Green Paper – Building a Capital Markets Union

Priorities for early action

Lowering barriers to accessing capital markets, widening the investor base for SMEs, building sustainable securitisation, boosting Long Term Investment, developing European private placement markets

1 Beyond the five priority areas identified for short term action, what other areas should be prioritised?

The Commission has identified priorities for early action with which the Autorité des marches financiers (AMF) agrees and on which it further comments in its answers to the consultations launched by the Commission. In addition, the AMF would like to underline the need for short term action on the following two priorities: (1) finalizing the key reforms, especially those implementing the G20's political commitments, and (2) taking steps to improve the efficiency of EU financial markets surveillance.

1) Finalizing the key reforms

Finalizing the long-awaited reform of MMFs

One of the key priorities in the short term should be the finalisation of the European Money Market Funds (MMFs) reform, which should be both ambitious and comprehensive. Europe's credibility is at stake on this specific file considering that the need to reform the MMFs sector from a financial stability standpoint was endorsed by the G20 at the Cannes Summit in 2011. In this respect, it should also be noted that the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO) are currently conducting an assessment of the progress of reforms undertaken in relation to MMFs. Against this background, it is of the utmost importance that Europe reaches an agreement on a satisfactory compromise that can be considered compliant with the international recommendations.

A comprehensive reform needs (i) to address the specific issues raised by the Constant Net Asset Value (CNAV) model, notably by acknowledging that these types of funds represent a systemic threat due to their particular deposit-like features (amortized-cost accounting valuation, penny-rounding) which make them more vulnerable to investor runs, as evidenced by the demise of the Reserve Primary Fund in 2008; and (ii) to propose a robust regulatory framework applying to all MMFs, which would help secure these products while not impairing their role as key providers of short term financing to the real economy.

While we see positively the evolution of the discussions taking place at the European Parliament to the extent that it proves that it is possible to reach a compromise on this complex file, we would caution against arriving at a final reform introducing new types of risks. In particular, we are opposed to the idea of allowing MMFs to display a CNAV if invested predominantly in European public debt.

In our view, the final reform should acknowledge that eventually MMFs need to allow their net asset values to float in line with the market value of the underlying portfolio so as to clarify the nature of MMFs as investment products and put an end to the confusion with bank deposits that is fostered by CNAVs. To that end, there needs to be an agreement on a transition period that has to be carefully calibrated to appropriately accompany the industry in its evolution. The proposal to authorise Low Volatility Net Asset Value MMFs during this transition phase, merits further consideration provided that they are subject to appropriate safeguards.

Absent a satisfactory legislative outcome on MMFs that display a CNAV, the risk is that this model will prosper in the EU at the cost of heightened systemic risk.

Moving forward in setting up a recovery and resolution regime for CCPs

In view of ensuring resilience of financial markets and restoring the confidence of investors and in line with the G20's commitments, it is essential to ensure the robustness of market infrastructures and post-trade frameworks by strengthening the robustness of central counterparties (CCPs) and setting up a recovery and resolution regime for them.

2) Taking steps to improve the efficiency of EU financial markets surveillance

The recent overhaul of the EU single rulebook has led to the introduction of various reporting obligations in order to improve the surveillance of financial markets and activities. This effort has been applied in a wide range of EU legislation (MiFID II/MiFIR, EMIR, CRA, AIFMD, etc.) and is still being conducted in the context of the finalisation of some new pieces of legislation (such as the proposal for a regulation on reporting and transparency of securities financing transactions). The implementation of these reforms relies on ESMA and national competent authorities (NCAs) but also market participants, and requires a huge commitment on their behalf in terms of human resources and significant investments. It is now necessary to take stock of the available data reported under the various pieces of legislation in order to make sure these data are used in the most effective and efficient way for the purpose of market surveillance, including by rationalising and empowering ESMA to put in place common solutions and help optimize the IT tools used by NCAs and ESMA for supervisory purposes.

2	**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?**
	Standardization of SME credit information, although a laudable objective, is far from being a simple matter. It raises a number of issues (including, but not limited to, issues pertaining to national specificities, to the diversity of SMEs, to the confidential nature of contributed information, to rights and costs of access, etc.). Consequently, the AMF believes that a more pragmatic and realistic approach should be to protect and promote the development of financial research, especially for SMEs. ***Protecting and promoting the development of financial research, especially for SMEs*** The issue of financial analysis is fundamental to corporate financing, especially for SMEs, as mentioned for instance in the Green Paper on long term financing and its follow-up actions. As highlighted in a recent report (*The Real Effects of Financial Shocks: Evidence from Exogenous Changes in Analyst Coverage*, Derrien and Kecskes, Journal of Finance 68, 4 (2013)), there is a causal link between analyst coverage and cost of financing for SMEs. It implies that weakening the research coverage in Europe would be an impediment to the development of strong SMEs. Availability of research is also an effective way to reduce reliance on credit rating agencies. An increased diversity of analyses and approaches is essential to allow investors to have a fair view of the reliability of firms, and thus to increase confidence in markets. ESMA's current proposal on the matter may be interpreted as putting in place an unworkable separation between the payment of the transaction fees and the research budget, and does create considerable operational difficulties for investment firms, in particular for management of small portfolios (ESMA's technical advice to the European Commission on MiFID II and MiFIR; ESMA/2014/1569). This may lead to a major disruption in the current organisation, notably for smaller players, which has not been the subject of any in-depth debate at the level of European lawmakers. Such a stringent change in the funding of research would lead to a drastic reduction in the offer of research available to the market. This would be especially detrimental to SMEs, in particular those seeking long term financing. Therefore, the AMF proposes that research is not dealt with in the delegated acts of MiFID II, but separately, both for portfolio and collective management. The work conducted by the Commission on a Capital Markets Union, completed by a thorough impact assessment, represents the perfect opportunity to address, both globally and efficiently, this crucial topic.

3	**What support can be given to ELTIFs to encourage their take up?**
	The creation of the ELTIF framework was intended to address the need to boost long term financing in the real economy. ELTIFs are primarily targeted to professional investors. However, the ELTIF Regulation enables ELTIF managers to open up these funds to retail investors. This implies that ELTIFs may potentially have a broad investor base. It will soon be up to the asset management industry to identify investment opportunities and to use this newly created label. A precondition to raise the interest of retail investors in relation to such type of investment strategy, which could appear to them as non-standard and risky, is providing them with high-quality advice, without imposing additional fees, and financial education. Furthermore, it is important to follow-up on the ELTIF Regulation by clear level 2 measures, clarifying certain key concepts under the ELTIF Regulation, such as the sufficient length of the life of the ELTIF fund and common definitions, calculation methodologies and cost presentation formats. These are currently being prepared by ESMA. In the future, ESMA can also deliver additional guidance and enhance supervisory convergence at level 3 (e.g. through Q&As). Further clarifications could shed light on the applicable rules on the prospectus regime: ELTIFs have their own prospectus regime, as detailed in the ELTIF Regulation. The issuance of a separate prospectus, as provided for under the Prospectus Directive, should as such, be dis-applied. In the specific case of a public offering and in order to ensure the same level of information and protection to investors, the prospectus initially published in relation to an ELTIF could be completed with relevant Prospectus Directive requirements. Moreover, demands for ELTIF funds might require the support of specific incentives for each type of investors, as to stimulate the attractiveness of such investment vehicles. From an institutional investor perspective, registering ELTIF funds as eligible investments for pension funds would also encourage their take-up, up to a maximum exposure that would need to be specified.

4	**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?**
	The AMF considers that the private initiatives launched in various countries and in particular in France provide an adequate framework and does not support any EU-level regulatory action on private placements. In that respect the success of the Euro PP constitutes a good example and, to accompany its development, the AMF supports two key actions: • ***Ensuring transparency by precise reporting figures for Euro PP:*** When Euro PP are listed, their main features (size, price, terms) are easily accessible as they are mentioned in the prospectus approved by the regulator and available on the issuer's and regulator's websites. Relevant data is less available when Euro PP are not listed, which has been the trend observed since one year on the French market. In these cases, the AMF would encourage initiatives aimed at maintaining a certain level of transparency on these private placements so as to contribute to the development of this new market segment and to create reliable and useful benchmarks for both investors and issuers. Among such initiatives are those of establishing a data collection service and statistics from providers such as Dealogic or IFR Thomson; • ***Euro PP and asset management*:** Today, funds invested in Euro PP are mainly marketed to institutional investors (such as insurance companies) but not to wealth management or private banking. Considering the fact that the ELTIF Regulation requires ELTIFs to invest at least 70% of their capital in certain types of assets, including bonds or loans and sets that the initial amount invested in one or more ELTIFs is not less than € 10,000, the ELTIF Regulation thereby potentially provides more liquidity for Euro PP and private placement in general. Regarding equity markets, the AMF focuses, on the one hand, on the issue of the balance between the nature of the information which is disclosed to the market (prospectus versus press release) and, on the other hand, on that of the scrutiny performed by the regulator (ex-ante versus ex-post). If the issuer complies with its obligations regarding periodic and ongoing information, an adequate way forward could be to consider, at least for issuances without a major dilutive impact, more targeted information to investors than the completion of a full-blown prospectus for the admission of securities.

Measures to develop and integrate capital markets	
Improving access to finance: addressing information problems, standardisation as a mechanism to kick start markets, enabling alternative means of financing to develop	
5	**What further measures could help to increase access to funding and channeling of funds to those who need them?**
	Mobilizing alternative funding channels to fill the equity gap As stated in the Green Paper, while all companies may have to tap capital markets to find resources to complement bank funding, some of them may need to raise relatively high amounts at an early stage (such as start-ups and innovative companies) or may structurally face greater difficulties (such as SMEs due to fixed costs or lack of visibility by institutional investors) in accessing capital markets. In that respect, they may face a so-called "equity gap" that some stakeholders consider to occur between "close money" and venture capital (all the more so as the average investment of venture capital funds tends to rise in some markets), being a range of approximately € 100,000 to € 1 million in funding. Considering the amounts at stake, this equity gap could be better filled by proximity and local players at national level rather than through cross-border flows at pan-European level. Following the "Entrepreneurship Forum" that took place in the Spring of 2013 and the establishment of an appropriate national legal framework for crowdfunding activities, the French authorities have considered securities and loan-based crowdfunding as one of the most adequate alternative tools; the threshold for not producing a prospectus (where more than half of the issuer's capital is concerned) was therefore raised from € 100,000 to € 1 million. In spite of its high potential, it is likely that crowdfunding will only cover a small portion of the needs of start-ups and SMEs (equity crowdfunding soared by almost 150% in 2014 but only amounted for € 25.4 million, compared to € 828 million raised by venture capital funds). ***Inspiring French experiences*** Recent experience of the French market however illustrates that other funding channels may be successfully mobilized, such as bond or loan private placements for SMEs (it is to be noted that the average size of Euro PP has decreased from € 160 million in 2012 to € 65 million in 2014), bank guarantee instruments for SMEs, loan funds invested by institutional investors (such as insurance companies, mutual unions and provident institutions) or stock markets for biotech and medtech companies (34 issuers as of 26 March 2015 composing the Euronext Next Biotech index). Other Member States and the European Investment Bank (EIB) have launched similar initiatives, which can also be replicated or expanded without specific European legislation. Yet, it is paramount to ensure a strong dynamic for venture capital and private equity in general, which are a necessary channel for riskiest investments. EuVECA can be an appropriate label at EU level, but such a dynamic remains highly dependent on a thorough knowledge of the demand side and on exit perspectives for investments, which notably involves attractive and liquid capital markets. ***Supporting research and market making which are essential to well-functioning markets in favor of investors and issuers*** Financial research analysis dedicated to SMEs should be promoted by setting up an appropriate regulatory environment. Market making, which is an essential tool for the financing of the economy, should also be supported. Indeed, an issuer may only efficiently raise capital on the primary market if investors are assured that the secondary market is sufficiently liquid to allow them to on-sell their securities. ***Other initiatives*** Other initiatives may be envisaged at European level, such as: considering a more favourable prudential treatment of investments in bonds issued by SMEs, and the development of retail investment funds with more spaced out redemption rights.

6	**Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?**
	Standardisation is not the answer For the time being, the AMF does not support any regulatory endorsement of bond market standardisation. While we acknowledge that secondary market liquidity is problematic, it is preferable to err on the side of caution and take the time to fully evaluate the impact of bond standardisation on the primary and secondary bond markets before committing to any regulatory action. There are two main reasons why we believe regulatory action is not warranted at this stage: • Firstly, the European bond market is about to undergo a major regulatory change with the implementation of MiFID II, which will bring pre- and post-trade transparency to bond markets. Implementing measures must therefore be effectively calibrated, ensure a harmonized post-trade transparency and strike the right balance between the investor information and the need for a market maker to properly hedge its position arising from a transaction. It is important to take the necessary time to properly assess the impact of MiFID II on the bond market and not rush into new regulatory initiatives. • Secondly, there is no evidence of much support from bond issuers regarding bond market standardisation, whose advocacy seems to be mainly driven by the buy-side. In that respect, potential advantages of bond market standardisation should be balanced with a potential negative impact on primary markets, keeping in mind that bond standardisation – encompassing measures such as a minimum issue size, a specified issuance format or restricted coupon and maturity dates – implies constraining the types of bonds corporates will be able to issue. Nevertheless, we welcome the ongoing discussions on secondary bond market liquidity within the industry and with regulators and support a wider involvement of corporate bond issuers in order to assess the merit of bond standardisation with respect to the well-functioning of primary bond markets.

7	**Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG investment, including green bonds, other than supporting the development of guidelines by the market?**
	A harmonized ESG definition and an ESG label are welcome The market has indeed been active in the field of ESG in recent years. In France, since 2009, several labels have been created. Fostering an accurate and official definition of ESG could perfect the comparability between labels and further increase their reliance. Nonetheless, the so-called *Grenelle II* law introduced enhanced requirements regarding non-financial information and, in this context, outlines social, societal and environmental aspects which need to be included in annual reports: • The requested social information covers *inter alia* the following topics: employment; work organization; social relations; health and safety; training; and equal treatment; • The requested societal information covers *inter alia* the followings topics: territorial, economic and social impact of the company's activities; on-going relations with persons and organizations concerned by the company's activities, including integration associations, teaching institutions, environmental protection associations, consumer associations and riverside residents' associations; and outsourcing and suppliers; • The requested environmental information covers *inter alia* the following topics: general environmental policy; pollution and waste management; sustainable use of resources; and climate change. In addition, a current initiative in France aims to address the difficulty in comparing labels. This initiative consists in the creation of new labels owned by the French government. Although this initiative is still at an early stage, the process should progress quickly and initial labels could be available by the end of 2015/early 2016. An initiative at EU level would further help to the extent it establishes a common framework in terms of transparency and methodology requirements and, as such, facilitates comparability. The French experience could also usefully feed into the review of the PRIIPs Regulation which foresees an assessment of the feasibility, costs and possible benefits of introducing a label for social and environmental investments. It could further be explored whether categories of products beyond PRIIPs should be allowed to qualify for the label. Prima facie, no specific limitation to PRIIPs seems necessary except with respect to the EuSEF label (in order to avoid confusion).

8	**Is there 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?**
	There is no obvious response to these questions due to several items which would need clarification: • The first item which would need clarification is whether MTFs and SME Growth Markets are considered as steps towards the main listing (the regulated markets). If so, it might be useful to allow the use of accounting standards other than full IFRS for these markets. The experience in France is that small and medium-sized companies see full IFRS as a set of accounting standards which is both difficult and costly to apply. Among the reasons provided are the fact that IFRS are subject to very frequent changes by the international standard setter (which makes them complex for SMEs), and require a level of technical expertise which is very often absent in SMEs (and as a consequence is provided by external advisors which is a cause of significant costs). • A second question is dealing with the kind of investors which are expected to invest, respectively, in MTFs, SME Growth Markets, and on the regulated markets. Experience in France tends to indicate that international investors are present only on the regulated markets. And as far as the regulated market is concerned, international investors seem to be active only on the largest companies (in terms of market capitalization). SMEs on the regulated market are seldom followed by financial analysts and, as a consequence, they do not attract any interest from international (non-domestic) investors. Bearing this in mind, whether a common EU level accounting standard for SMEs would be useful is very questionable. Even for SME Growth Markets the answer to this question is not obvious. • Another question is linked to the definition of small and medium-sized companies. Studies on the voluntary use of IFRS by entities listed on Alternext (a French MTF) show a very strong correlation between the size of the market capitalization and the choice to use IFRS as a financial reporting standard. But these studies also show that the size of the companies which choose to use national GAAP often exceed by far the criteria set at European level for the definition of SMEs. If a requirement were made, or an option granted, to use a common EU level accounting standard for SMEs, the size of this category of issuers would have to be adapted to encompass more companies than at present. Based on experience in France, it could even be argued that problems with the application of IFRS are frequently observed with SMEs listed on the regulated market, and that the application of a different set of standards would be helpful for these SMEs (using the broader definition a SMEs alluded to above) without being detrimental to non-domestic investors (for the reasons described above). • Developing a common EU level accounting standard for SMEs means that a single standard setter at EU level is put in place. Today there is no such organization at EU level. It would be costly to create one, both in terms of financial means and time. Relying on the standard for SMEs published by the IASB could be seen as an alternative option. But similarly to what has been done in the UK with FRS 102, the existing standard would have to be amended to meet basic needs from investors which are currently not addressed by the standard (for instance earnings per share, information on operating segments, and improved disclosures in the notes to the financial statements). To summarize, if MTFs and the SME Growth Markets are considered as steps towards the regulated market, allowing the use of several sets of accounting standards would seem to make sense. Experience in France indicates that there is a low level of interest from non-domestic investors in small caps (with some exceptions, for instance in the bio-tech industry) and that these small caps have difficulties coping with the complexity of IFRS. An initiative could nonetheless be envisaged to assess the quality and degree of comparability of national standards and to promote further convergence without, however, creating any additional layer of standardization.

9	**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?**
	A European initiative is necessary to harmonize the different regimes that have been set up in Europe and to enhance investor protection Considering that crowdfunding will contribute to financing the economy in the coming years, it is worthwhile to encourage the development of crowdfunding activities while ensuring investor protection. The regulation of crowdfunding platforms varies across the EU due to different interpretations of EU rules (mainly the Prospectus Directive and MiFID), different stages in market development and various business models of platforms across the EU. This heterogeneity of regimes is further exacerbated by the fact that several Member States require additional measures to EU legislation, especially regarding investor protection. In this context, regulatory arbitrage may occur and platforms express difficulties to operate across Europe, thus raising investor protection concerns. Against this backdrop, a minimum of harmonization at EU-level would have a beneficial effect. In the short-run, disclosure requirements could be harmonized where the Prospectus Directive requirements to issue a prospectus do not apply, to improve market access with a high level of investor protection. This harmonization could be achieved either by amendments to the Prospectus Directive (under the exemption sections) or an EC Recommendation. In that respect, the template of information to be provided by the issuer and the platform for a crowdfunding offering published by the AMF could be a relevant example. In addition, it would be useful to clarify when and how the AIFMD is meant to apply, bearing in mind that the initial purpose of the AIFMD was not to capture securities-based crowdfunding platforms; in this regard, it is worth noting that the great majority of these platforms do not meet the AIFMD's characteristics in terms of model (e.g. agency model), investment policy and activities. Also, European citizens and SMEs should be educated and informed about the risks and opportunities of this new form of financing by developing a range of tools such as educational guides, a European label, etc. Beyond these objectives, consideration should be given to the harmonization of investor protection rules (e.g. suitability test, warnings, due diligence, etc.). Furthermore, in order to address the issues raised by platforms currently regarded as outside the scope of MiFID, particularly in terms of securities offered, the creation of an opt-in regime to operate across the EU could also be envisaged.

Developing and diversifying the supply of funding	
Boosting institutional investment	
10	**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?**
	Investing in long term projects, SMEs and innovative and high growth start-ups is critical to unlock investment in Europe's companies and infrastructure. The EU should support institutional investors willing to participate in such areas of investment. Nevertheless, such investments should not be made at the expense of the stability of the European financial system and of its actors. Any policy measures designed to encourage such investments should therefore define an appropriate balance between the different interests at stake. Policy measures that could facilitate investments by institutional investors in long term projects, SMEs and innovative and high growth start-ups, could relate not only to the regimes applicable to institutional investors (as further detailed below) but also to the status of SMEs (in particular the definition of SMEs, as further detailed below). ***Regarding the regimes applicable to institutional investors*** Prudential requirements under Solvency II represent a significant issue, all the more so in Member States where retirement savings are predominantly invested in life insurance products rather than in pension funds. Implications of Solvency II in terms of investment policy (asset allocation and asset duration) need to be carefully reviewed and, as the case may be, corrective action taken in light of the very objectives set by the Commission for the Capital Markets Union initiative. In addition, particular attention should be paid to accounting standards as they may also have implications on asset allocation decisions. Collective investment schemes also appear to be appropriate vehicles to facilitate investments by institutional investors in long term projects, SMEs and innovative and high growth start-ups while ensuring that such investments do not expose them to risks that have not been appropriately assessed. Managed by professional asset managers benefiting from the adequate skills and tools to consider the risks and benefits presented by different projects, investment funds have the adequate features to accommodate the involvement of institutional investors in the financing of these kinds of projects. The EU should facilitate such investments. Another key aspect in order to define the appropriate regime is to make sure that institutional investors are permitted to invest in long term projects, SMEs and innovative and high growth start-ups. Indeed, such investors are often subject to specific requirements regarding the types of assets that they may invest in either as a result of regulation or of internal rules. These requirements are essential to regulate the risks that institutional investors may be exposed to. Close attention should be paid to these regulatory obligations to assess their adequacy with the objective of encouraging the financing of long term projects, SMEs and innovative and high growth start-ups. In France, recent examples, dating back to July 2013, are the so-called “NOVA” and “NOVO” funds (their purpose is to invest in shares and bonds issued by non-listed SMEs, with an investment between 10 to 50M€ and a maturity of roughly 5 to 7 years) and their success has led to the new “NOVI” fund (which involves investing in a mix of shares and bonds).

	Regarding the status of SMEs Among the initiatives proposed to increase investments by institutional investors in SMEs, harmonizing and clarifying the definition of SMEs could be explored. Indeed, the current definition of SMEs considers businesses under € 100 million for the Prospectus Directive and € 200 million for MiFID in terms of market capitalisation. They should not however be the only criteria; others, necessary for increased information and analysis on SMEs (including governance set-up, voting rights, valuation of SMEs) are critical to meet the objective. Rather than providing earnings guidance, SMEs should provide analysts with long term goals, such as market share targets, number of new products or percentage of revenues from new markets. Conversely, SMEs should be made aware of all requirements applicable to the eligible asset classes that an institutional investor may invest in, so as to ensure that the shares of the SMEs would fall under the eligible assets universe. In conclusion, in order to increase the attractiveness of SMEs, it is essential to provide reciprocal transparence which means (i) in respect to SMEs, quality financial and qualitative analysis, and (ii) with regards to institutional investors, criteria that fall within their authorised investment universe.

11	**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 benefiting from economies of scale?**
	Costs of funds' creation are not the issue There are few funds marketed across the EU and those which are, have local distributors which market their funds in the "targeted" Member State(s). This may be due to the ease and speed of creating funds in different Member States and the low registration fees. As such, it seems easier to set up different funds that are incorporated in various Member States than to distribute one specific fund across Europe. Europe ranks as the second largest domicile for investment funds worldwide, behind the United States. Europe also counted more than 3,200 asset management companies as at the end of 2012 (according to the "*Asset Management in Europe: Facts and Figures – 7th annual review*" published by EFAMA as of June 2014). This figure underlines, based on its stability, that UCITS are profitable. Further decreases in registration or regulatory costs, which are already competitive (and, based on the above figures, do not represent barriers) would not serve the stated objective but may instead favor further market fragmentation. Total expense ratio is in addition comparable to the one applicable to US funds. Costs are, as such, not the issue. ***Infrastructure: favoring a transparent and efficient settlement process*** However, improvements are still possible to smoother marketing of funds across Europe, especially in terms of infrastructure and barriers which exist at an international level. Because of fragmentation in the processing of investment funds, particularly the lack of common communication channels and standardised format for order placements, investment fund processing may be inefficient and the operating costs, shared between the investor and the fund or its management company, is not immaterial. In France, a central hub operated by Euroclear France is responsible for processing investment funds but the latter is not fully compatible with Clearstream, mainly in use in other European countries, such as Germany or Luxembourg. Prior to reaching the transfer agent of a fund, an order potentially passes through multiple venues. The investor using this service bears costs, which may potentially be high in the case of retail orders. The fund, in order to be referenced on the relevant distribution and settlement platforms, also pays fees. Ensuring compatibility across the European settlement platforms would help standardising and automating the complex and fragmented investment fund subscription, redemption or switching order. It would also strengthen the operational settlement process, shorten the settlement cycle which may under certain circumstances, such as IPOs or financial crises, be crucial and reduce the costs to both the investor and the fund or its management company. If an investor invests indirectly in a fund, through the services of an intermediary acting as nominee, the legal ownership of the shares may, in that instance, depending on national legislation, be retained by the entity acting as nominee of the investor. In that case, such investor could have no rights against the fund and the fund could have no direct or indirect liabilities towards this investor. In other terms, an investor loses out in this set-up and from this point of view, all the legal protection he/she would otherwise have benefited from under the jurisdiction of the applicable Member State. The sole action the investor may have would be as per the agreement with the distributor. On top of the legal insecurity for the investor, investing in a nominee capacity without mentioning the name of the end-investor may raise two issues from a fund's perspective. First, an issue linked to anti-money laundering. Second, an issue linked to tax evasion. One solution could be to require that any investment made via the services of an intermediary should refer at least to the name of the "nominee/end investor".

Cross-border distribution: strengthening harmonisation and cooperation between regulators

A management company also bears various costs linked to a cross-border distribution of the fund it manages. For instance, a lack of harmonisation in the area of applicable tax regimes, contributes to explain such costs: for example, such costs relate to obtaining the relevant tax certification status in the Member State where the fund would be distributed which is different from the certification status that another Member State may require. There are additional costs linked to the issuance of the specific tax reports due to the relevant authorities and to which the legal fees payable to law firms should be added. Harmonisation would help in this matter; a centralised database as well, or further cooperation between Member States so as to avoid the multiplication of layers of specific reporting requirements, among others, on management companies.

The recognition by third countries of specific European labels of funds as authorised investments for professional and non-professional investors should also be advocated on the basis that they deliver a suitable balance of investor protection, financing of the real economy. This is further discussed under question 21.

In addition, the admission of shares of investment funds to trading on regulated markets at their net asset value, as it is the case in France and in the Netherlands, is an appropriate way of developing cross-border distribution. It facilitates cross border subscriptions of shares of investment funds whilst maintaining the principle that shares may be subscribed and redeemed at their applicable net asset value.

13	**Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?**
	Pension provision There is merit in strengthening a single market in pension provision bearing in mind that this requires addressing substantial differences in national tax and retirement regimes. ***Employee savings plans*** With an investment horizon of approximately five years (shorter than the one of pension savings), employee savings plans also constitute an important pool of long term investments. Employee share ownership provides a means to involve employees by giving them a stake in the company they work for and, hopefully, together with pension funds, a direct interest in the real economy. Broadening Capital Markets Union considerations on pension provisions to employee saving schemes with the objective of harmonising the multiple rules governing existing schemes (such as transparency or governance) might not only be in the interest of investors but also favor an environment serving the real economy. Consequently, there would be merit in exploring the possibility of a common European vehicle for employee participation and saving schemes, as it would seem that setting up a standardised vehicle could significantly impact the development of new markets for European-wide investments. A common European vehicle could have the following features: a stable and lasting shareholder base (as a significant part of the shares is held by the company's employees); employees' participation in the scheme's governance and capital building (implicating employees in a supervisory board and offering employees haircuts and capital guarantees); and raising awareness of employees about the company's identity and financial targets (transparency on the company's financial objectives, regular communication toward employees). Convergence efforts in the field of pension provisions and, more broadly, employee participation schemes, should be made taking into consideration applicable European regulation such as the Institutions for Occupational Retirement Provision (IORPs) Directive or the Alternative Investment Funds Managers (AIFM) Directive, to avoid any overlap or inconsistencies.

14	**Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU regulated funds to run these types of funds?** **What other changes if any should be made to increase the number of these types of fund?**
	No changes to the EuVECA and EuSEF Regulations seem, at this stage, necessary. However, further clarification as to the link between the different applicable regulations would be helpful. In particular, it may be necessary to clarify that the EuVECA and EuSEF labels are open to any alternative investment fund manager, regardless of the total amount of assets that it manages.

15	**How can the EU further develop private equity and venture capital as all alternative source of finance for the economy?** **In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?**
	The European framework in relation to private equity and venture capital is robust, all the more so that it has been strengthened by the AIFM Directive. Indeed, private equity and venture capital funds are AIFs and their management companies must comply with the AIFM Directive. As such, private equity and venture capital funds benefit from the AIFM label throughout the EU and beyond; in particular, they benefit from the regulatory competitive advantages that the AIFM Directive offers, being the appropriate balance between investor protection and the flexibility in terms of risk and investment guidelines matching the interests and the objectives of these funds. The EuVECA Regulation has brought a complementary development framework to private equity and venture capital funds, with the creation of a dedicated EU label that might further facilitate the development of part, if not, most of these funds and, potentially, foster their success beyond the Union. Additional regulation does not seem, at this stage, warranted to further develop private equity and venture capital as an alternative source of funding to the economy. In France, market participants benefit from a large scope of fund structures tailored to their specific constraints, requirements and needs; in the EU, they fit within legal structures shaped to meet their needs and objectives. However, and from an institutional investor perspective, registering such funds as eligible investments for pension funds or insurance companies could help their further development, up to a maximum exposure that would need to be specified.

16	**Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?**
	France has been largely and historically financed by banks. Although financial markets have been playing a growing role, the level of bank loans has remained stable since the financial crisis, contrary to several Member States (at the end of January 2015, loans to all companies increased by 2.2% over a one-year horizon ; source: Banque de France). Next to banks, however, other actors such as insurance companies and investment funds can provide financing to governments, corporates, institutions, etc. They may, as such, enlarge funding access to the whole scale of borrowers by broadening the potential investor base. Whereas there are clear benefits from diversifying the sources of funding, there are also risks, which should be addressed, including the risk of asymmetry of information or the different level of expertise in the chain of financing. In the context of the present consultation, the AMF would like to discuss specifically the possibility for funds to originate loans as has been proposed in the recent ELTIFs regulation. A subject which has been raised both within Europe (ESMA, ESRB) and internationally notably in the context of the work on shadow banking. There is no common approach at EU level yet. The Central Bank of Ireland consulted widely on this issue and finally decided in September 2014 to authorize qualified investor alternative investment funds (QIAIFs) to engage in loan origination. Other Member States do not explicitly prohibit this while some, such as France, do. Rather, France authorises loan participation funds that can take the form of the "*Fonds Professionnels Specialisés*" or the so-called "*Organismes de Titrisation*" vehicles which are securitisation vehicles that were created in 2008. They offer an appropriate level of protection to investors while providing a robust framework to the vehicle, including the involvement of a depositary. Loan origination funds provide loans directly to borrowers without the intermediation of a bank. In the case of loan participation funds, the investment fund manager takes an active role in the selection of the loans but the loans themselves are originated by banks. Both models (origination and participation) imply different level of expertise, organisation and risks. However, allowing investment funds to originate loans as banks would do, but without equivalent constraints, experience, expertise, systems and structures raises serious issues. Besides, regardless of the models elected, additional questions would need to be addressed to ensure these vehicles are not creating undue risks, such as terms and conditions applicable to the financing of loans by the investment funds, in particular the extent to which leverage could be seen as a source of funding. In that respect, clear limits should be imposed as disintermediation should not be seen as an opportunity to expose our economies to the risks of leverage overuse. Investment funds implementing lending investment strategies should at least be required to have an authorised alternative investment fund manager (AIF). ***Risk of altering banking regulation or allowing unfair competition*** If investment funds were to be allowed to originate loans, prudential constraints, similar to those applicable to credit institutions, should apply, to ensure the risks are properly taken into consideration and to avoid any unfair competition among lending actors with the creation of loopholes in the applicable banking regulation. ***Risk of denaturing asset management*** In addition as per originating loan funds, these "new hybrid products", mid-way between banks and asset managers, would end-up mixing two universes, two regulations. The origination lending model furthermore contradicts the European initiatives aiming at clarifying the legal structures and regimes in the realm of asset management under the application of a European single rulebook.

Boosting retail investment	
17	**How can cross border retail participation in UCITS be increased?**
	A strong regulatory framework UCITS is a successful label, well established in the European market and internationally. It has proved, as such, its robustness and qualities since its creation 30 years ago. This success is due to a number of factors, the main ones being a model that is cost-efficient, easy to set up and in a timely manner; this is what can be observed on the market, with a wide diversity of manufacturers creating UCITS funds. In addition, the share of cross-border fund assets in Europe in 2013 stood at 40% of total European investment fund assets compared to 27% at the end of 2003, according to EFAMA. This is a strong testament to the strength of the UCITS label which has built up over the past decade. Going forward, further developments of this label rely on other channels, such as: institutional, with the development, for instance, of innovative strategies; and international, in the continuity of what we observe in Asia, with the creation of UCITS-like labels. ***Going forward: promoting UCITS*** Please, see answer “Infrastructure: favoring a transparent and efficient settlement process” to question 11. The success of UCITS represents its best argument for further developments, beyond Europe in particular, as it reflects the genuine need and demand of investors for this type of a label, subject to a condition: regulatory stability. The successive amendments to the UCITS status create doubts as to its strength and qualities. EU institutions could furthermore actively participate in promoting the quality and efficiency of the UCITS model internationally. Some actions could be carried out to facilitate the marketing of funds throughout Europe and beyond, by easing distribution via the listing of funds and the compatibility of funds’ settlement procedures (including compatibility of the respective infrastructures in use in different countries).

18	How can the ESAs further contribute to ensuring consumer and investor protection?
	The ESAs should work towards increased consistency across rules and the effective implementation of rules A significant amount of new rules have recently been enacted which aim at increasing investor protection. In addition, the new legislation includes references to delegated acts as well as technical standards and guidelines. ESMA is currently finalising regulatory technical standards (RTS) and has provided the Commission with advice (related to key MiFID II provisions, for instance). However, a lot still needs to be done in order to take a cross-cutting approach to rulemaking. Although this falls within the remit of European lawmakers rather than the ESAs, the AMF would like to underline that, in preparing legislation, it is important to take an approach that makes it possible to achieve more consistency across the rules applicable to different financial sectors, such as banking, financial markets and insurance, and make them compatible with each other. For example, such an effort should be made in respect of marketing rules applicable to comparable financial products sold to retail customers, which are currently subject to sector-specific regulation. In the present context of finalisation of the single rulebook, the role of the ESAs should be to take action in order to ensure the effective and consistent implementation of the overall regulatory framework, to facilitate convergence in the interpretation of rules through guidelines as well as, where needed, Q&As. This should be completed by efforts in order to foster consistent supervisory approaches and practices in order to: reach consistent implementation; ensure fair treatment of investors wherever their bank or intermediary is located in the EU; and avoid regulatory arbitrage and ensure a level playing field among market participants. ***The ESAs should play a major role in the rationalization of reporting processes and in the development of central or mutualized IT systems*** Supervisory convergence will be greatly enhanced by putting in place common tools, in particular information technology (IT) tools, such as recently launched by ESMA with respect to instrument and trading data and the calculation of the MiFIR transparency and liquidity thresholds, as well as the setting up of a single access point to trade repositories data under EMIR. First, such projects meet the needs of supervisory authorities to be more efficient in their supervision of the markets and to ensure investor protection. They would also be key elements for the further integration of European markets. ***The ESAs should develop more focused and quick peer reviews resulting in practical outcomes*** The peer reviews of national competent authorities (NCAs) that are conducted by the ESAs should be focused on key aspects of regulatory and supervisory frameworks, in order to strengthen consistency in supervisory outcomes. These reviews should be followed by practical outcomes as well as the development of guidelines or opinions, where necessary. Should these peer reviews reveal serious issues or even breaches of Union law, the ESAs should take appropriate action. ***The ESAs have to play an active role in building a common supervisory culture*** The ESAs should make full use of the powers that their founding regulations gave them in order to contribute to the consistent application of legally binding EU acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of EU legislation, preventing regulatory arbitrage as well as mediating and settling disagreements between NCAs. In particular, ESMA should enhance its role in the field of supervisory convergence by providing a forum where NCAs can share information on their respective supervisory priorities in order to facilitate not only exchanges of experiences but also resolving on a multilateral basis issues they encounter in their supervisory activities, primarily in the supervision of cross-border activities. Cooperation in supervising cross-border transactions within the EU must be stepped up to solve problems such as online marketing of high-risk financial products (Forex, CFDs, binary options).

	The AMF for instance has identified serious investor protection challenges with online trading companies authorised in other Member States. In 2013 and 2014, the AMF noted a sharp increase in complaints concerning these trading services. Numerous online advertisements targeting the general public promise huge and easy gains and are often misleading. They attract large numbers of retail investors to the Forex and binary options markets. These investors are victims of reprehensible practices and are often on the receiving-end of unscrupulous sales approaches: a less-than-rigorous client questionnaire, barely visible information on the websites on the risks of trading, numerous encouragements to invest more, etc. Most of them then suffer financial losses, sometimes quite considerable. These events concern both non-authorised companies and companies authorised in other Member States. The AMF expects and looks forward to ESMA making full use of the powers attributed by sectorial legislation, in particular by making judicious use of product intervention, in close cooperation with NCAs.

19	**What policy measures could increase retail investment?** **What else could be done to empower and protect EU citizens accessing capital markets?**
	Today, it seems that distribution-related issues, in relation to all asset classes across the universe of financial instruments, mainly relate to: the differences of interpretation within the EU regarding the concept of marketing; investments in financial instruments; rapid development of passive asset management; and the new distribution models and the emergence of new forms of advice on social networks. ***Regulating High Frequency Trading*** MiFID I has brought major changes to European equity markets, promoting in particular competition between trading venues, which resulted in a fragmented market favourable to the development of High Frequency Trading ("HFT"). Along with technological development, the fragmentation of markets has ushered in new opportunities for the fastest players and a race for speed, which in turn has spurred a rise of automation and technological innovation allowing faster processing of information. In this context, HFT, which now accounts for a large proportion of transactions, has become a new reality symbiotic with fragmented markets. Nevertheless, the contribution to market efficiency brought by technological innovation needs to be balanced against an increased market fragility that recent events have highlighted. The AMF supports the approach adopted by MiFID II, which acknowledges HFT as a new reality and emphasises the need for more robust financial markets in the context of an automated, low latency environment. Additionally, the AMF believes it is key to supplement regulatory measures on risk controls with microstructure reforms on tick size, fee structures and order-to-trade ratios in order to improve the quality of the liquidity provided by HFT. HFT firms contend that they have contributed to a reduction in spreads and an increase in liquidity, but a type of liquidity consisting of too many flickering orders with which investors cannot interact is not to the benefit of market participants. In that respect, a distinction should be drawn between: • the technological progress allowing to place orders at great speed which, along with market automation, represents a genuine benefit to the investor and has the backing of the AMF, provided it does not contribute to unfair conditions in accessing the markets; and • the acute shortening of the lifetime of orders, symbiotic with the reduction in tick sizes, and the corresponding surge in message traffic, which contributes to order book noise at the expense of the transparency and effective supervision of the markets. This may create unfair transaction conditions for players who operate with higher latency, and lead to overinvestment in costly infrastructures (co-location, highly sophisticated processing and transmission systems), that would not have been undertaken otherwise. The AMF supports a viscosity-controlled environment achieved mainly through a tick size regime mandating for each share a minimum tick size striking the appropriate balance between incentivising liquidity provision and disincentivising order book noise. By the same token, the ESMA "toolbox" on tick size is key to providing ESMA with the flexibility to respond to a quickly evolving market structure.

Educating and informing consumers to increase investment in equity and long term instruments

With respect to investments in financial instruments, possible actions could be: re-introducing a culture of "measured and proportionate risk" for investors, including retail investors; developing financial education of retail investors in order to restore their confidence and reconcile them with a proportionate and appropriate level of risk. European regulation should also promote access of retail investors to high quality advice, without additional fees, in order to encourage et protect equities and long term products investments. Initiatives could further aim at improving their understanding of the financial market and specific products they can invest in; restoring their confidence in financial advisors; and improving and simplifying information provided to retail investors to ensure that such information is clear, sufficient, easy to understand and comparable across investment products, as provided in the key information documents under the packaged retail and insurance-based investment products' (PRIIPs) regulation.

With respect to the development of passive asset management, prior to implementing any mechanism which could favor the rapid dissemination of passive asset management over active asset management (such as a "super simplified" model for passive asset management without an equivalent framework for active asset management), the potential consequences (for instance, in terms of impact on price determination and increase in the number of daily orders) should be carefully examined in order to determine whether an over-representation of passively managed investment funds could, in times of stress, disturb markets or even amplify risks through pro-cyclical patterns.

Adapting regulation to digital age

Concerning new distribution models and the emergence of new forms of advice on social networks, the EU should play a leading role in the development of capital markets in particular in terms of digital finance, provided the EU manages to create a unique, simple and efficient infrastructure. At the international level, there should be an overall review of existing rules in terms of electronic trading, data protection and diverse regulations related to online players in financial services. At EU level, a reflection should be initiated on the challenges triggered by new practices, existing practices and customs, and a project of harmonization concerning marketing rules applying to online financial services should be instigated. These rules should address issues concerning, for example, the notions of territoriality (location of the provider in a digital environment) and advice. Other initiatives could include implementing digital supervision cooperation rules, developing a common framework for cooperation and sanctions related to online financial services and promoting a European e-regulatory model for financial services internationally.

In the medium term, an effective implementation of the ongoing revision of the Shareholders' Rights Directive, aiming at improving the exercise of such rights, should make a significant contribution to the promotion of retail access to capital markets. Indeed, retail appetite for equity investment also depends on an actual reduction of barriers to cross-border identification of shareholders, transmission of relevant information regarding general meetings as well as exercise of voting rights and confirmation of votes' recording. In that respect, existing self-regulatory initiatives such as, for example, Market Standards for Corporate Actions Processing and Market Standards for General Meetings, could inspire the Commission when exercising its implementing powers in accordance with this directive.

20	**Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?**
	In addition to collective investment schemes which are a means of diversification and reduction of risk for retail investors, it is important to encourage direct investment in securities so as to build *affectio societatis* and ease the understanding and appropriation of how markets and companies concretely interact. Four conditions may be envisaged to channel abundant individual investors' savings to fuel the economy and especially corporate equity through simple instruments: financial knowledge and education; diversity and intelligibility of the offer; appropriate and fair information on the incurred risks; and incentive through an adequate tax treatment. In light of these conditions, the following main practices and rules in place in the French market may be outlined: • In the field of IPOs, companies and intermediaries are subject to a best-efforts obligation to set aside a retail tranche of at least 10% of the raised amount. As part of the implementation of its 2013-2016 strategic plan, in March 2014 the AMF formed a working group (including industry representatives) on IPOs to consider the existing regulatory framework in France, particularly in light of practices in other European countries. It is worth highlighting that the working group decided in favour of maintaining this obligation. • New life insurance vehicles were put in place in late 2014 to foster long term investment in companies. "*Eurocroissance*" contracts offer capital protection on an 8-year period and potentially higher returns than euro-denominated contracts (with permanent capital guarantee), while "*Vie generation*" contracts have to be invested for at least 30% in specific assets (mid-range housing, SME shares and social investment) and do not offer capital protection but benefit from a supplementary tax allowance on inheritance duties. • As regards securities crowdfunding, platforms may operate under the new national status of "*Conseiller en investissements participatifs*" (crowdfunding investment advisor) only if, among other conditions, they offer simple securities, that is ordinary shares and vanilla bonds with a fixed interest rate. • The AMF's current strategic plan for 2013-2016 is driven by the general ambition of "Making finance meaningful again" and is organized along three dimensions, among which to "Restore investor confidence". The AMF is also greatly involved in investor education through regular warnings and campaigns aimed at risky or unauthorized products (such as Forex in October 2014), partnerships with public institutions (such as the "*Institut national de la consommation*") or associations dealing with consumer issues, or its membership and contribution to the funding of the "*Institut d'éducation financière du public*", which notably operates through its dedicated website "*La finance pour tous*". • Promoting adequate investment products to retail investors implies greater vigilance on the misselling of inadequate or overly complex products. Promoting simple products is not the objective. What should be favored is the promotion of products to retail investors that give rise to appropriate financial advice and are accompanied by the information needed to make an informed decision, As one of its main legal missions is to protect retail investments in financial instruments, the AMF pays great attention to marketing materials. In that respect, it issued in 2010 a specific position on the marketing of complex financial instruments, which lays down four criteria for appraising misselling risks: poor presentation of the risks and payoff profile of the product; retail clients' lack of familiarity with the financial instrument because of the underlying assets used; payoff profile depending on the simultaneous occurrence of several conditions across two or more asset classes; and number of mechanisms in the formula for calculating the financial instrument's payoff. • The long-existing preferential tax regime applicable to the individual share savings plan ("*Plan d'épargne en actions*") was extended in early 2014 with a raise of the investment cap (€ 150.000 instead of € 132.000) and the creation of a new distinct plan dedicated to SMEs and midcaps (up to € 75.000). Moreover, a bill currently before Parliament notably provides for a better tax treatment of allocation and vesting of free shares.

Attracting international investment	
21	**Are there additional actions in the field of financial services regulation that could be taken to ensure that the EU is internationally competitive and an attractive place in which to invest?**
	Promoting the EU regulatory framework as a model where investor protection echoes a competitive market place Strengthening harmonisation efforts and convergence throughout Europe should favor a perception of clarity by stakeholders based in third countries, and enhance their understanding of the single rulebook. Such convergence would also be a key element when implementing MiFID II and MiFIR, both with regards to market structure and investor protection. ***Enhancing international cooperation*** Pursuing efforts in terms of international cooperation could be of tremendous help. To be competitive and attractive, European markets need to be placed under a framework that is both flexible and secure enough in order to allow for third-country firms to have access to EU markets as long as they are regulated and supervised in conditions which are equivalent to those applicable in the EU. This should be considered in relation to the same regulatory and supervisory treatment being offered by these third-countries to EU regulated entities. This is further discussed in the next question. ***Other important actions*** Other actions in the field of financial services that should be taken to ensure the EU is internationally competitive and an attractive place in which to invest, include: • favoring high quality and diversified financial research to help investors in their decision-making process and, ultimately, enhance market liquidity; • ensuring a timely finalization of the single rulebook, including: the revision of the Shareholders' Rights Directive to improve the exercise of such rights and contribute to the promotion of retail access to capital markets and the consistent and effective implementation of MiFID II and MiFIR; • equipping ESMA and national competent authorities with common surveillance tools and developing joint IT systems for processing and sharing of data; and • promoting supervisory convergence and the effectiveness of enforcement regimes.

22	**What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?**
	The AMF welcomes the fact that the Commission has identified this issue in its Green Paper. Indeed, at a time when the globalisation and interconnectedness of markets require reforms to be implemented and supervised consistently at global level, the EU must continue to affirm its place on the international stage. It is important to defend the competitiveness of Europe's financial businesses and ensure that international convergence does not take place at the expense of Europe's interests. This is all the more important in a context where extraterritorial measures adopted by the United States could have detrimental repercussions on European market participants and contribute to an increase in market fragmentation. In particular, mutual recognition of regulatory frameworks should be promoted. European participants must be allowed to grow their business internationally on a level playing field. This requires considering and promoting an approach based on mutual recognition of regulatory frameworks. Such an approach should be implemented when legislation that currently leaves it to Member States to deal with third-country entities or authorities as well as legislation which unilaterally opens Europe to third-country firms, is being reviewed. While it is important to attract foreign investment to Europe, there is also a need to help European players obtain the same kind of treatment that Europe grants their international competitors. More generally, in light of the difficulties raised by the cross-border application of rules, notably in relation to OTC derivatives reforms, approaches based on mutual recognition are more likely to produce results that provide certainty, efficiency and safety for market players, users as well as regulators. They should as such be promoted by EU institutions at the international level, in multilateral and bilateral negotiations. Europe's interests must be upheld in negotiations with other countries and organisations. For example, the EU must continue to push for the creation and application of high-calibre international accounting standards. The EU needs to strengthen its influence in international accounting standard-setting, notably through an overhaul of the organisation and tasks of the European Financial Reporting Advisory Group (EFRAG). The use of common standards at international level should be supported by EU institutions when such standards aim to improve the effectiveness of market surveillance and facilitate information-sharing among authorities, such as, for instance, the setting-up of the legal entity identifier (LEI).

Improving market effectiveness – intermediaries, infrastructures and the broader legal framework	
Single rulebook, enforcement and competition – supervisory convergence – data and reporting – market infrastructure and securities law – company law, corporate governance, insolvency and taxation – technology	
23	**Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity?**
	The absolute need for a consolidated tape Along with the Commission (page 23 of the Green Paper), we believe that the setting up of a single consolidated tape is of the outmost importance for the fair and efficient functioning of European markets. A single consolidated tape, which has long existed in the United States, would provide extremely useful information to investors, issuers and regulators: such a tape would provide an easily accessible exhaustive record of any executed transaction to retail and buy-side investors; it would help issuers to closely follow transactions and price formation on their stocks; and a single tape would also help ESMA and national competent authorities (NCAs) to ensure a better monitoring of financial markets. However, we do not believe the agreement reached in MiFID II of multiple consolidated tape providers would permit to provide a sufficient level of granularity and a reliable comparison of market information in order to make the market more readable. Furthermore, as competing consolidated tape providers will not be sufficiently profitable, so far we believe that no such tapes may exist in the near future. As a consequence, it belongs to the Commission to set up a public utility (or at least a robust model which could be implemented without too much delay) in charge of providing a pan-European consolidated tape to any investor willing to take part in the EU financial markets. ***Supporting market making in the interest of investors and issuers*** We also consider that market making is an essential tool for the financing of the economy. An issuer can only efficiently raise capital on the primary market if investors are assured that the secondary market is sufficiently liquid to allow them to sell their securities. Commonly used, the term market making refers to various practices, notably systematic internalization, facilitation or even the use of algorithmic strategies, including high frequency trading. In this respect, it appears that a large number of stakeholders wish to take advantage of their frequent interventions on the market, mostly on liquid instruments, to benefit from the financial incentives conferred on market makers by trading venues' managers, whereas liquidity providers do not always benefit from advantages benefitting the services they render on illiquid markets. In particular, the current increase in prudential requirements imposed on banks drives them to decrease their inventories, which, in turn, affects their capacity to intervene as market makers. The Capital Markets Union initiative must therefore aim at promoting and supporting market making, but only as far as it is effectively useful to investors, and consequently to issuers. This implies enticements on the sovereign and corporate bond markets, specifically in periods of stress which typically lower market liquidity ("stressed market conditions"), when investors consider buying or selling a large quantity of instruments (block transactions) which the market cannot smoothly absorb, or when investors wish to intervene on instruments whose market suffers from a near chronic liquidity shortage (particularly shares of small- and mid-caps issuers). Conversely, it appears unnecessary to promote market making on instruments whose market is naturally liquid and when it consists of acting as counterparty for orders similar or lower in size to those which are usually traded on an order-driven electronic market (excluding cases of "stressed market conditions"). This approach requires the implementation of specific criteria of market making. In any case, once precisely regulated, the activity of market making must also be clearly included within the scope the banking activity conducted in favour of bank clients and, more broadly, as contributing to the proper functioning of the economy. Indeed, any separation of this activity from other client activities would increase the financing costs of this activity and therefore may be detrimental to the liquidity of the markets.

	Improving market integrity through the access to order-book data Fragmentation of trading across different market exchanges, some of them located in different jurisdictions, has created new challenges for supervisors to prevent market abuse and to monitor the smooth and orderly functioning of the market. While financial regulators currently receive transaction reporting from all Member States on an ongoing basis, orders are not subject to such a reporting. Orders – of which only a tiny fraction gives rise to a transaction – constitute however a very valuable source of data for regulators to fight market abuse and especially market manipulations, analyse market incidents such as algorithm glitches. The lack of order book data made the analysis of the “Flash crash” more than difficult. Hence, it is important to give competent authorities a direct and ongoing access to order-book data related to financial instruments falling within their supervision remit, irrespective of the exchange or the jurisdiction where the instrument is traded. This would allow national competent authorities to substantially remedy the side-effects of liquidity fragmentation on their ability to fulfil their surveillance duties and enhance market integrity.

24	**In your view, are there areas where the single rulebook remains insufficiently developed?**
	We strongly support supervisory harmonization to promote a level-playing field between Members States. There remains, in certain areas, a lack of harmonization in respect of definitions and rule implementation, which opens the door to regulatory arbitrage and is detrimental to the functioning of markets, as further illustrated below: • The transparency regime for *non-equity* instruments in MiFID II leaves many key features at the discretion of national competent authorities (NCAs), which may result in different regimes across Europe. For example, a Member State may request real-time transparency for all transactions while another Member State may be less strict and allow for deferred publication of the price and the volume in certain cases. A third Member State may be even less strict and allow in some cases for an extended period of deferral for the publication of the volume. This lack of harmonization not only creates an un-level playing field within Europe, but also an operationally complex environment for cross-border transactions. • It is necessary to ensure a harmonised understanding of the definition of financial instruments across Member States. In particular, the uniform treatment of FX spot and forward contracts is crucial in the development of a single rulebook (Section C4 of Annex I to the Directive on markets in financial instruments, MIFID II). We strongly encourage the Commission to make progress on this issue and call for special attention to any exemption to the qualification as financial instrument that could lead to an un-level playing field. That said, the Capital Markets Union initiative should also take into consideration the fact that some local issues (related for example to specific local rules, tax incentives, insolvency regimes, accounting policies, market infrastructures) may arise when fulfilling local financing needs. Thus, for example, SME Growth Markets should be given a certain level of flexibility to allow them to cater to specific needs.

25	**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?**
	The present landscape in the EU is characterised by a shift from rule-making to rule implementation and convergence in supervisory practices. In this context, what is now required is not so much that the ESAs be granted further powers but that they make full use of their powers. ***Ensuring consistent and effective implementation of rules*** In the present context of finalisation of the single rulebook, the role of the ESAs should be to take action in order to ensure the effective and consistent implementation of the overall regulatory framework, to facilitate convergence in the interpretation of rules by guidelines as well as, where needed, Q&As. This should be completed by efforts in order to foster consistent supervisory approaches and practices in order to: reach consistent implementation; ensure fair treatment of investors wherever their bank or intermediary is located in the EU; and avoid regulatory arbitrage and ensure a level playing field among market participants. ***Making use of regulatory powers*** The ESAs should make full use of the powers that their founding regulations gave them in order to contribute to the consistent application of legally binding EU acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of EU legislation, preventing regulatory arbitrage as well as mediating and settling disagreements between national competent authorities (NCAs). The AMF also expects and looks forward to ESMA making full use of the powers attributed by sectorial legislation, in particular by making judicious use of product intervention, in close cooperation with NCAs. ***Tackling the IT and reporting challenge*** The challenges linked to surveillance systems, and particularly IT tools, are vitally important in order to meet the challenge of Europe-wide surveillance. NCAs and ESMA must equip themselves with common surveillance tools and develop joint systems, notably for processing and sharing data. Recent examples of initiatives to meet these challenges include projects led by ESMA and NCAs in respect of instrument and trading data and the calculation of the MiFIR transparency and liquidity thresholds, as well as the setting up of a single access point to trade repositories (TRs) data under EMIR. Enhanced supervision also requires that the quality of market data reported to ESMA and NCAs be improved and that common practices be developed for the purpose using data collected. The AMF has particularly strived for quality enhancement to be coordinated by ESMA as the supervisor of trade TRs in the EU. More generally, the recent overhaul of the EU single rulebook has led to the introduction of various reporting obligations in order to improve the surveillance of financial markets and activities. This effort has been applied in a wide range of EU legislation (MiFID II/MiFIR, EMIR, CRA, AIFMD, etc.) and is still being conducted in the context of the finalisation of some new pieces of legislation (such as the proposal for a regulation on reporting and transparency of securities financing transactions). The implementation of these reforms relies on ESMA and NCAs but also market participants, and requires a huge commitment on their behalf in terms of human resources and significant investments. It is now necessary to take stock of the available data reported under the various pieces of legislation in order to make sure these data are used in the most effective and efficient way for the purpose of market surveillance, including by rationalising and empowering ESMA to put in place common solutions and help optimize the IT tools used by NCAs and ESMA for supervisory purposes.

Developing more focused and quick peer reviews resulting in practical outcomes

The ESAs will also need to engage in more peer reviews of national competent authorities (NCAs), which should be focused on key aspects of regulatory and supervisory frameworks, in order to strengthen consistency in supervisory outcomes. These reviews should be followed by practical outcomes as well as the development of guidelines or opinions, where necessary.

Developing a common supervisory culture

ESMA and NCAs also need to work together to foster a shared supervisory culture. For example, it is essential to promote convergence in regulators' supervisory practices to give better assurance as to the consistency of accounting and financial information, particularly during initial public offerings. ESMA should enhance its role in the field of supervisory convergence by providing a forum where NCAs can share information on their respective supervisory priorities in order to facilitate not only exchanges of experiences but also resolving on a multilateral basis issues they encounter in their supervisory activities, primarily in the supervision of cross-border activities. As mentioned in our response to question 18, cooperation in supervising cross-border transactions within the EU must be stepped up to solve problems such as online marketing of high-risk financial products (Forex, CFDs, binary options).

Additionally, in the post-trading environment, the supervisory powers of ESMA vary depending on the financial market infrastructures, such as central counterparties (CCPs), trade repositories (TRs) and central securities depositories (CSDs). Since the legislative pillars (EMIR, CSDR) of the European regulatory architecture were recently enacted (there is still ongoing work on the level 2 measures of CSDR and EMIR), it is worth mentioning that a common supervisory culture in respect of financial market infrastructures is still work in progress.

However, the functioning of EMIR CCP Colleges already shows some room for improvement, ESMA could play a valuable role by facilitating the convergence and harmonisation of different interpretations by NCAs. As an example, ESMA could play a useful role by defining a convergent approach to defining what could be a significant change to the rules or models of an authorised CCP examined by ESMA. Likewise, the supervisory role of ESMA could be improved in the supervision of CSDs. Against this background, it is worth considering strengthening co-operation procedures between European authorities.

Finally, ESMA's role in the context of secondary markets could also be improved. The new MiFID legislation grants certain powers to ESMA (such as monitoring the double volume cap – article 4 MiFIR) without ensuring that the Authority has sufficient information and data at its disposal. As a consequence, ESMA's monitoring role should be envisaged at a larger scale in order to make sure it is granted with sufficient and reliable data as far as MiFID transparency calculation and commodities position limits are concerned.

26	**Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?**
	As mentioned in the Green Paper, the issue of harmonisation of securities laws, such as legislation on securities ownership rule, is complex as it touches on property, contract, civil law, corporate and insolvency law as well as the laws on holding of securities and conflict-of-laws. Any securities law legislative initiative would potentially present some important risks as long as it will not be made completely neutral regarding corporate law. In this regard, it must be noted that the French securities law provides for a strong level of protection of final investors and legal certainty while allowing for the development of business opportunities: in the French regulatory framework, the final investor is the legal owner of the securities which are credited, in its name, to a securities account of the intermediary (custodian). This mechanism, as well as other provisions (such as double accounting system), allow a close monitoring of the integrity of securities and prevent an undue creation of securities. The French regulatory framework avoids any situation where there would be more outstanding securities than securities really issued. The French legal framework also establishes a right to reclaim securities and transfer them to an account held with another intermediary. We believe that this system has proved its robustness in crisis times (*Lehman Brothers'* default) and is assessed as efficient and protecting by all representatives of the industry (institutional investors, asset managers, intermediaries, CSDs). In this regard, it can be noted that the provision of adequate level of protection can be seen as an element of competitiveness and attractiveness for investors. Should any project be considered, it should at minimum ensure certainty in the acquisition and the date of transfer of securities, protect the integrity of the securities holding system, list legal requirements of intermediaries, regulate the exercise of corporate actions and guarantee the protection of the final investor's rights on the securities, including in the case of insolvency of an intermediary in the holding chain. However, one the elements of securities law which would benefit from an added-value at the EU level is the harmonisation of corporate actions, participation in general meetings of EU issuers and identification of shareholders by issuers. Even if self-regulatory standards (within the Corporate Actions Working Group) are currently being developed, these standards are not efficiently and equally implemented in the EU. Harmonising key elements of corporate actions (scope, definitions, liability and timelines) and of participation to the annual general meetings of issuers (participation forms, timelines, remote voting rules, etc.) at EU level, along the lines of pre-agreed industry standards, would create a regulatory framework which would foster the cross-border shareholding and cross-border flow of collateral. In that respect, it is important to ensure full efficiency of the provisions (and the implementing acts attached thereof) of the Shareholders' Rights Directive – currently under revision – regarding shareholders' identification and the transmission of relevant information for the exercise of shareholders' rights.

27	**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?**
	In the context of increased demand for collateral, the issue of collateral velocity and, more globally, collateral management, is of fundamental importance for custodians as well as for market infrastructures. Some of them decided to develop new projects aimed at making collateral more available and more fluid, taking into consideration provisions laid down in EMIR (eligibility requirements for high quality collateral assets) and CSDR (settlement discipline) and tabling on the advent of Target2Securities and Securities Financial Transactions Regulation – SFTR (conditions for reuse of collateral). Against this background, we believe that there is no need, at least on the short term, to propose new regulatory measures to improve cross-border flow of collateral. However, one possible way forward for the Commission could be to identify how to favour a harmonised implementation of markets standards for general meetings and for corporate actions (as elaborated by the Joint Working Groups on General Meetings and on Corporate Actions).

30	**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?**
	The Commission should call upon Member States to ensure their national tax systems are properly aligned with the shared objective of encouraging retail investors to allocate part of their savings to capital markets and long term investments. The proposed common system of financial transaction tax, which would involve a limited number of Member States only, would not be a factor fostering the integration of European financial markets.

31	**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?**
	The increasing use of technology to reach investors – so-called digital distribution – has begun to reshape the whole distribution model, especially in the field of investment funds, to the benefit of more integrated and efficient capital markets. This brings new opportunities as well as new risks. ***A new approach of financial advice***: as MiFID II is reinforcing the framework of financial advice, generating additional costs for firms and therefore raising the price of advice to clients, the development of new technologies open the door to a less expensive type of advice, mainly provided by computers, commonly named "automated advice". This service is based on the use of questionnaires, which are treated automatically to allow machines to give automated advice to clients. This service is more affordable than personalized advice (provided by highly qualified professionals), and therefore it offers the opportunity to less well-off clients, who would not pay the price of traditional advice, to at least have access to some kind of advice. It is very important to keep a sufficient regulatory framework for these new tools, in order to avoid any regulatory loophole. In particular, the registration, monitoring and responsibilities of firms providing automated advice need to be clearly specified in the Capital Markets Union, if "financial advice" is to remain meaningful for investors. ***Opportunities for new markets***: The first interesting aspect of digitalisation is the fact that it lowers boundaries. The use of new technologies in fund distribution and commercial communication could have multiple positive effects on the fund industry consistent with the objectives of the Capital Markets Union. For instance, the possibility to sell online and cross-border could open new markets for many market participants, which are currently only operating on a national level and through physical points-of-sale. It could also allow investors to compare and fine-tune their analysis when looking for an asset management company which best meets their expectations and risk/reward profile. ***Emergence of new categories of players***: The main issue with the emergence of digital distribution is disintermediation. Indeed, issuers of financial products will be more and more able to reach out directly to investors. Traditional distribution channels will need to adapt to the new possibilities brought by new technologies. For instance, financial technology companies cannot be seen as usual distributors in their approach to end-customers. These new participants in the distribution chain could have a better understanding of liabilities thanks to the use of social media. Investors in funds will expect distributors (and/or issuers) to know them better, as it is the case in the banking industry. This new game set could have important repercussions on issues such as the advice and responsibility chain or product governance. ***Integration of new tools in advisory and marketing activities***: The emergence of mobile technology and the wide use of social media and social networks offer individual investors innovative ways to access and scrutinise the investment fund industry. The greater use of mobile technology has spurred the development of applications tailored to the asset management business. Distributors on the front-line have started providing their clients and prospects with real time access to applications which track their fund performances and carry out subscription and redemption operations. The use of social networks represents a new challenge for fund promoters who are now required to make their marketing strategy evolve, as to be visible on these new communication channels. Moreover, new technologies will provide a better advisory servicing to clients as advisors will be able to receive instantaneous information about the products their clients have been looking at online (on traditional distributors' websites or on new platforms) and adjust their offer to match the profile and targeted investments of their clients. Finally, the regulatory authorities could also use these new channels to enhance their knowledge of the market and the behavior of customers. They will also be able to introduce more and more links leading to pedagogic and follow-up spaces, where individuals will have better access to a neutral financial education. ***An underlying risk: information dissemination velocity***. One of the most important risks regarding the impact of new technologies is the speed at which financial information can spread on networks. This phenomenon accelerates the shift from medium and long term processes – which helped segregate relevant and irrelevant information – to short term processes. In order to limit an increase in market volatility, it could be considered to introduce new indicators (for instance a medium annual growth rate of performances on a rolling period) in order to complete short term indicators and provide an overall picture.

32	**Are there other issues, not identified in this Green Paper, which in your view require EU action to achieve a Capital Markets Union?** **If so, what are they and what form could such action take?**
	European institutions should make every effort to identify issues for which political decisions are required, to avoid having to make subsequent decisions in non-legislative provisions because they were not addressed at political level. European lawmakers must also limit and strictly regulate exceptions and national options. Otherwise, they could fall short of their objectives, particularly in terms of convergence. The AMF also considers that integrating ESMA more effectively in the European legislative process would be helpful, for instance by consulting ESMA as part of the lawmaking process in order to help build consistency between the principles set out in legislation and in the corresponding implementing measures. It is also important to promote stability and quality in standard-setting. Realistic timelines should be established for setting technical standards and revising adopted legislation. Preparing proportionate and appropriate responses to often highly complex questions, including consultation with financial services stakeholders, takes time. In addition, measures must be given time to take effect before assessing their impact with a view to a potential revision.