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FINANS DANMARK

Finance Denmark response to "Targeted consultation on integration of EU Capital Markets"

Høringssvar

19. maj 2025
Dok: FIDA-1851823956-324-v1
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Finance Denmark welcomes the opportunity to provide comments to the European Commission's consultation on integrated EU Capital Markets with a deadline to The Danish Financial Authority 19 May 2025. Due to the very short deadline, Finance Denmark reserves the right to provide additional comments at a later stage.

Finance Denmark has initially the following general comments to the consultation followed by more specific comments to section 1-7 in the consultation paper. Please note, however, that our response is not comprehensive and more details and comments will be included in the final response to the European Commission.

General comments

Finance Denmark fully supports the European Commission's initiative to work on breaking down national barriers and divergent practices in the EU capital markets. In particular, existing divergent practices and (to a lesser extent) national over-implementation hamper time-to-market and increase structural costs for investors. Removing operational barriers would support the organic development of more efficient capital markets. However, it is important that the work on harmonization does not lead to an additional layer of prescriptive regulation and that the harmonization process includes an assessment of whether national rules/practices can benefit the EU broadly. Equally important, however, is our observation of missing enforcement of existing rules. For instance, enforcement in relation to the unjustified increases in market data costs in combination of unreasonable terms & conditions as well as participation rules, enforcement of the trading rules and the apparent existence of brokers crossing networks and so forth.

We are strong proponents for genuine competition AND a level playing field. These combined requirements are critical for the ability to build a grow competitive and efficient European capital markets where local ecosystems also can prevail and thrive.

Finance Denmark is fully aware of the urgency of improving European capital markets. However, the magnitude of the consultation and the requirement for data support and level of details in both some of the questions and responses is an unrealistic task to meet with the extremely short deadline in mind. Hence, we reserve the right to provide additional comments and data support after the

deadline as well and we welcome the European Commission to call for additional examples directly as well.

Please also beware that some of the data exercises require access to fee structures and policies from the capital market infrastructure. At present, it is only possible to access limited material, and some named firms even refuse to hand out material older than the past year, making it difficult for the users to provide the requested documentation for the unreasonable development in both costs and complexity. Hence, this serves the ground for the first proposal from our side: Either require capital market infrastructure to publish fee structures, terms & conditions and other relevant material for users on their web with multiyear comparison for the past 10 years or create a public available database where all this information is available without any restrictions.

Capital market infrastructure (trading venues, CCPs and CSDs)
First and foremost, we agree that the size and the efficiency of EU capital markets are far below what we should have. The less efficient capital markets harm the ones the capital markets are for meaning the **companies** as they face reduced access to capital as well as higher costs of capital and the **investors and pension savers** facing lower return on their savings and investments**. EU as a whole** face a persistent weakness in both facilitating SMEs and matching the ability of China and the US to create new mega players in critical industries. The end result is harmful **to all of us.**

It goes without saying that there is a sense of urgency, and the European Capital markets have the potential to grow considerably to the benefit of the whole EU, **IF** the political system has the courage and the will to **solve the core problems** instead of focusing on the symptoms.

In that context, it is important to stress that capital market infrastructure are infrastructure companies and natural monopolies which at present are allowed to operate on an unrestricted for-profit basis unlike infrastructure in other sectors. This allows the capital market infrastructure to be able to charge monopoly rent and impose both unreasonable terms and conditions as well as restrictive participation rules and contracts.

Furthermore, during the past years, considerably consolidation both horizontally and vertically has been manifested but without the expected benefits for users.

On the contrary. Costs have increased and both choice and quality have deteriorated leaving the European capital markets without the possibility to become efficient, to grow and to be competitive. It is time to correct a significant misunderstanding in the capital markets: Infrastructure is **not** the end goal or the star of the show – it is means to an end like the stage upon which the performance takes place. Hence, in the capital markets – the capital market infrastructure companies are the **enablers** of connectivity and growth and must be ensured to stay as such instead of continuing as monopolistic bottlenecks as this ability undermines the principle of infrastructure as a neutral enabler and stifles efficiency, competition and growth in the capital markets.

Below, Finance Denmark initially provides an overview of the core problems and proposal for solutions in relation to capital market infrastructure.

Core problems in relation to capital market infrastructure and a possible solution
The focus is mainly on shares in the section on trading venues.

Trading venues - core problems
A Regulated Market (an exchange) has three different core business legs where the exchange collects revenue: Listing, trading, and market data. For Multilateral Trading Facilities and Organised Trading Facilitites[1], the revenue stream comes mainly from trading and market data.

In the market for **listing** (the primary market) where companies carry out public offerings to gain access to capital and funding, the following is observed:

- The exchanges compete in principle for listings and mainly for larger companies in contrast to smaller companies (SMEs) as SMEs to a larger degree depends on local investors whereas larger companies appeal to a broader range of investors – both local and international investors.
- However, a company's home market is often regarded as the country in which it is incorporated. This is where companies usually go public, and it is here that investors tend to expect the listing. A company is intimately linked to the economy, culture, infrastructure, technology base and taxes of its home country. It is also committed to the relevant capital market regulations.
- Listing in another country requires resources to handle differences in financial reporting standards, legal and regulatory compliance, corporate governance, requirements for disclosure and transparency, listing fees and ongoing costs etc.
- Hence, most listings, and in particular in SMEs, are still on the national exchange (incumbent exchange) due to the structural challenges and differences in corporate laws, tax laws, insolvency laws etc.[2].

In the market for **trading** (the secondary market), there is competition – but it is hampered and centralized between Regulated Markets (exchanges) and MTFs:

- Statistic[3] reveals that incumbent exchanges still hold more than 50% of the trading, and the closing auctions, where incumbent exchanges hold the absolute monopoly, count for on average 25%[4].
- There is de **facto zero competition between exchanges** in trading. Or as New Financial writes[5]: "…*Most competition today between exchanges is episodic and arguable in the wrong places. While MiFID introduced much-needed competition between exchanges in trading, most of that competition is between incumbent exchanges and more recent challengers like Aquis, Cboe Europe and Turquoise, and not between incumbent exchanges themselves….* "
- The lack of competition between exchanges can also be verified by investigating the cross-border exchanges groups where neither offers consolidated orderbooks. Access to all orderbooks within a group requires access to each individual market (country).
- In sum, there is not a market failure in continuous trading – but competition is hampered due to lack of competition between the exchanges

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[1] Only non-equities.
[2]For example, also asset protection differs as Corporate Law differ in respect on liability – e.g. if the management is incompetent. Insolvency laws differ, there are tax difference and differences in withholding tax procedures etc.
[3] CBOE, April 2025
[4] Continued decline in lit volumes sees closing auctions and dark pools become more prevalent and own interviews with market participants.
[5] The problem with European stock markets (New Financial) and PowerPoint Presentation (newfinancial.org)

themselves. However, in closing auctions, there is an actual monopoly situation which adds to the market power of the exchanges.

For **market data**, **there is an absolute monopoly** (a market failure)[6]. Market data contains fundamental knowledge, which is indispensable for trading, best execution, risk management purposes etc., and thus, demand is not very responsive to price increases (inelastic demand).

- The fact that market data is unique per trading venues is verified by the European Commission and substantiated by some of the trading venues themselves when suggesting that the provision of market data services should be segmented between "*(i) the provision of proprietary trade-related information (…), namely information generated on an exchange, such as real-time pricing and trading volume data, and for which that exchange is the sole provider; and (ii) the provision of non-proprietary market information.*"[7] The Commission strongly supported this view themselves in the same decision: "*..market investigation confirmed that the Notifying Parties each provide exchange-specific information that is not capable of being replicated by market data services provided by other exchanges or venues.*" Additionally, in its competitive assessment of market data the Commission finds that as "*concerns proprietary market data, each notifying party is by definition the sole provider of the trade-related information generated on its own platforms. Therefore, there is no horizontal overlap between the Notifying Parties' activities and their proprietary data products should be considered as complementary*."[8].
- In short, the **supply of market data is a monopoly** as market data is unique for each trading venue, and therefore, market data cannot be substituted between venues (you cannot use market data from trading venue A to trade on trading venue B) nor with Consolidated Tape data. Furthermore, demand is inelastic as access to market data is indispensable for market participants in order to stay in business.

CCPs – core problems

A CCP interposes itself between the two counterparties in a financial transaction. After the parties have agreed to a trade, the CCP becomes the buyer to every seller and the seller to every buyer. In doing so, the CCP reduces counterparty credit and liquidity risk exposures through netting.

- A CCP **is a monopoly** unless interoperability is introduced and even then, the competitive situation is limited due to high switching costs for clients and high entry cost and network effect for CCPs. We also see differences i margin requirements, fees, cut-off times, buy-in rules. collateral acceptance etc.
- Interoperability is apparently not a "real" requirement for cash equities despite MiFIR art. 35 and 36. Unlike the rest of EU, interoperability is the standard in the Nordics within cash equities but not in the rest of EU. The Nordic approach to interoperability should be the European standard.

[6] There's No Market in Market Data (2025)Pricing of market data (2018), mifid_ii_mifir_review_report_no_1_on_prices_for_market_data_and_the_equity_ct.pdf, Opimas; Regulators must act on exchanges' market data monopoly; From National Marketplaces to Global Providers of Financial Infrastructures: Exchanges, Infrastructures and Structural Power in Global Finance
FLASH FRIDAY: Why the Market Data Monopoly Won't Be Nirvana - Traders Magazine; Consultation on MiFIR Review Package (non-equity trade transparency, reasonable commercial basis and reference data); Accessing and using wholesale data – Call for Input (fca.org.uk); regulating-access-to-and-pricing-of-equity-market-data-revised-version-12-september-2013.pdf;]

[7] Case No. COMP/M.6166, Deutsche Börse/ NYSE Euronext, para.139. See also para. 157

[8] Case No. COMP/M.6166, Deutsche Börse/ NYSE Euronext, para.140, 152 and 159.

- For derivatives, requirements for interoperability have been removed in article 35 and 36 with MiFIR2.

CSDs – core problems
The core business model of a CSD is concentrated around the following business legs, as it operates a securities settlement system ("settlement service")[9], it records newly issued securities in a book-entry system ("notary service") and it provides and maintains securities accounts at the top tier level ("central maintenance service")

- For the **settlement** competition is hampered and cross-border settlement is considerably more expensive than domestic settlement. The T2S platform was created e.g. to mitigate this problem. However, even as settlement is increasing concentrated on T2S the move has not solved the problems due to lack of harmonization in settlement practice, conflicts of laws, lack of standards, lack of links between CSDs etc. In this context, we strongly encourage further adaptation of T2S in the Nordics, where e.g. Euroclear Bank should be mandated to adapt T2S links to all T2S CSD's where they act as investor CSD's and in all T2S currencies.
- Furthermore, despite the outsourcing of settlements to T2S, we have not seen a price reduction in CSD settlement costs - on the contrary. The costs have increased due to a market practice where the CSD charge T2S costs as add-on.
- For **issuance** of securities, there is a **de facto monopoly** for the **issuance of shares**, as the CSD issuance is linked to the exchange where the company is listed. For **issuance of bonds** and other types of instruments, there is **competition.**
- For **maintenance** of securities, including for example the processing of corporate actions, such as dividend and interest payments, or voting rights in the case of shares, there is a **de facto monopoly** as the service is linked to the securities issued at the CSD. The lack of harmonisation in these areas prevents market participants to utilize investor CSD and T2S settlement efficiency and further legal harmonization is required.
- For the **safekeeping**, for all other countries besides NO and FI there is **competition** in relation to **client accounts**. It should, however, be noted that the end-investor accounts reduce the benefit of T2S in the Nordic markets. However, for "assets under custody", held at CSD level, there is a **monopoly** as the price for the services that only the Issuer CSD is able perform, typically depends on the value of the assets held by each market participant in the CSD. The cost often seems to be decoupled from the costs associated with the underlying services performed or systems maintained.

Other data providers – core problems
Data providers other than trading venues (such as vendors, benchmark providers, Credit Rating Agencies (CRAs) face a rather similar market power and ability to **acquire monopoly rent for value-added data** as trading venues can for raw market data.

- Data providers are at present **not in scope for regulatory requirements** in relation to pricing, transparency, standards etc. As the information providers' business cases also are related to market data (although in a value-added format in contrast to the trading venues' raw market data).

[9] Part of this can be outsourced to T2S.

- The data providers take advantage of their position and require unreasonable pricing, terms & conditions and contracts

The following solution is proposed:

- Conduct holistic and competition-driven examination of capital market infrastructure and data providers inefficiencies and identify areas and services across European capital markets which are not subject to genuine competition and where the costs and complexity of the services provided are unreasonable. It is imperative to include the user perspectives in the examination and the EC study on barriers in the capital markets. Beware that capital market infrastructure both are natural monopolies and for-profit companies but not subject to similar infrastructure regulation as in other sectors. The capital market infrastructure investigation should assess the state of effective competition, for instance where service providers are in a position of market power that can be or is abused. It is also key to assess if services lack effective competition across borders (following horizonal consolidation) as well as in other parts of the value chain (following vertical consolidation).

- Clarify clearly what type of businesses/business leg which is subjected to competition and what is not. The proposed regulation of capital market infrastructure should be clearly separated from services which can be opened for competition. If the relevant company only have strong market power on part of their products/market, the regulation should be targeted to those products/markets. The essence of assessment regarding the various business legs is presented in the section with "core problems"(in depth elaboration is available upon request).

- Where a business leg cannot be exposed to competition, replicate ex-ante infrastructure regulation from other sectors (energy, tele). The point being that the capital market infrastructure company should have its cost covered plus a reasonable mark-up (LRIC+) - but not be allowed to charge monopoly rent. Furthermore, a cap on the allowed prices/income/revenue (depending on what is most suitable) should be imposed to ensure incentives to continuously improve efficiency in the infrastructure[10].

- Where a business leg is not exposed to genuine competition, but can be, "nudge" competition for instance via fines, other incentives and ultimately ex ante regulation which force competition.

- Produce mandatory templates for fair, reasonable, standardized, transparent and non-discriminatory terms & conditions including participation

[10] For example, market data is an example of a business leg of trading venues which cannot be exposed to competition due to the uniqueness of the market data per trading venue. This provides the trading venue with a monopoly status in the supply of market data combined with inelastic demand as market data is indispensable for the buy- and sell-side to stay in business. Evidence has clearly verified that the present regulation has not worked due to inadequate and ambiguous measures combined with lack of consistent supervision and enforcement. This enables the trading venues (and in particular the incumbent exchanges) to charge monopoly rent and exercise cross-subsidization on business legs which can be exposed to competition

rules and contracts for both capital market infrastructure (trading venues, CCPs and CSDs) and other data providers (vendors, benchmark provider, Credit Rating Agencies, ESG-provider).

- Ensure that the conflicts of laws and market practices including operational tax procedures, which prevent the development of cost-efficient cross-border capital market operations are removed as soon as possible.

- Ensure that further harmonisation is built on best practices that foster retail participation in capital markets, fair access and continue to support important local products like Danish Mortgage bonds.

- Dedicate one central EU supervisory authority with a competition mandate (e.g. in cooperation with DG COMP) supervising (cross-border) capital market infrastructure and data providers. This is in order to 1) prohibit rent-seeking by imposing and enforcing ex ante competition regulation similar to infrastructure in other sectors on business legs which cannot be exposed to competition and 2) introduce an appropriate incentive structure to ensure competition in business legs which can, but are not, subject to genuine competition and 3) to ensure a level playing field between capital market infrastructure which at present are subject to divergent supervisory models at National level/supervisory colleges and 4) enable the central EU supervisory authority to dedicated the needed, experienced and specialised resources in this very complex area.

- In case ESMA is considered to take that role, ESMA's mandate, as regulated under Regulation 1095/2010 (EU), should be revised to grant ESMA the authority to establish ex ante regulations that ensure genuine competition in this sector. In case another entity is to take on that role, specific regulation must be prepared.

Expected outcome of the solution:
The single EU supervisor must always ensure both competition and user choice within capital market infrastructure and other data providers on a continuous basis even though the changes will lead to consolidation. No concentration rule must be imposed. Furthermore, the following outcome is expected from our proposals:

Trading venues

- Should be subject to one single European supervisor with a competition mandate which should have the ability to introduce ex ante regulations where relevant in order to abolish the possibility to charge monopoly rent or perform cross-subsidization (MiFIDIII art. 66-70 and MiFIR2, art. 13)
- Should refrain from claiming IP rights in market data (MiFIR2, art. 13)
- A requirement for interoperability in closing auctions (Include requirements in Title II of MiFIR2 and change heading to "Transparency and trading requirements for trading venues")
- Should offer trade feeds to all requesting CCPs within a specified, short deadline (MiFIR2, art. 36)
- Should not require issuance or settlement in a specific CSD (Add requirements in MiFIDIII, art. 55)
- Should offer standardized policies, terms & conditions and non-restrictive participation rules and contracts (can be included in MiFIDIII, art. 48)

- Should publish pricelists, policies, terms & conditions with multi-year comparison for the past 10 years (can be included in MiFIR2, art. 13)
- It should be considered establishing a central public database where all the required information is available.

CCPs

- Should be subject to one single European supervisor with a competition mandate which should have the ability to introduce ex ante regulation if relevant and not be allowed to charge monopoly rent (EMIR art. 14-24)
- Should be mandated to offer interoperability in EU markets (MiFIR2, art. 36)
- Should be aligned in principles for margin requirements, cut-off times, buy-in rules and collateral acceptance (EMIR art. 41-48)
- Should offer standardized policies, terms & conditions and non-restrictive participation rules and contracts (EMIR, art. 36 and 37)
- Should publish pricelists, policies, terms & conditions with multi-year comparison for the past 10 years. (EMIR, art. 38)

CSDs

- Should be subject to one single European supervisor with a competition mandate which should have the ability to introduce ex ante regulation where relevant and not be allowed to charge monopoly rent or perform cross-subsidisation (CSDR, art. 10 and 22)
- Should be mandated to offer interoperability with other CSDs (links) based on market demand. T2S links should be mandated and links outside of T2S should be reduced, hence all EU securities can be settled in all EU CSDs (art. 19 and 52 of CSDR)
- No requirement for issuance in a specific CSD (CSDR, art. 53)
- Prevent new issuances being mandated to settle in specific CSDs
- Should be aligned in principles for cut-off times and all core functionalities a CSD must offer. For example, a common data dictionary and data model for reference and transactional data in financial services, across the steps of issuance, settlement and holding of securities. There is no universally available golden source on securities reference data and information suffers from media breaks and lack of machine-readable data exchange in transactions. CSDs depend on information provided by stakeholders like issuers and agents, which is currently not aligned. The co-existence of different, not fully interoperable international and national proprietary messaging standards makes it costly for service users and providers to exchange and process data. A strategy and a clear timeline for all stakeholders to transition to ISO20022 must be developed. In debt issuance, the absence of a commonly adopted European template for term sheets and the lack of convergence on market conventions (business calendar, business day, interest rate calculation, rounding) makes European debt markets less deep and efficient than their potential. (CSDR, art. 36-41)
- Should offer standardized policies, terms & conditions and non-restrictive participation rules and contracts (CSDR, art. 32-36)
- Should publish pricelists based on standadized price element, policies, terms & conditions with multi-year comparison for the past 10 years (CSDR, art. 34)
- Should promote technology neutral rules to enable innovation

Other data providers (vendors, benchmark providers, CRAs, ESG-providers)

- Should be subject to ex ante regulation where relevant and not allowed to charge monopoly rent or perform cross-subsidization (new regulation – e.g. extend the scope of MiFIR2, art. 13)
- Should offer standardized policies, terms & conditions and non-restrictive participation rules and contracts (new regulation – e.g. extend the scope of MiFIR2, art. 13)
- Should publish pricelists, policies, terms & conditions with multi-year comparison for the past 10 years. (new regulation – e.g. extend the scope of MiFIR2, art. 13)

Regulatory changes/market practices:

- Removal of structural issues driving monopolist behavior from market infrastructures
- Legal barriers, including alignment on SRD II and corporate laws
- Harmonized corporate events build on common standardized data elements available for the full value chain
- Enable access to omnibus account structures in all markets
- Harmonized buyer protection rules
- Promotion of T2S links
- Harmonisation of issuance practices
- Harmonisation of tax practices

Asset management and funds

The consultation also includes several questions in relation to the asset management and funds industry and how consolidation can be pursued. However, this industry differs considerably from the capital market infrastructure as the asset management and fund industry consist of financial companies acting in competitive environments on a continuous basis.

Impediments in the cross-border competitive environment for the asset management industry are related to conflicts of law in areas such as tax but also lack of supervision convergence and diverging national practices. Hence, any measure should appropriately take these differences into account.

Supervisory convergence through more frequent dialogue between European and local supervisory authorities is important to overcome some structural barriers. Consolidation in an industry such as the asset management industry, where economies of scale are important, must come through the organic development of more efficient and integrated markets by removing frictions.

Core Problem for asset management and funds

The asset management sector in the EU is facing a growing disconnect between regulatory ambition and practical outcomes for retail investors. Despite years of reforms, the retail investor journey remains complex, fragmented and discouraging, particularly for new or smaller investors. Regulatory layers across MiFID II, PRIIPs, SFDR and other frameworks have led to overlapping and often inconsistent requirements.

This results in:

- Divergent supervisory practice and requirements between national competent authorities remain a barrier to a truly integrated market for investment funds

- Strict POG rules risk limiting open product architecture and encouraging closed distribution models to own products
- Excessively detailed disclosure that overwhelm rather than inform investors
- Language and different local requirements for marketing and passporting regime that act as barriers that restrict cross-border product access
- Product governance rules and tests that limit the availability products
- Inflexible investor profiling rules (eg. sustainability preferences) that deter meaningful engagement
- Regulatory uncertainty and diverging supervisory practices that increases administrative burdens
- Structural barriers to EU wide fund growth and scaling up investment funds cross boarder

Proposed Solution
A streamlined and investor centric regulatory approach is needed that simplifies investor experience, removes unnecessary market barriers and harmonize regulation across Europe to create level playing field between manufacturers, distributors and clients.

Conclusion for Asset Management and Funds
The success of integrating EU's Capital Markets depends on removing friction for investors, ensuring simple access to suitable products, and enabling the asset management sector to deliver value efficiently.
The above proposals will reduce administrative burdens, increase investor participation, and improve the alignment of the regulatory framework with the needs of Europe's capital markets. A more harmonized supervisory approach will also be essential to avoid fragmented implementation and ensure a level playing field across the EU.

Specific comments on the sections in the consultation paper

1. **Simplification and burden reduction**

Please see our proposals in relation to capital market infrastructure and other data providers under "General remarks".

Furthermore, we suggest in CSDR, art. 7 and 7a a decommissioning of the CSDR penalty regime since settlement fail rates on the T2S platform have fallen from 6,5% - 7% before implementation of the settlement.

For Asset Management and Funds, we propose the following initiatives:

- AIFMD: Establishment of an AIF retail passport regime to retail investors to passporting in EU (high)
- MIFID II: More flexibility within Mifid client categories to allow investors to access AIFs mor easily e.g. change conditions for the opt-up to professional client status (high)
- PRIIPs: Amend the scope of PRIIPs to explicitly exclude standard corporate bonds and OTC derivatives (high)
- PRIIPs: Modify language requirements for the PRIIPs KID to allow the use of non-official languages under certain conditions (medium)
- PRIIPs: Delete the requirement to use the arrival price calculation of indirect trading costs. (Medium)

- PRIIPs: Remove the floor requiring direct transaction costs to be shown as a minimum for total transaction costs in the PRIIPs KID (particularly problematic in Denmark due to the double price method) (medium)
- MiFID II: Excessively detailed information in ex-ante and ex-post cost disclosures. It is recommended that all costs be disclosed as a total amount in currency and in percentages (Medium)
- MiFID II: Flexibility in addressing clients' sustainability preferences. The current rules and terms are too extensive and not suitable for retail clients. (high)
- MiFID II: "Suitability Light" regime should be extended to all types of investment advice. (high)
- MiFID II: POG requirements should be streamlined by excluding single securities and easing distributor requirements in relation to execution services. (medium)

2. Trading

Nature of barriers to integration, modernisation of liquidity pools
First and foremost, we find that the core issues which prevent the development of EU capital markets are directly linked to the possibility for capital market infrastructure to earn monopoly rent on business legs which cannot be exposed to competition (e.g. market data for trading venues) and to exercise cross-subsidization on other business legs to gain an unfair competitive advance (e.g. trading). Hence, it must be prohibited to charge monopoly rent and to perform cross-subsidization.

In this context, **we are deeply concerned about the fact that the costs of market data are not included in the EC consultation** as the "market data business leg" is a concrete example of a market failure where the trading venue are charging monopoly rent due to the uniqueness of the data and are using the monopoly rent for cross subsidization. Hence – market data is a key barrier which must be handled as also elaborated under "general remarks". We are certainly aware of changed art. 13 in MiFIR2 and the proposed level 2 from ESMA in relation to costs of market data. However, as also documented, neither the new level 1 nor the proposed level 2 will solve the problems as these rules are not the needed *ex-ante regulation* (LRIC+ and a price cap). Ideally, market data should be free of charge, due to its nature as a public good.

In relation to the business leg "trading", we see competition in trading between the MTFs and the exchanges in continuous trading (but not between the exchanges), whereas the exchanges hold an absolute monopoly in the closing auctions. This maintains flow on the incumbent exchanges due to lack of access for other trading venues in the closing auction and because the incumbent exchanges claim ownership of market data. These "official prices" are used for various purposes i.e. tax reporting. Recent statistics show that the closing auction, where the incumbent exchange holds an absolute monopoly, counts for on average 25 percent and with an increasing trend.

I relation to the questions on the level of direct connection to execution venues across the Union, market participants consider that the level is reflecting the high costs of direct connection which by nature will favor bigger players and we do not support a requirement to connect to all/a certain level of execution venues. It must be the decision of the market participants on where to connect provided

they are able to comply with, for example, the best execution requirements. On the same note, a requirement for trading venues to trade all shares in the EU would also favor bigger players. The right approach is to create the right framework for market driven development which is to focus on the core problems and prohibit the capital market infrastructure from charging monopoly rent and perform cross-subsidization and require interoperability in the closing auctions. This will enable a development which enables the market participants to adapt, and it will facilitate that the local eco systems can prevail, which is essential for in particular the SMEs and the investors Hence, the basis for creating larger and more deep and efficient capital markets in a market driven way is created.

In relation **to interconnection, best execution and consolidated tape** we are strong opponents of any kind of inspiration from the US, such as an adaptation of an order protection rule and alike. In the EU, Best Execution is not only about price. It is "*..the best possible result for their clients taking into account price, costs, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order when the investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of total consideration, representing the price of the financial instrument and the costs relating to the execution, which shall include all expenses incurred by the client which are directly relating to the order, including the execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order For the purposes of delivering best possible result in accordance with the first subparagraph where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the investment firm's order execution policy that is capable of executing that order, the investment firm's own commissions and the costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment. "* (MiFIDIII, art. 27).

The US requirement is only about price and therefore not in line with EU rules. Furthermore, it would imply that firms lose control over their order execution policy and require connection to all trading venues. With latency – there is also a high possibility that the orders will not be filled. And if costs are not included in the considerations – it could result in much worse net result for the client.

We believe the **clients choice should be the key focus**. And we are pretty sure that clients prefer to have a higher return when the costs are included that a price where the net result will be lower when costs are taken into account.

Furthermore, the order protection rule requires that the prices is included in the Consolidated Tape: *"The definition of "protected bid or protected offer" (collectively, "protected quotations") includes several key elements. First, they must be "automated quotations" displayed by an "automated trading center." The definitions of automated trading center and automated quotation generally require that quotations must be immediately and automatically executable, without any programmed delay. 5 Second, to be protected, a quotation must be disseminated in the consolidated market data feeds. Consequently, Rule 611 does not apply when the consolidated market data feeds are not operating.*

A similar requirement in EU will be a de facto requirement of mandatory consumption Consolidated Tape. As access to proprietary data is "license to operate" and already very expensive, mandatory consumption of Consolidated Tape under the present conditions with unreasonable market data costs, will be unacceptable. Furthermore, not all trading venues/incumbent exchanges are required to contribute to the Consolidated Tape. Finally, latency prevents that at Consolidated Tape to be used as a valid source of where the best prices are available.

3. **Post-trading**

As for trading, the main barriers to the provision of cross-border CSD services in the EU and the freedom to choose CSD are structural as specified under "general remarks". Furthermore, we see other barriers like different tax legislation and procedures, different interpretation of sanctions and KYC requirements.

The most important barriers to handling are:

1. Removal of structural issues driving monopolist behavior from market infrastructures, cf. above
2. Legal barriers, including alignment on SRD II and corporate laws
3. Harmonized corporate events build on common standardized data elements available for the full value chain
4. Enable access to omnibus account structures in all markets
5. Harmonized buyer protection rules
6. Promotion of T2S links
7. Harmonisation of issuance practices
8. Harmonisation of tax practices
9. Single-sided trade reporting under EMIR

We support a centralized EU supervision of market infrastructures with a competition mandate that secure cost efficient infrastructure open to competition and support fair access for all European issuers and investors.

We recommend removal of barriers for omnibus accounts in all EU markets.

We recommend the EC to further investigate options to harmonize corporate and insolvency laws, and replace key directives with regulation, e.g. Shareholder Right directives, Settlement Finality directive and Financial Collateral Directive.

We support continues work towards a single European Rulebook using regulation rather than directive and which harmonize post trade infrastructures. Harmonisation should be driven throughout the full value chain including data elements from issuers all the way to the end investors custodian.

We support aligned withholding tax procedure in EU as soon as possible as a regulation covering all EU countries and with no exemptions. We consider FASTER as a clear step towards more harmonised tax procedures. However, it still leaves room for large variations and interpretations and put undue reporting obligation on the custodians likely resulting in lower reclaim rates for small investors.

Some examples of the legal barriers/market practices
Member state securities laws and corporate laws differ to a great extent in how they define rights in/attached to book entry securities and what the legal effects

of holding or transacting a security are. Due to the lack of harmonisation or at least a comprehensive and general conflict of laws framework (see also EPTF barrier 11) this results in a high level of legal uncertainty in cross-border securities transactions.

Corporate law barriers to harmonised processing of corporate actions corporate laws differ as to what holding pattern they recognise for the purpose of processing of corporate events. This variation results in investors being discriminated in the way they can or cannot exercise their rights stemming from corporate events based on their location and the location of the account providers through which they hold the securities. This is a key barrier that the Shareholder Rights Directive (SRD) attempted to remove but its focus is limited both in terms of instruments covered, i.e., it covers only equities but not debt instruments (some markets have increased the in scope securities to include debt instruments) and in terms of types of corporate events (it focuses on participation and voting on general meetings while the processing of other types of corporate events are not harmonised). Industry standards have been created and are promoted / monitored by the AMI-SeCo on shareholder identification, but such European market standards cannot correct underlying differences in national laws.

Securities and corporate law barriers to free choice of location of issuance/ restrictions on form and location of securities is for example that National securities and corporate laws require the use of the domestic CSD for securities issued by certain issuers to be valid or restrict the possibility of issuing or transferring securities in the domestic CSD which are not constituted under the national (securities and /or corporate) law. They often prevent domestic issuers from using a foreign CSD for issuance/initial entry either explicitly or implicitly by imposing idiosyncratic national requirements on what services the issuer CSD has to provide to the issuer (e.g. how general shareholder or bondholder meetings are to be processed) or which additional compliance actions it needs to perform vis-à-vis national authorities (e.g. reporting). Finally, it is common that national securities laws only allow dematerialised issuance of securities (i.e. securities which are constituted under the national law) in the domestic CSD forcing issuers using foreign CSDs to resort to creation and maintenance of global or definitive notes. Despite widely shared expectations and its objectives as stated in its pre-amble / recitals, the CSD Regulation (CSDR) did not remove these barriers as its relevant provisions have been subjected to the existing national corporate and securities laws. The diverging understandings and practices of the relevant CSDR articles and corporate laws creates additional hurdles for foreign CSD issuance. The list of key paragraphs in member states' corporate laws is currently compiled in a way which does not help any stakeholders in identifying the relevant requirements and is not conducive to removing the related barriers. In practice, most national competent authorities simply present article numbers from their national laws or provide some text reference in the national language. Therefore, while these efforts might be perceived as compliant with the letter of the CSDR they are certainly not commensurate with its spirit and objectives.

The process of issuance is a complex set of steps consisting of pre-trade/trade and post-trade phases. The significance of issuance to post-trading is that, to a great extent, choices on key features of the securities, on representation and exchange of reference / static data and of the process distribution affects post-trade procedures not only in primary market transactions but throughout the lifecycle of the security (asset serving, secondary market transactions, collateral management). Issuance processes across the 27 EU jurisdictions vary significantly

and can exhibit high levels of inefficiency in general. In the post-trade domain issuance practices lead to the following issues:

- Lack of a single, trusted 'golden source' for security reference and corporate events data which hinders efficient regulatory reporting and processing of corporate actions
- Frictions in exchanging standardised machine-readable data to allow the settlement of primary market transactions in an efficient and timely manner
- Use of market conventions which cause frictions or media breaks in post-trade processing

Corporate Actions (CA) and General Meetings (GM) are perhaps one of the most complex areas in post-trade. As a consequence, harmonisation in this area will be equally complex but of high importance in the cross-border environment foreseen in the CMU plan. Although the EPTF report indicated significant progress in the harmonisation efforts, with all relevant stakeholders agreeing on market standards as well as the T2S CA Standards, more recent monitoring done by the AMI-SeCo Corporate Events Group (CEG) has shown that many markets still do not comply with these standards. Another area also covered by EPTF (Barrier 5), is fragmentation in shareholder identification and registration regimes between countries, possibly as a consequence of diverging local implementations of the SRD2, which also covers the CA and GM processes. The 2024 CEG compliance report revealed that compliance with the various standards was limited. Specifically, only 8 out of 40 markets met the Market CA Standards, 15 out of 28 markets adhered to the T2S CA Standards, and 10 out of 31 markets complied with the SI Standards (Market Standards for Shareholder Identification).

For Corporate Actions, the main challenges are diverging local practices, including announcements, deadlines, messaging, and the lack of centralised golden source of information on securities. Combined, these create hurdles for an efficient management of CAs, by making Straight-Through-Processing (STP) more difficult, especially for cross-border ownership of securities and securities financing transactions (SFTs). The CAs originating from an issuer typically go through a variety of different actors, all of which apply their specific logic on the data and information processing, before it finally reaches the investor. This is especially the case in a cross-border environment where securities are often held through a (longer) chain of intermediaries. The main challenges are reported to stem from both the non-compliance with EU standards / market practices and from the lack of an EU-wide golden source of information. Additionally, CAs are burdened with relatively high degrees of manual processing, often with varying requirements such as signed physical documents or certificates.

4. <u>Horizontal barriers to trading and post -trading infrastructures</u>

We refer to the general comments and sections 1, 2 and 3.

I relation to encourage innovation it goes without saying that the structural barriers meaning the ability for the capital market infrastructure to collect monopoly rent and use cross-subsidization are preventing the fostering of viable alternatives. Users are forced to use the capital market infrastructure as the capital market infrastructure companies are not subject to competition and their business does not depend on "happy clients" like companies subject to genuine competition.

If and when the framework allows true innovation and "disruptors", we still underline the need for level playing field and call for "same business, same risk, same rules".

5. Asset management and funds

Finance Denmark has proposed a set of 19 proposals that simplifies investor experience, removes unnecessary market barriers and harmonize regulation across Europe to create level playing field between manufacturers, distributors and clients.

Simplify the retail investor journey – product disclosures

1. Ex-ante and ex-post cost disclosure on cost disclosed as an aggregated amount and percentages instead of detailed itemized breakdown (MiFID II)
2. Remove obstacles to cross-border investments through more flexible language requirement – Increase flexibility in language requirements for PRIIPs KID
3. Meaningful product cost methods that do not discourage retail investments - abolish the complex and misleading Arrival Price method and return to the more transparent and intuitive methods (e.g. half-spread method). Alternatively disregard requirements to include implicit transaction costs.
4. Delete floor on transaction cost (PRIIPs KID)
5. Replace complex forward-looking performance scenarios with past performance disclosures to increase investor understanding and reduce unnecessary costs for product manufacturers
6. Delete the website duplication requirement under PRIIPs. Remove the obligation for product manufactures to provide PRIIPs-related information separately and in addition to the KID on the webside.

Simplify the retail investor journey – simplification of distribution

7. Ensure access to a simple and digital advice regime for all retail investors (esp. important for new and low AuM investors) - Extend the proposed suitability light regime in MiFID II article 25 (in RIS) to all types of investment advice and not only independent advice
8. Avoid introducing new tests and requirements in investor dialogue - Delete the best interest test and incorporate Inducement test in product governance rules in RIS
9. Remove rigid rules governing sustainability preferences in advice - Ensure at sufficient flexibility for financial institutions to engage in dialogue with investors also in light of new reporting rules following the ongoing omnibus review on sustainability (CSRD) and new product categories expected in light of upcoming SFDR review

Increase retail investors' ability to fund EU strategic priorities through an enlarged and safe investment universe

10. Harmonize rules for marketing AIFs to increase retail investors' access to financing EU strategic priorities - Introduce a more unified framework for marketing and passporting of AIF to retail investors across the EU through introducing a new simple framework in advice and portfolio management services.

11. Remove disproportionate authorization limits for fund strategies. Allow AIFMs authorized in one Member State to launch new strategies without requiring burdensome local authorization amendments (e.g. Luxembourg and Denmark model constraints)
12. Enlarge investment universe retail investors through a more flexible opt-up regime to professional status - Flexibility for retail investors for upgrade to professional status to get access to broader services and products (MiFID II). The focus should be on the client's knowledge and experience.
13. Increase retail investors' access to finance companies - Exclude direct investment in corporate and financial bonds from PRIIPs scope (PRIIPs)
14. Simplify product governance rules for single shares and bonds - Product governance scope should not include single shares and bonds (MiFID II)

Foster market-driven cost-efficiency in retail investment products and services

15. Specify internal VfM requirements and processes for product manufacturers - Internal peer-grouping requirements on costs and performance in UCITS and AIFMD, cf. EP/council mandates on RIS as well as requirement for product manufacturers to anchor strong VFM policy at management level (UCITS and AIFMD)
16. Specify Internal VfM requirement and process by distributers - Internal peer-grouping requirements on costs and performance in MiFID II POG rules, cf. EP/council mandates on RIS as well as requirement for distributers to anchor strong VFM policy at management level (MiFID II). Make it clear that distributors can rely on manufacturers VfM when offering execution services or when no additional cost layer is attached to the service provided.

Facilitate supervision and market transparency

17. Increase investor transparency about products through a 'PRIIPs database' - Introduce a product database based on existing data reported in PRIIPs. Inspiration can be drawn from the industry developed European Fund Classification System and other national practices on product cost comparison websites.

Scaling up of investment funds cross-border

18. Any scaling up of investment funds must be organic and market driven - Such a development can be encouraged by examining existing regulatory barriers and determining the most effective methods for their removal

Ensure regulatory convergence and reduce national gold plating

19. National laws tend to have more local gold plating, which full harmonization could tackle. For example, lack of extending AIFMD to retail distribution severally hampers efficient cross-border distribution of retail AIFs. It is problematic where a regulation is interpreted very differently by different NCAs and it would be crucial to ensure sufficient supervisory convergence among member states.

6. Supervision

As elaborated above, we observe that capital market infrastructure at present is allowed to charge monopoly rent and perform cross-subsidization. We also note

different interpretations of rules, goldplating, lack of enforcement of existing rules and so forth.

For capital market infrastructure (trading venues, CCPs and CSDs), this calls for one single EU authority which should be provided with a mandate for direct supervision as well as a competition mandate. This mandate should also cover other data providers such as vendors, benchmark providers, Credit Rating Agencies, ESG-providers. The goal is to remove the ability to charge monopoly rent and perform cross subsidization and to ensure continuous competition and a level playing field.

For Asset Management and Funds in the EU, there is a growing disconnect between regulatory ambition and practical outcomes for retail for retail investors. Despite years of reforms, the retail investor journey remains complex, fragmented and discouraging, particularly for new or smaller investors. Regulatory layers across MiFID II, PRIIPs, SFDR and other frameworks have led to overlapping and often inconsistent requirements.

A streamlined and investor centric regulatory approach is needed that simplifies investor experience, removes unnecessary market barriers and harmonize regulation across Europe to create level playing field between manufacturers, distributors and clients. Hence, a more harmonized supervisory approach will also be essential to avoid fragmented implementation and ensure a level playing field across the EU.

7. <u>Horizontal questions on the supervisory framework</u>

The centralised EU Supervision must be limited to capital market infrastructure (trading venues, CCPs and CSDs) and other data providers such as vendors, benchmark providers, CRAs, ESG-providers and we do not see immediate risks of negative side effects. However, it must be ensured that the Governance requirements are clear and with a precise description of the mandate, powers and with KPIs which ensures that that the potential for bureaucratic inefficiency is minimized and the centralised EU supervisor with a competition mandate is able to introduce and enforce ex ante regulation, perform quick decision-making and is not using complex and bureaucratic procedures.