

APPENDIX I

Response of Börse Stuttgart to the Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

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).

Theme	Question	Answers
Scope	1) Are the exemptions proposed in Directive Articles 2 and 3 appropriate? Are there ways in which more could be done to exempt corporate end users?	
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	

	4) Is it appropriate to regulate third country access to EU markets and, if so, what principles should be followed and what precedents should inform the approach and why?	
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?	<ul style="list-style-type: none"> - The OTF category is not appropriately defined as there are no technical details provided to differentiate those systems from the incumbent MTF category. If technical/functional similarity is intended then the proposed category of OTFs is problematic as it is currently less regulated than RM and MTFs – they are exempted from execution and access rules (i.e. non-discretionary execution and open access) – this will create an unlevel playing field between RM/MTF and OTF. Also orders from retail investors could be executed at this less regulated trading platform. Thus, the execution of retail investor orders at OTFs should be strictly forbidden. - There is no need for creating a new category of OTFs. The existing MiFID equity venue classification covers already all European trading platforms. It seems more to be a serious problem of law enforcement of the existing regulation of securities trading systems. This problem should be solved instead of chasing the market by introducing another category of securities trading systems, whose value can be doubted. The proposed new category of OTFs will split the EU markets into

		<p>“fully regulated” and “somewhat regulated” trading platforms and MTFs could become OTFs to be subject to lighter rules for the same business.</p> <p>If the OTF category is kept, we recommend that OTFs also have to provide non-discretionary execution, must provide open and fair / non-discretionary access and must be subject to the same level of surveillance as for RMs and MTFs. Otherwise the principle of ‘same business, same rules’ will be undermined and the safety and quality of EU secondary trading business essentially downgraded.</p>
	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?	<ul style="list-style-type: none"> - There is no explicit OTC definition in the main text of the Commission’s proposal (only in the recitals). A proper definition is important to ensure that all venues doing the same business are subject to the same rules. - OTC should be defined as bilateral, ad hoc, irregular, large trades (at least: exceeding retail market size) with wholesale counterparties. Because OTC is exempted from all the trading platform rules, the market participants must be sure that the flexibility in the OTC space is used only for large, ad hoc trades executed by the brokers on his own account. Otherwise a continued abuse of the OTC regime is likely by those brokers who compete unfairly with other venues by avoiding all the trading venue rules. - The channelling of trades which are currently OTC onto organised venues requires a clear line between trading platforms activity and OTC business. This is essential for a well-regulated marketplace. Above all an execution of retail orders in the OTC space should be strictly forbidden, to safeguard the retail investor.
	8) How appropriately do the specific requirements related to algorithmic trading, direct electronic	<ul style="list-style-type: none"> - We agree with the proposed duty of all firms offering Direct Electronic Access to a trading venue to register as an investment firm

	access and co-location in Directive Articles 17, 19, 20 and 51 address the risks involved?	<p>in order to do this business.</p> <ul style="list-style-type: none"> - However, we are concerned about the proposed obligation for investment firms operating an algorithmic trading strategy to remain in continuous operation throughout the trading hours of the trading venue by providing quotes at competitive prices, particularly in fast market situations. - Although we have sympathy to the Commission's approach to tackle the artificial character of HFT liquidity (withdrawn from the market as fast as provided to the market) we are sceptic about the concrete measures proposed, because this obligations will not only effect HFT firms but any investment firm operating algorithmic trading strategies. This would have grave consequences for the markets in terms of systemic risks with increased order flow and for credit risk as firms are forced to provide quotes.
	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?	<ul style="list-style-type: none"> - We agree with the formal introduction of circuit breakers, the ability to halt trading or to block erroneous trades that are too wide off given spread. - Risk controls such as circuit breakers are a necessary part of measures to limit the risk of errors generated by automated trading leading to disorderly trading. Volatility interruptions, on the other hand, although often cited as an example of a new risk mechanism specifically designed to counteract the risks of high-frequency trading, have, in fact, been available in European stock market trading for several decades and are thus not specifically designed to address HFT. - We also agree that all trading venues should have the ability to deal with peak orders and message volumes and to have effective business continuity arrangements to ensure of its services if there is any unforeseen failure of its trading systems. - Regarding the obligations of commercial platform operators,

		<p>regulation aimed at curbing the dangers of HFT should primarily be targeted at those behind these dangers, namely, those engaging in HFT, and not at the trading platforms (and retail investor orientated platforms like ours in particular), which are merely passive victims of such trading.</p> <ul style="list-style-type: none"> - Market place operators must be granted an explicit and comprehensive right to introduce regulations for dealing with HFT, especially in light of the fact that market organisations are geared to different needs. The organisational requirements of retail-orientated markets differ from those of large, high-volume institutional markets. For example, the Stuttgart Stock Exchange especially emphasizes price quality, as private investors are usually more interested in price quality than execution speed. In doing so, however, there is once again a danger that the HFT dealer will be structurally favoured in access to this price quality. - Retail investor orientated markets provide liquidity for the benefit of retail investors in general rather than a relatively small number of HFT companies. In keeping with their goal of providing liquidity to private investors, market operators need to be equipped with the regulatory tools to ensure that the liquidity intended for retail investors is also available to these investors and not just to professional HFT dealers with their superior technical means. - Due to their different functioning of each individual market and the need to take into account the specific client base that exists on them the proposal to limit ratio of unexecuted orders to transactions, slow down order flow and to limit the minimum tick size should not be a one-size-fits-all approach. Rather the proposed instruments should be set by each individual market.
	10) How appropriate are the requirements for	

	investment firms to keep records of all trades on own account as well as for execution of client orders, and why?	
	11) What is your view of the requirement in Title V of the Regulation for specified derivatives to be traded on organised venues and are there any adjustments needed to make the requirement practical to apply?	
	12) Will SME gain a better access to capital market through the introduction of an MTF SME growth market as foreseen in Article 35 of the Directive?	- We agree with the application of the transparency rules to MTF SME growth markets. But there is no need for a regulatory regime especially to SME growth markets. We already apply them voluntarily to our trading segment “Bondm” (SME-oriented market for debt-financing). We do not see a particular need for regulation in this area. The lack of scale to attract institutional investors is the main obstacle for SMEs accessing capital. We don’t think that this will be solved through the proposed regulatory regime for an MTF SME growth market. However, as long as the label is voluntary and is based on a reasonable and flexible set of requirements, we have no objection to it.
	13) Are the provisions on non-discriminatory access to market infrastructure and to benchmarks in Title VI sufficient to provide for effective competition between providers? If not, what else is needed and why? Do the proposals fit appropriately with EMIR?	

	14) What is your view of the powers to impose position limits, alternative arrangements with equivalent effect or manage positions in relation to commodity derivatives or the underlying commodity? Are there any changes which could make the requirements easier to apply or less onerous in practice? Are there alternative approaches to protecting producers and consumers which could be considered as well or instead?	
Investor protection	15) Are the new requirements in Directive Article 24 on independent advice and on portfolio management sufficient to protect investors from conflicts of interest in the provision of such services?	
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	
	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?	- In general, we agree with the best execution requirements set down in Directive Art. 27 and the supporting requirements on execution quality. In our point of view the current MiFID framework is sufficient and has reached its goal to reduce the transaction costs with the best execution requirements. The best execution requirements led to tight spreads and consequently to better prices at the trading venues. But while the implicit and explicit transaction costs at the competing trading venues have significantly decreased, the reality is still that the most investment firms consider in their best execution policies only the explicit transaction costs and even do not pass the

		reduced costs to their clients. In our point of view, the investment firms should factor the implicit transaction costs to their best execution policies to a greater extent.
	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?	<ul style="list-style-type: none"> - We support all efforts that improve the transparency level at electronic platforms of any kinds towards the exchange requirements. - In general, we welcome the Commission proposal to making the application of the pre trade transparency waivers more consistent and more coherent. But it is necessary to ensure that the waivers from the transparency rules should only be granted to specific types of orders or trading and not to trading venues entirely. - Nevertheless, we believe that there is no need for waivers from transparency rules at all. As a stock exchange committed to complete transparency in trading in all instruments, we welcome any and all measures for ensuring greater transparency and we claim for a prohibition of execution of retail orders at markets that have waivers in place. We at Börse Stuttgart have no waivers in place, but are already fully transparent over all asset classes. We provide full pre and post trade information in real time and for free on our website.

	<p>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?</p>	<ul style="list-style-type: none"> - See question 20 - We welcome the extension of transparency rules to bonds, structured products, emission allowances and derivatives. - In terms of bonds it should make sure that the proposed pre-transparency apply to all type of bonds and all type of trades as to keep the level playing field. - As a stock exchange we are already in compliance with pre- and post-trade transparency requirements for the instruments mentioned above. We don't believe that any changes to the proposed requirements are needed.
	<p>22) Are the pre-trade transparency requirements in Regulation Articles 7, 8 and 17 for trading venues for bonds, structured products, emission allowances and derivatives appropriate? How can there be appropriate calibration for each instrument? Will these proposals ensure the correct level of transparency?</p>	<ul style="list-style-type: none"> - See question 20 - In our point of view waivers from transparency rules are not necessary. As a stock exchange committed to complete transparency in trading in all instruments, we welcome any and all measures at ensuring greater transparency and we claim for a prohibition of execution of retail orders at markets that have waivers in place.
	<p>23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?</p>	<ul style="list-style-type: none"> - See question 20 & 22 - Trading venues should not be exempted from transparency entirely. If any, only specific types of orders or trading should be exempted.
	<p>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)?</p>	<ul style="list-style-type: none"> - We don't believe that a consolidated tape for pre- and post-trade transparency is necessary. Existing service provisions on the market, including those in already consolidated form, are sufficient and constantly evolving. Pre-trade transparency data from different markets are already intensively linked via information technology.

		<ul style="list-style-type: none"> - A highly efficient arbitrage makes regulatory intervention unnecessary. Competition between markets has led to excellent price quality, to the point where investors can omit pre-trade research as they can rely upon offerings such as our best ex guaranty (same or better price than home market). - Therefore a consolidated tape for exchanges as ours would simply be a cost burden.
	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?	<ul style="list-style-type: none"> - We agree with the proposed post-trade transparency requirements by the Commission.
Horizontal issues	26) How could better use be made of the European Supervisory Authorities, including the Joint Committee, in developing and implementing MiFID/MiFIR 2?	
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	

	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	
Detailed comments on specific articles of the draft Directive		
Article number	Comments	
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Detailed comments on specific articles of the draft Regulation		
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