholders' approval) each provision of the CRD4 on remuneration.

This approach is at odds with the policy at work in other existing European regulations which include this principle, under which proportionality plays both to strengthen the rules and to soften them

The effect of the undifferentiated approach adopted by EBA would be highly negative for a large number of institutions, as it would inevitably raise their fixed costs, thus limiting their ability to withstand economic downturns and would greatly harm their wage competitiveness towards competitors who can benefit from being part of a large group or whose activity is not subject to similar requirements. Losing the adjustment factor given by variable remuneration means losing their wage competitiveness, jeopardising their ability to keep their key employees and to attract new talents, and so, endangering their capacity to resist future economic shocks.

This interpretation is improper as it would affect firms which pose no systemic risk and which are of specific importance to facilitate access to market funding for small and mid-tier issuers.

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
(Please give references to concrete examples, reports, literature references, data, etc.)

AMAFI's letter 15-0454.
Legal opinion on an issue raised by the implementation of the proportionality principle within the EU (http://www.banque-france.fr/fileadmin/user_upload/banque_de_france/HCJP/Avis_01_A.pdf).

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

It necessary to set a common threshold under which national competent authorities would be authorised to apply the rules with some flexibility, taking into account the size of institutions as well as the complexity of their business and the potential systemic risk induced by their activities .

Example 3

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) No 596/2014 of the EP and of the Council of 16 April 2014 on market abuse (market abuse regulation Directive 2014/57/EU of the EP and of the Council of 16 April 2014 on criminal sanctions for market abuse

* Please provide us with an executive/succinct summary of your example:

Requirements on prevention and detection of market abuses are getting more and more demanding. It is now difficult to be compliant without investing in IT sophisticated automated tools. Such investment is more difficult for small investment companies and therefore detrimental to preserving diversity in the financial sector.

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
(please give references to concrete examples, reports, literature references, data, etc.)

Some relatively small investment firms did not have an automated tool to detect potential market abuse when the first directive entered into force. They relied on human vigilance thanks to regular training. That seems no longer true: many of them had to invest a lot to buy such automated tool in order for them to comply with a more demanding regulation.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

ESMA and national regulators should have a more proportionate approach towards firms in such matters. It seems inappropriate and inefficient to have the same expectation for small investment firms which by definition have not the same scale of activity than the biggest ones. Thus, the Commission should make sure that the tools that have to be put in place are adequate with respect to the size of the activity of the firm.

B. Unnecessary regulatory burdens

Issue 5 – Excessive compliance costs and complexity

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

* Please provide us with an executive/succinct summary of your example:

Product Governance and Definition of Target Market.

The draft guidelines from ESMA could lead to a multi criteria approach that fails to take into account the type of product in question, since the marketing of equities or bonds issued by a firm could have to follow the same procedure as that used for a complex product. This would result in an unnecessarily unwieldy and administratively burdensome framework which, rather than being proportionate to the actual risk incurred by retail investors, would lead to highly restricted target market definitions. Such restriction would ultimately limit the options for distributing certain financial instruments that are critical to the effective financing of the economy.

Furthermore, ESMA seems to propose a highly detailed approach for defining target market with a long list of 9 compulsory criteria to screen – each of those criteria could be classified into X categories… This screening would have to be done by Manufacturers in all cases for all products – whatever the complexity of the product and, by Distributors depending on the service provided (full screening when providing investment advice vs. partial screening for execution). That seems highly too ambitious and complicated: when the requirement is too complicated to understand and implement it could only be inefficient; especially where it is a new requirement.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

Prior to drafting a Q&A or guidelines, ESMA should launch a wide and public consultation / a call for evidence from Professionals on the matter.

Example 2

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

* Please provide us with an executive/succinct summary of your example:

Data recordkeeping costs (storage and exploiting) are excessive.

Some foreseeable consequences are: an increasing recourse to outsourcing and a concentration of market players.

Example 3

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.
Article 27: Obligation to execute orders on terms most favorable to the client.

* Please provide us with an executive/succinct summary of your example:

Best execution requirements, and particularly the provision of an annual report summarizing the top five execution venues in terms of trading volumes where they executed client orders in the preceding year and information on the quality of execution obtained, are excessive and unjustified for retail clients.

Indeed, the volume and complexity of the data required under this provision are disproportionate and will not be useful for retail clients. The implementation of this rule will unnecessarily increase firms' costs.

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
(please give references to concrete examples, reports, literature references, data, etc.)

The volume and complexity of current required data under the proposed best execution reporting requirements is seriously disproportionate and will undermine its purpose under Level 1.

Under the proposed ESMA RTS, it seems that billions of data fields under RTS 27 and up to 36,000 data fields under RTS 28 are to be consumed and analysed by investors. The sheer volume and the complexity of these data will not help them in getting a better understanding of the quality of a bank's best execution practices.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

The unconfirmed benefits of the proposed regime should be measured against the actual costs and effectiveness of implementing such a complex and disproportionate regime. A more appropriate scoping and usable data set is needed, in order to make these data "informative".

Example 4

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) No 596/2014 of the EP and of the Council of 16 April 2014 on market abuse (market abuse regulation
Directive 014/57/EU of the EP and of the Council of 16 April 2014 on criminal sanctions for market abuse

* Please provide us with an executive/succinct summary of your example:

Insider lists contain too many details. It will be highly difficult to implement and keep updated.

* Please provide us with supporting relevant and verifiable empirical evidence for your example:
(please give references to concrete examples, reports, literature references, data, etc.)

All personal data required within the insider lists are problematic because it is every detailed. It implies many costs generated by the implementation of an effective, comprehensive and properly maintained information system within the firms and by IT developments. It also raises difficult legal questions as far as data protection rules are concerned.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

Invite ESMA or national regulators to publish guidelines at national level. Such guidelines should allow to adopt a proportionate approach and compliant with national legislations on data as far as insider lists are concerned.

Issue 6 – Reporting and disclosure obligations

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Prospectus Directive (PD, 2003/71/EC and 2010/73/EU)

* Please provide us with an executive/succinct summary of your example:

In order to the reduce the cost and administrative burden of producing a prospectus, the scope of documents which could be incorporated by reference should be extended to cover any and all regulatory filings made in accordance with the Prospectus or the Transparency Directive and Member States' relevant implementing measures.

Example 2

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments - Requirements on information duty / reporting to clients.

* Please provide us with an executive/succinct summary of your example:

Best execution: reports to be issued are burdensome and not yet proved to be that relevant for clients

Best execution requirements like requiring the prior express consent of clients for execution of orders outside of a regulated market and a MTF is a very burdensome requirement.

Requirement of an annual report of costs and charges although there are reported for each transaction. Generally speaking, many requirements form MIFID II lead to inform the client at least twice on the same matter.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

RTS 28 and Delegated Acts should be reviewed to reconsider the scope of disclosure duties, with a more articulated view at costs and benefits.

Example 3

* To which Directive(s) and/or Regulation(s) do you refer in your example?
  (If applicable, mention also the articles referred to in your example)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments - Article 58(2) et (3) Position reporting by investment firms.

Article 58.2 provides for the obligation for investment firms to provide, on a daily basis, the competent authority with a complete breakdown of their positions taken on a trading venue and equivalent OTC contracts as well as those of their clients and the clients of their clients.

Article 58 (3) provides for the obligation for members and participants of trading venues to provide those trading venues with details of their own positions and their clients' positions in on-venue contracts. These reports are required on a daily basis.

* Please provide us with an executive/succinct summary of your example:

AMAFI would like to remind that position limits will be set in reference to the position reporting. If the reporting is not accurate, so won't be the limits.

Market participants and their members are aware only of the transactions they carry out for their clients. Therefore, they are unable to report the trades that those same clients may be making through other participants.
Clearing members offering a clearing service have the information concerning the position of their direct client. However, they do not have the information concerning the ultimate client in case of omnibus account (gross or net OSA). In this case, this is the institution which holds the client's clearing account that will have the information.

In the current MiFID 2 position reporting scheme, information can't be correctly collected and the ultimate objectives of articles 57 and 58 will be missed.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

To review the architecture of positions reporting system so as to allow for an efficient transmission of the data.

Example 4

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

- Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 Text with EEA relevance, recitals (32) and (35) and Title IV (art.24– 27)
- Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
- Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency
- Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency.

* Please provide us with an executive/succinct summary of your example:

The regulatory reform program introduced different reporting requirements for market participants.

Different flows of transactions reporting under different rules and mechanisms may entail uncertainties, double counting or gaps, complexity and cost which may finally miss the final transparency objective and monitoring purpose.

In some cases, different requirements have introduced conflicting reporting requirements. As an example, in general SFTR, EMIR and REMIT apply to any person who trades relevant products, whereas MiFID and MiFIR reporting regimes only apply to EU regulated investment firms and banks. Further, under EMIR for instance, both counterparties to a trade are required to report. In many cases a non-financial counterparty will not be equipped to carry this out, leading to widespread non-compliance, flawed data and necessary remedial steps such as delegated reporting.

In terms of the overlapping reporting requirements, one product will fall within more than one reporting regime. For example, certain derivatives may need to be reported under MiFID/MiFIR, EMIR or REMIT. It is generally not possible to send in one report to satisfy multiple reporting requirements, as the data required is not consistent across regimes and reporting requirements may also be triggered at different times. As a particular example, there is a lack of consistency in the interpretation as to which products are included under EMIR (from MiFID, annex C, interpreted by each NCA). Also, TRS have to be reported under EMIR, MIFID2/R and the SFTR according to different formats.

Finally duplicative obligations can also result from diverging requirements between the EU and non-EU jurisdictions. This is typically the case for reporting to trade repositories when one counterparty is located in the EU and the other one outside the EU. The EU counterparty may be required to report twice (to one trade repository in the EU and to one trade repository outside the EU), for example when one counterparty is located in Singapore.

* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)

The different Regulations introduce specific transaction reporting:

- MIFIR reporting regime

The details of transactions in financial instruments should be reported to competent authorities to enable them to detect and investigate potential cases of market abuse, to monitor the fair and orderly functioning of markets, as well as the activities of investment firms (Recital 32 of MIFIR).

The reporting obligation under MIFIR is applicable to investment firms authorised under MiFID 2 and credit institutions authorised under CRDIV when providing investment services and/or performing investment activities. The reportable products under MIFIR are:

(i) Financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made
(ii) Financial instruments where the underlying is a financial instrument traded on a trading venue; and
(iii) Financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue. (Article 26 of MIFIR).

"Financial instruments" means those instruments listed in Section C of Annex 1 of MiFID II.

The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale.

For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3) (a) and Article 21(5) (a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU. (Article 26 of MIFIR)

- Article 9 of EMIR provides that Financial counterparties and non-financial counterparties (as defined in Article 2(8) and 2(9) respectively of EMIR) and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a registered trade repository

The purpose of the reporting obligation under EMIR aims at providing authorities with a comprehensive overview of the market and for assessing systemic risk, in particular regarding interconnectedness between OTC derivatives participants.

The products that are reportable under EMIR are any derivative contracts that mean a financial instrument as set out in MiFID II. This includes both exchange-traded and OTC derivatives.

The reports shall specify at least:

(a) the parties to the derivative contract and, where different, the beneficiary of the rights and obligations arising from it;
(b) the main characteristics of the derivative contracts, including their type, underlying maturity, notional value, price, and settlement date.

Another example are thresholds in Transparency and in Short selling which are based on a different methodology.

Worse, the requirement to make public net short positions seems to be disproportionate, not really useful since firms are required to disclose such data to regulators. It creates misunderstanding from Issuers. It could create false information for the market and publication within trading day is problematic since it is likely to create a disruptive market effect.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

First, consolidate the different tools, second, find an efficient solution to manage the different data.
A dedicated Regulation on Reporting across products, that would replace existing provisions and harmonize reporting obligations, could be of use.

Example 5

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) No 596/2014 of the EP and of the Council of 16 April 2014 on market abuse (market abuse regulation

* Please provide us with an executive/succinct summary of your example:

The disclosure of conflicts of interest: lower threshold both for long and short position at 0.5% of the issued share capital of the issuer to which the investment recommendation, directly or indirectly, refers. The administrative burden will increase and it is widely considered as useless since investors would not consider a long position of 0.5% as a conflict of interests.

Issue 7 – Contractual documentation

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments

* Please provide us with an executive/succinct summary of your example:

Within **Product Governance** requirements, MIFID firms will have to review their contractual documentation with their producer or distributor to comply with the new legislation. Because of territoriality and reciprocity issues, some of them will have to manage difficult negotiation with non MIFID or non EU firms.

European legislator and regulators rely on firms to impose regulatory requirements by way of contracts whereas the firm is not always on an easy commercial position to impose such restrictions.

Another example is on **Personal Transactions**: Under MiFID II, firms are required to impose restrictions on personal transactions to services providers (eg IT). The service providers often work punctually for the firms so it seems disproportionate and useless to impose them such important requirements.

Example 2

* To which Directive(s) and/or Regulation(s) do you refer in your example? (If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments

Technical Advice to the Commission regarding Client Agreement (§ 2.19 of its Final Report of 19 December 2014).

Written agreement

* Please provide us with an executive/succinct summary of your example:

ESMA proposes to extend significantly the scope of the requirement for a **written agreement** which should be entered into by investment firms with their clients. Indeed written agreement should now be requested not only for the provisions of all investment services to retail clients but also for the provisions of all investment services (and the ancillary service of safekeeping and administration of financial instruments for the account of clients), to new professional clients after the date of application of MiFID II.

AMAFI disagrees with the extension of this requirement to the relationship with professional clients which seems utterly unjustified.

In general, the frequent and numerous regulatory changes entail too frequent adaptation of contractual documentation. As a result, the legal framework is not sufficiently stable.

Example 3

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments

* Please provide us with an executive/succinct summary of your example

Opt-in and opt-out mechanisms complicate excessively the contractual exchanges.

Example 4

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments

* Please provide us with an executive/succinct summary of your example:

MiFID requires obtaining clients consents on:

- Categorization
- Policies
- handling orders policy including specific provision on limited orders widely not understood by most of clients and prior express consent for OTC orders, again not well understood by many clients.

These requirements are burdensome, they add costs since firms spend time to update the contractual documentation and they don't provide greater investor protection.

Issue 8 – Rules outdated due to technological change

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
  (If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;
Regulation (EU) No 596/2014 of the EP and of the Council of 16 April 2014 on market abuse (market abuse regulation.

* Please provide us with an executive/succinct summary of your example:

The provisions imposing printed documents (contractual documents in particular) are restrictive and outdated. MAR requires notifying clients and obtaining their consent on many provisions.

Issue 9 – Barriers to entry

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
  (If applicable, mention also the articles referred to in your example.)

Regulation (EU) No 596/2014 of the EP and of the Council of 16 April 2014 on market abuse (market abuse regulation)

* Please provide us with an executive/succinct summary of your example:

The broadening of the market abuse regulation scope to MTF, by applying a burdensome regime to both RM and MTF, may constitute a barrier to entry to issuers who are not listed.

Example 2

* To which Directive(s) and/or Regulation(s) do you refer in your example?
  (If applicable, mention also the articles referred to in your example.)

The EU Legislation as a whole.

* Please provide us with an executive/succinct summary of your example:

In general, the ongoing growing regulatory and obligations burden constitutes as such a barrier to entry to new participants (reducing consequently the competition) and may even constitute a factor of eviction for a number of European players.

Ultimately, American investment banks, which operate in a more favorable context, gain market shares in Europe at the expense of European market participants.

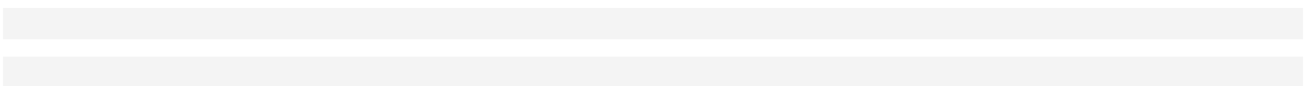
In order to serve its economy properly, Europe needs to have a sound and diverse financial system which it can regulate and monitor.

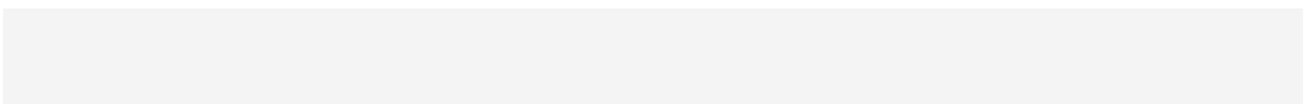
* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)

It is sufficient to look at the different ranking, over the last years, of large financial institutions (worldwide and at European level) in the market league tables.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

When producing new rules or amending the existing ones, European legislator should evaluate more precisely their effect on competition within Europe, considering with careful attention the ability of European financial institutions to be able to continue to serve the specific needs of European investors and issuers.





C. Interactions of individual rules, inconsistencies and gaps

Issue 10 – Links between individual rules and overall cumulative impact

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Prudential regulation

* Please provide us with an executive/succinct summary of your example:

Legitimacy of individual rules is not in general questionable but their cumulative impact give rise to important constraints on the financing of the economy, and most particularly of SMEs.

See ISSUE 1

Issue 11 – Definitions

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
  (If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;

* Please provide us with an executive/succinct summary of your example:

Investment service: the absence of definition of all investment service makes difficult to determine their exact scope.

Example 2

* To which Directive(s) and/or Regulation(s) do you refer in your example?
  (If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, Article 4 (1)(13) of MiFID 2.
Article 2(1)(t) of the Prospectus Directive and article 2 (f) of the Proposal for Prospectus Regulation (PRP)

* Please provide us with an executive/succinct summary of your example:

SMEs: The new definition of SMEs in the PRP puts an end to the lack of coherence which currently exists between the definitions of SMEs in MiFID 2 and in the PD. SMEs under the PRP will be defined, inter alia, by reference to the definition of SMEs in MiFID 2. This is certainly a positive move.

However this alignment to a market capitalization of EUR 200,000 is highly insufficient to reflect the reality of mid-sized companies seeking to access capital markets. Under the PRP, a minimum disclosure regime is proposed for SMEs, the content of which is not known yet (it should appear delegated acts to be adopted in the future). But this minimum disclosure system should not be limited to companies having a market capitalization of EUR 200,000 if the objective is truly to make it easier for mid-sized companies to raise capital. This is why AMAFI advocates the creation of a new category of mid-sized companies, with a market capitalization of up to 1 billion euros for which a bespoke prospectus regime (possibly the minimum disclosure regime proposed in the PRP if this regime appears to be satisfactory) could be put in place, irrespective of whether they are listed (and where) or not.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

AMAFI advocates for the creation of a new category of mid-sized companies, with a market capitalization of up to 1 billion euros for which a bespoke prospectus regime could be put in place, irrespective of whether they are listed (and where) or not. (S*ee previously*)

Example 3

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the EP and of the Council of 15 May 2014 on markets in financial instruments;

* Please provide us with an executive/succinct summary of your example:

Eligible counterparty for investment services: the notion of eligible counterparty varies depending on each investment service. The notion exists for services like execution of orders or reception and transmission of orders but not for investment advice for instance. Therefore, firms should consider eligible counterparty as Professional clients as far as investment advice is concerned. Since the definition of the service of investment advice is very wide, a lot of suitability assessments are being done even with such highly sophisticated counterparty.

This is still considered as useless…

Issue 12 – Overlaps, duplications and inconsistencies

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Alternative Investment Fund Managers Directive 2011/61/EU
Directive 2014/65/EU of the EP and of the Council of 15 May 2014 on markets in financial instruments (MiFID 2)
UCITS

* Please provide us with an executive/succinct summary of your example:

Inconsistencies between the portofolio management notions referred to in different EU legislations

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

If the notions referred to in the different EU legislations refer to the same concept, there should be a harmonization of the terms.

Example 2

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

MAR, MAD 2, Transparency Directive

* Please provide us with an executive/succinct summary of your example:

The disclosure requirements are not the same in MAR/MAD for disclosing potential conflicts of interests in investment recommendations and the Transparency Directive.

Example 3

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Directive 2014/65/EU of the EP and of the Council of 15 May 2014 on markets in financial instruments (MiFID 2)

Regulation (EU) No 1286/2014 of the EP and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

* Please provide us with an executive/succinct summary of your example:

Inconsistencies between the target market definition. PRIIPS make reference to only 3 criterias where as MIFID II seems to go under a much complex and detailed approach.

Inconsistencies about the timeline : PRIIPS is supposed to apply several months before MIFID2 where as there are strong thematic interconnections between some of the new investor protection rules in MIFID2 – such as cost disclosure, performance scenarios, target market and PRIIPS.

Example 4

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps
ESMA's guidelines on "Exemption for market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps" 02/04/2013| ESMA/2013/74

* Please provide us with an executive/succinct summary of your example:

Inconsistencies between the definition of market making activities in the Regulation (EU) 236/2012 (Article 2(1)(k)) and the ESMA's guidelines

In its guidelines, ESMA has a very stringent interpretation of the "membership" requirement of Article 2(1)(k) while considering that the exemption would be granted for market making on financial instruments notified only to the extent that the market maker would be a member of the trading venue on which market making is performed. Indeed the first limb of Article 2(1)(k) of the Regulation states that the market maker must be a member of a trading venue or third country equivalent market, it does not say in the second limb that the financial instrument for which notification is sought must be traded on that market.

ESMA's condition cannot be met for all market making activities subject to the short selling regulation, especially OTC derivatives.

Given that, five National Competent Authorities (including the AMF, the FCA and the BAFIN) have decided not to comply with ESMA's guidelines which create uncertainties, unlevel playing field and costs of implementation for investment firms.

* Please provide us with supporting relevant and verifiable empirical evidence for your example: (please give references to concrete examples, reports, literature references, data, etc.)

Guidelines compliance table : 19 June 2013 ESMA/2013/765
Peer Review Report : Compliance with SSR as regards Market Making activities : 05 January 2016 | ESMA/2015/1791

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

We recommend a modification of ESMA's guidelines in order to be consistent with the level 1 provisions.

Issue 13 – Gaps

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
  (If applicable, mention also the articles referred to in your example.)

MIFIR
ESMA draft RTS 2, page 47, article 1.2 (a)
Final report on MiFID 2- MiFIR, page 155, points 311 and 312

* Please provide us with an executive/succinct summary of your example:

Exchange for physical (EFP) in Commodities

EFPs are composite transactions that are linked directly to a transaction in the underlying physical market. They represent a very large portion of transactions traded on EU exchange and are widely used particularly in commodity (agricultural, oil, and metals), bonds, and equity derivatives markets.

The current regulatory environment allows for a waiver to pre-trade transparency so that EFPs can be negotiated outside the central order book while the on-exchange leg of the composite transactions is reported to the exchange.

The current draft RTS2 and the final ESMA report as currently worded put an end to this waiver opportunity. EFPs are qualified as packaged transactions and the legal review carried out over the summer concluded that ESMA does not have the mandate as per level 1 to develop a specific regime for EFPs.
As a consequence, the reference to waiver for EFPs has been wiped out from the RTS 2.

In the end, contracts deemed liquid, but under the LI and SSTI waivers threshold, would be within the scope of the pre-trade transparency. It seems that widely used commodity contracts are concerned.

* If you have suggestions to remedy the issue(s) raised in your example, please make them here:

We recommend an amendment of MiFIR which would allow for a tailored treatment of EFPs in the context of pre-trade transparency.

D. Rules giving rise to possible other unintended consequences

Issue 15 – Procyclicality

Example 1

* To which Directive(s) and/or Regulation(s) do you refer in your example?
(If applicable, mention also the articles referred to in your example.)

Accounting and prudential rules

* Please provide us with an executive/succinct summary of your example:

Accounting rules:

Accounting standards have a cross-cutting impact insofar as they apply to all the participants considered above, i.e. investors, issuers and financial institutions. As a result, efforts to curb liquidity requirements must include limiting the procyclical effects of these standards in a crisis situation. This in turn entails thinking about valuing assets as a function of the holding period. Such an adjustment is vital to making these investments less sensitive to short-term variations and to mitigating the procyclical effects otherwise created. In this respect, there are questions over the impact during times of stress, particularly on low-liquidity securities, of the international financial reporting standards (IFRS) that have applied in Europe since 1 January 2005 (Obligation to apply the IASB framework to companies listed on a regulated market (Regulation (EC) No. 1606/2002). IFRS notably introduced fair value (IAS 32 and 39), a concept that breaks with French accounting traditions and introduces a major driver of procyclicality.

See also Issue 1.

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