13 January 2012

Review of the Markets in Financial Instruments Directive

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.**

Name of the person/ organisation responding to the questionnaire	**AFEP**[1] Contact person: Francis Desmarchelier[2]

Theme	**Questions**	**Answers**
et	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	No particular comments on the exemptions proposed in Directive Articles 2 and 3. However, regarding Directive Article 2.3 and the criteria for determining whether an activity is ancillary to the main business, we believe it would be inappropriate to

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	users?	describe the concept of ancillary service in a manner that would lead to impose the obligations of the MiF and capital requirements on non-financial undertakings, in particular by referring only to an activity that is objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity. For transactions other than hedges, the volume of transactions should also be taken into consideration. Concerning EU emission allowances (EUAs), it is not clear whether the exemption covers the European Trading System (ETS operators), who have a regulatory obligation to surrender allowances within prescribed deadlines, in order to comply with emission reduction requirements set out in the Directive 2003/87/EC (Emissions Trading Scheme). We believe that MiFID/MiFIR should fully take into account the specificities of this category of persons and/or transactions.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	<u>Emission allowances</u> We support a better regulation of the markets that play a key role in the price formation of emission allowances, without qualifying spot contracts as financial instruments, as proposed by the European Commission, given the specific characteristics of such contracts. We take the view that parts of the legislation applicable to financial instruments are not suitable for emission allowances, given their specific objective - reduce greenhouse gas emissions - and characteristics (concerning in particular : the primary market; the offer/issuers - namely the States -; the nature of emission allowances - regulatory instrument based on the obligation for main industrial and energy companies to surrender such allowances to cover their greenhouse gas emissions -; the interaction with energy markets and the supervision of these markets).
	3) Are any further adjustments needed to reflect the inclusion of custody and	No particular comments.

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	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?	We believe it is appropriate to regulate third country access to EU markets, given the potential effects in EU markets of malpractices and/or negligence by actors based in third countries. It is therefore relevant to introduce a third country regime, based on a strict assessment of equivalence and on reciprocity. Concerning EU emission allowances (EUAs), it is even more appropriate to regulate third country access to the EU spot markets that EUAs currently cannot be traded or owned outside the EU. The qualification of EUAs as financial instruments would provide third-country operators access to the EU spot markets and likely undermine their stability and predictability, which are needed by ETS compliance operators.
	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?	Companies are concerned that the proposed definitions (in Directive Article 4 points 27 to 29) and measures relating to the governance for investment firms impinge on existing national corporate law and corporate governance principles. <u>Any interference and inconsistency with other EU legislation, national company laws and corporate governance codes should be avoided in the proposed Directive. The following key points need to be considered in developing MiFID/MiFIR</u>: . Distinguish , in a two-tier system, the respective roles of the Management Board and the Supervisory Board: the management body does not perform a supervisory function. Companies are worried that the proposals only refer to the one-tier management system to the exclusion of the two-tier system, which runs counter to corporate law requirements in several Member States; . Distinguish the respective roles of the Board of Directors/Supervisory Board and senior management: the role of the Board - a <u>non-permanent body</u> - is to set the company's strategy and main policy lines and/or to oversee their implementation by <u>senior management or</u>, in a two-tier system, the <u>Management Board</u>, which

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		takes on prime responsibility in respect of decision-making, risk policy and risk management. Based on the essential information received from different sources, the Board (Board of Directors or Supervisory Board) may "challenge" the senior management/Management Board if it considers that the main risks incurred or the main policies defined and decided by management are not consistent with the company's strategy, or that the management systems defined and implemented by management are not effective. It would be counter-productive to transfer from senior management to the Board managerial functions, such as the responsibility for defining or approving the internal organization, defining, deciding or implementing policies, for risk monitoring and management, for taking steps to address any deficiencies, which require a continuous presence in the company and frequent management decisions and actions (as proposed in § 6 of Directive Articles 9, 48 and/or 65); . MiFID and the draft regulatory standards prepared by ESMA should not interfere with well-established company law and corporate governance principles (e.g. by defining general concepts such as adequate collective knowledge of the management body, independence of mind, diversity…).
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?	It is still unclear whether the creation of the new category of "organized trading facility" (OTF) will be sufficient to achieve the desired level playing field, as some requirements still vary when comparing for example regulated markets and alternative execution venues. Also we believe that the definition and characteristics of the Organised Trading Facility category should be further supplemented with criteria to better differentiate it from other trading venues and systematic internalisers. In any case, the new OTF category should exclude pure OTC trading (as defined in our response to question 7), in particular the systems used exclusively for pure OTC trading of derivatives between non-financial counterparties or between financial and non-financial counterparties. Transactions on unlisted shares should also be

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		considered as pure OTC trading and thus scoped out. These elements should be clarified in the final text.
	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?	The definition of OTC trading should encompass only bilateral trades carried out on an ad hoc and irregular basis. In this respect, it should be understood that general conditions alone (such as those defined by the International Swaps and Derivatives Association/ISDA or the European Federation of Energy Traders/EFET) cannot be sufficient to consider that trades are carried out on an ad hoc basis: both general and special conditions should be taken into account. Also OTC trading should include trades on energy and gas derivatives that can be physically settled, when these trades involve non-financial counterparties. This is inter alia justified by the fact that such trades relate to industrial activities and are already subject to supervision and regulation (European Regulation n° 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency / REMIT). We understand that the proposals, including the new OTF category, will lead to the channeling onto organized venues of trades that currently are processed on "broker crossing systems" (BCSs). As mentioned in our response to question 6, pure OTC trading should not be channelled onto organised venues, in particular OTC trading of derivatives between non-financial counterparties or between financial and non-financial counterparties.
	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?	<u>High frequency trading</u> (HFT) We welcome the intention to regulate HFT, notably in instances of disorderly market conditions. However, we believe that <u>similar rules should apply to all types of organized trading venues</u> (some proposals apply only to regulated markets; see hereafter) and that the following complementary measures should be adopted: - to address the issue of unexecuted orders: binding restriction and minimum period of time before an order can be cancelled, especially when there is evidence of low

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		rates of execution of orders; definition of new pricing arrangements with fees being charged for orders cancelled under HFT (the European Commission would adopt delegated acts regarding the maximum and minimum ratio of unexecuted orders to transactions that may be adopted by regulated markets); - introduction of minimum tick sizes; - authorisation of high-frequency traders; introduction of specific requirements regarding their organisation, their governance and the surveillance of their transactions; binding restriction of unexecuted orders. In assessing whether orders are cancelled under HFT, consideration should be given to orders that are not executed due to client limit orders, which may not fall within this category (in particular corporate clients). As a reminder: the European Commission does not propose a binding restriction on or specific pricing arrangements for unexecuted orders; a minimum period of time before an order can be cancelled; binding measures covering specifically high frequency traders. As mentioned above, some proposals on HFT apply only to regulated markets. Directive Article 19.4 (MTFs) and 20.4 (OTFs) rightly require alternative trading venues to have in place effective systems, procedures and arrangements to comply with the conditions in Article 51, which in its paragraphs 1 to 4 refers to systems, procedures and arrangements. However other provisions in Directive Article 51.4, 5, 6 and 7 are not captured by Directive Articles 19 and 20, and therefore would not be applicable to MTFs and OTFs: - requirement to set appropriate standards regarding risk controls and thresholds to trading through direct electronic access and to be able to stop orders or trading by a person using direct electronic access separately from orders or trading by the member or participant (Directive Article 51.1 second subparagraph); related delegated acts (Directive Article 51.7 d);

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		- requirement to ensure that the rules on co-location services and fee structures are transparent, fair and non-discriminatory (Directive Article 51.5); related delegated acts (Directive Article 51.7 e); - requirement, upon request by the competent authority, to make available to the competent authority data relating to the order book or to give the competent authority access to the order book so that it is able to monitor trading (Directive Article 51.6); - delegated acts adopted to ensure trading systems of regulated markets are resilient and have adequate capacity (Directive Article 51.7 a) and to set out conditions under which trading should be halted if there is a significant price movement in a financial instrument on that market or a related market during a short period (Directive Article 51.7 b); - maximum and minimum ratio of unexecuted orders to transactions that may be adopted by regulated markets (Directive Article 51.7 c).
	9) How appropriately do the requirements on resilience, contingency arrangements and business continuity arrangements in Directive Articles 18, 19, 20 and 51 address the risks involved?	No particular comments.
	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?	No particular comments on the appropriateness of the specific requirements to keep records of all trades. However we underline that records for execution of client orders are needed to ensure the proper application of order execution policies and client requests, in particular compliance with the order execution policy and with the client choice of an execution venue. There is a need for more substantive information to enable clients, upon their

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		requests, to effectively understand how their orders are executed and at which venue. Under the current proposals, it would remain difficult for the client to verify compliance with its choices and better execution of its orders, as the information given would be public, aggregate and/or ex post (execution venues would make public periodic reports on the quality of execution of transactions; investment firms would provide ex ante information on their execution policy and ex post public information on the top five execution venues used in the preceding year).
	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?	We believe that derivatives entered into by non-financial counterparties should be concluded on organized trading venues (OTV), only if these transactions exceed the clearing thresholds set out in EMIR (with hedging transactions being scoped out when determining these thresholds) on account of their not representing a systemic risk and/or their being used for hedging purposes (commercial, investing and financing transactions). For all practical purposes, we consider that the exemption from the trading obligation should also apply to bespoke derivatives used by non-financial companies for hedging purposes although they are exceeding the clearing threshold imposed by EMIR. While the final decisions will be determined by the technical standards and guidelines to be developed by ESMA, it is important to give some preliminary elements that we believe should be used in determining these conditions: • Hedging should not be too narrowly defined or necessarily defined by reference to specific transactions or elements. The notion of risk reduction/mitigation is essential for non-financial counterparties; • Derivative contracts linked to the operating, investing, treasury and financing activities of non-financial counterparties should never be taken into account in the calculation of thresholds; • The reference to investing, treasury and financing activities reflects the fact that derivatives are also used to reduce the risks on financial assets and liabilities

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		(there are no industrial and commercial activities without investing, financing and treasury). As regards energy and gas derivatives, please refer to our response to question 7. Finally disclosing pre- and post-trade data for bespoke derivative instruments would raise confidentiality problems and increase the costs of corporate risk mitigation strategies.
	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?	We support the principle of differentiation between MTFs that provide primary growth markets for smaller issuers, and other MTFs that provide pan-EU trading venues. Also we welcome the proposal that an EU regime for dedicated growth markets remains optional. We believe, however, that encouraging viable SMILEs markets in Europe is not as simple as defining a framework in MiF. We do not think that the extension of some obligations already applicable to issuers on regulated markets to SMEs traded on MTFs is helpful and can improve their raising of capital. There is a need to consider how to foster a culture throughout Europe that supports funding for SMILEs and to reconsider other regulatory requirements applicable to issuers (such as Prospectus requirements). We believe that other proposals for SMILEs should be considered quickly. We would therefore like to see the European Commission take the time to properly identify the problems facing smaller companies, to analyze the options for dealing with those problems and only then to propose solutions.
	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?	No particular comments.

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	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?	Position limits may be useful in certain cases, namely significant investor protection concerns, market disorder or serious systemic risks (Directive Articles 71 and 72; Regulation Article 35). At the same time, this possibility should be applicable only in clearly defined conditions and subject to a specific procedure (including a consultation with market players, with a possible exception in emergency situations). In particular, it would be necessary to specify, not only the notions used to define the specific circumstances (such as "systemic risk", "significant damage to the investors' interests or the orderly functioning of the market"…), but also the scope (geographic scope; permanent or temporary limit...) and how a limit would be implemented (e.g. how to take into account the practical consequences of position limits for companies). In addition we would like to stress the following: 1 Imposing <u>automatic hard/ex-ante position limits</u> is not necessarily the right solution. This should be done only in well-defined circumstances and after an impact assessment; 2 <u>Position management rules may be more appropriate and should be considered in first place</u>. In our view, the revision of the MiFID should be the opportunity to create position management rules which give powers to market operators to determine - in a dynamic way and according to alternative arrangements - if any participant is potentially building a position which raises a threat to the orderly functioning and integrity of financial markets, given the specific circumstances of the underlying market and taking into account such factors as the levels of open interest, liquidity and the supply of the underlying commodity. In that context, hard/ex-ante position limits would be used only as last resort measure in individual

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		cases, if there is a threat to the orderly functioning and integrity of financial markets; 3 A<u>ppropriate aggregation rules should be defined to take into account how positions are managed within a group and how its entities are regulated. In particular it would not be relevant to aggregate the positions of entities with</u> completely separate managements; more specifically, the follow-up in real time of the various accounts would not be relevant in terms of confidentiality and conflict of interests; 4 Market operators across the EU should apply the same methodology. Thus <u>we believe that ESMA</u> should propose common guidelines, while agreeing with the European Commission general approach to give relevant powers to market operators to apply limits or alternative arrangements; 5 <u>This methodology should indicate how total exposure of market participants (resulting from their open positions on the physical and derivatives markets) could be taken into account</u>.
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?	<u>Make investment in smaller companies more accessible to retail investors</u> Smaller issuers suffer from not being able to make investment research and financial analysis which they have commissioned themselves available to investors on their website, since this is not classified as independent research, but rather as investment advice (marketing communication or financial promotion). The consequences of this, given the assessment process for use of such research is too difficult and expensive for most issuers to operate, is that much research on smaller companies is now available only to professional investors, and not to retail investors (the investment firm providing investment advice is required to assess whether the investment envisaged is suitable and appropriate for the client and to specify how the advice meets the personal characteristics of the client, according to Directive Article 25.2 and 5). We would rather support an approach where investment advice relating to SMEs should be exempted from the assessment of suitability and appropriateness and related

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		reporting to clients and where, as proposed, investment firms would be required to specify whether the advice is provided on an independent basis, allowing investors to judge for themselves whether to use the information given or not.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	No particular comments. As a reminder: in our response to the Commission consultation, companies recognize that some UCITS, because of their complexity, require that clients (both retail and professional) be provided specific client information about the product (objective, sensitivity…) and the associated risks (e.g. money market fund using a variety of derivative instruments).
	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?	<u>Ensure the proper application of order execution policies and client requests</u>, in particular compliance with the order execution policy and with the client choice of an execution venue. There is a need for more substantive information to enable clients, upon their requests, to effectively understand how their orders are executed and at which venue. It is far from being certain that the European Commission proposals will achieve this; it would remain difficult for the client to verify compliance with its choices and better execution of its orders, as the information given would be public, aggregate and/or ex post (according to Directive Article 27.2, 4 and 5, execution venues would make public periodic reports on the quality of execution of transactions; investment firms would provide ex ante information on their order execution policy and ex post public information on the top five execution venues used in the preceding year); In view of the uncertainties about implementation of the best execution principle, a more extensive use of the option provided by Directive Article 27.1 could be made. This option provides for an exception to the best execution requirement whenever there is specific instruction from the client, e.g. in order to facilitate execution of an issuer buy-back programme.

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		Finally it would be appropriate to explicitly provide for the enforcement of the best execution requirements, in particular: provisions relating to the order execution; compliance with the order execution policy; execution of clients' instructions or orders on the trading venue of their choice.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	Our expectations are the following: 1) <u>Provide professional clients with a real possibility to obtain a higher level of protection from an investment firm, upon request</u>. We consider that professional clients rather than investment firms should be left with the option to obtain a variation of the terms of their agreement in order to secure a higher degree of protection for these clients, upon their request, <u>regarding specific services, transactions, types of products or transactions</u>; Under the current proposals (Directive Annex II, unchanged from Directive 2004/39), professionals are "allowed to request non-professional treatment and investment firms <u>may agree</u> to provide a higher level of protection". "The customer (…) can request a variation of the terms of the agreement in order to secure a higher degree of protection". However an agreement of the investment firm is necessary; 2) For some complex products provide specific information to all clients; 3) Define as follows in European legislation the areas which, under national civil liability regimes, should be covered by a binding principle of civil liability applicable to investment firms. As suggested earlier by the European Commission, issuers believe that this principle should cover the following areas: information and reporting to clients; suitability and appropriateness test; best execution; client order handling. They believe it should not be possible to deviate from this principle by contractual provisions (principle of public policy).

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	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?	Suspension and removal of instruments from trading (Directive Articles 32, 33, 53) as well as temporary prohibitions or restrictions (Regulation Articles 31 and 32) may be necessary in certain cases, namely significant investor protection concerns, market disorder or serious systemic risks. While the operator of a regulated market may suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market "unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market" (Directive Article 53.1), it is difficult to understand why there is no such limit on the decision of an MTF or an OTF to suspend or remove from trading a financial instrument, except where the suspension or removal is due to the non-disclosure of information (Directive Articles 32.1 and 33.1). We believe that similar limits should apply to all organised trading venues. In any case, a suspension, a removal, a temporary prohibition or a restriction should be applicable only in clearly defined conditions and subject to a specific procedure (including a consultation with market players, with a possible exception in emergency situations). In particular, it is necessary to specify not only the notions used to define the specific circumstances (such as "significant damage to the investors' interests or the orderly functioning of the market", "threat" or "serious threat" "to the orderly functioning and integrity of financial markets or the stability of the financial system", "non-disclosure of information"…), but also the scope (geographic scope; permanent or temporary limit,...) and how a limit would be implemented (e.g. how to take into account the practical consequences for companies of a suspension or removal).
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	Companies welcome the extension of pre-trade transparency requirements to all organized trading venues and financial instruments traded on these venues. However they remain concerned about the size of the business eluding pre-trade transparency, which currently appears high (between 10-40% of orders).

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	workable in practice? If so what changes are needed and why?	MiF should exempt from pre-trade transparency only the orders that may have an impact on the market (by raising the threshold for large in scale orders) and, as specified in our response to question 7, pure OTC trading (i.e. bilateral trades carried out on an ad hoc and irregular basis). Companies consider that the new waivers mechanism (in Directive Article 4) might defeat the priority objective of achieving a significant reduction in the size of business eluding pre-trade transparency. Moreover it is unclear whether the new OTF category will really help achieve this objective. In order to ensure consistent application across the European Union, <u>we believe that the new waivers mechanism should be defined by ESMA and approved at EU level.</u> As regards consolidation of pre-trade data, it is necessary, in first place and without further delay, to put in place a European post-trade consolidated tape as a priority for shares and equity-like instruments, then for other asset classes: bonds, structured products, emission allowances and derivatives traded on organised venues. The establishment of a system to consolidate pre-trade data for all organized trading venues and standardized instruments should be considered subsequently, as a priority for equity instruments.
	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?	Companies welcome the extension of pre-trade transparency requirements to all organized trading venues and financial instruments traded on these venues. MiF should exempt from pre-trade transparency only the orders that may have an impact on the market (by raising the threshold for large in scale orders) and, as specified in our response to question 7, pure OTC trading (i.e. bilateral trades carried out on an ad hoc and irregular basis). Companies consider that the new waivers mechanism (in Directive Article 8) might defeat the priority objective of achieving pre-trade transparency. Moreover it is unclear whether the new OTF category will really help achieve this objective. In order to ensure consistent application across the European Union, <u>we believe that the</u>

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		new waivers mechanism should be defined by ESMA and approved at EU level. As regards EUAs, we believe that pre-trade transparency requirements in Regulation Articles 7 and 8 (concerning prices and depth of trading interests) should be specifically calibrated in such a way that they do not compromise the confidentiality of industrial and business plans of ETS compliance operators. This would be the case if these requirements were pushed to an excess, as the EUA price and trading interests reflect to a large extent the volumes of carbon emissions and thus the industrial activities of ETS compliance operators. As regards consolidation of pre-trade data, it is necessary, in first place and without further delay, to put in place a European post-trade consolidated tape as a priority for shares and equity-like instruments, then for other asset classes: bonds, structured products, emission allowances and derivatives traded on organised venues. The establishment of a system to consolidate pre-trade data for all organized trading venues and standardized instruments should be considered subsequently, as a priority for equity instruments, then for other asset classes. No particular comments on the highest priority for the introduction of pre-trade transparency requirements concerning non-equity instruments.
	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?	Systematic internalisers: no particular comments. Concerning EUAs, please refer to our response to question 21.

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	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	As mentioned in our responses to questions 20 and 21, companies remain concerned about the size of the business eluding pre-trade transparency. They consider that the new waivers mechanism (in Directive Articles 4 and 8) might defeat the priority objective of achieving pre-trade transparency. Moreover it is unclear whether the new OTF category will really help achieve this objective. MiF should exempt from pre-trade transparency only the orders that may have an impact on the market (by raising the threshold for large in scale orders) and, as specified in our response to question 7, pure OTC trading (i.e. bilateral trades carried out on an ad hoc and irregular basis). Concerning EUAs, please refer to our response to question 21.
	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)?	The proposal for a Regulation favors a commercial solution and sets out conditions for the emergence of Consolidated Tape Providers (CTPs). Despite an urgent and since 2007 unmet need, the proposed solution still requires a lot of time and does not ensure the quality, comprehensiveness and consistency of the consolidated data published by different providers. As the objective of the proposed post-trade consolidation model is mainly to set out conditions for the emergence of Consolidated Tape Providers (CTPs), issuers question whether this model provides the necessary incentives to deliver an EU-wide comprehensive and high quality solution. Companies underline that the lack of comprehensive, consistent and affordable data increases the potential to misvalue financial instruments, uncertainty about implementation of the best execution principle and the potential for market abuse. Therefore a European post-trade consolidated tape should be put in place without further delay. Given its essential mission - publish timely and reliable information in a sustainable way and at a lower cost -, this consolidated tape should be sustainable, protected from commercial pressures and conflicts of interest; it should be administered by a non-profit seeking entity, according to procedures defined by the

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		European Securities and Markets Authority (ESMA), and should operate under its authority and control (as a priority for shares and equity-like instruments, then for other asset classes: bonds, structured products and derivatives traded on organised venues). Also, given the need to verify that the consolidated tape delivers comprehensive, timely, reliable and affordable post-trade data, ESMA should absolutely control the quality of published data.
	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 access timely, reliable information at reasonable cost, and that competent authorities receive the right data?	As mentioned in our response to question 11, we believe that the disclosure of pre- and post-trade data for bespoke derivative instruments would raise confidentiality problems and increase the costs of corporate risk mitigation strategies (Regulation Article 20.1 refers to “derivatives which are clearing-eligible or are reported to trade repositories”). Therefore the proposal should be reconsidered. Concerning EUAs, please refer to our response to question 21 mutatis mutandis for post-trade transparency requirements.
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?	As mentioned in our response to question 24, we believe that ESMA should play a key role in contributing to put in place a European consolidated tape and in verifying that it delivers comprehensive, timely, reliable and affordable data.
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	Yes, please refer to our responses to questions 21, 24 and 26 regarding data consolidation.
	28) What are the key interactions with	In our response to question 5 (concerning new requirements on corporate governance

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	other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	for investment firms, trading venues and data service providers), we hold the view that any interference and inconsistency with other EU legislation, national company laws and corporate governance codes should be avoided in developing MiFID/MiFIR. We also explain the key interactions that need to be considered. As mentioned in our response to question 7, the definition of OTC trading should include energy and gas derivatives, which are subject to the European Regulation n° 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency / REMIT). This legislation should be taken into account. Concerning EUAs, their qualification as financial instruments may lead to apply a number of other EU financial services legislation to EUAs and/or ETS compliance operators, which would in certain cases be inappropriate, disproportionate and overly burdensome. In addition it should be stressed that the MiFID/MiFIR2 proposals do not take into account the regulation (not published in the OJ yet) of 11/11/2011 establishing a Union Registry for the trading of EUAs post 2012 and the specific rules set out in its Articles 37 to 42. We believe that more work is needed to assess the relevance of EU provisions relating to a qualification as financial instrument, and consequently to apply to EUAs and/or ETS compliance operators only those provisions that would be relevant to them. In order to avoid any systematic or undesired application of EU legislation to EUAs and/or ETS compliance operators, EUAs should not be qualified as financial instruments. In making that assessment, special attention should be given inter alia to the following: - The proposal for a Market Abuse Regulation (MAR, due to replace the current MAD directive) specifically addresses EUAs trading, but does not adapt the definition of "insider dealing" to the specificities of EUAs and in particular to the fact that States are the issuers. On this basis, the definition of insiders should be extended to include the competent public authorities which, in that capacity, hold or may hold

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		privileged information. The definition should not focus on ETS compliance operators; - An application of the Capital Requirements Directive to energy suppliers and industrial operators would be inappropriate. For instance, under this Directive, the backing cannot be done through holding assets (such as production facilities), but only in cash. Given the importance of infrastructure investment for energy suppliers and industrial operators, such a backing would be disproportionate.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	No particular comments.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	No particular comments.
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	No particular comments.