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	Barclays Barclays welcomes the opportunity to respond to the questionnaire on MiFID/MiFIR. Barclays has contributed to, and is supportive of the separate industry submissions, including those provided by ISDA, AFME, BBA and the FOA. Given this, we have only provided responses to certain questions where we feel we can provide additional information, in particular as a top tier investment bank with a leading position as a primary dealer in Euro- and Sterling-denominated fixed income products.

Theme	**Question**	**Answers**
Scope	1) Are the exemptions proposed in Directive Articles 2 and 3 appropriate? Are there ways in which more could be done to exempt corporate end users?	

	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	We support strongly any initiatives that will enhance the transparency and oversight of the spot emissions markets. However, we feel that the inclusion of spot emissions contracts as financial instruments is somewhat inconsistent with the approach to other commodities markets where the underlying commodities are not regulated as financial instruments. Therefore, we believe that the best potential solution may be the introduction of a sub-regime within MiFID for spot emissions allowances. We support the inclusion of structured deposits as it pertains to retail clients only; in other words, if limited to ensuring the regulation of financial promotion standards and sales documentation which are core to the “Packaged Retail Investment Products” (PRIPs) initiative.
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	
	4) Is it appropriate to regulate third country access to EU markets and, if so, what principles should be followed and what precedents should inform the approach and why?	There are clear benefits to implementing a harmonised regime governing third country access, including to minimise the risk of regulatory arbitrage. However, the new regime should be carefully designed to build upon and preserve current arrangements that have worked well. Given the benefits to end users of an open approach governing access, the aim of the harmonised third country regime should be to facilitate access to European markets and provide that such access takes place within a sound regulatory framework.

		We are concerned about the provisions relating to "equivalence" and "reciprocity". The criteria for assessing applications should not be based on strict equivalence but rather equivalent outcomes. Some jurisdictions may be less granular than others, or have legal structures that do not permit identical rules, but still meet the "spirit" of a requirement. Nor should the assessment be based on reciprocity; whilst reciprocity may be ideal, European financial markets and end investors can still benefit from third country access even where reciprocity is not currently available. Limitations on access where there is no or limited reciprocity would ultimately be detrimental to end users if choice and provision of service is diminished.
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?	
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?	First of all, it is imperative to ensure an efficient and well functioning secondary market, which amongst others supports the primary market activities of corporate and sovereign issuers in both the equity and non-equity markets. In both the equity and non-equity markets, there should be a range of suitable and appropriately regulated trading venues. In addition, there should be possibility of trading Over The Counter (OTC), including where it is not possible to trade on an

		organised trading venue given the nature of the financial instrument or the characteristics of the trade. <u>OTF category</u> The proposed OTF category seeks to: • include Broker Crossing Networks (BCNs) in equity markets and future-proof the regime by capturing "venue-like" activities; and • provide a suitable venue for the trading of standardised, liquid derivatives. MiFID 2 and MiFIR would extend the current MiFID framework to a far broader range of asset classes. Given this, the trading venue framework should be flexible enough to allow for choice and to suit the different trading methodologies or protocols necessary to support the equity and non-equity markets. Undue restriction would have a detrimental impact on the liquidity and pricing available to clients. *Equity markets* There has been much discussion about the levels and type of trading activity currently conducted in BCNs and OTC, and whether the current levels of "dark" trading have an impact on price formation in the "lit" markets. We think it is helpful to consider the data published by CESR in April 2010 which found

		that less than 5% of OTC trading was conducted in BCNs, which equated to less than 1.5% of overall trading.[1] In January 2011, Tabb Group published data which also found that less than 5% of OTC activity is conducted in BCNs.[2] Moreover, it is important to recall that any trading conducted at present outside of trading venues is regulated and within the scope of MiFID, including obligations relating to systems and controls, transaction reporting, surveillance, and post-trade transparency. BCNs – as well as OTC trading (see also our response to question 7 below) –complement RMs and MTFs, and form part of the mechanisms by which brokers aim to provide clients with best execution. We support strongly flexibility and choice for end users. Therefore, we believe that where the OTF category captures BCNs or other types of trading currently conducted OTC, it should retain the current benefits for clients. For example, where a broker has two matching orders from clients, it may be less costly (either direct or indirect costs) for the clients if the trade is matched by the broker. Brokers may also use "proprietary capital" to match client orders and reduce the client's settlement risk by becoming the counterparty to the client rather than the clients being exposed to one another, which may be less costly and easier to manage for clients. Use of capital in such cases is

[1] http://www.esma.europa.eu/system/files/10_394.pdf
[2] http://www.tabbgroup.com/PublicationDetail.aspx?PublicationID=815

		driven by client orders and used to facilitate best execution. Given this, we oppose strongly the proposed restriction on the use of proprietary capital in OTFs, as this would limit the choice of execution available to clients and may result a worse outcome for clients. The Commission has raised concerns about conflicts of interest where proprietary capital is used. However, other means are available to meet these concerns. In particular, we consider that a better solution, which would not limit choice, is to address such concerns through systems and controls requirements, including best execution, conflicts of interest identification and management, and disclosure, for example, where clients could opt in or out of matching against different types of liquidity. *Non-equity markets* We are supportive of ensuring a range of suitable trading venues on which to trade standardised, liquid derivatives, in line with the G20 commitments. However, unlike the homogenised and fungible equity markets, which largely already trade on trading venues, it is important to ensure that existing or new trading venues for non-equities take into account the different manner in which such instruments are currently traded and the reasons for those differences. Taking derivatives as an example, a number of standardised, liquid derivatives are currently traded on RMs on centralised, transparent order books (i.e. where orders match anonymously with no intervention by a specific dealer). However, these are

		typically only vanilla contracts where there is sufficient liquidity to suit such trading models. For example, benchmark equity index derivatives and certain single stock derivatives where there is a liquid underlying market. Similarly, there exist currently a number of trading platforms for trading a number of government and corporate bonds, and certain interest rate swaps. A number of these trading venues are already registered as MTFs, for example, EuroMTS, Tradeweb, MarketAxess and Bondscape. However, it should be noted that these venues may support different trading methodologies or protocols, rather than an order book model. Whilst there may be other standardised financial instruments that can be migrated onto trading venues (whether RM, MTF or OTF), it does not follow that there will be sufficient liquidity to support a centralised, transparent order book model. Therefore, it is important to ensure that there is sufficient flexibility within the categories of “trading venues” under MiFID, including the MTF and OTF categories, to cater for other trading venue methodologies or protocols that support trading in non-equity markets (for example, Request for Quote mechanisms). This is clearly recognised by the Commission in its proposals. However, we are not convinced that the specific proposed provisions adequately reflect the different features of non-equity market trading protocols. In particular, it is important to take into account the significant role played by “dealers” in non-equity markets. Dealers are firms that are willing to use their own capital to provide a price to a client and fill his order where there is no “client contra-side

		liquidity", i.e. where there is no other market participant who wishes to trade the same instrument at the same time in the same size and/or on the same terms. These markets, are not continuous (i.e. there is limited or no availability of client contra-side liquidity). Therefore, dealer-provided capital is the most effective, and in some cases the only, way for clients to trade. In such cases, the dealer rather than the client takes on execution risk, as it is the dealer that takes the risk that the market will move against him before the position can be hedged. At present, clients may choose the way in which they access prices provided by dealers. In particular, they may access prices from a single dealer ("Single Dealer Platforms") or access multiple dealers through a single trading screen, e.g. Tradeweb and Bloomberg. Both provide important access points for clients to liquidity. It is also important to recognise that multiple dealer platforms are not analogous to central limit order books (which are common in equity markets), but rather provide a single access point to multiple dealers, which provide their own proprietary capital to fill client orders. We believe that Single Dealer Platforms have a role to play amongst a set of permissible trading venues, including for standardised, liquid derivatives. We are extremely concerned that the restriction on the use of proprietary capital in OTFs would significantly limit the choice available to clients in the non-equity markets. Again, we consider a better solution, which would not limit choice, is to address such concerns through systems and controls requirements, including best execution, conflicts of interest identification and management, and

		disclosure. <u>Systematic Internaliser (SI) category</u> The definition of SI is extremely broad in capturing trading by investment firms on own account to execute client orders on an organised, frequent and systematic basis. The Commission's proposals anticipate that Level 2 measures will determine the extent of the activities covered. However, in the absence of this, we are concerned that it is not possible to understand the potential impact or whether the Commission's policy aims will be met. As the SI definition appears to be constructed in order to introduce a pre-trade transparency requirement, this lack of certainty has significant impact on the proposals with respect to transparency. We have set out our views in more detail in response to question 21 below.
	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?	In the equity markets, there has been significant debate regarding whether the current level of OTC activity (i.e. activity taking place outside of organised trading venues) has a detrimental impact on price formation and the integrity of the overall market. We consider that there is no evidence to support such arguments. OTC markets play a vital role for end users for trades that could not be conducted on trading venues, for example, given they are bespoke or in illiquid financial instruments, or where factors other than best price might dictate the execution policy. Moreover, as noted in our response to question 6 above, any equities trading currently conducted outside of trading venues is regulated and within the scope of MiFID, including obligations

		relating to systems and controls, transaction reporting, surveillance, and post-trade transparency. With respect to transparency, both pre- and post-trade information contribute to price formation in the market as a whole, i.e. even where a trade may be conducted legitimately without pre-trade transparency, it will be published post-trade and so will contribute to overall price formation. We support the aim of improving the quality of post-trade transparency information. In particular, we are supportive of the Technical Advice provided by CESR to the Commission in October 2010 on Post-Trade Transparency Standards, which aims to enhance the quality and consistency of post-trade transparency data.[3] With respect to non-equity markets, the mandatory trading obligation will result in certain trading activity in OTC derivatives migrating to organised trading venues. However, as noted in our response to question 11 below, care must be taken to only include derivatives that are suitable to trade exclusively on “trading venues”. Broadly, we do not support creating a definition of OTC in order to migrate order flows on to trading venues where not appropriate. In particular, we should not oblige end users to trade in a manner that could result in a worse outcome. A better approach is to ensure – through MiFID and the Market Abuse Regulation – that trading venues and OTC are appropriately

[3] http://www.esma.europa.eu/system/files/10_882.pdf

		regulated, and that regulators have access to adequate information to monitor the market.
	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?	The Commission has articulated that the greater automation of trading poses a number of potential threats that should be addressed. First of all, we do not believe that greater automation of trading by itself necessarily poses additional risks to the stability of the markets. Rather, an absence of appropriate controls results in greater risk. We are, therefore, supportive of the inclusion of specific controls aimed to ensure that all firms have effective systems and controls that are appropriate to the type of trading activity conducted, whether electronic (including highly automated, at high speed, or otherwise), manual or a combination of both. That said, whilst we support strong systems and controls requirements, we consider that the absolute requirement, as currently drafted, to "prevent" disorderly trading conditions and to "prevent and detect" market abuse is unrealistic. A more realistic obligation, which would achieve the same effect, is to ensure that firms have systems and controls *designed to* prevent disorderly trading conditions and prevent or detect market abuse. More broadly, we are concerned that the proposed definition of "algorithmic trading" captures a far broader range of trading activities than intended. For example, algorithms are widely used including as "best execution" algorithms, such as VWAP (Volume Weighted Average Price) or TWAP (Time Weighted Average Price), as risk management tools (auto-hedging) or to automate responses to Requests for Quotes. It is particularly

		important to ensure that the definition is appropriately framed as the Commission has proposed that algorithmic trading is subject to a liquidity provision obligation. As currently drafted, this provision would effectively place “market maker”-like obligations on all firms using algorithms, including buy side clients and brokers acting in an agency or client facilitation capacity. We do not believe that the proposed liquidity provision obligation adequately reflects the different ways in which financial instruments trade, nor their liquidity profiles. In addition, current requirements on market makers set by exchanges recognise that liquidity does not have to be provided 100% of the time, nor in extreme market conditions. Obliging the provision of liquidity in all circumstances could give a false impression of liquidity and could exacerbate volatility in times of stress. With respect to incentivising the provision of liquidity, trading venues should be able to choose to implement market maker or liquidity provision schemes where necessary, for example, in illiquid instruments or to support the launch of new contracts. To the extent that the proposed liquidity provision obligation is seeking to address the issues seen during the Flash Crash in 2010 in the US equity markets, we do not believe that such an obligation would ensure orderly and stable markets. This aim is better achieved through systems and controls requirements, such as those proposed (subject to the caveats noted above), and effective circuit breakers. In this regard, we would note that European exchanges and MTFs currently impose a number of

		erroneous order entry controls and circuit breaker mechanisms. We are supportive of the proposed measures to enable a level of harmonisation between circuit breakers, although these should be designed to take into account the specific nature of the instruments traded and the trading mechanism.
	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?	
	10) How appropriate are the requirements for investment firms to keep records of all trades on own account as well as for execution of client orders, and why?	
	11) What is your view of the requirement in Title V of the Regulation for specified derivatives to be traded on organised venues and are there any adjustments needed to make the requirement practical to apply?	We welcome central clearing for liquid, standardised derivatives and agree these can be traded exclusively on trading venues in certain instances. However, we would note our response to question 6 with respect to the structure and trading protocols of suitable trading venues. In determining which derivatives should trade exclusively on trading venues, recognition must be given to the multiple variations of derivatives that clients transact in order to meet their particular risk management requirements. Obliging centralised trading prematurely, in addition to imposing transparency requirements, may have a significant impact on liquidity and pricing and, therefore, the ability of clients to manage adequately their risk exposure through derivatives.

		Therefore, it is important to ensure that the trigger criteria are appropriately calibrated, taking into account the specific characteristics of different financial instruments and the way in which they trade. We consider that the criteria at Level 1 could be elaborated to give ESMA clearer guidelines when drafting Level 2 measures.
	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 are supportive of proposals to create a pan-European calibrated regime for SME markets. Coupled with the extension of the Market Abuse Regulation, this should help to increase confidence in such markets. Having said that, whilst we appreciate efforts to reduce administrative burdens on SMEs, such relaxation of the requirements should not extend to fundamental requirements that support a fair and orderly market. In addition, it should not be forgotten that access to public markets is still comparatively expensive and may be prohibitively so for a large number of SMEs. It is, therefore, important to view access to public markets as one facet of the Commission's broader proposals on SME.
	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 continue to support strongly the original aim of MiFID to increase competition and choice, and support the extension of this objective to include index providers and post-trade infrastructure. Competition drives efficiencies in markets and brings significant benefits to end users of financial markets in terms of reduced fees and improved service. There exist a number of structural barriers to competition in the post-trade infrastructure space, which we do not believe will be

		addressed through market forces alone. For example, in the equity markets we are only now beginning to see greater choice as a result of the Code of Conduct on Clearing and Settlement. In the derivatives markets in particular, structural factors, such as CCPs and index providers being part of vertical silo exchange groups, can provide significant barriers to entry. We believe that MiFID, its proposed revisions, and the provisions contained in the European Market Infrastructure Regulation (EMIR) provide a framework that can support competition within a sound regulatory environment and with no detriment to stability. In order to allow for effective competition, the proposals should ensure that any potential barriers to competition, whether direct or indirect (including through margin and collateral arrangements) are addressed.
	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?	There is no clear evidence to demonstrate that position limits achieve the Commissions goals to “support liquidity”, “prevent market abuse”, and “support orderly pricing and settlement conditions”. Moreover, poorly designed position limits can damage liquidity and the efficient functioning of the market by limiting the ability of end users to manage their risk. Therefore, we support strongly the Commission’s proposal to allow for alternative arrangements, such as position management. A number of European exchanges currently use position management regimes to ensure fair and orderly markets. Under a position management regime, members of an exchange must

		adhere to position reporting requirements set by the exchange. This reporting provides the exchange with a granular view of positions held and, depending on a number of market factors (such as liquidity, types of participants, seasonality of commodity contracts), gives the exchange the authority to require members to close or reduce positions, or any other measure deemed necessary to uphold the integrity of markets, including ultimately the power to close out members' positions. There are other ways in which exchanges can ensure orderly delivery conditions, such as the "lending guidance" currently in place at the London Metal Exchange. This form of position management places the focus upon the delivery period for each contract, and ensures that physical delivery squeezes are not possible. Such position management regimes are initially designed by exchanges, but are continually overseen by national Competent Authorities. Such powers are more dynamic than position limits and focus on deterring market abuse, whilst ensuring that artificial limits do not hinder legitimate market behaviour, including hedging. Unlike a position limits regime (where different limits may be set for different types of market users), a position management regime is agnostic of the type of trading firms and treats all as equals in the aim of reducing market abuse.
Investor protection	15) Are the new requirements in Directive Article 24 on independent advice and on portfolio management sufficient	We believe that the measures, as drafted, are not sufficiently clear to determine their impact. The success of any new

	to protect investors from conflicts of interest in the provision of such services?	measures will, therefore, be a function of the detail that it is to be included at Level 2. We support legislative measures that ensure harmonisation of rules and standards across Europe. However, we do not believe that article 24 as currently drafted will result in harmonisation on inducements. In addition, we believe that this objective could be met by ensuring current requirements around inducements and disclosure of inducements were more readily applied.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	We disagree with the assumption that a product that embeds a derivative is automatically complex, risky and difficult to understand. For example, a simple convertible bond might arguably qualify as “complex” to the extent it embeds an option. However, this is a commonplace and understandable product that acts as a useful risk management tool for clients. At the very least, we think products should only be complex where they trigger both tests, although would also note that the “difficult to understand test” is extremely difficult to evidence compliance with.
	17) What if any changes are needed to the scope of the best execution requirements in Directive Article 27 or to the supporting requirements on execution quality to ensure that best execution is achieved for clients without undue cost?	
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	

	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?	
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?	We consider that there is already a high degree of transparency in equity and equity-like instruments. We are supportive of trading venues continuing to provide pre-trade transparency information, provided an appropriate waiver regime is maintained, including based on either the size or the type of order (see also our response to question 23 below). Concerns raised by end users about transparency in equity markets have tended to focus on fragmentation of transparency information. We are supportive of the proposals to address these concerns, in particular, the proposals relating to improving the quality of post-trade transparency information, including through the implementation of the Approved Publication Arrangement (APA) regime and the Technical Advice provided by CESR to the Commission on Post-Trade Transparency Standards.
	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?	Although the proposals make some concessions to the differences between equity and non-equity markets, we believe that, unless appropriately framed and calibrated, including with reference to both the underlying market structures and the nature of the financial instruments, the proposals would have a significant impact on liquidity and prices available to clients in non-equity markets. The current MiFID transparency regime for equities has been

		framed in relation to a relatively small number of instruments in which liquidity is concentrated. In these markets, each issuer will typically issue one class of share in large volumes, which is then traded by retail and institutional investors alike. Every share issued by that issuer is fungible with all other shares issued by the same issuer in that class. There are just over 6,000 entries on the ESMA database of all shares admitted to trading on EU Regulated Markets. The more liquid of these shares trade on average more than 40,000 times per day and only a minority trade less than once a day. The vast majority of trading in shares takes place on organised trading venues and the average trade size on these venues is around 7,500 Euros. By contrast, in fixed income markets, an issuer will typically issue multiple instruments with differing maturities and in relation to different parts of its capital structure. For example, sovereign bonds will typically have a wide range of maturities, and it would not be uncommon to have over 50 bonds in issue with different maturities. The same issuer may also issue a range of other instruments, including inflation-linked bonds, treasury bills, zero-coupon bonds, etc. In Europe, there are approximately 10,000 tradeable instruments (by ISIN) for government institutions. Unlike a single class of shares, fixed income instrument issued by a single issuer with different maturities are not directly fungible and may appeal to different investors. Therefore, the nature of the pool (and number) of interested market participants will vary widely. Bonds have a “life cycle” up to maturity and the levels of liquidity for a bond will vary depending on where

		that bond is in its life cycle. Average trade sizes in bonds vary widely but are typically large; we might typically see a representative trade size around 10 million Euros, although trade sizes of 50 million to 100 million Euros would also not be uncommon. In CDS markets, we might typically see representative trade sizes for single names and indices are respectively around £5 million and £25 million, but that trade ranges around respectively £5-10 million and £10-50 million would not be uncommon. In terms of frequency of trading, a single name CDS might on average trade around only 20-25 times per week. With respect to derivatives transactions, there is virtually an infinite number of structures. According to data from ISDA, "there are less than 2,000 standardized interest rate swaps executed on an average day. The largest maturity – 10 year dollar swaps – trade about 200 times a day or once every four minutes assuming a 12 hour global trading day. Most standardised swaps trade 20 times or less per day or once every half hour. In all, there might be 600 US dollar trades a day and 400 Euro trades a day."[4] We highlighted in our response to question 6 the different market structures necessary to support efficient trading in equity and non-equity markets. Consistent with meeting regulatory objectives, any transparency regime should be framed both with

[4] ISDA's response to the European Commission's MiFID Review Consultation:
https://circabc.europa.eu/d/d/workspace/SpacesStore/22941359-89bb-4ad6-baa1-249fe452e370/ISDA.pdf

		reference to those underlying market structures <u>and</u> to the nature of the financial instruments, including those factors set out above. <u>Pre-trade transparency requirements for trading venues</u> The proposed pre-trade transparency requirements for non-equities appear to have been drafted with reference to the current MiFID transparency regime for shares. We do not believe that this should be the starting point on which to base a pre-trade transparency regime for non-equity markets. Whilst the Commission clearly intended to include different trading methodologies that support non-equity markets (for example, Request for Quote mechanisms and voice broking), we are concerned that the way in which the pre-trade transparency obligations is framed does not necessarily align with those trading methodologies. <u>Pre-trade transparency obligations for Systematic Internalisers (SIs)</u> We also have significant concerns about the impact of the proposed pre-trade transparency obligations for SIs in non-equities. The Commission has articulated that its aim in extending the SI regime to non-equities is to support the valuation of these instruments and to aid price formation. Clients have the ability to access a range of dealers and prices. We do not believe that the quoting obligations proposed, i.e. a

		dealer having to publish to all market participants any price quoted to a single client and making certain prices available to its other clients, would address a specific market failure. These proposed requirements would have a significant impact on the risk associated with providing a price to a client. Given the essential role played by dealers in these markets, this would significantly impact the liquidity and prices available to clients. Since the SI regime for non-equities appears to be constructed in order to introduce a pre-trade transparency requirement, such regime must respect the process around liquidity formation available to clients in non-equity markets.
	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?	See response to question 21 above.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	As set out in our responses to questions 20 and 21, there are many instances where we see the need for a waiver from pre-trade transparency in order to maintain an efficient and well functioning market. Waivers should be allowed based on the size of the order <u>or</u> the type of order, or the nature of the financial instrument itself, having regard to the characteristics and liquidity of the market.
	24) What is your view on the data service provider provisions	

	(Articles 61 - 68 in MiFID), Consolidated Tape Provider (CTPs), Approved Reporting Mechanism (ARMs), Authorised Publication Authorities (APAs)?	
	25) What changes if any are needed to the post-trade transparency requirements by trading venues and investment firms to ensure that market participants can access timely, reliable information at reasonable cost, and that competent authorities receive the right data?	There is recognition in the Commission's proposals that the post-trade transparency regimes for both the equity and non-equity markets need to be carefully calibrated. We endorse strongly this view, as a poorly calibrated post-trade transparency regime would have a detrimental impact on liquidity. In particular, obliging premature disclosure of trades may move the market against firms providing liquidity to end users. Any reduced ability to hedge risk would have an impact on the ability of firms to continue to provide liquidity, in particular for large (block) orders, in bespoke instruments, or in illiquid instruments, including the shares of mid and small cap companies. Careful calibration is important for both equity and non-equity markets. However, we would also note the benefits of post-trade transparency to the market are limited for non-standardised derivatives and structured products given their lack of fungibility. Therefore, to the extent that post-trade transparency is mandated, calibration of the regime must take into account not only liquidity and the size of transactions, but other factors, such as the consistency of trading volumes throughout the contract lifecycle.
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?	Whilst we are supportive of the efforts to ensure greater harmonisation across the single market through the creation of the ESAs, it is clearly important to recognise that these nascent

		bodies have been tasked with a proposing an extremely large number of binding technical standards for a number of directives (including as noted in our response to question 28 below). Therefore, it is important to ensure that the ESAs are appropriately resourced and given reasonable timeframes to ensure they are able to draft well thought through proposals.
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	Market Abuse Regulation/Market Abuse Directive; EMIR; REMIT; CRD4; PRIPs; etc. Given the significant amount of regulatory change in Europe and other key jurisdictions, it clearly is extremely important to be mindful of both any cross-over between proposals, as well as the possible cumulative effect.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	Dodd Frank. See also our response to question 28.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	
Detailed comments on specific articles of the draft Directive		

Article number	**Comments**
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Detailed comments on specific articles of the draft Regulation	
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