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	**Fabrizio Ferraro (Private and confidential)** **IG Group Holdings Plc**

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?	No response provided.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	No response provided.

	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	No response provided.
	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?	We consider that it is appropriate to regulate third country access to EU markets for the following reasons: - Provides an equal playing field for all firms participating in EU markets whether they are based within the EU or not. - It is important for investors that every investment firm is subject to the same level of regulation and that all products within the same category (whether provided by a firm based within the EU or not) provide the same level of protection.
Corporate governance	5) What changes, if any, are needed to the new requirements on corporate governance for investment firms and trading venues in Directive Articles 9 and 48 and for data service providers in Directive Article 65 to ensure that they are proportionate and effective, and why?	We are supportive of the proposal in Article 65 that data service providers should be subject to obligations in relation to the members of their management body because we consider that data service providers perform an important role in the operation of the markets and we consider that this proposal makes it less likely that a data service provider would operate in a manner that was detrimental to the smooth or orderly functioning of the markets.
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?	We consider that clarification needs to be provided regarding the approach taken in determining whether a firm is an OTF or systematic internaliser. Will it be that a firm is a systematic internaliser in relation to particular products only and not all products that it deals in? Or, if a firm is a systematic internaliser in relation to a product, then it will be considered to be a systematic internaliser in relation to all products that it deals in? In addition, we consider that there should be a pre-defined level

		of dealing in a product that triggers the firm becoming a systematic internaliser.
	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?	We are very concerned with how OTC trading is defined. We would like to point out that there are different characteristics and levels of risks pertaining to firms involved in OTC trading and that a "one size fits all" approach to defining and regulating OTC trading and the rules relating to trading would be inappropriate and detrimental. We would hope that a distinction is made between wholesale and retail clients and the OTC trading they perform. We consider that, as a class, wholesale clients would be trading in significantly larger volumes and amounts than retail clients and as a result their trades would create more systemic risk to the smooth or orderly functioning of the markets and therefore the trading of wholesale clients should be channelled onto organised venues. Retail clients' trades are generally exempted from the obligations under EMIR and should not be obliged to be traded on organised venues. In addition, obliging retail clients to trade on organised venues would result in increased costs for retail clients despite their trading creating minimal systemic risks to the smooth or orderly functioning of markets. We consider that this would be an un-proportionally large cost for retail clients when considered against the potential risks that are reduced by enforcing this requirement.
	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?	In relation to Article 17, we consider that the reference to "suitability" and "suitable" in Articles 17(4) and 17(5) of MiFID is misleading and confusing due to suitability testing of clients set out in Article 25. As a result, we propose that either a different word should be used or it should be stated that the

		references to suitability and suitable in Articles 17(4) and 17(5) is not referring to the suitability testing referred to in Article 25.
	9) How appropriately do the requirements on resilience, contingency arrangements and business continuity arrangements in Directive Articles 18, 19, 20 and 51 address the risks involved?	No response provided.
	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?	No response provided.
	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 agree that certain derivatives should be traded on exchange. We agree that the Article should cross refer to the provisions of EMIR to determine whether a class of derivatives has been declared subject to the trading and clearing obligations. We consider that Recital 21 should be clarified by referring to the fact that "clearing-eligible" is as defined under EMIR.
	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?	No response provided.
	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 agree that these provisions are beneficial for market participants and should result in sufficient access to CCP's and trading venues. However, only after a period of these regulations being applied will it become apparent whether these regulations are sufficient.
	14) What is your view of the powers to impose position limits, alternative arrangements with equivalent effect or manage	No response provided.

	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?	We agree with this proposal and consider that it is beneficial. However, in relation to Article 24(6) we do not agree that portfolio managers should not be able to obtain fees from third parties. Obtaining fees from third parties is an integral component of the remuneration structure for portfolio managers. Provided that there are appropriate obligations on portfolio managers to disclose details of fees to clients, we consider that this would not be detrimental to clients. As a result, we consider that this Article should be amended to provide that portfolio managers are able to retain fees paid to them by third parties provided that sufficient disclosure and details of those fees are made to clients.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	No response provided.
	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?	No response provided.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	No response provided.

	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?	Member states should not be able to prohibit or restrict a product in a financial markets of a member state if the purpose is to promote its own firms' products or because it does not agree in principal with the offering of a particular financial product in that member state, despite it being able to be offered in that country under MiFID passporting provisions. In relation to Article 32(2), we consider that all the grounds set out in Article 32(2)(a)-(e) should be met before a competent authority may prohibit or restrict a product. This is the same threshold as ESMA's ability to prohibit or restrict a product under Article 31(2) and (3).
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 section 3.4.6 of MiFIR should be clarified by referring to the fact that "clearing-eligible" is as defined in EMIR. It will be important that a centralised product list is prepared, regularly updated and published to ensure that firms are able to determine which products are subject to pre-trade transparency requirements.
	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?	We consider that section 3.4.6 and Article 17 of MiFIR should be clarified by referring to the fact that "clearing-eligible" is as defined in EMIR. We consider that the instruments of highest priority should be the instruments that are of systemic importance to the smooth or orderly functioning of markets or the integrity of markets.
	22) Are the pre-trade transparency requirements in Regulation Articles 7, 8 and 17 for trading venues for bonds, structured	We consider that section 3.4.6 and Article 17 of MiFIR should be clarified by referring to the fact that "clearing-eligible" is as

	products, emission allowances and derivatives appropriate? How can there be appropriate calibration for each instrument? Will these proposals ensure the correct level of transparency?	defined in EMIR. We consider that products that pose the most systemic risk to the smooth or orderly functioning of markets or the integrity of markets should be subject to greater levels of pre-trade transparency requirements than those products that are of lesser systemic risk.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	No response provided.
	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)?	No response provided.
	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?	No response provided.
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?	No response provided.
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	No response provided.
	28) What are the key interactions with other EU financial	There is significant cross referencing to EMIR in MiFID and

	services legislation that need to be considered in developing MiFID/MiFIR 2?	MiFIR. We consider that where terminology or principals in EMIR are referred to in MiFID and MiFIR, this should be clearly referenced. It will be necessary to ensure that the final draft of EMIR is consistent with the final drafts of MiFID and MiFIR and how they inter-relate.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	No response provided.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	No response provided.
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	No response provided.