

Review of the Markets in Financial Instruments Directive

Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

**Response provided by EQUIDUCT Systems Ltd the transactions services provider for EQUIDUCT.
EQUIDUCT is a market segment of the Borse Berlin AG, a regulated market
operator pursuant to article 36 of MiFID and a member of FESE.**

The questionnaire takes as its starting point the Commission's proposals for MiFID/MiFIR 2 of 20 October 2011 (COM(2011)0652 and COM(2011)0656).

All interested stakeholders are invited to complete the questionnaire. You are invited to answer the following questions and to provide any detailed comments on specific Articles in the table below. Responses which are not provided in this format may not be reviewed.

Respondents to this questionnaire should be aware that responses may be published.

Please send your answers to econ-secretariat@europarl.europa.eu by **13 January 2012**.

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

	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?	
	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?	
	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?	<p>We believe that the scope of the definition of best execution as currently contained in Article 27 is not sufficiently clear. Its current complexity makes it possible to claim almost any execution on any platform by any broker as being able to meet ‘best execution’ criteria. This has the effect of making the current definition practically meaningless. Article 27 needs to be clear, removing any ambiguity that merely sending an order to the incumbent market does NOT necessarily constitute best execution of that order.</p> <p>There also needs to be clear guidance as to what best execution means to the different categories of investors and in particular best execution in respect of non-professional retail client orders must be mandated as the best price available from a minimum of two independent bourses.</p> <p>The best execution requirement for a retail investor may be</p>

		<p>different to that required by a large sell side firm and this must be recognised in the text. The retail investor is absolutely concerned with obtaining the best price available in the market and he should not be marginalised by the fact that the current text allows brokers the ability to avoid executing at the best price by trading on the incumbent market.</p> <p>The other factors mentioned in ARTICLE 27(1): speed, likelihood of execution and settlement, size etc. are of no direct relevance to the retail investor who does not care about the speed of execution or any factor other than getting filled at the best price.</p> <p>Allowing intermediaries to meet best execution “obligations” by trading on the incumbent exchanges was appropriate prior to the fragmentation of pricing but in the light of the change in the macro market structure this IS redundant. This must also be considered against the increased number of market outages which means that often NO execution can be offered let alone best execution.</p> <p>By way of illustration during 2011, during continuous trading in CAC 40 stocks, only 49.4% of trades occurred on the incumbent exchange (Euronext) while similarly for FTSE 100 stocks, only 38.6% of all trades occurred on the LSE.</p> <p>Focussing specifically on retail executions by analysing execution quality on Equiduct (which guarantees execution at the best available price for retail members) the fundamental flaw in allowing best execution to be achieved by trading only on the</p>
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		<p>incumbent is clearer.</p> <p>A single online retail broker member achieved a better price than was available on Euronext for 35% of all (82 000) marketable orders sent by its retail clients while a more prolific retail member who sent 667 000 marketable orders received a better price than on Euronext 28% of the time. For the avoidance of doubt, all orders were executed at a price at least as good as the one available on the Euronext 100% of the time..</p> <p>Across the entire pan-European market a total of €226.89 million was lost by the end investor through executions not achieving the best available price.</p> <p>We ask that this matter is focussed on as a matter of material consumer protection.</p>
	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?	
	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?	
	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?	
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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