Association of British Insurers

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.

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?	We support the exemption given for insurance undertakings in Article 2.1(a) and the recognition that they are subject to Directive 2009/138/EC (Solvency II).
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	No comment.
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	It should be made clear which of the MiFID requirements would apply to the core service of custody and safekeeping. We also have concerns around the impact this may have on 3rd country appointed custodians and their ability to provide services to EU firms and their clients.

	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 important to recognise existing transactions made with third countries and the need to ensure commercial relations with those third country counterparties are not hindered by the new MiFID rules. Further it is important that inward participation in EU markets is not disrupted or discouraged especially if there is no added value or increased investor protection. There are potential solutions and advantages to having an open market and an EU passport for third country firms could potentially improve EU investors' choice and opportunity for optimal investment. Both the MiFID Directive and Regulation are silent on the required regime for professional clients and we would seek clarification on these obligations (Please also refer to our response to Question 18). Currently the third country rules in Article 36 MiFIR only apply to eligible counterparties. If ABI members are to be classified as professional clients, as they hope to be, then Article 36 needs to have reference to professional clients and include delegation so that EU firms can continue to source local expertise on local markets and not curtail investment managers' ability to execute trades with local brokers in third countries. In order to achieve this aim we suggest including the ability to delegate and a reference to professional clients in Article 41 in MiFID.
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?	We agree with the revised high level principles proposed in relation to good corporate governance but find the solutions in Articles 9.1 and 9.4, and 48.1 and 48.4 to be too detailed and prescriptive.

		In Article 9.1, one particular problem arises for individuals who have directorships on the Boards of corporate-type funds with a legal personality, for example a Property Fund. These directorships will not be able to qualify as being held within the same group although managed by the same investment manager, and therefore will not be considered as a single directorship. While the ABI fully supports the proportionate approach given in Article 9.2 with respect to establishing a nomination committee, the requirement for non-executive directors (NEDs) on this committee to have an additional compliance role are not appropriate. NEDs should not be required to assess compliance and act as quasi-regulators in their capacity on these committees. Further we find the requirements in Articles 9.4 and 48.4 that direct ESMA to develop regulatory standards to specify the notions of knowledge, integrity or diversity, etc., as unnecessarily prescriptive and question whether ESMA should be tasked with codifying abstract concepts into law. Further requirements on these notions would then result in a tick box compliance exercise rather than genuine improvements in corporate governance. We fully support a principles based approach to corporate governance and therefore propose the deletion of Articles 9.4 and 48.4.
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?	The ABI is less concerned with the proposed definition of an OTF and more worried about the requirements surrounding an OTF and how they may differ from other trading venues. We believe there may be unintended consequences of these new

		rules; for example, how an OTF exercises its discretion over an execution order, who may have access to the trading venue and the requirements for OTFs to seek authorisation. Additionally, we believe there may be uneven granting of OTF status by the different competent authorities However, we believe the owner of the OTF should be able to use its own capital as investors seek to use their balance sheet, and we believe the separation could make it more costly for investors to obtain best execution. Open ended fund structures in particular need market makers, particularly in smaller and illiquid markets, for example fixed income markets. We would suggest that regulation seeks to separate capital into specific designations for genuine market making vs. discretionary proprietary trading. We support the proposal to allow discretion to be exercised by the OTF participants.
	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?	Given other EU financial services legislation, we would suggest delaying until EMIR is agreed to prevent duplicative regimes being developed, thereby resulting in double compliance and cost requirements. It is too early to tell whether the proposals will lead to the channelling of trades which are currently OTC onto organised venues.
	8) How appropriately do the specific requirements related to algorithmic trading, direct electronic access and co-location	There are different risk profiles associated with both direct market access and sponsored access that need to be taken into

	in Directive Articles 17, 19, 20 and 51 address the risks involved?	account. If the concern is market manipulation, we would suggest that other EU financial services legislation such as the Market Abuse Directive and Regulation are perhaps better vehicles to address these issues. There is a great risk involved in the definition and treatment of algorithmic trading. The definition is very broad and will capture any form of automated trading. Investors, such as insurers and asset managers, often use automated systems to execute normal orders. If the current drafting is approved, such buy-side institutions would suddenly have to become market makers. In effect, a provision designed to capture and regulate abusive trading strategies – as well as helping to improve orderly operation of markets and mitigate the risk of flash crashes – would capture all market participants who use automated systems to execute ordinary orders. We suggest the definition is tightened considerably to capture what is intended to be captured by the measure, such as high frequency trading. We suggest **Article 17.3** should read: **"Algorithmic trading** 3. An <*investment firm which posts quotes using an*> algorithmic trading strategy shall <*ensure that it remains*> in continuous operation during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions. The trading parameters or limits of <*such*> an algorithmic trading strategy shall ensure that the strategy posts firm quotes at competitive prices with the result of providing

		liquidity on a regular and ongoing basis to these trading venues at all times, regardless of prevailing market conditions." One could also consider making it clearer that where an asset manager uses third party "sponsored access" these obligations should bite on that third party rather than the buy side firm. The wording refers specifically to "funds". As our members are investment managers to funds and segregated mandates, we would suggest wider terminology which would cover all types of clients for which investment managers execute trades.
	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 comment.
	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?	ABI members and their investment management subsidiaries do not trade on their own account. However, we fully support the requirement for investment firms to keep records of all trades – on their own account as well as for execution of client orders – for good governance and transparency, as well as to ensure minimal systemic risk and no market abuse.
	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 would refer to our answer to Question 7), and given that other EU financial services legislation are currently being negotiated, we would suggest delaying this decision until EMIR is agreed to ensure consistency. Following EMIR's implementation we can look at how the market moves to organised trading venues and whether any adjustments are required to make the requirement appropriate for application.

		However, we recognise that this does not square with the EU requirement to implement the G20 commitment to trade OTC derivatives (which EMIR does not deliver), or indeed for the need to create equivalent mechanisms to Dodd-Frank in the US. Whilst we believe that MiFID should be aligned with G20, IOSCO, etc., (see Question 29), it is unfortunate that regulations on derivatives have been separated into two separate Directives in Europe which are moving at two different speeds.
	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?	Whilst we support initiatives to give SMEs better access to capital markets, we do not believe that the proposed MiFID legislation in Article 35 is necessarily going to create such a market. It is important to continue to apply the current Large-in-Scale waivers for equities to the SME growth markets identified in Article 35. There is a danger that if these waivers are not applied, that large institutional investors will be unable to invest in the smaller and less liquid companies such as those listed on AIM, and we also believe that the broking community is most unlikely to take on the required risk to assist in the transaction.
	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?	We fully support non-discriminatory access to CCPS, trading venues and benchmarks. It is important for choice and greater competition in the market. The MiFID proposals rightly appear broader in scope than those in EMIR, and cover a broader range of financial instruments. We believe there is no need for further proposals to be included in MiFID.

	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?	We would support an approach based on position management rather than one based on limiting trading. We believe there is a need to recognise the considerable use of commodity derivatives in industry and ensure that any regulations do not have any adverse effects on the commercial economy outside of financial markets. We also think that considerable thought should be given to any different treatment of cash versus physical trades to not be disadvantageous to any market participants.
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?	We welcome the requirement in Article 24.3 for advisers to disclose the basis on which they are providing the advice (ie. independent or restricted) and whether they are providing an on-going service. However, while we support the ban on commission for independent advisers in Article 24.5, we are concerned that the draft text does not address the issue of remuneration for restricted or tied advisers and thus will permit restricted or tied advisers to continue to receive payments from product providers. We agree with the conclusion of the FSA that it is in the consumer interest to ban commissions for all advisers (independent and restricted) and we would be concerned if MiFID prevented the UK from retaining such a ban. While we support the commission ban for portfolio managers, we are concerned about the lack of detail regarding what is a non-monetary inducement. Recital 52 explains that non-

		monetary benefits should be allowed providing they do not impair the ability of the investment firm to pursue the best interests of their client. We believe this additional commentary should be included in Article 24.6 of the text in order to avoid differing interpretation and application in Member States and to provide certainty to those investment firms that receive non-monetary benefits, for example research, which enhances the service provided to the end clients. We believe that bundling and cross-selling of products can offer benefits to consumers and provides them with good quality products at a reduced cost. So we are unclear about the justification for the inclusion of Article 24.7 and we are concerned that guidelines developed by ESMA for the assessment and supervision of cross-selling practices could be disproportionately burdensome and may restrict the ability of the industry to sell products to consumers.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	We are pleased that the Commission has recognised that execution-only sales have a valid space in the marketplace but we are concerned about the proposed introduction of restrictions on the sales of structured UCITS. We do not agree that product structures/packaging are inherently risky and require additional consumer protection. In the insurance context, product packaging can help to manage or reduce the risk for consumers. Any further restrictions on execution-only sales will put up unnecessary barriers and stop consumers from being able to make their own investment decisions.

		We believe that UCITS funds should remain non-complex as the UCITS Directive was specifically designed for retail investors to gain access to the skill sets of institutional portfolio managers. To date there has been no market failure of note in relation to UCITS that would justify splitting them. Furthermore categorising some UCITS as 'complex' risks damaging a successful and well recognised European brand. The requirements in Article 25.5 to specify how the advice given meets the personal characteristics of the client are unclear. This requirement appears to apply to both retail and professional clients but would only be applicable when dealing with retail clients. Also unclear is what the personal characteristics of the client are and how this would be specified. Article 25.3.1 has the potential to severely negatively impact on the business model for UK Investment Trust Companies, and we question why shares in non-UCITS collective investment undertakings are to be automatically considered complex, when there is no record of market failure. With no evidence of any disadvantaged investor and all the benefits from the Transparency Directive (amongst others) as fully listed shares on regulated markets, Investment Trust Companies give more than sufficient information to potential investors. We therefore propose that they be considered as non-complex automatically.
	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?	The requirement in Article 27.4 to provide information in "sufficient detail" and "in a way that can be easily understood" needs clarification to ensure consistency in the understanding of what these terms mean and in the information provided.

		We would question the requirements of Article 27.5 to publish the top five execution venues, particularly what the value and the benefits would be to an investor.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	We believe that ABI members as portfolio managers should not be classified as eligible counterparties but rather as professional clients. It would make more sense for portfolio managers to be classified as professional investors, and be given a choice to opt up to the eligible counterparty status. For example, difficulties arise where under the current regime some of the client protections, such as best execution, are not applied to eligible counterparties but portfolio managers still have to provide best execution to their clients. This requirement cannot be guaranteed because portfolio managers (as eligible counterparties) will not have had the protection of best execution. A further difficulty ABI members are facing as portfolio managers under the current regime is the ability to be reclassified as professional clients. MiFID permits such a request if a broker agrees to it, but a broker can legitimately refuse this request. This seems inappropriate, as our members are subject to the brokers' commercial interests. The feature within MiFID to give clients the ability to opt for greater regulatory protection at any time does not work in this instance. We do not support the proposal that local public authorities are classified by default as retail clients. As asset managers to their pension funds, our Members provide discretionary investment management. It would have a material impact on our Members'

		business models if they were required to treat a small subset of their clients as retail clients. The professional client category is an important facet of their business model in terms of how their end clients are treated, and the expectation of how the marketplace treats our Members when transacting on their end clients' behalf. We are concerned that this status is being eroded.
	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?	The new powers on product intervention in MiFID II are potentially very significant. We are not clear why they have been included within the Regulation, and suggest they should be instead addressed within the Directive. Good management of risks associated with the launch of new products, operations and services is an important area of provider responsibilities which can be addressed by high level requirements on firms to treat customers fairly, for example, when designing products. However, we believe that product bans for investor protection purposes should be a last resort based on clear evidence of detriment. We do not believe that ESMA should be granted powers to temporarily ban products for the purpose of investor protection, and suggest this Article 32 power should be restricted for the purposes of market integrity or financial stability. Due process needs to be developed to govern the use of product intervention powers by competent authorities. So we welcome the approach taken in Article 33.2, setting out criteria that must be met before the powers are used, including an assessment of whether improved supervision or enforcement of existing requirements might better address the investor protection concern.

		However, competent authorities should also be required to consult with the industry and consumer groups at the earliest stage possible so that they have an opportunity to state their case and a thorough cost benefit analysis must be carried out before using this power.
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?	The new pre-trade transparency requirements need to be calibrated appropriately, or there is the potential for harm to investors' use of equity OTFs. As a minimum we would want the Large-in-Scale and Reference price waivers left as they are across all markets.
	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?	**Pre-Trade Transparency for Bonds (non-equities)** We believe that market participants currently receive sufficient pre-trade transparency to make suitable and appropriate trade decisions. The potential benefit of a pre-trade transparency regime for the wholesale market for corporate bonds (non-equities) is that transparency should increase efficiency. The ABI has always supported pre- and post-trade transparency regimes in equity markets for this very reason. However, in the bond markets – particularly in the wholesale corporate bond market – there are significant concerns that increased pre-trade transparency will result in a diminution of liquidity provision as it will significantly increase the risk of making a market in these names. This in turn will likely lead investment banks to reduce the capital they deploy to support this activity and a widening of

		spreads as a higher return will be required on the capital that is deployed to reflect increased risk. A key consideration in relation to pre-trade transparency relates to open ended investment vehicles (vehicles that are used by members of the public to save for retirement, etc.) which need liquidity to be provided for them to operate. Without that liquidity these vehicles will no longer be permitted to invest in this asset class. This would then directly impact on capital flows to companies issuing corporate bonds. We want and need as an industry to avoid a repeat of the situation in 2008 / 2009 when certain funds needed to suspend dealing following the collapse of liquidity in the market – this disadvantaged many millions of unit holders. Given the potential that the pre-trade transparency proposal has for damaging the market we believe there needs to be a very high burden of proof that there is a problem in the fixed income markets that can only be overcome by pre-trade rather than post-trade transparency. It is worth noting that to date, the Commission's own studies have not demonstrated this is the case on the multiple occasions on which this matter has been investigated. **<u>CDS market (Credit Default Swaps – non equities)</u>** We have serious concerns about proposals for pre and post-trade transparency in the CDS market (non-equities). There are fewer participants in this market than before the financial crisis and we are still waiting for them to return back into the market. We are concerned that these transparency proposals might discourage

		those participants from returning. The CDS market works because participants do not know the size of holdings that each one has and this reduced transparency in this instance leads to greater market stability. If transparency were increased, there might be greater volatility as the CDS market is driven by perception and can exhibit herd behaviour and create panic. We believe that these proposals would exacerbate these features of the CDS market and we are concerned that, with full transparency, trading would become more polarised, bid/offer spreads would widen and liquidity would be reduced. **<u>OTC Derivatives (Over The Counter - non-equities)</u>** In relation to the OTC derivative markets there are serious concerns that increased pre-trade transparency will result in a diminution of liquidity provision as it will significantly increase the risk of making a market in these names. This in turn will likely lead investment banks to reduce the capital they deploy to support this activity and a widening of spreads as a higher return will be required on the capital that is deployed to reflect increased risk There are also concerns that a move towards mandated pre-trade transparency (for example, being required to invite quotes from the market in an electronic platform) will have significant and detrimental unintended consequences in terms of execution behaviour. This will ultimately increase risk and the costs borne by the client. Asset managers using OTC derivatives will not want to make public large potential trades prior to their execution for fear of

		pricing moving against them between the trade being made public and execution. As a result you would likely see what would previously have been a large lot size executed once via one transaction to achieve an objective for the client be broken down into smaller lots and executed over a period of time building up the required position. Clearly this increases the volume of transactions executed to achieve the same result which in turn drives up operational costs, potentially the risk of settlement failures and adds a lead time to achieving the desired position within the clients portfolio that does not exist today. **Pre-Trade Transparency for CDS (non-equities)** We have not experienced any lack of pre-trade transparency that needs to be addressed. There is a great deal of research available and we receive sufficient information to make informed trading decisions. We do not see any added value of introducing a requirement that may have unintended consequences. **<u>Other Derivatives</u>** **Pre-trade transparency for other derivatives (non-equities)** **a) Interest Rate Derivatives** We have not perceived a lack of pre-trade transparency in terms of access to pre-trade information in respect of interest rate derivatives and we consider that there is an efficient system of price discovery. Interest rate derivative prices are indicative and not firm because information on firm bid and offer prices in a particular size is not useful or relevant in this market. The market has evolved in this

		manner and operates an efficient system. Pre-trade transparency may be beneficial for plain vanilla business, but this information already exists via Bloomberg and Reuters. A drawback of this information is that this is not useful for bespoke business. Also, even though a market maker may display a price, it is not possible to trade with that counterparty unless there is an ISDA in place. **b) Equity Derivatives** Pre-trade transparency for equity derivatives is not an issue that needs to be addressed. If you do not like the OTC price, you can chose to trade through a listed market or not trade at all. The OTC market is made up of very illiquid instruments that cannot be hedged. If a third party were to find out about a trade, they could completely undermine it. It would then be impossible to trade out of the position and these can be very large positions. A potential benefit of further transparency might be more efficient prices but this would be balanced by the drawback of loss of anonymity. Loss of anonymity would increase risk and potential cause extremely unfavourable prices or even make it impossible to trade out of a position. **c) Commodity Derivatives** We have not perceived a lack of pre-trade transparency in terms of access to pre-trade information for commodity derivatives. Price estimates can be calculated from looking at similar instruments on screens or by calculating

		the option premium. If the trade is similar to an exchange traded instrument then there will be some pre-trade transparency. However, most OTC derivative trades are, almost by definition, not transparent. The OTC market is bespoke and the universe of possible transactions almost infinite. Therefore, it is very difficult to conceptualise how a pre-trade transparency regime would work in such a large number of instruments. In practice, quotes are obtained from two or three counterparties. If quotes were obtained from more counterparties, then there would be wider knowledge of the trade and this could compromise our position in obtaining best execution. The risk is borne by the counterparty that wins the trade and then has to unwind the risk. The greater the transparency, the greater will be their risk and this will be reflected in the price. **d) FOREX Derivatives** We have not perceived a lack of pre-trade transparency in terms of access to pre-trade information for FOREX derivatives. There is less pre-trade information for emerging currencies as there is a lack of liquidity. The retention of the Large-in-Scale and Reference price waivers will be key. The least damaging priority for the introduction of pre-trade transparency should be the most liquid and most frequently traded instruments, eg. government bonds.
	22) Are the pre-trade transparency requirements in Regulation Articles 7, 8 and 17 for trading venues for bonds, structured	New pre-trade transparency requirements for non-equity instruments such as bonds, structured products and derivatives

	products, emission allowances and derivatives appropriate? How can there be appropriate calibration for each instrument? Will these proposals ensure the correct level of transparency?	are not necessarily appropriate. This will be the same across trading venues, but will differ between the types of investment instruments involved. We would suggest a more flexible approach needs to be taken, particularly as liquidity can vary through the life of a specific product. For post-trade transparency some benefits could be seen for increased transparency of bonds if properly calibrated. However too much detailed drafting is again left to Level 2, so industry is unable to fully identify the impact. **Post-trade transparency for corporate bonds** If a regime were to be introduced, then our views would be as follows: • We would strongly support delaying publication of large trades to end of day as we are comfortable with end of day post-trade reporting but consider that intra-day is too risky. • We would agree with reporting actual volume up until a certain level then reporting 'above €x million'. • Trading methodologies are less automated in the corporate bonds market than the equities market. It is worth noting that the required speed of trade capture may involve process changes and investment in systems and the aggregated cost of this should be taken into account in cost/benefit analysis. **Post Trade for other Derivatives** We do not consider that additional post-trade transparency

		would be desirable for these instruments, with the exception of FOREX. **a) Interest Rate Derivatives** There is little post-trade transparency in as much as there are not enough trades in OTC markets to report for there to be a clear picture. However, we do not perceive this as a lack of post-trade transparency because we do not make trading decisions on the basis of other participants' trades. We do not consider that post-trade transparency is useful for bespoke business such as LDI trades as these are commercially sensitive trades to hedge pension risks for our clients. Interest rate trades are not done in isolation but against something else that is not transparent. It may be part of an anchor trade e.g. a relative value trade. It is not necessarily a view on interest rates but part of something else. Therefore it is misleading to report one element on its own. We do not think that post-trade transparency on derivatives in isolation will add value as these are too bespoke. If we have placed a trade to hedge a risk, the counterparty is then taking on risk. If our side is disclosed and the counterparty has not been able to offload the risk, then their risk is increased. This may then make the trade more expensive for us. It is not clear that post-trade transparency will improve the cost efficiency of the market. **b) Equity Derivatives** The greatest drawback is the loss of anonymity. Also, it is

		crucial to preserve the OTC market and not move this market on exchange particularly for large orders. Yes, there is a lack of post-trade transparency but this is a given aspect of trading OTC. We recognise that a post-trade transparency regime would improve valuation, making it easier, more accurate and less subjective. **c) Commodity Derivatives** There is no post-trade transparency but this would be of limited usefulness because it is unlikely that reported trades would be similar to any other trade and also because prices can vary significantly from day to day so reported information is very quickly out of date. **d) FOREX Derivatives** There is a lack of post-trade transparency. It is not possible to see what has been filled at what price. It is possible to see prices change but not to know what has caused that change. It would be beneficial to know the volume of trades that went through in a day although this may be available in some data feeds already. However, anonymity is the key component. It is critical not to disclose large positions as this would cause price distortions.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	We are not convinced of the merits of using the cash equity market as a model on which to base that of other financial instruments due to their considerable diversity. The retention of the Large-in-Scale and Reference price waivers will be key.

	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)?	We welcome the introduction on a consolidated tape as all market participants should have access to an acknowledged record of market trading in one consolidated form. However, we question the approach suggested in the text that various commercial providers operate the tape given that no providers have come forth with such a system. We also have concerns that there may be delays to the tape's introduction due to commercial disagreements. We continue to support the approach for a single CT either operated by a non-profit or commercial basis. We would suggest that the ARMs and APAs collect their data in a way that could be delivered directly to the CT operator.
	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?	For post-trade transparency some benefits could be seen for increased transparency of bonds if properly calibrated. However too much detail drafting is again left to Level 2, so industry is unable to fully identify the impact. We would need to be able to differentiate between the accurate and timely data required by market participants, and the base underlying data required by the competent authorities and the publicly available post-aggregation data.
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?	The wide-reaching scope of MiFID/MiFIR means that all markets will be affected in some manner, whether as primary or secondary market participants, wholesale clients, product providers, asset managers and so forth . It is therefore important that each ESA considers how this could impact, and therefore be implemented practically, in their particular sectors. To get a full picture the three ESA should consult with each other,

		particularly on cross-cutting issues, as there are considerable sequencing issues to consider when it comes to implementation. For example the EBA will require the banks to undertake measures that will ultimately impact on the investment managers, whilst ESMA is simultaneously setting their own requirements. The Joint Committee is the obvious forum to coordinate this. There are also a number of areas (for example, transparency of non-equities) in the Commission proposals that are new and will have a significant impact, however, the limited detail, even in setting the parameters, means that the potential implications of the new requirements cannot be measured or judged. Recognising that the ESAs do not have any official role before the Parliament and Council have agreed a Level 1 text, it may be valuable if the ESAs informally began to look at what these details may be. We require consistency within and among legal texts, and a consistent approach to supervision and support strengthening the Joint Committee to achieve this.
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	No comment.
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	EMIR CRD/CRR MAD/MAR SSR AIFMD

		PRIPS UCITS IMD Solvency II We would appreciate the removal of conflicts of interests across regulations and would value both circular- and cross-references throughout all documentation.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	Internationally, MiFID needs to be consistent with legislation instigated by G20, IOSCO and the Financial Stability Board. This gives rise to the problem that the changes to derivatives regulations have been separated into two separate Directives in Europe (EMIR and MiFID) which are moving at two different speeds. There are many unanswered questions in the text on third country equivalence and work is required to ensure that both the qualifying criteria and period of application of this arrangement do not exclude certain jurisdictions from trading in the EU or discourage them from moving towards an equivalent standard. Also, the legislation must support the Commission in helping deliver conditions in third countries that allow EU firms wishing to trade there to be able to do so without unnecessary domestic requirements.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	We strongly recognise the importance of robust and effective sanctions. Our members want confidence (and fairness) in the market in which they invest, and operate, and have a strong

		interest in the integrity and efficiency of financial markets and in promoting the confidence of the investing public .We consider the proposals reasonable
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	We are not convinced that the balance is yet correct. As referenced in Question 26, there are a number of new elements introduced in MiFIR/MiFID II Level 1 that are likely to be of considerable significance. However, without further details/signposting it is not possible to identify the implications (positive or negative).We would welcome more detail introduced in Level 1, for example on the non-equity transparency, to both gain a better understanding of the rules, and provide proper signposting for the Level 2 provisions.

Detailed comments on specific articles of the draft Directive	
Article number	**Comments**
Article 16.7	This Article currently states "…recording of telephone conversations or electronic communications involving, at least, transactions…" We would request clarity around the specifics of what else is required to be recorded. We believe that lack of clarification in this area would lead to an unlevel playing field, with different interpretations from the various Competent Authorities. Additionally, we would suggest that to retain records for 3 years is a disproportionate time period. As we understand that the recordings are required for Market Abuse purposes, we would suggest that 6 months is an appropriate time.
Article ... :	
Article ... :	
Detailed comments on specific articles of the draft Regulation	

Article number	Comments
Article ... :	
Article ... :	
Article ... :	