

**MEMO# 32447**

May 7, 2020

# ICI Global's Draft MiFID II Response to the European Commission - Member Comments Requested by 11 May 2020

[32447]

May 7, 2020 TO: Derivatives Markets Advisory Committee  
Equity Markets Advisory Committee RE: ICI Global's Draft MiFID II Response to the European Commission - Member Comments Requested by 11 May 2020

As previously advised,[\[1\]](#) on 17 February 2020 the European Commission issued a consultation[\[2\]](#) on the review of MiFID II/MiFIR.[\[3\]](#) The original deadline for responses of 20 April has been extended to 18 May. Attached is ICI Global's draft response to the consultation. The draft response takes account of the input we have received from members including during member calls held on 4 March[\[4\]](#) and 23 April[\[5\]](#) and other requests for input.[\[6\]](#)

We are seeking comments on the draft response by Monday 11 May. Comments on the questions concerning research unbundling and SME research coverage should be sent to Eva Mykolenko ([emykolenko@ici.org](mailto:emykolenko@ici.org)). Comments on other questions should be sent to Giles Swan ([giles.swan@ici.org](mailto:giles.swan@ici.org)).

Members are invited to provide comments on all aspects of our draft response. We are particularly interested in feedback on the following questions and topics:

## Investor Protection

- **Simplifying and focusing product governance rules (Q46-48,p33-35)** – we argue for (i) the introduction of a default assumption that non-complex products are suitable for the retail target market; (ii) clarification of the obligations on fund managers to define the characteristics of products and on distributors to ensure appropriate distribution; (iii) limiting the scope of target market requirements to retail products; and (iv) extending the reformed requirements on non-MiFID comparable investment products.
- **Reforming inducement rules but not introducing an pan-EU inducements ban (Q 49.1-Q50.1, p35-37)** – we argue for: (i) simplifying and harmonising MiFID, UCITS and PRIIPs disclosures; (ii) harmonising the interpretation of inducements and the conditions for the quality enhancement test (including consideration of a non-exhaustive list of criteria); and (iii) aligning the suitability assessment of equivalent

investment products with the quality enhancement test.

- **Changing other aspects of the investor protection framework** – we identify barriers to retail investors accessing products suitable to their needs (Q6.1, p6-7), approaches to the phase out of paper-based information (Q35-Q36, p27-28) and recommendations for the establishment of an EU-wide database of investment products by ESMA (Q37-39.1).
- **Client categorisation (Q40-45.1, p31-33)** – we are seeking input on the aspects of proposals to create a semi-professional client categorisation and other considerations for the distribution of funds to the retail public.

## **Trading, Market Structure and Investment Research Issues**

- **Changes in pre-trade and post-trade transparency resulting from MiFID II (Q4.1, p5)** – anecdotal feedback from ICI Global members suggests that MiFID II/MiFIR has not materially increased pre- and post-trade transparency and some members report that this has decreased for certain asset classes. We are seeking input as to whether this is the experience of members across the board.
- **The “playing field” between execution venues (Q5.1, p6), the regulation of systematic internalisers and reforms to the share trading obligation (Q21-29.1, p19-p22), derivatives trading obligation (Q77-80.1,p43-44) and double volume cap (Q82, p45-46)** – we note the different functions of execution venues, argue that SIs should not be subject to additional regulation and that the STO, DTO and DVC should be repealed;
- **The establishment of a well-constructed and thoughtfully implemented consolidated tape (Q7-Q30.1, p9-24)** – our draft response includes the following: (i) arguments for the establishment of a consolidated tape, ideally sequenced across asset classes to ensure timely delivery (equity and equity-like initially); (ii) recommended features of the tape and additional considerations for bond and derivatives; and (iii) discussion of how a tape will support best execution obligations but that consumption should not be mandated;
- **Research unbundling rules and SME research coverage (Q58- Q68.1, p39-43)** – we set out member perspectives on the quantity, quality and pricing of research and consider aspects such as the use of artificial intelligence and the creation of an ESMA database for research.
- **Open Access (Q83-Q85, p47)** – we are seeking input on the benefits and drawbacks of open access including whether theoretical benefits of scale, competition and innovation are likely to be realised and potential operational challenges (e.g. interoperability)
- **Continuing to exclude Spot FX from MiFID and MAR (Q92, p51)** – we argue that the regulatory framework is adequately calibrated and that we have not identified market integrity or market conduct issues that warrant changes at EU or Member State level. Spot FX contracts should not be brought within the scope of MiFID II/R or MAR.

Giles Swan  
Director of Global Funds Policy  
ICI Global

[Attachment](#)

## endnotes

[1] See Memorandum No. 32240, RE: European Commission Issues Consultation on MiFID II/MiFIR, dated 25 February 2020, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo32240>

[2] The consultation is *available from* [https://ec.europa.eu/info/sites/info/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/2020-mifid-2-mifir-review-consultation-document\\_en.pdf](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2020-mifid-2-mifir-review-consultation-document_en.pdf).

[3] Directive and Regulation on Markets in Financial Instruments (respectively MiFID II – Directive 2014/65/EU – and MiFIR – Regulation (EU) No 600/2014

[4] See Memorandum No. 32250, RE: Member Call on EC Consultation on MiFID II/MiFIR Review and ESMA Consultation on MiFID/MiFIR Third-Country Regime - March 4 at 10 am EST/ 3 pm London, 27 February 2020, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo32250>

[5] See Memorandum No. 32358, RE: EU MiFID II/R Consultation - Deadline Extended to 18 May; Member Call on 23 April, dated 6 April 2020, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo32358>

[6] See Memorandum No. 34241, RE: EU MiFID II/MiFIR Consultation - Seeking Feedback on Research Unbundling/SME Questions, dated 27 April 2020, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo32421>