ASSOGESTIONI
associazione del risparmio gestito

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DG FISMA
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Response to the EU Commission's Green Paper – Building a Capital Markets Union (COM(2015) 63 final)

Assogestioni, the Italian Fund and Asset Management Association[1], highly welcomes the opportunity to respond to the Commission's Green Paper – Building a Capital Markets Union (COM(2015) 63 final) and to the related consultations on the review of the Prospectus Directive and on an EU framework for simple, transparent and standardized securitization, representing the framework of the future action plan of the Commission, with the overarching objective to foster growth and unlock capital in the EU.

As a preliminary and general note, we wish to stress that the build-up of a Capital Markets Union cannot be realized without the creation of a single and consistent regulatory framework across the EU – a true EU Single Rulebook - with the objective to avoid inconsistencies amongst different sectors and regulatory arbitrages between Member states, to ensure a level playing field between similar investment products and remove regulatory barriers to the development of a single market of capitals.

[1] Assogestioni is the trade body for Italian asset management industry and represents the interests of members who manage funds and discretionary mandates around € 1700 bn (as of March 2015).

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Q1: Beyond the five priority areas identified for short term action, what other areas should be prioritized?

Assogestioni supports the five priority areas indicated in the Green paper on Capital Markets Union (CMU) (COM(2015)13) and identifies other complementary profiles which would contribute to comprehensively address the main goals prioritized by the Commission.
In particular, we invite the Commission to grant a "pause" from regulatory interventions, in order to adequately assess the *status* of the legislative and regulatory actions realized during the last years and ensure that implementation of L2 and L3 measures according to the different pieces of legislation/regulation (UCITS[2], MiFID II[3]/MiFIR[4], PRIIPs[5]) is done appropriately, without creating unintended consequences to the detriment of final investors. A level playing field and consistency across different regulations and sectors (MiFID II/UCITS/PRIIPs and MiFID II/IMD II[6]), should also be considered as priorities by the Commission when implementing/negotiating the different pieces of regulation mentioned above, to avoid market distortion preventing the creation of a single market for capitals and hindering investors from benefitting from meaningful comparability and transparency across distribution channels and investment products.
During the last years, the asset management sector has witnessed a proliferation of regulatory interventions, both at product-level and entity-level, with the result of creating a stratification and fragmentation of requirements. It is crucial that the Commission encourages the development of a single rulebook for asset management, gathering the different provisions stemming from various pieces of legislation and regulation (L1, L2 and L3 measures) to create a comprehensive, single legal source to guide asset managers' operations and practices in the EU.

Q2: What further steps around the availability and standardization of SME credit information could support a deeper market in SME and start-up finance and a wider investor base?

Assogestioni shares the Commission's view that the development of a common minimum set of comparable and standardized credit information on SMEs represents a fundamental step to support funding to such entities. To increase the investor base for SMEs financing, we believe that systems of centralized information

[2] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).
[3] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.
[4] 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.
[5] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).
[6] Proposal for a Directive of the European Parliament and of the Council on insurance intermediation (recast). Brussels, 2012/0175 (COD).

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could increase the availability and promptness of access to such information. Centralized rating systems, issued, for instance, by central banks (or, even, by the ECB), could also help to develop and streamline the channeling of funding, creating a shared, reliable and consistent measurement of SMEs' creditworthiness for investors.
To avoid unintended consequences on SMEs financing, we would also like to draw the Commission's attention to the impact that changes to the investment research regime on securities under MiFID II could have on access to listed SMEs' information, namely augmenting the concentration of research coverage on big issuers, reducing research activities for smaller SMEs.

Q3: What support can be given to ELTIFs to encourage their take-up?

Assogestioni welcomes the Commission's initiatives under the Green Paper to support the take up of ELTIFs. We recognize the role ELTIFs can play in the process of boosting long term investments in the EU and appreciate the Commission's intention to seek views from the market to ensure it will be able to attract the interests of both asset managers and investors.
We share the Commission's view that insurance companies and pension funds represent key potential investors into ELTIFs, for their need of steady and long income streams, with naturally long term holdings. We also agree with the objective of the ELTIFs Regulation to broaden investors' access to ELTIFs and encourage (indirect) retail participation into this new investment vehicle via UCITS investments.
In order for ELTIFs to meet the objectives outlined both in the Green Paper and in the ELTIFs Regulation, the Commission should consider specific actions to make ELTIFs appealing for long-term capital and encourage their take-up, attracting a broader range of investors, both institutional and retail.
As for the first type, the existence of certain regulatory constraints can restrain the interest of institutional investors into ELTIFs as a vehicle for long-term investments through which channeling their holdings. In this sense, the provisions on capital requirements as set forth in the Directive on the taking-up and pursuit of the business of Insurance and Reinsurance[7] (Solvency II) and the Commission Delegated Regulation[8] can represent a hindrance for the investments of insurance companies into ELTIFs.
We appreciate the Commission's proposal to review the standard parameters used to calculate the solvency capital requirements for investments in long-term infrastructure (Recital 150 of Commission Delegated Regulation 2015/35/UE) and welcome EIOPA's current work in this regard.
As for retail investors, the Commission should clarify how it intends to pursue the objective set out in Recital 33a of the ELTIFs Regulation[9] to make "*UCITS be able to*

[7] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance.
[8] Commission Delegated Regulation 2015/35/UE supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).
[9] Regulation of the European Parliament and of the Council on European Long-term Investment Funds – Final Report of the EU Parliament, EU Plenary session, 10 march 2015.

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invest in units or shares of the ELTIFs", such as, for instance, through a revision of the investment limits foreseen in the UCITS directive. In this perspective, we encourage the Commission to consider increasing the possibility for UCITS to invest into ELTIFs up to the limit of 20% of the UCITS' assets[10]. UCITS are a widely recognized product in and outside the EU: increasing the investment *ratio* foreseen in the UCITS directive could have the effect to concretely incentivize the take-up of ELTIFs while also promoting (indirect) participation of retail investors, in accordance with the objective of the regulation.

Assogestioni would also welcome the development at national level of fiscal incentives related to long-term investments through ELTIFs, by extending to ELTIFs the preferential tax treatment of UCITS, as foreseen in several national jurisdictions. This will significantly help shifting investments to new diversified structures and meeting the ELTIFs policy goal on long-term investments.

Finally, we note that while the provision of art. 9(c) of the ELTIFs Regulation allows "*loans granted by the ELTIFs to a qualifying portfolio undertaking* [...]" to be eligible for investment by an ELTIF, it remains less clear on the possibility for ELTIFs to invest in loans not granted by the ELTIF itself (i.e. other loans of the qualifying portfolio undertaking in which the ELTIF invests). Further clarifications in this regard are welcome. The recognition to ELTIFs of a broader range of investment options represents a measure to reinforce their take-up and act as a source of diversification of supply of capital available for lending in Europe, in the light of the overarching objective of the Green Paper to "*make the financial system more stable by opening up a wider range of funding sources*".

Q4: Is any action by the EU needed to support the development of private placement markets other than supporting market-led efforts to agree common standards?

Assogestioni strongly believes that common standards could be sufficiently developed as market-led best practices. In this perspective, we support initiatives – such as ICMA's Pan-European Private Placement Guidelines - aimed at enhancing private placement markets on a transnational level, which we consider sufficient to promote common standards: further regulatory intervention in this area is, thus, not necessary.

Nevertheless, we would be supportive of a regulatory initiative for a clear definition of "private placement", currently defined only in a negative way as a 'non-public offer'. A common definition of "private placement" would help identifying the differences between these operations and public offers as well as defining the panel of investors that could be addressed by private placement operations and, if any, other relevant elements that characterize these practices.

[10] It is worth noting that the recently amended Decree issued by the Italian Ministry of Economy and Finance (Decree No. 30/2015), in the occasion of the implementation of AIFMD provisions, has recognized the possibility for open Italian AIFs, also conceived for retail investors, to invest up to 20% of their assets in non-listed (i.e. illiquid) instruments (art. 8 of the Decree).

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Q5: What further measures could help to increase access to funding and channeling of funds to those who need them?

Further actions to promote access to funding can be identified in an appropriate implementation of MiFID II Level 2 measures (please refer to our reply to Q2 related to the impact of the proposed treatment of investment research on SMEs), in an encouragement of more standardised documentation for credit information on SMEs and corporate bonds (further elaborated in our response to Q6), and in adjustments to the capital requirements under Solvency II, to create a more favourable regulatory environment and attract institutional investors to specific long-term or SMEs-oriented investments.
The European Commission should also consider taking action to create a EU framework to promote loan origination funds (we further elaborate on this in our reply to Q10).

Q6: Should measures be taken to promote greater liquidity in corporate bond markets, such as standardization? If so, which measures are needed and can these be achieved by the market or is regulatory action required?

Assogestioni believes that EU initiatives to promote a stable, well-functioning bond market play a very important role in strengthening the EU financial market infrastructure, providing capital for issuers and investment opportunities for savers and investors.
Market and regulatory development over the last few years – including the ever increasing demand on transparency envisaged by MIFIR - are threatening liquidity – a key feature for an efficient market especially from the point of view of asset managers. We share the concerns that the currently discussed measures regarding pre- and post-trade transparency (MIFIR II) increase risks to lower liquidity in the mentioned markets, aiming in the opposite direction then the CMU. In particular: (1) market making activities by banks are already becoming unattractive due to corresponding capital requirements and additional burdens relating to LCR, depriving markets of liquidity; (2) the regulatory pressure put on the market makers through MiFID II and the Banking Structural reforms will largely diminish the liquidity of the corporate bond market through inappropriate disclosure requirements (at least until a consolidated tape including bonds has not entered into force) and excessive capital requirements.
There are a number of initiatives that can be taken to improve the liquidity in bonds' markets, such as the development of all-to-all platforms that allows e.g. buy-side firms to trade with other buy-side or sell-side firms and new trading protocols, such as e-trading protocols to complement RFQs (request for quote) and CLOBs (central limit order book).
We hope that the need to restore growth in Europe will help recognizing the need for some balance in the MiFID II regime before it becomes too harmful for the EU real economy.
In order to support liquidity, we welcome the Commission's suggestion to set standards in bond market. We share with the EU Commission the understanding that some standardization is required in the issuance of bonds. We also agree with the

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EU Commission that standardization can be positive way to improve participation in capital markets, especially for the corporate bond market.
We believe that standardization will help in (i) lowering issuance costs for corporate and lowering transaction costs for investors and (ii) providing greater transparency and better access to the corporate bond markets for retail investors.
In this perspective, in line with the position also expressed by EFAMA, we believe that the most important level of standardization to achieve is the standardization of data. Even if the creation of centralized venues and development of e-trading will help to improve liquidity, the impact of new issuance practices will need to be more fully understood and addressed.
In conclusion, we suggest that the EU should reconsider the proposals currently discussed under MiFID II/MiFIR for determining liquidity thresholds for non-equity instruments as they bear the risk to reduce liquidity in these markets. We also believe that the creation of more bond trading platforms and related trading protocols would be beneficial.

Q7: Is any action by the EU needed to facilitate the development of standardized, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?

Assogestioni welcomes initiatives aimed at providing further access to finance through ESG investments. The existing legal and regulatory framework (country-by-country reporting, revision of the Shareholders' Rights directive, transparency requirements under both the UCITS KIID and PRIIPs KID provisions) sets out an adequate level of measures, to promote practices by the market. Further legislation would, thus, not be necessary.
With the aforementioned framework already in place, the European Commission could still play a role in incentivizing ESG investments, via specific and tackled actions, such as: (1) the promotion of ESG in the European Fund for Strategic Investments launched with the Juncker plan: ESG can be reinforced as key criteria for the selection of the projects in the pipeline; (2) support private sector initiatives on corporate social responsibility ('CRS') codes of conducts, as an instrument to enable asset managers to identify and set benchmarks for ESG investment policies; and (3) the development of a EU ESG label, on the basis of the national labels that are starting to be created by some Member states.
Pension funds could also play an important role in the field of ESG investment considering that the long term approach of retirement provision is particularly consistent with the ESG approach. With this in mind, the European Commission should promote the adoption of ESG criteria by pension funds both through direct actions as well as by supporting national initiatives. With this regard, the expression of a clear position about the relevance of the integration of ESG analysis in the investment process would be a relevant step in the direction of the promotion of ESG investment.
On a different note, given the evolving nature of the industry, currently undertaking developments to create new and better methods to achieve the ESG investment goals, we believe that it would be premature to discuss standardization of processes

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in addition to the already existing information standardization for retail investors as per the UCITS directive and the PRIIPs regulation.
Regarding green bonds, other than supporting the development of guidelines by the market, we would support a standardization of the definition of what constitutes a green investment. For the time being, only recommendations (Green Bond Principles, GBPs) are provided, which are not compulsory for issuers. For instance, an issuer could launch a green issue without complying with some GBP recommendations. We would also support a traceability of the funds as well as allocation external certifications; a standardization of impact measurement and the setting up of SRI and Green labels.

Q8: Is there any value in developing a common EU level accounting standard for small and medium-sized companies listed on MTFs? Should such a standard become a feature of SME growth Markets? If so, under which conditions?

N/A.

Q9: Are there barriers to the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis? If so, how should they be addressed?

N/A.

Q10: What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high growth start-ups?

It is important to ensure that a stable and well-functioning legal framework is in place to facilitate investments in infrastructures. This could be promoted by introducing a pan-European definition of infrastructure as an asset class and encouraging standardization of information related to investments in infrastructure.
In this regard, we acknowledge the crucial role EIB can play, with the Juncker Plan and the Commission's proposal on the European Fund for Strategic Investments, to boost EU investments in infrastructure and SMEs through its support in terms of capital, expertise and long experience in lending, blending and advising activities in EU investment projects. As for SMEs financing, provisions of high quality credit information data, shared on an equal basis between banks and investments funds should also be encouraged (see also our reply to Q2).
In addition, it is also crucial to encourage a EU framework harmonising conditions for fund investments in loans. Some Member states, including Italy, have already created a national framework for loan origination funds. Nevertheless, the existence of impediments for cross-border capital funding (lack of explicit recognition of loan origination fund in one Member State to originate loan in another, barriers to lending, such as the need for banking licenses, restrictions on access to the type of comprehensive data needed to make an informed risk-based decision on investment opportunities) can constitute barriers to pan-EU investment opportunities. We

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therefore recommend the development of harmonised conditions on lending activities by investment funds at EU level.
As an additional note, prudential regulation applying to institutional investors in general and pension funds and insurance companies in particular should not discourage long term investments. The European Commission should recommend Member States to identify and remove barriers for long term investment in their national prudential regulation and supervisory frameworks.
The lack of standardization and transparent information constitute an important barrier also to the pension funds' investment in alternative assets, such as non-listed companies and SMEs. As specified above, the creation of specific investment categories combined with the development of a standard set of comparable information represents a fundamental step to boost these investments.

Q11: What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefitting from economies of scale?

The existence of different regulatory requirements (e.g. reporting requirements) in various Member states across the EU can prove burdensome in terms of costs for fund managers, requiring compliance with different sets of provisions when they wish to market funds cross-border. The Commission should consider the possibility to intervene in this area, with the intent to create a uniform framework across the EU.
Moreover, the Commission should seek to identify common criteria to help NCAs set the costs related to the exercise of their supervisory activities. Such costs currently differ from Member State to Member State: creating a single, harmonised system of criteria through which national supervisory costs can be calculated, in line with what has already been done for sanction regimes, could help removing barriers from cross-border marketing, reducing costs and incentivising economies of scale.
In addition, we note that although a discipline was inserted in the UCITS IV directive to favour the development of economies of scale – such as master/feeder structures and fund mergers – such measures have not witnessed a substantial utilization over the past years. It is important the Commission makes an assessment of these measures, to recalibrate the requirements in terms of notification/information to investors for fund mergers and master-feeder structures, which have proven burdensome in terms of costs and might have contributed to the underutilization of these tools.

Q12: Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets? If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRD IV/CRR and Solvency II?

N/A.

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Q13: Would the introduction of a standardized product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?

The creation of a standardized pension product would certainly boost the creation of a single market for personal pension products; nonetheless we recognize that for the good functioning of the single market, a minimal fiscal harmonization is needed.

Q14: Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds? What other changes if any should be made to increase the number of these types of fund?

N/A.

Q15: How can the EU further develop private equity and venture capital as an alternative source of fiancé for the economy? In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?

N/A.

Q16: Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?

To encourage a more diversified funding base for companies and infrastructures across the EU, it is important to remove those barriers that still impair the possibility for funds to act as loan originators. While appreciating the reference in the ELTIFs regulation for long-term investments funds to invest in loans granted by the ELTIF to qualifying portfolio undertakings, we believe that, in addition to what outlined in our reply to Q3, the Commission should further explore the possibility to create a pan-European regulatory framework to harmonize rules and conditions for lending activities by investment funds other than ELTIFs. In addition, standardization of the structure of the agreements governing loan origination activities should be encouraged, to create common best practices in the market.

Q17: How can cross border retail participation in UCITS be increased?

As a general note, it is important that the Commission ensures that the relevant disclosure information to retail clients is kept at a sufficient minimum to be meaningful and not confusing to investors, avoiding to overburden consumers – especially retail in the UCITS area. The review of the existing legislation over the past few years (MiFID II and the PRIIPs Regulation) has resulted in a series of different requirements relative to the information presented to consumers. It is important that the Commission ensures that the UCITS KIID continues to be the only document in terms of product cost disclosure that is needed by retail clients, in

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order to deliver concise and not confusing information to investors and avoid operational difficulties.

Q18: How can the ESAs further contribute to ensuring consumer and investor protection?

The ESAs can give a crucial contribution in further develop a single and coherent EU regulatory framework, ensuring consistency in financial markets regulation, to the benefit of final consumers, and proper regulatory calibration in those areas where rules stemming from recent legislation appear unworkable.
We refer, for instance, to the current state of play between MiFID II directive and the proposed IMD II directive: It is important the same set of provisions are envisaged in both MiFID and IMD II. When retail investment products have similar characteristics, (investment funds, structured products or insurance-based investment products, the so called PRIIPs), they should be subject to the same rules: retail investors must receive the same high level of protection. Both the co-legislators and the ESAs should work in this sense, ensuring consistency in the way legislation and implementation apply in financial markets.

Q19: What policy measures could increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets?

As previously mentioned in our replies to Q1, Q17 and Q18, actions are welcome in those areas where investor protection requirements are not achieved with a level playing field, hindering consumers from benefitting from single sets of rules. Implementation of MiFID II in connection with PRIIPs and UCITS on one hand and with IMD II on the other should be inspired by this objective, as well as the implementation of a European central repository of indices complying with the ESMA guidelines for the use of indices by UCITS (ESMA/2014/937).
Also mentioned in the Green Paper, the introduction of a standardized pension product, through a pan-European 29th regime implemented with an EU passport, would also remove obstacles to cross-border access and encourage the creation of a single market for personal pensions.

Q20: Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?

N/A.

Q21: Are there additional actions in the field of financial services regulation that could be taken ensure that the EU is internationally competitive and an attractive place in which to invest?

N/A.

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Q22: What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?

As stated by the Commission in the Green paper, direct marketing of EU investment funds and other investment instruments in third countries should be facilitated. Existing barriers (e.g. requirements to set up local asset management companies or local funds as well as limits for overseas investments by local investors) for EU firms and services to access third country markets should be removed. In this sense, we would support actions by the Commission aimed at creating the possibility for EU players to offer EU investments more easily to local, non-EU investors. International trade negotiations (such as the TTIP) can well represent the opportunity for the Commission to address these issues with its international counterparties.

Q23: Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond markets functioning and liquidity?

The functioning and efficiency of equity and bond markets should not be inhibited by the initiatives around financing for securities research through MiFID delegated acts, which, as explained in our reply to Q2, could have the unintended consequence to harm the market financing of issuers in the EU.

Q24: In your view, are there areas where the single rulebook remains insufficiently developed?

We have identified some specific areas of the Single Rulebook where inconsistencies are still present. More specifically, we would outline: (1) the unlevel playing field which could derive from the application of CRD IV[11] remuneration requirements to entities not subject to CRD (even though subject to specific sectoral [UCITS and AIFMD[12]] remuneration principles)[13]; (2) the distortion on distribution requirements, if MiFID II and the proposed IMD II are not kept aligned; (3) the overlapping provisions on disclosure to investors according to UCITS, MiFID II and PRIIPs, (which could undermine the temporary exemption granted in the PRIIPs Regulation for UCITS and retail AIFs using the UCITS KIID from the application of the PRIIPs regulation); and (4) the proliferation of reporting requirements coming, among others, from AIFMD, EMIR[14], Short Selling Regulation[15], European Central Bank

[11] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.
[12] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.
[13] Please refer to EBA's recently published Draft Guidelines on remuneration policies under CRD IV – Draft Guidelines on sound remuneration policies under Article 74(3) and 75(2) of Directive 2013/36/EU and disclosure under Article 450 of Regulation (EU) No 575/2013 [EBA/CP/2015/03].
[14] 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.

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Regulation concerning statistics on investment funds and forthcoming regulations such as SFT Regulation, and Money Market Funds Regulation. As for the latter, a reinforcement of a consolidated tape at ESMA level would be welcome to avoid multiplication of national reporting on the same data in different formats.

Q25: Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU level supervision would materially contribute to developing a capital markets union?

Assogestioni supports the role played by the ESAs to ensure consistent supervision and convergence of regulation and practices within the EU. In order for them to effectively fulfill their objectives and to act as key players to support the creation of a true Capital Markets Union, it is important to ensure they are given sufficient means to realize their tasks. As specifically for ESMA, it is important that the European Securities and Markets Authority is given sufficient time by Level 1 provisions to perform its commitments appropriately. In the course of the past years, increased legislative and regulatory production by the EU co-legislators have sometimes put ESMA under time constraints, with the consequences of restricting consultation periods, and thus risking to inhibit the benefits of proper consultations with stakeholders.
In addition, it is important that ESMA guidelines are enforced via peer reviews, in order to make them apply homogeneously in the different Member States. As a final note, the Commission should, while supporting coordination of ESAs, avoid that a single ESA could overstep its areas of competence.
Moreover, it is crucial to ensure proper coordination between the ESAs and the different national authorities, in order not to impair promptness and certainty of implementation and interpretation of EU regulations in national jurisdictions.

Q26: Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?

N/A.

Q27: What measures could be taken to improve the cross-border flow of collateral? Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?

Collateral exchange is a sound management principle. Buy-side investors such as insurance companies, investment vehicles and pensions are meant to be invested in various types of securities yet mainly fixed income securities and bonds. Therefore, it is crucial that collateral management conduits remain able to cope with exchange of securities as collateral support.

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[15] Regulation (EU) No. 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.

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However, regulation on derivatives and current initiatives of regulators to better control banks' activities, while increasing their capital and liquidity requirements, will have deep impacts on the capacity to manage collateral with securities both on: (1) the derivatives regulation side, as mandatory clearing involves the use of cash for variation margins; and (2) on the bank regulation side, as netting mechanisms on the leverage ratio do not allow for compensating mark-to-market derivatives with securities based collateral (which means more demand for cash collateral), and the leverage ratio strives banks to reduce low margin activities such as repo activities, while the repo market is the natural way for long securities investors to generate cash.
As a result, regulations are having contradictory effects with a higher demand for cash collateral, along with less means to generate cash at bearable costs and less liquidity on the repo markets. This would inevitably have deep impacts on the fixed income, funding market.
Furthermore, UCITS access to liquidity for the purpose of collateralizing derivative transactions is currently inhibited due to the ESMA Guidelines on ETFs and other UCITS issues. According to these Guidelines, the purchase price of a repo contract shall be treated as collateral in itself and may not be reused or reinvested by the fund. Those Guidelines have been implemented by numerous NCAs and therefore became de facto binding (and, in certain cases, were also extended to non-UCITS).
Since banks accept only a limited range of non-cash collateral (not included in all UCITS), liquidity demand in UCITS will increase with broader application of EMIR.
Therefore, considerations should be given to: (1) the fact that regulation shall give all means to use securities as collateral support with appropriate haircuts; (2) mitigating the risk of leverage through appropriate segregation arrangements for collateral with rules on re-use; (3) allowing a fair functioning of the repo market to ensure fluidity; (4) harmonization of cross border rules to avoid fragmentation of the derivatives, repo and collateral markets (e.g. initiatives such as the Working Group on Margin Requirement WGMR, as well as initiatives in the areas of clearing and Leverage Ratio); and (5) providing access to repo clearing that would give asset managers some guaranteed access to funding.
Lastly, from an operational perspective, cross-border settlement of securities is still quite complex and costly, and therefore we welcome initiatives such as Target 2 Securities (T2S), whose aim is to integrate and harmonize the fragmented settlement infrastructure in Europe, and which would therefore simplify cross-border flow of collateral.

Q28: What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them?

Obstacles to the development of an integrated market arising from company law, including corporate governance, could derive from the introduction of differential voting rights regimes and from the complexity in the exercise of cross-border voting rights.

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The positions expressed by proxy advisors[16] and comments in the *Report on the Proportionality Principle in the European Union* issued in 2007 by ISS together with Sherman&Sterling and ICGN outline that differential voting rights regimes could have the unintended consequences to reduce cross-border investment flows, discourage long-term investments, because of the uncertainty around the value and 'weight' of the investment, and cause a more acute discrimination between domestic and non-domestic shareholdings. This could have the possible effect to hinder the objectives of the CMU and the intent of the Revision of the Shareholders' Rights Directive.

On a different note, more efficient cross-border voting rights' systems could also be incentivized to target obstacles to integrated capital markets, for example, via direct electronic vote systems, to streamline the voting processes.

Other measures could include provisions aimed at encouraging companies to produce a legal framework and company documentation in English, especially for AGM's documentation such as, at least, a summary of the AGM's agenda and resolutions.

Q29: What specific aspects of insolvency laws would need to be harmonized in order to support the emergence of a pan-European capital market?

N/A.

Q30: What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments?

A series of issues around taxation should be looked at by the Commission as a matter of priority to encourage more integrated capital markets in the EU.

In particular, we refer to the existing lack of tax harmonization of cross-border mergers of funds and, in this perspective, we encourage the Commission to amend Directive 2005/19/EC (the so-called merger directive), to include investment funds in its scope, with the view to create a harmonized framework for tax neutral investment funds' mergers in the Union. Access of investment funds to tax treaties and simplification of withholding tax relief procedures should also be regarded by the Commission as a priority. In this sense, the implementation of the TRACE project should be seen as an action able to bring about an important contribution to CMU creation.

In addition, we would like to note that, if introduced, the EU FTT proposal would cause a detrimental impact on EU financial markets, increasing cost of capital for businesses, lowering returns on investments and savings and creating distortion in the markets, by rendering EU investment funds more expensive compared to direct

[16] Please see *inter alia* Frontis Governance and Expert Corporate Governance Service's comments available at: https://frontisgovernanceblog.wordpress.com/2014/12/09/frontis-governance-and-ecgs-commented-on-consobs-consultation-on-multiple-voting-rights/ and ISS Europe summary Proxy Voting Guidelines – 2015 Benchmark Policy Recommendations available at: http://www.issgovernance.com/file/policy/2015europesummaryvotingguidelines.pdf

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investment, with the result of channeling investments to products not subject to FTT or to non-EU investment funds.
As a final remark, looking at possible measures ahead, the development at national level of tax incentives related to long-term investments through ELTIFs would be highly welcome, as previously mentioned in our reply to Q3. For long-term assets and portfolios with long-term investment strategy invested in SMEs and infrastructure, tax incentives could significantly address the need to reallocate financing into their direction.

Q31: How can the EU best support the development by the market of new technologies and business models, to the benefit of integrated and efficient capital markets?

N/A.

Q32: Are there other issues, not identified in this Green Paper, which in your view require action to achieve a Capital Markets Union? If so, what are they and what form could such action take?

N/A.

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