

Review of the Markets in Financial Instruments Directive

Amundi response to questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

The questionnaire takes as its starting point the Commission's proposals for MiFID/MiFIR 2 of 20 October 2011 (COM(2011)0652 and COM(2011)0656).

All interested stakeholders are invited to complete the questionnaire. You are invited to answer the following questions and to provide any detailed comments on specific Articles in the table below. Responses which are not provided in this format may not be reviewed.

Respondents to this questionnaire should be aware that responses may be published.

Please send your answers to econ-secretariat@europarl.europa.eu by 13 January 2012.

Theme	Question	Answers
Scope	1) Are the exemptions proposed in Directive Articles 2 and 3 appropriate? Are there ways in which more could be done to exempt corporate end users?	
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	
	4) Is it appropriate to regulate third country access to EU markets and, if so, what principles should be followed and what precedents should inform the approach and why?	It is appropriate to regulate third country access to EU markets. Third country access should be based on a strengthened equivalence regime that is built on the principles

		of legal, fiscal and accounting reciprocity so that EU institutions could also access third country markets.
Corporate governance	5) What changes, if any, are needed to the new requirements on corporate governance for investment firms and trading venues in Directive Articles 9 and 48 and for data service providers in Directive Article 65 to ensure that they are proportionate and effective, and why?	- It is important to ensure consistency across the different EU initiatives concerning corporate governance so as to achieve legal certainty. MIFID2 rules should therefore be aligned with the CRD 4 requirements and other EU legislative texts like AIFMD. National legislations and international principles should also be taken into account.
Organisation of markets and trading	6) Is the Organised Trading Facility category appropriately defined and differentiated from other trading venues and from systematic internalisers in the proposal? If not, what changes are needed and why?	
	7) How should OTC trading be defined? Will the proposals, including the new OTF category, lead to the channelling of trades which are currently OTC onto organised venues and, if so, which type of venue?	
	8) How appropriately do the specific requirements related to algorithmic trading, direct electronic access and co-location in Directive Articles 17, 19, 20 and 51 address the risks involved?	A clear distinction should be made between general algorithmic trading on the one hand and HFT on the other hand. Differentiation should be done between brokers provided algorithms to the buy-side and in-house built algorithms used for proprietary trading (HFT). Most algorithms are very helpful for the whole industry, whereas HFT has no economic usefulness as it only provides additional liquidity to securities which are already liquid. Some typical HFT behaviours are also very questionable. With this in mind, market integrity and potential market abuse (<u>clear definition</u>) should be under high scrutiny. Finally, Amundi is firmly opposed to co-location, as it is comparable to insider information.
	9) How appropriately do the requirements on resilience,	Amundi believes that it is probably illusory to imagine that these

	contingency arrangements and business continuity arrangements in Directive Articles 18, 19, 20 and 51 address the risks involved?	<p>requirements will solve the problem of HFT because in case of emergency it is not sure that commitments would be respected. Neither is registration sufficient to cope with HFT and one can even wonder whether such registration would not provide a sort of implicit and detrimental recognition to HFT.</p> <p>It should be necessary to go further and to take the following provisions:</p> <ul style="list-style-type: none"> - set a minimum ratio of 50% (for example) between executed transactions and total orders - impose a minimum latency period in the order book - give ESMA the power to determine and to monitor a harmonised tick size.
	10) How appropriate are the requirements for investment firms to keep records of all trades on own account as well as for execution of client orders, and why?	
	11) What is your view of the requirement in Title V of the Regulation for specified derivatives to be traded on organised venues and are there any adjustments needed to make the requirement practical to apply?	
	12) Will SME gain a better access to capital market through the introduction of an MTF SME growth market as foreseen in Article 35 of the Directive?	
	13) Are the provisions on non-discriminatory access to market infrastructure and to benchmarks in Title VI sufficient to provide for effective competition between providers? If not, what else is needed and why? Do the proposals fit appropriately with EMIR?	

	14) What is your view of the powers to impose position limits, alternative arrangements with equivalent effect or manage positions in relation to commodity derivatives or the underlying commodity? Are there any changes which could make the requirements easier to apply or less onerous in practice? Are there alternative approaches to protecting producers and consumers which could be considered as well or instead?	
Investor protection	15) Are the new requirements in Directive Article 24 on independent advice and on portfolio management sufficient to protect investors from conflicts of interest in the provision of such services?	<p>Amundi understands the proposed requirements on independent advice (Art. 24(5)) in order to protect investors from possible conflicts of interest which can occur in such a context. These requirements are sufficient because these conflicts of interest do not exist in an integrated model where levels of retrocession are uniform for the same category of products. Though not an independent based model, the advantage of such 'integrated' model of distribution is based on the following features:</p> <ul style="list-style-type: none"> ○ Customer relationships are managed over the long-term, thereby contributing to a good knowledge of the customer and higher standards of integrity of the advice; ○ Customers have access to a sufficiently broad range of in-house products and services; ○ Advisers have a good understanding of the products and their characteristics; ○ <u>No risk of conflict of interests</u>: advisers are not personally interested by the inducements paid to their distribution network (their remuneration is not based on the sale of specific products) but they are intended to propose the fund best adapted to each client need. <p>It is worth pointing out that entry fees are often negotiated and sometime cancelled for wealthy retail clients, which cannot be the case for on going fees nor for inducement. Banning inducement in this context would lead to a further disadvantage for non wealthy clientele.</p>

	<p>16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?</p>	<ul style="list-style-type: none"> - Amundi stress on the fact that complexity of products has to be considered with regards to the capability of investor to understand the return he can expect from the product and the level of guarantee offered to him. - For that reason, most structured UCITS should not be considered as “complex” products because: <ul style="list-style-type: none"> • The investor does not need to understand the underlying structuring technique of a product to be able to understand the risks and the expected gains it entails, which are the most important information for him/her; • After the firm has drafted the prospectus clearly describing the guarantee, formula and probable pay off of the fund, it is the role of the regulator to verify the quality of the internal structure of the product ; • we are so far not aware of any detriment arising from the sale of these instruments to retail consumers or of any market evidence of failure of these products, to the contrary; • structured UCITS for retail customers offer a guarantee of at least 90% of the invested capital to maturity, which has allowed coming safely through the 2008 and 2011 financial crises; • such fund structures can actually deliver less risky outcomes for investors, better matching their needs and profiles; • the term “complex” would deter retail banks from buying these products thus depriving retail consumers thereof; • if MIF regulation establishes that complex products cannot be traded on an execution only basis it must not imply that all products needing proper advise to the customer before subscription have to be classified as “complex”. <p>One could admit the exclusion of <u>structured</u> UCITS from the execution-only regime in order to make sure due consideration is taking place before investing on a long</p>

		period. But an automatic classification of <u>structured</u> UCITS as “complex” would be unjustified and would have severe marketing consequences on the UCITS brand.
	17) What if any changes are needed to the scope of the best execution requirements in Directive Article 27 or to the supporting requirements on execution quality to ensure that best execution is achieved for clients without undue cost?	
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	We do not see any need to grant best execution to eligible counterparties who may simply opt out to have access to it.
	19) Are any adjustments needed to the powers in the Regulation on product intervention to ensure appropriate protection of investors and market integrity without unduly damaging financial markets?	<p>Amundi believes that a distinction needs to be made as regards ESMA intervention powers:</p> <ul style="list-style-type: none"> - Regarding <u>retail markets</u>, national regulators should keep their powers considering their proximity and in-depth knowledge of these markets (including their risk profile). Coordination by ESMA is however necessary to avoid regulatory arbitrage and competition distortions; - Regarding <u>corporate markets and professional clients</u>, which typically operate on a cross-border basis, Amundi supports the strengthening of ESMA powers, as proposed by the Commission.
Transparency	20) Are any adjustments needed to the pre-trade transparency requirements for shares, depositary receipts, ETFs, certificates and similar in Regulation Articles 3, 4 and 13 to make them workable in practice? If so what changes are needed and why?	Any excess in transparency would clearly be very detrimental for market-makers we use to work with as a mutual fund manager and this would have an impact on prices we get when we buy or sell assets for our funds, thus altering the final performance of these funds.
	21) Are any changes needed to the pre-trade transparency requirements in Regulation Articles 7, 8, 17 for all organised trading venues for bonds, structured products, emission allowances and derivatives to ensure they are	

	appropriate to the different instruments? Which instruments are the highest priority for the introduction of pre-trade transparency requirements and why?	
	22) Are the pre-trade transparency requirements in Regulation Articles 7, 8 and 17 for trading venues for bonds, structured products, emission allowances and derivatives appropriate? How can there be appropriate calibration for each instrument? Will these proposals ensure the correct level of transparency?	<p>Amundi agrees with the need to increase transparency on non-equity markets. However, non-equity markets behave very differently from equity markets, in terms of volume, variety of products and size of transactions.</p> <p>In order to achieve MiFID 2 transparency targets without reducing liquidity / increasing bid/offer spreads, AMUNDI suggests details of technical standards and exemptions to be defined by ESMA in close cooperation with industry associations (e.g. AFME), either buy- or sell-side. In any case, purely and simply extending the rules already applicable to equity to non-equity would likely result in an important decrease of liquidity in those markets.</p> <p>Amundi agrees that these provisions be detailed at Level 2. However we believe that it would be most sensible for these measures to take the form of ESMA's technical standards rather than delegated acts of the Commission.</p>
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	
	24) What is your view on the data service provider provisions (Articles 61 - 68 in MiFID), Consolidated Tape Provider (CTPs), Approved Reporting Mechanism (ARMs), Authorised Publication Authorities (APAs)?	
	25) What changes if any are needed to the post-trade transparency requirements by trading venues and investment firms to ensure that market participants can	In our view, simply extending post-trade transparency rules for equity to non-equity markets, as proposed, would not be efficient as it would be ill-adapted to non-equity, especially bond markets, where the quantity of tradable assets is much higher and where

	access timely, reliable information at reasonable cost, and that competent authorities receive the right data?	<p>many factors tend to influence the market (liquidity, rating, maturity...). There is indeed a significant interaction between trade size, bond liquidity and the potential for market movements. Poor execution and market instability could derive from early publication of illiquid trades. Therefore, it is necessary to carefully calibrate the trade reporting delays, so as to protect investors and contribute to market efficiency.</p> <p>In order to achieve this goal, CASA & Amundi therefore support introducing criteria-based reporting delays for bonds transactions. The criteria should include transaction size, bond outstanding amount and bond liquidity, the latter being a combination of trading volumes and number of trades during a reference period. A potential industry-proposed reporting framework, currently being worked out by AFME with representatives of both buy- and sell-side, should prove an appropriate basis. ESMA should, after in-depth consultation with industry representatives, be in charge of elaborating these detailed, adequate rules to be adopted by the Commission.</p>
Horizontal issues	26) How could better use be made of the European Supervisory Authorities, including the Joint Committee, in developing and implementing MiFID/MiFIR 2?	
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	In our views, the main interaction will be with PRIPs which we hope will be proposed early 2012 and EMIR on market infrastructure.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind	

	and why?	
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	
Detailed comments on specific articles of the draft Directive		
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