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).

Answers from the French market authority (Autorité des Marché Financiers)
13 January 2012

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?	As far as article 2 is concerned: ▪ The AMF supports the clarification in d) of Article 2 that provides for persons who deal on own account when executing client orders not to be exempted. ▪ The AMF also supports the principle in d) according to which all members of regulated markets and all participants in an MTF should be authorised as investment firms. ▪ The AMF opposes however the exception to the principle in article 2, under which such members and participants would remain exempted when dealing for own account in relation to commodity derivatives and emission allowance derivatives.

		The AMF considers that the Directive should apply to all such members and participants and they should be authorised as investment firms. ▪ The deletion of k) is welcome for commodity derivatives, since this exemption is covered under d). ▪ The AMF supports the intention of the Commission to narrow the exemption for entities having an activity in commodity derivatives under i) where such activity is ancillary to the main activity of their group and this activity is non-financial. The proposal would however continue to exempt even very large emission allowances or commodity derivatives players. This is unsatisfactory from a systemic risk perspective, from an investor protection perspective, and from a level playing field perspective. Therefore, AMF would suggest that level 2 or new binding technical standards (BTS) to be adopted by ESMA should not only specify what an "ancillary" activity, but also to set limits (e.g. quantitative limits such as income from the emission allowances or derivatives businesses, etc.) to the exemption so that all major players would need to be authorised. ▪ The AMF considers that the exemption under k) – or l) in the current version of Article 2 of MiFID – should be deleted. This provision for so-called "locals" no longer seems necessary. ▪ The AMF agrees that market makers should be authorised for own account dealing. The definition of market making in Article 4 of MiFID is nevertheless too narrow: instead of a person holding himself out "on a continuous basis" as being willing to deal, the definition should say "on a regular basis" in order to clarify the current situation where many firms are

		in fact market makers but are not "continuously" present on some market such as no equity markets and therefore are not authorised to be qualified market markers. Other parameters and conditions should also be considered to better define the specificities of market maker. Some market participants do consider that themselves as market markers as soon as they engage into arbitrage although they do not aim at contributing to a better liquidity of an instrument with regards to investors. Market strategies have evolved since 2004 and the current definition of market making does not seem to be tailed enough to reflect market making practices anymore and ESMA should be empowered to adopt BTS on that subject matter. As far as article 3 is concerned : ▪ The AMF supports the intention of the Commission to maintain the Article 3 optional exemption, and to harmonise and strengthen the rules applicable to entities that benefit from this exemption. ▪ The AMF nevertheless considers that two important changes should be made to the proposal: - these entities should be subject to MiFID's conflict of interest and recordkeeping requirements, in addition to the conduct of business rules referred to in Article 3(1); - it is necessary to maintain the possibility for Member States to allow the competent authority to delegate tasks related to the authorisation and supervision of exempt entities. Such a possibility is no longer needed for investment firms, but remains necessary for these entities that may be very numerous and are regulated at national level, without involving any real single market issue.

	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	On emission allowances : ▪ The AMF is not in favour of including emission allowances in the scope of MiFID. The AMF supports the intention to regulate this type of instrument, but considers that an "ad hoc" approach would be preferable in order to take into account their specificities, due to the fact that they are essentially an instrument dedicated to environmental policy, used by industrial firms as a raw material. ▪ Should emission allowances nevertheless be placed within the scope of MiFID, the AMF considers that two precautions should be taken: - they should not be defined as financial instruments, because this may have unintended consequences; - it will be necessary to disapply or adapt a number of provisions of MiFID that cannot apply to emission allowances, for example the rules on custody and safekeeping because of the specificities of they way in which emission allowances are held i.e. through specially regulated registers. On structured deposit: ▪ The concept of structured deposit should be better defined as recital 26 is not precise enough and it not clear as to what exactly it should refer to. ▪ From a more general standpoint, AMF believes that splitting the PRIPs initiative into three parts (a regulation on pre-contractual disclosures, and MIFID and IMD for selling practices) will inevitably lead to a patchwork of uncoordinated regulation. There is a strong need to better harmonize conduct of business rules and improve the comparability of products.

	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	▪ MiFID already regulates custody when an investment firm "holds financial instruments belonging to clients" (Article 13(7)), but does not require firms providing this service to be authorised because custody is an ancillary service. The AMF agrees with the Commission that all firms providing this service should be authorised as investment firms, but an impact analysis should be made as to the consequences should that be the case, especially with regards to 3rd country access. ▪ The MiFID review provides an opportunity to clarify both the scope of this service (at level 1), and the rules that apply at level 2 or through ESMA BTS'. As far as the scope of the service is concerned, the AMF considers it necessary to make a distinction at least between securities and derivatives (cf. the ESMA advice on AIFMD implementing measures).
	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?	▪ The AMF supports in principle the Commission's intention to harmonise the requirements for third country access to EU markets. ▪ <u>However , If third country access is to be provided, this is however strictly conditioned on two crucial aspects:</u> - only third country investment firms subject to equivalent regulation and supervision, as determined by the Commission, should be allowed to have access to EU markets and investors; - Such third country access should be allowed only if reciprocal treatment is guaranteed to EU investment firms. These broad requirements are present in the Commission proposal, but it will be necessary to consider the proposal in detail, for instance

		for service providers as well as for market operators.
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?	▪ The AMF supports the Commission's intention to strengthen and harmonise corporate governance requirements. The Commission proposal is an excellent basis for discussion. It will be necessary to consider carefully, inter alia, the proposed restrictions on multiple directorships. ▪ At this stage, the AMF thinks it necessary to better understand the Commission proposal, especially the definitions of "management body" and "senior management" and the concepts of "executive directorship" and "non-executive directorship".
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?	▪ **The AMF welcomes the idea of regulating all venues where financial transactions are executed.** ▪ **Nevertheless the Commission's proposal raises a number of concerns:** - <u>OTFs may apply discretionary rules for executing orders</u>: This means that such trading platforms may display and offer different prices to different clients at their discretion, or execute transactions in a discretionary sequence, permitting for instance voice execution or other methods for executing orders that are not today allowed on RMs and MTFs. - Under such circumstances, although it would in theory apply, <u>it is unclear what best execution this would consist in on OTFs,</u> especially if prices are specific to a client according to his risk profile and may not be shared for others, or if client orders may be entered in the order book in a discretionary way. If OTFs are allowed to have

		discretionary rules, they should not be qualified as trading venues - Whether discretionary execution rules cover prices or order book management, the discretionary component for executing orders makes it very difficult to know how pre-trade requirements would concretely apply on OTFs. - The broad OTF category would potentially cover a wide array of assets, including derivative contracts and all types of securities: (i) With regards to OTC derivatives: the rationale behind the Commission's proposal is welcome. Nevertheless, it is possible to execute derivative transactions on a "non discretionary" price when derivatives are cleared with a central clearing house that 'absorbs' the counterparty risk. Therefore, if cleared (and sufficiently liquid - one will have to ensure consistency between EMIR and MIFID II regarding the criteria for eligible contracts), all derivatives can and should be traded on organized trading venues which apply the same pre-trade transparency and execution rules as RMs and MTFs. (ii) With regards to securities: the development of trading on venues that are inadequately regulated such as OTFs would lead to concerns about price formation and the impact of poor price discovery on the real economy. Ensuring that the price formation process remains efficient and meaningful is essential in order to maintain investors' confidence in financial markets. It also crucial for issuers to be able to rely upon security prices formed according to publicly known and non-discretionary principles. The liquidity shift toward de minima regulated venues would also have an impact on the real economy and financial stability if RMs and MTFs cannot be used as

		benchmarks anymore. ▪ It is also <u>unknown whether OTFs will operate truly multilateral systems along with (firm) price-driven or order-driven models</u> (in any event, ESMA should be empowered to adopt binding technical standards, in order to avoid divergent interpretations across jurisdictions, as to the nature and level of pre-trade transparency and the meaning of "multilateral" platforms, in addition to clarifying the concept of discretionary order execution). ▪ Lots of <u>uncertainty remains as to how rules on transparency and order execution will apply to OTFs.</u> Therefore, OTFs should clearly be identified as 'Intermediary trading platforms' where less stringent rules apply. OTFs occupy a middle ground between intermediaries and markets, and should not be considered as equivalent to genuine trading venues like RMs and MTFs. Therefore, an incentive for trading financial instruments on genuine trading venues such as MRs and MTFs should be introduced, to the extent that they operate with multilateral and fully transparent processes and should accordingly remain a benchmark for all financial instrument pricing. ▪ Finally, <u>further identification and flagging of OTC trades</u> would be more useful, in order for market participants and regulators to better understand the precise nature and characteristics OTC trades actually cover. Such flagging would also help appreciate whether those transactions are actually bilateral ad hoc ones or whether they would rather belong to the organised trading facilities, or possibly trading venues, and could also be usefully incorporated in transaction reporting, as appropriate.

	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?	▪ **European Commission proposals on HFT in MiFID are to be welcomed:**
	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?	- Indeed, at traders' level, MIFID should set up clear and appropriate regulatory constraints on the operation of trading algorithms: this should include back testing and adequate controls and governance processes to address all the risks involved for orders either placed directly by a market member/participant or by its clients through direct market access (DMA). - Moreover, market operators should strengthen market surveillance over trading venues, and adopt adequate controls in order to be capable of managing high volumes of orders and cancellations. Operators should implement effective circuit-breakers, and should be able to reject orders that exceed pre-set price and volume thresholds. ▪ **However, the necessary reforms should go even further, as follows:** - it would be relevant to establish technical measures on tick sizes, fee structures and order-to-trade cancellation ratio (it would also be appropriate that ESMA adopts binding technical standards in this respect (rather than the Commission establishing delegated act in such technical field). Technical solutions such as message traffic fees or fees for market participants with high order cancellation rates, tick sizes, appropriate fee structures, order-to-trade/cancellation ratios (or latency) have been explored in now-finalised ESMA Guidelines that could be used as a valuable starting point for future work by the European regulator. - Cross-market surveillance should be organized: HFT trading has indeed expanded into virtually all market including non-equity

		markets such as futures, and most HFT orders are not originated by EU players. The resulting fragmentation requires a centralised EU surveillance system for EU financial markets. Detecting abusive behaviour across order books is a supervisory challenge and neither market infrastructures nor national regulators are capable of ensuring this surveillance since they lack the necessary information from other trading venues. - Regulators' should adopt a more comprehensive and powerful monitoring system: this would require a consolidated audit trail that would gather data on trades in real time from all markets. Furthermore, MiFID II and MAR must provide for a coordinated approach: provisions under the new MIFID and MAR must be coordinated in order to create a comprehensive regulatory framework to ensure the integrity of financial markets in the EU and to enhance investor protection and confidence in those markets. Through the MAD review, EU regulation should be strengthened to catch traders whose abusive activities distort the markets, thus encouraging market members/participants to act in a more responsible way for both directly placed and DMA orders.
	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?	▪ The basic principle in Article 13(6) of MiFID is satisfactory, and the AMF welcomes the proposal for a new Article 13(7) on the recording of telephone conversations and electronic communications. This new provision needs to be examined carefully, in particular as to the types of conversations to be recorded and how this is to be done given the variety of possible communication devices. ▪ What is missing, in AMF's view, is an implementing measure specifying the minimum records that investment firms are required to keep. The 2007 level 3 recommendation issued by CESR in 2007 is not sufficient.

	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?	▪ **In line with the G20 statement and other international initiatives, AMF welcomes the requirement for derivatives eligible for clearing and sufficiently liquid, be traded on trading venues.** Benefits can indeed be expected from trading of sufficiently liquid derivatives on regulated markets and MTFs and, where needed, other "eligible" OTFs for derivatives trading, including: - Transparency: pre-and post trade transparency reduces information asymmetry. Price transparency contributes to efficient price discovery and pricing of assets, allows for comparability, reduces search costs for market participants and strengthens risk management in allowing for a better understanding of products. - Price formation: one of the most important benefits is the increased efficiency in the price formation and discovery process that results from bringing together the interests of multiple buyers and sellers. - Liquidity: trading on eligible platforms involves a large number of market participants expressing interest to effect transactions and can result in enhanced liquidity around these venues, while increased competition among participants puts pressure on trading costs. RM and MTF also have the potential of attracting new participants on these venues. - Operational efficiency: MR and MTF offer a higher and more uniform level of operational efficiency and resilience. - Market surveillance: MR and MTF facilitate efficient oversight of derivatives trading by enabling market operators and regulators to more easily have a comprehensive and accurate view of market activity and identify potential market abuses.

		▪ **Regarding the criteria that could determine whether a derivative is sufficiently liquid to be required to be traded on such eligible platforms**, we agree with the Commission that, given the technicalities of the exercise, it should be for ESMA, in consultation with the industry and other stakeholders (e.g. ESRB), to assess and decide on the criteria by which a derivative would be considered as sufficiently liquid to be traded on a Regulated Market, an MTF or another eligible platform (OTF), where needed. (It will also be key to ensure consistency between EMIR and MIFID II regarding the criteria for eligible derivatives contracts.) ▪ An incentive for trading financial instruments on genuine trading venues such as MRs and MTFs should be introduced, to the extent that they operate with multilateral and fully transparent processes and should accordingly remain a benchmark for all financial instrument pricing.
	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?	▪ The AMF welcome the Commission initiative with regards to SME's. The SME's markets should be recognised and regulated as other regulated markets are. The SME's markets should not benefit from a lighter regulation to act on equivalent level playing field. ▪ AMF believe that the SME's markets could provide for further incentive for a better access to capital market, either through regulated market or MTFs'. ▪ AMF would propose to explore the idea of proportionate intermediation costs (mainly platform fees) for SMEs for instance by tackling this subject under the current MIF revision. Such an idea would indeed perfectly fit with the section on SMEs markets,

		which aims at facilitating the access of such SMEs to capital markets. Proportionate and non-discriminatory fees may play a very helpful role in that regard.
	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?	The AMF has no comments regarding these provisions at this time.
	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?	▪ The AMF strongly supports the Commission's intention to enhance the transparency and integrity of commodity derivative markets. ▪ The AMF considers that position limits are much more effective than position management procedures, and that position limits are particularly crucial for spot month futures. ▪ The AMF is concerned however by the proposal to confer the power to set position limits on market operators (Article 59(1)). The AMF strongly believes that competent authorities should have this power. In addition, the AMF fails to understand how the power of the Commission to set position limits (Article 59(3)) fits into this framework. A similar question arises about the power of competent authorities to set position limits as a "remedy" (Article 72) or in exceptional cases (Article 59-4), and the "coordination role" to be played by ESMA (Article 34) with respect to position limits.
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?	▪ The MiFID review is an opportunity to enhance the quality of portfolio management and advisory services provided to investors, especially retail investors. Conflict of interest issues raise legitimate concerns and should be addressed altogether

		with investors' protection issues with regards to the quality of advice and management services. Clarifying the rules which apply to individual portfolio managers and investment advisers is necessary. **Both direct and indirect remuneration schemes show some bias for end investors and prohibiting only one remuneration model will not solve the problem nor will it overly achieve the objective of enhancing sound investor protection.** ▪ **For individual portfolio managers:** the Commission proposal is to be considered together with other means to fully avoid for conflict of interest situation to arise. Additionally, the clients should receive information as regards the fees and commissions that he indirectly pays for the management fees of any underlying financial instruments that are purchase by the fund he is invested in. ▪ **For investment advisors:** to avoid any 'conflict of interest and truly enhance investors' protection, distinction should be made between advisors that belong to a group including product providers and others stand-alone advisors: - For advisors belonging to a group: the conditions upon which inducements can be paid or received should be associated with clear remuneration/appraisal/promotion policies to prevent for advisors to have any incentives when selecting a financial instrument; - For stand-alone advisers, e.g. advisors that do not belong to a group including product providers : the measures proposed in order to enhance investor protection are unlikely to achieve the objective, as many investment firms may opt to sacrifice the notion of "independence" in order to keep their remuneration

		schemes. For both types of advisors, alternative solutions could be explored: - Indirect remuneration could be allowed only if fees received are to be deducted from the pre-defined fees owed by the client to the investment firm and provided that full, comprehensive and clear information has been provided to the client prior to the making of any investments. - It should be clarified that ongoing fees can only be received if the adviser provides an on-going assessment of the suitability of the financial instrument recommended to the client ("on going" should not be understood as "on a day-to-day basis", but "on a reasonably regular basis given the specificities of the instrument and of the client profile").
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	▪ The AMF believes the wording of Article 25 in the Directive introduces a clear distinction between products that may/may not be sold on an execution only basis (i.e. complex or non-complex). In this regard, it deems that complexity should be appreciated from a retail investor's perspective based on the latter's comprehension of the risk/reward profile of the offered product or service. It also wishes to highlight that the 'complexity' of a given product or service should not be confused with the latter's degree of riskiness. A product may for instance carry significant risks for the end investor without necessarily being 'complex'.

		The AMF is of the view that complexity should foremost be defined in these terms in the text of the proposal, leaving the actual identification of both complex/non-complex instruments to the directive's future implementing measures. ▪ The AMF intends to propose <u>a set of criteria to qualify **all** products' complexity</u> in the light of the existing and revised MiFID rules. In summary, a product should be deemed complex if: 1) It is an financial instrument (e.g. a share , a bond or a note…) embedding a derivatives or fund 'structured' in the sense that its payoff is based on an algorithm linked to the performance (or to price changes or to other conditions) of a financial asset, index, reference portfolios, etc.; or 2) it provides an investors with an exposure to non-traditional parameters, e.g. volatility, dividends, correlations, etc.); or 3) its investment strategy is by nature discretionary (e.g. geared towards generating absolute returns) ; or 4) is deemed and marketed as 'complex' by the manager or its distributor (opt-in option). ▪ Finally, the text of the proposal would need to be supplemented by appropriate implementing measures in order to ensure a harmonised implementation of the

		criteria used for the distinction between complex and non complex products, and ideally by ESMA guidelines.
	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 AMF supports the proposal enhancing disclosure to clients about the firm's execution policy (Article 27(2)), and well as the proposals requiring publication of execution quality data by execution venues and of the principal execution venues used by investment firms (Articles 27(4) and 27(5)). These proposals will help to improve execution performance as well as the understanding by clients of the quality of services provided. More detailed work on the application of the best execution rules will nevertheless be necessary in the future.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	▪ The AMF welcomes the measured enhancement of the protection of eligible counterparties, who will benefit from the application of the fundamental principles of fair treatment and clear information. The protections available to the three categories of clients will accordingly be better balanced.
	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 AMF welcomes these measures. ▪ The AMF considers necessary to grant ESMA with more power in order to coordinate the ability for National Competent Authorities to permanently prohibit or restrict the marketing, distribution or sale of certain financial instruments or type of financial activity or practice, as a non-coordinated action to prohibit products or activities could be a cause of regulatory arbitrage and have detrimental effect on investors protector and the single market

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 proposed extension of pre-trade transparency requirements to equity-like instruments,** i.e. to depository receipts, ETFs and certificates (i.e. shares without voting rights) along similar lines as for equities, is relevant as those instruments are very close to a share from an economic perspective. ▪ **As regards non-equity instruments:** we support the inclusion of a wider set of instruments including bonds, structured products and derivatives in MiFID pre-trade transparency scope As explained above, all standardised and sufficiently liquid instruments should be traded on trading venues with adequate pre–trade transparency. Where those instruments are not sufficiently liquid to be traded on such trading venues, imposing pre-trade transparency requirements would not be a thoughtful way forward.
	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?	
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	▪ **Concerning waivers to pre-trade transparency**: it is worth noting that the reference price waiver currently gives rise to the largest spectrum of interpretation. The way the use of the waiver has evolved over time, including as regards the "price" used as a reference, raises concerns and calls for reconsidering whether it is appropriate to have such waiver in the MIFID. ▪ **Regarding non-equity instruments:** some of the parameters retained by the Commission to determine such waivers may not be appropriate (e.g. the liquidity profile of the instrument – a far too subjective concept to be meaningful and to be appropriately implemented).

	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 Commission's suggestions for improving the quality of data and the publication of transactions through approved publication arrangements are to be supported.** Improved quality of data is a prerequisite for meaningful post trade transparency and a meaningful consolidated tape. Further harmonisation of post-trade transparency publication format across trading venues, organised facilities and OTC will facilitate the consolidation of data. ▪ **In this perspective, the introduction of a European Consolidated Tape (ECT) for post-trade transparency is to be promoted.** The comprehensive consolidation of all trades on a single consolidated tape will offer market users, be they sell- side or buy-side firms, investors or issuers, an effective and efficient access to post trade information helping to overcome market fragmentation. The European Consolidated Tape will also represent a significant step towards a more integrated pan-European market. The current Commission proposals do not foresee the creation of any exhaustive consolidated tape (but only of consolidated tape providers having no obligation to provide consolidation of exhaustive information): this is a loophole that has to be closed. ▪ **In terms of the governance model for such consolidated tape**: a tape operated by a single, non-profit seeking entity, established and appointed by a legal act appears to be the most appropriate way forward given the public-good nature of such a consolidated tape and the potential link with the European reporting mechanism (for cost and efficiency reasons, some synergy should be created in due course between the consolidated tape and the European centralised reporting mechanism/database). As a compromise solution,

		the option under which a single entity operating the consolidated tape would be a commercial undertaking appointed following a public tender offer could also be acceptable. In such scenario, ESMA would be best placed to assess the merits of the bids and monitor ongoing compliance with the requirements set out in the call for tender.
	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?	▪ **Regarding post-trade transparency requirements for non-equity instruments:** the scope of products covered is relevant. In essence, a transaction based post-trade transparency regime predicated on a set of thresholds by transaction size is agreeable. Besides transaction size, the issuance size can also be used to account for liquidity and determine when the regime or a threshold applies, at least for bonds and structured products. It may be considered as a somewhat rough proxy, but it has the benefit of simplicity (indeed, given the number of instruments covered, the sophisticated calculations done each year for shares based on frequency of trading, as displayed in the CESR MIFID database would not appear as a reasonable or viable way forward).
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 AMF believes that more frequent recourse to ESMA technical standards is necessary in order to clarify and harmonise the application of MiFID in the EU.**
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	▪ Market supervision and surveillance has become highly challenging for competent authorities as a result of the increasing fragmentation, complexity and speed of markets. Much remains to be done to improve the coordination among, and resources available to, market authorities, and additional powers may be needed under MiFID. It is also necessary to begin thinking about how to organise a more centralised form of market surveillance at ESMA level.

		▪ Although the proposed Market Abuse Regulation (Article 19(7)) provides for cooperation between financial market authorities and bodies responsible for the underlying physical commodities markets, MiFID should provide for the same type of cooperation in order to cover the relevant MiFID issues, and this should include emission allowances.
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	▪ Provisions in MiFID II will need to be consistent with EMIR and its implementing measures. ▪ It will be necessary to introduce in the CRD a specific set of capital and liquidity requirements for the commodity specialist firms that will become investment firms under MiFID II. ▪ If emission allowances fall under the scope of MiFID II, it would be necessary to coordinate the statements of the European Auctioning Regulation with those of MiFID, in particular regarding the authorisation of firms trading emission allowances. ▪ Furthermore, as already mentioned, one must have a coordinated approach between MiFID II and MAR regarding HFT: provisions under the new MIFID and MAR must be coordinated in order to create a comprehensive regulatory framework to ensure the integrity of financial markets in the EU and to enhance investor protection and confidence in those markets. HFT actors whose behaviour is detrimental to the market integrity are financial “hackers”; they must be fought as such. Through the MAD review, EU regulation should be strengthened to catch traders whose abusive activities distort the markets, thus encouraging market members/participants to act in a more responsible way for both directly placed and DMA orders.

	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	▪ Interactions will the US Dodd Frank Act are by far the most important area today, especially as regards the registration and regulation of swap dealers and exchanges.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	▪ The AMF strongly supports the Commission's intention to ensure that sanctions are truly effective and dissuasive in all Member States. This requires that each competent authority disposes of minimum sanctioning powers, as proposed by the Commission.
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	▪ The AMF considers that the balance between level 1 and level 2 is appropriate. However, ESMA powers to issue technical standards should be provided for more frequently, as indicated above.