ABI - Italian Banking Association - ID n. 51725251793-16

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.**

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?	ABI has no specific comments on this.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	The extension of MiFID requirements, (particularly rules concerning conduct of business and conflicts of interest), to the sale of structured deposits by credit institutions aims at enhancing investor protection in their investment choice. As a matter of fact, structured deposits offer a structure of remuneration which raises the same need for protection as shared by other investment products. ABI agrees with the proposal to

		extend the scope of the Directive to such products, but believes there is also an opportunity here to bring the definition of structured deposits, set out by Article 1(3), into line with that of Recital 26, which excludes from such category those deposits "*…linked solely to interest rate, such as Euribor or Libor, regardless of whether or not the interests rate are predetermined or are fixed or variable*".
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	The proposal for the review of MiFID envisages that "the safekeeping and administration of securities for the account of clients, including custodianship and related services such as cash/collateral management" no longer constitutes an ancillary service, but rather a key investment service. The aim of this measure is to subordinate the exercise of such activities to the possession of specific requisites and thereby reinforce the investor protection system. ABI feels this proposal should be examined further as there is no EU definition of safekeeping and administration (the activities to be authorised) and the effective benefit for investor protection is not clear, given the high costs required that would be incurred from having intermediaries bring the current contracts and information documents into line with MiFID rules. In this respect, it should be considered that (i) except for investment firms, custodians are in practice exclusively credit institutions that are already authorised to perform safekeeping and administration of securities and (ii) the holding and disposition of securities is an issue that should be addressed by an "ad hoc" European directive/regulation governing both credit institutions and investment firms (and, if appropriate, other subjects like CSD or ICSD) as suggested in our reply to the

		consultation document of the European Commission regarding the Legislation on legal certainty of securities holding and dispositions. Therefore, in our opinion the qualification of "safekeeping and administration of securities for the account of clients, including custodianship and related services such as cash/collateral management" among investment services will not impose a stricter authorization and supervision system than the one that currently applies, and will submits custodians to obligations that are materially not applicable to custodian activities, leading to significant uncertainties.
	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?	ABI supports the Commission's proposals aimed at introducing more harmonization in the way third country firms access the EU markets. We are however concerned that the equivalence assessment may excessively prevent non-EU firms to access the EU financial market and provide investment services. The assessment should be focused on substantial equivalence, rather than strict equivalence, based on approximation in regulatory outputs, principles and objectives. Nevertheless, as it regards specifically Article 41 (2), we believe that the location where the branch is set up should be carefully evaluated. Particularly, we believe it should be compulsory that the branch is set up in a location where the financial institution has a real and concrete "business interest" in order to avoid any regulatory/fiscal arbitrage. It goes without saying that this requirement would entail the drafting of specific rules outlining both the exact definition of "business interest" and the parameters according to which any chosen location can be effectively considered as the relevant centre of "business interest".

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?	With reference to "diversity" as one of the criteria for the selection of management body members, it is necessary to take into account the nature of investments firms as well as the size of the management body. For instance, putting in place a policy intended to promote geographical diversity will hardly make sense for a small local bank. Moreover, ABI highlights that similar rules will be issued in the near future by the EBA as part of the new directive on capital adequacy of credit institutions and investment firms (i.e. CRD IV). In this respect, therefore, a provision for coordination between the two Directives would be appropriate. In addition, it seems contradictory that ESMA has to draft specific binding technical standards (which will be issued in the form of a Commission Regulation) alongside a Directive which was designed to be flexible enough to take into account the different situations and laws existing in some Member State. Therefore, we feel that ESMA should issue guidelines rather than drafting binding technical standards. Therefore we suggest changing the wording of Article 9 (3) (4) to the following: (*3) Member States shall require investment firms to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account* ***their nature and*** *the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management*

		body. *(4) ESMA shall develop ~~draft regulatory standards~~* ***guidelines*** *to specify the following:* ***(..) Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1095/2010****.*
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?	The proposed definition improves the proposal presented in December 2010 and distinguishes some of the characteristics of OTFs from those of RMs and MTFs. However, we believe that there is still some confusion regarding the precise definition of the scope of the new trading venue as, at the moment, the OTF seems more a residual catch-all category than an independent, clearly defined category. Consequently, further clarification is considered necessary. Although ABI shares the aim of protecting clients and understands the risk of a potential conflict of interest between a system operator and its clients, we do not agree with the decision to prevent OTF operators from operating on their own account. This is a significant restriction in terms of the liquidity provided to the market by the intermediaries' own account trading, especially for certain products like derivative instruments. This restriction could be replaced by requiring the OTF manager to request authorisation from clients for the execution of their orders on the operator-manager's own account. Today, crossing networks, dark pools and electronic platforms are managed by international banks who usually allow only a few eligible clients (mainly other financial institutions) to operate. If the restriction is introduced and these platforms are (automatically) qualified as OTFs, then in order to be compliant,

		the banks managing the platforms: a) will set up ad hoc entities to manage the platform; b) could even evaluate the possibility of closing the platform, or operating as a mere market maker (as they used to do before the MiFID). As it regards Systematic Internalisers (SIs), their exclusion from the list of trading venues seems to be a move to satisfy a need for conceptual "order" and does not seem to imply significant differences from current regulations, as the requisites and characteristics specified for SIs remain unchanged, clear and well identifiable. However, any intermediary activities conducted through SIs would qualify as over-the-counter (OTC).
	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?	As it currently stands, the proposal seems to classify as "over the counter" any transaction executed outside the scope of any envisaged trading venues (i.e. included those executed on a SI). Probably, as it stands, the proposal might have the potential to channel the currently-defined OTC trades on to organised venues, although, clearly, a role in this will be also played by any new further detailed definition of the scope of OTF venues which ABI consider not appropriately detailed and should be further specified (see answer to Q.6 above).
	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?	ABI agrees with the proposal to strengthen the requirements for organisational and risk controls of the intermediaries performing algorithmic trading. However, it feels that these new requirements should reflect, as far as possible, the best market practices already adopted by intermediaries.

		Indeed, ABI notes that the definition currently provided for "algorithmic trading" is particularly wide, as it includes the 'trading activity' in general terms, as this is nowadays very frequently based on 'operating algorithms'. Therefore, in this respect, ABI considers that a review of the proposed definition would be appropriate in order to avoid any potential interpreting errors and to guarantee the necessary legal certainty. As currently drafted, the proposed framework on algorithmic trading seems excessively weighty given its non-specific wide-ranging definition. In terms of how appropriately the specific requirements on algorithmic trading address the risks involved (in such activity), a particularly worrying aspect is that the proposal imposes obligations similar to those provided for market making ("*posting firm quotes at competitive prices with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times, regardless of prevailing market conditions*"). The role of 'liquidity providers' is not specific to algorithmic traders and, if this obligation were actually to come into force, it would represent a disproportionate restriction for such traders.
	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?	ABI has no specific comments on this.
	10) How appropriate are the requirements for investment firms to keep records of all trades <u>on own account</u> as well as for	Firstly, the wording of Article 22 of MIFIR, which this question refers to, is vague and thus there is the need for greater clarity in

	execution of client orders, and why?	its specification. Indeed, the first part of the article seems unclear regarding the scope, i.e. whether it refers exclusively to OTC-own-accounts trading or not. Such ambiguity must be looked at to avoid future problems related to the interpretation of this article. Secondly, when reading both parts of the article, it becomes apparent that the workload will be unnecessary doubled: record keeping will be done by both the relevant market operator and the relevant market maker. If this were to be the case, it would be particularly laborious and costly.
	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?	ABI agrees with the European Commission's objective of increasing transparency and the efficiency of the OTC derivatives market. However, it observes that the extensive category of derivative instruments includes very different types of products, serving equally different purposes. Consequently, a precise identification of the types of derivatives to consider "eligible" pursuant to the EMIR (European Market Infrastructure Regulation) is of vital importance. Trading derivatives on RMs, MTFs or OTFs will be based on their "eligibility", and this in turn will imply a certain degree of standardisation. 'Standardisation' has the potential to impair the 'flexibility' a tailored derivative contract offers to the counterparties defining its features to adapt it to their specific needs (i.e. hedging, payment or debt plan rescheduling, etc.). Hence, the follow-up expected of the European Commission and the ESMA will be crucial and, in this regard, ABI deems it appropriate to highlight the paramount importance of ESMA using the means of a public consultation with the industry aimed at identifying each specific eligible derivative instrument. Without doing so, there would be

		a significant risk of impacting on the use of some of those instruments normally used for hedging purposes by both the financial and the non financial industry (e.g., some derivative instruments on currency exchange rates are normally entered into by financial and commercial companies to hedge against the fluctuations of a certain exchange rate, not to mention the use of these instruments in project finance).
	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 new "SME Markets" rules appear to be positive as they leave ample margin for flexibility of existing SME markets (mainly MTFs) in relation to the decision on whether or not the specific criteria for SME markets should be standardised. It is also positive that the identification of requirements for such markets, except for certain elements already defined at Directive level, is deferred to level 2 measures. ABI highlights that the proposed definition of small and medium-sized enterprises, provided by Article 4 (12), is based only on the "average market capitalisation" and, therefore, seems to be limited only to companies for which a market already exists. ABI suggests that the definition should be related to other quantitative elements. To this end, it should be considered that Article 2.1.(*f*) of the Prospectus Directive defines 'small and medium-sized enterprises' as "*…companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43 000 000 and an annual net turnover not exceeding EUR 50 000 000*".

	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 provisions composing Title VI seem appropriately detailed and sufficient to provide for effective competition.
	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 combined reading of the relevant Recitals (83 to 88) – apparently referring to commodity derivatives only – and the relevant Articles (59-60 and 71-72) seems to lead to the understanding that ex-ante position limits will be introduced only on commodity derivatives, whereas for any other type of derivative instrument (i.e. as the articles suggest) the competent authorities may 1) ask for any information regarding the positions taken by market operators and clients, and 2) have – ex-post – the power to ask for unwinding or the partial decrease of the positions. Such ambiguity highlights the need for further clarification on this matter.
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 new conflict of interest requirements in Article 24 on independent advice and portfolio management ban intermediaries from accepting monetary inducements. These new measures are additional to those included in the policy for conflicts of interest management related to all investment services provided by intermediaries. These measures although affect the remuneration structure for these services, which has to be totally explicit and directly paid by investors do not affect the quality of the services, which is based on the correctness of assessment of both products and suitability of investments, two characteristics common also to investment advice not provided on an independent basis.

		We see this as a fair compromise between the position of those who, initially, feared a distinction between "A"-level and "B"-level investment advice, and those who instead proposed the introduction of a general ban on the acceptance of all kind of inducement by investment advisors. Finally, although we do not fully appreciate the labelling of a form of advice as "independent" (as it improperly implies one can get also alternative and minor "non-independent" investment advice), ABI supports the approach proposed by the European Commission.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	It is difficult to agree with the proposed exclusion from the range of non-complex products of bonds not traded on regulated markets or MTFs as this is based on a legally-presumed liquidity of such trading venues. On this issue, one should be bear in mind that though acknowledging that a poor level of liquidity actually represents a factor of product complexity and that it can therefore make it difficult for retail clients to understand the risk associated with the investment, "the condition of liquidity, presumed but not legally guaranteed by listing of the security on regulated markets or MTFs, could also be guaranteed by an intermediary buy-back commitment based on predefined criteria and mechanisms in line with those leading to pricing of the product on the primary market". This approach was followed by Consob in providing its guidance on illiquid products (see Communication no. 9019104, dated March 2nd 2009). In the light of the above, the definition of non-complex products

		should also cover: a) bonds traded on a systematic internaliser (which, in the future MiFID, will also be allowed to trade in such bonds); b) bonds traded by the issuer or the intermediary according to predefined criteria and mechanisms in line with those leading to the pricing of the product on the primary market. In this respect, therefore, ABI believes that the new proposals should reconsider this approach by accepting in general terms that the complexity of financial instruments can be due to multiple factors (i.e. structural complexity, degree of market and credit risk and liquidity), and by tasking ESMA with defining guiding criteria based on whether the level of complexity of products can be assessed in greater depth. Furthermore, as we are requested to give our opinion on the soundness of Article 25, we would like to take the opportunity to suggest a change in the wording of par. 5 (see below) in order to make clear that it refers specifically to investment advice: *The client must receive from the investment firm adequate reports on the service provided to its clients. These reports shall include ~~periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include~~, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice* ***and the on-going assessment of the suitability***

		of the financial instruments recommended to clients, investment firms' reports shall include periodic communications, taking into account the type and the complexity of financial instruments involved and the nature of the service provided. However, *the investment firm shall specify how the advice given meets the personal characteristics of the client.*
	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?	ABI believes Article 27 (5) should be rephrased in order to make clear that investment firms are not obliged to ensure at least five execution venues in its execution policy. Moreover, ABI believes that clarification should be done if similar obligations are imposed on the intermediary who collects and transmits the client's order.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	The proposal to apply the requirements set by Article 24 (3) and Article 25 of the Directive to eligible counterparties seems to be excessive and inappropriate for the following reasons: i) the nature of the relationship with these parties; ii) they are not "Clients" but "Counterparties"; iii) it is not always easy to identify their respective roles (Client / Provider). For these reasons, it is advisable to evaluate the deletion of the referrals to the aforementioned paragraphs under Article 30 of the Directive. It should also be considered that, under MIFID, eligible counterparties may always ask to be classified as professional clients (or even retail clients) and have investor protection rule applied. ABI welcomes that the Commission is proposing to grant local public authorities and municipalities the choice to "opt up" and

		be treated as professional clients.
	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?	ABI considers this provision critical as it could leave a discretionary margin to the competent authorities of each Member State and consequently could lead to an unlevel playing field, allowing prohibitions or restrictions for certain products in some countries but not in others where the same product is marketed, distributed or sold. Therefore, ABI holds that such a provision should be integrated by envisaging: - a preliminary and mandatory opinion of ESMA based upon their assessment of the circumstances that caused the power to be invoked; - suitable measures in order to ensure business continuity in the interest of clients, when the banning or restricting decision is adopted. More generally, ABI believes that the proposal should represent an *extrema ratio* measure to be used only in cases of severe threats to 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?	In ABI's view, no changes are needed.
	21) Are any changes needed to the pre-trade transparency requirements in Regulation Articles 7, 8, 17 for all	The extension of the transparency regime to non-equity instruments had already been favourably accepted by ABI at the

	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?	time of the public consultation held in December 2010, given that the Italian financial services authority, Consob, had already adopted a transparency regime for bonds, government securities and other non-equity instruments. ABI agrees with the suggested approach which differentiates the transparency regime on the basis of the type of financial instrument. However, it recommends to fine-tuning the proposal by also taking into account the structural characteristics of the market, the size of the transactions and the type of operators and investors involved. Indeed, such a format is already in place in Italy, as it was adopted by Consob at the time it extended the transparency regime to non-equity instruments, and it has proved to be much more flexible, less costly and certainly in line with the principle of proportionality endorsed by the Directive.
	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?	With regards to the appropriateness of the transparency requirements for the instruments regarded in this question, and a possible calibration for each instrument, please refer to our answer to question no.21. It is ABI's belief that they are appropriate, and that a calibration, based on the type of instrument as well as the structural characteristics of a market, the size of the relevant transactions and the type of operators and investors involved is necessary.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	ABI regards the envisaged pre-trade transparency waivers as appropriate, in line with the comments provided above to questions n. 20 and no. 21.
	24) What is your view on the data service provider provisions (Articles 61 - 68 in MiFID), Consolidated Tape Provider	As far as the consolidation of trade information is concerned, ABI believes a 'partial consolidation' system involving only

	(CTPs), Approved Reporting Mechanism (ARMs), Authorised Publication Authorities (APAs)?	trading venues and intermediaries qualifying as 'significant' in terms of 'trading liquidity' should be contemplated. In this regard, ABI feels the EC run cost/impact analysis of CTPs within the financial industry is necessary. A 'partial consolidation' approach would also offer a solution to the problem of the costs of publication through APAs. Indeed, the provision for the mandatory use of APAs also for small intermediaries (i.e. with limited trading flows) raises some worries as these entities would not be able to continue using their own proprietary systems (e.g. web sites) for the public disclosure of data, which currently allow significant cost savings. In terms of the ARMs and, more generally, the transaction reporting requirements, ABI understands the need to monitor markets and collect quantitative and qualitative data on all transactions executed on an "organised" venue, but the amount of information to be reported regarding executed transactions is considered excessive. Specifically, the requirement to include the client ID number and that of the order execution party seems to be unnecessary. It would be more efficient to ask intermediaries for the relevant client IDs when the Authority considers it appropriate for its supervisory and investigation activities, rather than requiring a systematic inclusion of these details in the transaction reporting. Also, inputting such additional information, when completing an order, could result in operational difficulties, especially when more intermediaries are involved in a transaction.
	25) What changes if any are needed to the post-trade	In ABI's view, no changes 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?	transparency requirements by trading venues and intermediaries.
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?	ABI hopes the co-legislators give ESMA sufficient time to prepare their rules
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	For the time being, ABI has no specific suggestions.
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	The MiFID/MiFIR and the forthcoming EMIR regulation interact in a number of areas, especially in terms of the clearing obligation for derivatives traded on regulated markets. As for now, despite the fact the trialogue on EMIR is still ongoing, the two pieces of legislation seems to fit well together. Further interactions are foreseen with many other legislations, such as PRIPS, UCITS, Solvency II, Transparency, Prospectus and MAD.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	ABI suggests that interactions between IOSCO and the EU (even at ESMA level) could be set up in order to achieve more efficient and effective coordination and harmonisation of the relevant regulations and legislations.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	The sanctions provided for in Articles 73-78 seem to be sufficiently dissuasive, especially from the viewpoint of the publication of sanctions.

	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	ABI believes that clearer principles at level 1 are necessary. The market and transparency regime is a case in point. ABI considers, as regards this topic, that establishing the exact point in time when the new measures will come into effect is of crucial importance to the industry, as well as the period of time given to the industry to implement the changes resulting from review of the current regulations. Another crucial aspect is the need for the Commission and ESMA's definition of level 2 measures to be preceded by a suitable consultation with the industry, and with timing appropriate to the significance of issues to be discussed. This is mainly because many of the new proposed principles will call for ESMA to set out ad-hoc regulatory standards.

Detailed comments on specific articles of the draft Directive

Article number	**Comments**
Article 1 (3)	As stated above in our answer to question no. 2, we suggest the following revised wording of Article 1 (3): "*…….and when selling or advising clients in relation to* ***structured*** *deposits, other than those* ~~*with a rate of return*~~ ~~*in relation to*~~ ***linked solely to interest rate, such as Euribor or Libor, regardless of whether or not the interest rate are predetermined or are fixed or variable****, ……"*
Article 9 (3), (4)	As stated above in our answer to question no. 5, we suggest the following revised wording of Article 9 (3) (4): *(3) Member States shall require investment firms to take into account diversity as one of the criteria for selection of members of the*

	management body. In particular, taking into account ***their nature and*** *the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body.* *(4) ESMA shall develop ~~draft regulatory standards~~* ***guidelines*** *to specify the following:* *(..)* ***Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1095/2010*** *"*
Recital 52	ABI notes that there is partial inconsistency between the formulation of the final part of Recital 52 in the Draft Directive which, in clarifying the extent of the new rules on inducements relating to independent investment advice and portfolio management, emphasises that the only inducements that will still be permitted are "*limited to non-monetary benefits such as training on the features of the products*", and the wording of Article 24 (5.ii) (6) which envisages no limitations on the continued acceptance of non-monetary inducements. To overcome this inconsistency and ambiguity, ABI considers it necessary to eliminate the entire last sentence of Recital 52 as it follows: *(52) […] ~~In such cases, only limited nonmonetary benefits as training on the features of the products should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC."~~*
Article 25 (5)	As stated above in our answer to question no. 15, we suggest the following revised wording of Article 25 (5): *(5) The client must receive from the investment firm adequate reports on the service provided to its clients. These reports shall include ~~periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include~~, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice* ***and the on-going assessment of the suitability of the financial instruments recommended to clients, investment firms' reports shall include periodic communications, taking into account the type and the complexity of financial instruments involved and the nature of the service provided. However,*** *the investment firm shall specify how the advice given meets the personal characteristics of the client.*

Article 30 (1)	As stated above in our answer to question no. 18, we suggest the following revised wording of Article 30 (1): (1*) Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Article 24 ~~(with the exception of paragraph 3)~~, 25 ~~(with the exception of paragrapgh 5)~~, and….*
Detailed comments on specific articles of the draft Regulation	
Article number	**Comments**
Article 20 (1)	It seems to us that the post trading transparency requirements for financial instruments for which a prospectus has been published is disproportionate having regard to: - the fact that these instruments can be negotiated even by small credit institution in very limited (and not regulated) markets, - cost benefit ratio between transparency and burden on credit institution is very marginal, - the practical implementation is uncertain because the information is not always available. Therefore, the compulsory of APA to transparency implementation is unnecessary mainly for financial instruments that are not shares and not traded in Regulated Markets. We suggest to change the wording of the article 20(1) eliminating the entire last sentence and the reference to the bond for which a prospectus has been published.”
Article 32 (3)	(3) *The competent authority shall not take action under this Article unless, not less than one month before it takes the action,* ***it has asked a preliminary and mandatory opinion of ESMA based upon their assessment of the circumstances triggering the power; it has taken suitable measures in order to ensure business continuity in the interest of clients, when the banning or restricting decision is adopted****. it has notified all other competent authorities and ESMA in writing of details of:* *(a) the financial instrument or activity or practice to which the proposed action relates;* *(b) the precise nature of the proposed prohibition or restriction and when it is intended to take effect; and* *(c) the evidence upon which it has based its decision and upon which is satisfied that each of the conditions in paragraph 1 are met.*