

15 March 2019

Bundesministerium der Finanzen
Wilhelmstraße 97
10117 Berlin

Submitted via email to: VIIB5@bmf.bund.de [REDACTED]

RE: Konsultation des Bundesministeriums der Finanzen zu Erfahrungen und möglichem Änderungsbedarf im Hinblick auf die EU-Finanzmarktrichtlinie (MiFID II) und die EU-Finanzmarktverordnung (MiFIR)

Dear Sirs,

BlackRock¹ is pleased to have the opportunity to respond to Bundesministerium der Finanzen's call for feedback on the entry into force of MiFID II and MiFIR in Germany.

BlackRock supports a regulatory regime that increases transparency, protects investors, and facilitates responsible growth of capital markets, while preserving consumer choice and assessing benefits versus implementation costs.

Based on our experience of the first months of operating under the MiFID regime, we provide suggestions on two key aspects of the MiFID regime which require further attention, namely regarding transaction costs, and equity and ETF market structure.

We welcome further discussion on any specific issues that may assist the Bundesministerium der Finanzen.

Yours faithfully,

[REDACTED]
Managing Director
Global Public Policy Group

[REDACTED]
Managing Director
Global Public Policy Group

¹ BlackRock is one of the world's leading providers of investment, advisory and risk management solutions. Our clients include pension plans, insurers, banks, foundations, official institutions, and other financial institutions, as well as individuals – both in Germany and globally. Two thirds of the assets we manage are in long-term retirement solutions. Our clients can access our investment solutions through a variety of product structures, including institutional separate accounts, mutual funds and other pooled investment vehicles, and the industry-leading iShares ETFs. We are present in Germany with offices in both Frankfurt and Munich, serving German clients with our full range of investment, advisory and risk management services.

As an important part of our fiduciary duty to our clients, BlackRock advocates for public policies that we believe are in the long-term best interests of investors. We support the creation of regulatory regimes that increase financial market transparency, protect investors, and facilitate responsible growth of capital markets, while preserving consumer choice and properly balancing benefits versus implementation costs.

The creation of a genuine Capital Markets Union (CMU) that better connects the patchwork of national capital markets in Europe has been a long-standing priority for policy makers and investors alike. While definitions of what specific components might constitute a CMU vary, we believe that, first and foremost, Europe must continue to develop the framework for a single EU capital market, open to global investment that works in the interest of its main beneficiaries: the asset owners, who are the end-investors spanning from individual savers to institutions such as pension funds and insurers; and the companies, infrastructure and other projects in the so-called 'real economy' seeking investment. On this premise, we have looked at how both investors and companies currently interact with the European market and assess whether improvements can be made to allow each greater ease of entry, and to create new opportunities to connect investors' capital and real economy sectors that need investment.

The completion and targeted refinement of the MiFID regime underpins the development of the CMU. We are grateful therefore for the opportunity provided by this consultation to feed in our experience of the first months of operating under the MiFID regime and to provide suggestions on two key aspects that require further attention, namely regarding transaction costs and equity and ETF market structure.

Pan-European issues

Transaction Cost Disclosure

The entry into force of the MiFID II regime in 2018 gave rise to new standards for disclosing the costs of investment portfolios, intended to enhance the visibility of transaction costs and empower investor decision making in the EU. These disclosures also reflect the introduction of the Packaged Retail Investment and Insurance-Based Products Regulation (PRIIPs) at EU-level in January 2018 (as well as national initiatives such as the Financial Conduct Authority's (FCA) upcoming requirements for UK pension funds). The practical application of these new standards has presented both market participants and end-investors with a number of challenges. Crucially, there is no consensus on how to calculate the transaction costs that portfolios incur. Across the EU we are seeing different conventions and methodologies emerge depending on the product or service provided. This impedes comparability of cost disclosures by investors, as developing market conventions reflect the different standards in the jurisdictions in which fund managers, distributors, and investors are situated. Within the same jurisdiction, reports can be hard to compare; but across EU markets with differing standards, it becomes nearly impossible.

In this context it is unsurprising that we have received consistent feedback from investors, including clients in Germany, that they do not understand the data in the new disclosure standards. The different approaches permitted under the various regulations such as PRIIPs and MiFID hinder investors' understanding of what they are paying for, and risk increasing distrust of the financial sector, rather than fostering greater confidence.

We draw the conclusion that, however well-intentioned, the new regulatory standards have not achieved their objective of empowering investors to make better and more informed investment decisions. This is principally due to the adoption of competing methodologies with markedly volatile and inconsistent outcomes, preventing effective comparability between providers in the market. This approach also has the effect of focusing attention on production of the lowest transaction costs rather than encouraging analysis of why transaction costs have been incurred in the first place and how they form part of the wider best execution process by managers in achieving a specific investment outcome. The web of overlapping disclosures means that product manufacturers are increasingly under pressure to report the costs of a single product against a number of different standards. In two different markets the same product can be shown to have different transactions costs, with the result that there is no single version of the truth for investors to rely upon – for example standards for pension fund disclosure differ markedly between jurisdictions.

The planned review of the application of PRIIPs at EU level in 2019, the scheduled adoption of PRIIPs disclosure standards by Undertakings for Collective Investment in Transferable Securities (UCITS) funds from the start of 2020 (and the FCA Call for Input on the impact of the PRIIPs Regulation in July 2018) underscore the importance of adopting a consistent and coordinated approach. Action is urgently needed to reach a common regulatory framework for transaction cost transparency, which empowers investors, rather than further exacerbating the problem.

Further targeted reviews of MiFID could be used for this purpose. BlackRock's August 2018 [ViewPoint](#) entitled *Disclosing Transaction Costs – the Need for a Common Framework* sets out a number of recommendations to address the issues that have arisen in the market in the last year.

Equity and ETF Market Structure

Equity markets have evolved significantly in response to new regulations and advances in technology in Europe and globally. The changes in market structure have primarily been beneficial for end-investors, by improving market quality and lowering transaction costs. However, new challenges accompany these developments and we believe that the additional recommendations outlined below would help to make equity markets fairer and more effective. We see the strengthening of transparency – in particular in Europe – as the foundation for driving further growth of electronic trading, increasing execution efficiencies, and fully extending these benefits to Exchange Traded Funds (ETF).

- **Deliver a consolidated tape for trades and quotes**
A central pillar of the MiFID II / MiFIR regime has not been delivered, to the detriment of price formation, market quality and investor protection. ESMA should now be given the opportunity to take the lead in providing a pan-European consolidated tape solution, as an authoritative source of post-trade information. This would increase transparency, strengthen best execution, and improve competitiveness.
- **Introduce an official European Best Bid and Offer (EBBO)**
Mandatory pre-trade transparency is an important and unique feature of European market structure. Its benefit could be strengthened further by establishing an EBBO, roughly equivalent to the US' National Best Bid and Offer (NBBO). Many market participants use a self-calculated EBBO, but market quality could be enhanced further by there being a formally prescribed standard through further reviews of MiFID and MiFIR.
- **Allow midpoint executions in any size and venue**
EU policymakers are increasingly focused on shifting trading activity towards venues with high pre-trade transparency (such as traditional stock exchanges and some Multilateral Trading Facilities). We disagree with the assumption that this improves transparency and price formation, and emphasise the cost benefit to end-investors from trading at midpoint. We advocate maintaining the plurality of trading venues to underpin the delivery of best execution to end-investors.
- **Focus future regulatory debate on benefits to end-investors**
Mechanisms such as the 'Double Volume Cap' place restrictions on 'dark' trading venues, assume that they detract from price formation and liquidity provision. Regulators should take a less direct stance in trying to shift liquidity from dark to lit markets, focusing instead on contribution to liquidity and benefit the end-investor.
- **Adopt minimum standards for market resiliency mechanisms**
Experience in the US has shown that market resiliency mechanisms that are not properly harmonised and calibrated with one another can worsen market stress. Controls should be automated and we recommend minimum standards around trade suspensions, cancellations, and auction processes.

These recommendations are supported by market data in BlackRock's February 2019 [ViewPoint](#) entitled *Mark-to-market structure: An end-investor perspective on the evolution of developed equity markets*. In this ViewPoint we also compare the development of EU markets against US markets and discuss trends influencing the evolution of developed equity and ETF markets including electronic trading, the impact of new market participants, competition, fragmentation and complexity as well as the growth of ETFs.

Impact of MiFID II / MiFIR on the German Market

One of the biggest issues for the German market has been that of legal interpretation. Due to the principles based approach taken by the regulators to MiFID II, interpretation at the 'bits and bytes' level has been challenging for firms. For example, diverse interpretations of the transparency regime have, in some instances, resulted in different timeliness of MiFID II data, which can cause issues of comparability. Issues such as these required additional regulatory guidance through 2018 as firms work towards standardising interpretations to achieve comparable data. Quality of data, and its sourcing and integration, was another significant challenge, and an issue that many firms may have left to one side in the race to meet the deadline to become compliant.

We hope these comments are helpful to your deliberations. We appreciate the opportunity to address the issues raised by entry into force of MiFID II and MiFIR in Germany, and more generally across Europe. We welcome further discussion on any specific issues that may assist the Bundesministerium der Finanzen.