Lloyds Banking Group

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?	The drafting is not abundantly clear. In the EMIR text, for example, the exemption is more specific.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	We agree in principle that these products should be subject to regulation. However, we are cautious as to whether merely expanding the scope of MiFID/R to include emissions allowances will deliver the desired results in terms of a suitable regulatory regime given the nature of the instruments under consideration. MiFID was developed with specific consideration of, for example, equities trading and traditional financial instruments such as stocks and shares. The provisions may not therefore work as well with emissions, and may be difficult to modify if the provisions are too much embedded in text which also affects purely financial derivatives and instruments.

		Similarly, we have concerns about whether the treatment of commodities derivatives is right, particularly given the social and economic impacts of commodities markets. An elegant solution which the Parliament may care to advance is to create a separate Title in the Regulation and the Directive. Within each Title there could be a chapter specifically covering emissions and another chapter specifically covering commodities derivatives. This will enable legislators to tailor provisions to the specific concerns which attend these instruments, making the provisions more stringent where required and defining the expectations on firms operating in these markets more explicitly. Such an approach may also help if and when the provisions require amendment to reflect any market developments or social and economic concerns as discreet treatment within the legislation could help policy-makers to focus on these particular markets without the intrusion of concerns about purely financial derivatives.
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	Under current legislation (MiFID 1), the safekeeping and administration of assets for the account of a client is specified as an 'ancillary service'. Accordingly, Member States are not required to regulate the provision of custody services per se. However, if the firm providing custody services is also providing investment services, it is de facto a MiFID-firm and subject to MiFID requirements on holding client assets and funds. (MiFID Art 13(7) & (8), MiFID Implementing Directive Art 16 -20). A MiFID investment firm may 'passport' its custody services as ancillary services. If the Host State into which the MiFID investment firm is passporting does regulate custody services, there is no requirement for the firm to 're-authorise' for its custody activities in the Host State.

		In the UK, 'safeguarding and administering investments' is a specified regulated activity (RAO). Generally, we welcome what appears to be an intention to improve the protection of investors across the EU by ensuring that all Member States apply the same rigour to the authorisation and supervision of custodians. However, we note that there potential for unintended consequences and it is essential that the definition of 'custody' is clear, that the impact on non-scope activities such as administering employee participation schemes are identified, and that the applicable provisions are carefully drafted to appropriately reflect the activity being undertaken. Further, any proposals to change the regulatory regime as specified in MiFID will need to be undertaken with full consideration of AIFMD, UCITS IV and the Securities Law Directive (SLD).
	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?	An EU passport for third country firms has the potential to improve EU investors' and issuers' access to third country markets. Particularly in light of the current economic climate, prudence must be balanced with facilitating growth and maintaining highly liquid, well-participated EU markets. Third country participation in EU markets must not be unduly limited or restricted, neither should routine professional and counterparty interactions with third country firms. It is crucial that the EU continues to attract inward investment and to play a key role in the global economy. Particular amendments which are needed are: (1) Any equivalence assessment must be based on broad objectives and consider jurisdictions' compliance with internationally agreed

		regulatory standards (or, given the staged approach to implementation of a range of internationally agreed accords, to the progress made towards implementation of such standards). (2) A condition of reciprocal recognition may appear sensible. However, we think it would be an error to include reciprocal recognition as a condition as this could be expected to radically reduce the number of market participants in EU markets. Our markets are attractive because they are broadly open and liquid, this attracts companies from across the globe to EU capital markets and broadens the range of investments available to EU investors. We are very concerned that a condition of reciprocal recognition would severely damage the EU markets at a particularly critical time. (3) There should be harmonised exemptions for 'per se' eligible counterparties: governments and authorised intermediaries, and for business that is intermediated by a MiFID firm. (4) The exemption for unsolicited business should allow interaction within an existing client relationship, and provision of information about services the third country firm provides. Failure to include this may have the practical effect, in terms of legal interpretation, of disallowing any interaction with a third country firm beyond an initial transaction. To allow for reasonable transition, national regimes should be allowed to continue at least until an equivalence decision has been made for a particular country. The process will be complex (as illustrated by the difficulties that ESMA has encountered with CRAs), and rigid deadlines, even with a four year transitional period, risk disrupting essential,

		legitimate and well-regulated interactions which may have a significant knock-on impact on EU economic recovery.
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 support an approach where the corporate governance provisions in MiFID/R replicate those set out in prudential legislation. Provisions on diversity are more appropriately dealt with under non-sector specific EU legislation. Including specific diversity requirements in sectoral legislation runs the risk that differences will emerge. The proposal that nomination committees made up entirely of non-executives assess a management bodies' compliance with its obligations is inappropriate at sub-parent board level. We are concerned that introducing a further layer of management structure, hindering effective decision-making and diffusing responsibility across the management body, audit committees, risk committees, etc.
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 proposal rightly allows OTFs to exercise discretion on both participants in the OTF and how trades are executed. These discretions are consistent with the firms' conduct of business obligations, including prudent management, which investors value. However, OTF operators should be allowed to deploy own capital within the OTF to support liquidity within the system and as investors generally seek the dealer's balance sheet when they engage bilaterally. While we understand that the restriction aims at addressing the manifestation of conflicts of interest, we do not believe that the approach delivers the best outcome for investors, i.e., a sufficiently liquid trading venue. Current requirements on conflicts of interest, including Chinese Walls, will apply to

		a firm acting in its OTF capacity and will be fully sufficient for the purpose of preventing conflicts of interest. Further, there are sufficiently strong supervision and enforcement powers accorded to competent authorities to allay any concerns about the operation of OTFs with own capital. It is our view that OTFs are equally valid trading platforms as RMs and MTFs; as such, there should not be a requirement for an OTF operator to explain why the platform does not need to be regulated as an MTF.
	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?	OTC trading is a residual category. Recital 18 of the regulation, with some amendment, provides a good basis if a definition is needed. The Recital refers to 'wholesale counterparties', a term which is not defined in the legislation. This should be amended to ensure that, for example, SME businesses are able to engage OTC when their needs require a tailored products. We suggest "i.e., ad hoc, irregular, and tailored to client needs as appropriate". The impact of the new OTF category is difficult to predict. We expect that it will result in a higher percentage of trades going through organised venues – increased volume will depend on the economic growth more generally. We believe it is important to understand that investors will view OTC and organised markets as complementary, not mutually exclusive. For example, investors will use OTC when a tailored solution is required; organised trading venues will be used when a standardised solution is acceptable. This is entirely appropriate – standardising all products so that they may be traded on organised venues would mean that many investors would not have a solution which fully suits their needs, this could impede economic activity and drive businesses to take on more risk than is appropriate.

	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?	It is appropriate to base the regulatory approach on management control of the risks associated with algos, direct access, and co-location. However, the definition and requirements of direct electronic access does not distinguish between direct market access and sponsored access, despite their different risk profiles.
	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?	It is appropriate for firms to retain records of all trades.
	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 stress the importance of the proper application of criteria in Art 26 for determining when a clearing-eligible derivative must be traded on organised venues. Those seeking to hedge and other investors must be able to trade contracts at any time, so the criteria on actual admission to trading and sufficient liquidity are essential. The requirement that third country trading venues be eligible only where the Commission has judged the third country regime to be strictly equivalent to the EU's is unrealistic and unworkable. It seriously risks cutting EU investors off from the ability to manage risks in properly regulated third country markets. Please also refer to our comments in response to Question 4 above. We urge the Parliament to consider that the

		proposals for third country recognition need to be sufficiently flexible not to impede EU growth and EU market liquidity at this critical time in the economy.
	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?	SME access to capital is influenced by a range of factors, including tax treatment, cultural tendencies, and – not least – SME strategies. Legislation may help to facilitate the development of SME markets, but it cannot create such markets. This is ultimately up to demand. It is not clear why an SME might choose to trade on an MTF growth market rather than another platform or why an MTF operator would seek to restrict its operations to ensure that the majority of issuers are SMEs (this appears to be the practical intention of the proposal). In addition, the issuer only appears to owe disclosure to the first MTF and not to subsequent platforms on which the instrument may be traded; this could put a disproportionate burden on the first MTF.
	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?	Yes. Non-discriminatory access will be hugely beneficial to the further development of the single market. It is important that the operational and technical caveat in Art 28 is not capable of being used as a barrier to entry, but that these caveats are based on legitimate assessment. Where access is denied, the applicant should have some recourse to challenge the assessment via competent authorities and ESMA. The proposals do fit with EMIR, it is important that the broader scope of MiFID provisions is maintained.
	14) What is your view of the powers to impose position limits, alternative arrangements with	An approach based on position management is preferable to one based on limiting trading. Derivatives serve an important commercial role for the

	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?	real economy. It is important to retain the provision for alternative arrangements with equivalent effect, and to interpret and apply it (taking account also of ESMA powers in the Regulation) in a way that does not disrupt these vital functions without good reason. As competent authorities engage with one another in the forum provided by ESMA, we expect that supervisory skills will develop and improve. Exercise of supervisory powers should, therefore, negate the need for the widescale exercise of position management powers.
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 requirement to 'assess a sufficiently large number of financial instruments' should be modified to be more concrete for advisors and portfolio managers, as this is a subjective measure.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	Aspects of the proposal are problematic. It would be more appropriate to focus the legislation on how a product's complexity impacts the expected return from the investment (i.e., return volatility), not necessarily on the complexity of the product's structure. Some products may contain, what could be termed, layers of elements that specifically aim to give simple, stable, regular and predictable returns to the end investor. 'Difficult to understand' is a subjective measure, which will necessarily vary from client to client, and we should not loose sight of the principle that financial institutions provide an important function of intermediating between clients and financial markets. To some degree, there will always be information assymetry in financial transactions, with the exception of transactions between eligible counterparties. This aspect has always been a

		challenge for legislators and regulators, but it must be acknowledged that it is not possible or practicable for the majority of investors to hold the same or an equivalent level of knowledge and understanding as a firm – as a simplistic comparison, it is not reasonable to expect a car owner to understand how their car has been manufactured. Indeed the reason for firms' very existence is that clients seek to leverage off their increased knowledge and understanding of financial markets. Focus should be on ensuring that legislation enables firms to provide investors with a reasonable amount of relevant information in clear terms. Strong governance and control as well as product development policies also significantly contribute to preventing investor detriment.
	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?	We query whether the provision of additional information on how orders will be executed and the mechanics involved is of real benefit to end-investors. Investors are primarily concerned that the price achieved is to their benefit and that the transaction is 'safe', e.g., delivery occurs. Parliament will appreciate that provision of extraneous or excessive information does not equate to better investment decision-making; indeed studies of behaviour economics has shown that 'information overload' can damage decision-making. We urge caution and the embedding of flexibility in the approach, particularly for retail customers. We also query whether the 'reasonable commercial terms' in Art 3(2) of the regulation (and references elsewhere) are to be factored into the best execution assessment.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	It is important to maintain the ability of local authorities, some of which are large and skilled managers of public funds, to act as professional clients.

		The text of last sentence of Art 25(5) does not align with Art 25(1) and should be amended from "*When providing investment advice, the investment firm shall specify how the advice given meets the personal characteristics of the client"* to *"When providing investment advice, the investment firm shall specify how the advice given meets the needs of the client based on the information which the client has provided to the investment firm."*
	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?	We note the provisions on product intervention at Art 31 – 33. We believe these provisions are largely well-drafted and look to incorporate reasonable safeguards. However, there remains room in the legislation for competent authorities to take different approaches and thereby undermine the single market aim. We suggest that at Art 32(3), the Parliament consider whether there may be a need for a competent authority seeking to intervene in a MiFID-scope product to obtain an affirmative response from ESMA prior to enacting the product intervention notice. We expect some authorities will have a greater appetite for product intervention, and ESMA may therefore want to exercise some control over these provisions in order to avoid distortion of the single market. In addition, firms subject to an intervention whether from ESMA or a competent authority should have advance warning of the intervention to prevent mass disruption when a notice comes in with immediate effect. Also, firms should be accorded a 'right to reply' to a notice prior to its enforcement to an independent arbiter, e.g., an ESMA panel of the competent authorities' peers which excludes the competent authority that wishes to issue the notice. This will help to ensure appropriate regulatory accountability and respects principles of natural justice. To mitigate against disorder, there should be a general principle that notices

		will only be published after normal business hours. There is no provision in the text which allows ESMA to 'lift' a prohibition or restriction before 3 months have expired. Given that there will be a desire to return the markets to normal operation as soon as possible, this seems an oversight. The Parliament should consider how product intervention will be exercised when the product concerned contains a range of elements. For example, an investment product may be linked to a deposit product or a life insurance product may have investment elements. It is unclear how the product intervention powers will work on such 'compound products' until such time as the EBA and the EIOPA have the same powers as ESMA. The Parliament may wish to consider whether ESMA should be directed to engage with EIOPA and EBA on proposed product intervention actions where compound products are concerned.
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?	The new transparency rules, if not appropriately calibrated, could harm users of equity OTFs. It will be important to ensure that Level 2 waivers cater for OTF users' needs.
	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 highest priority attaches to the most liquid and frequently traded instruments, in particular government or sovereign bonds. Fundamentally, the design of transparency arrangements MUST focus on end-users' needs and expectations.

	the different instruments? Which instruments are the highest priority for the introduction of pre-trade transparency requirements and why?	For other instruments, it will be important for the requirements, either through Level 1 text or Level 2 measures or in technical standards, to allow for the current range and diversity of pre-trade arrangements that have been designed to meet market users' needs. A simple requirement for RMs, MTFs, and OTFs to disclose price and depth of trading interest is not necessarily as well adapted to these markets as it is to equities. Art 17 is particularly problematic. The proposal is more draconian than the equity SI regime, and not well adapted to non-equity markets, particularly at the illiquid end. In particular, there is a need: (1) for a well-designed liquidity filter (as there is in Art 13(1), but not in Art 17); (2) for a well-designed size filter (again, present at Art 13(2), but not in Art 17); (3) for more work on the 'size specific to the instrument' criterion mentioned in Art 17(3); and (4) for Level 2 measures or technical standards that allow for a more flexible approach. As it stands, Art 17 imposes commercially unrealistic obligations on firms, and Art 18 imposes unrealisable expectations on ESMA. Please see our responses to the following questions in addition to these comments.

	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?	Appropriate calibration depends on the characteristics of the product, the investor base and the market in which it is traded. There may be no single correct level of transparency, so a flexible approach must be mandated. This is particularly the case where levels of liquidity vary over time or over the life of a product. The pre-trade transparency requirements for Organised Trading Venues (OTVs) are quite broadly stated and, beyond the most liquid government bonds and similar, 'prices and the depth of trading interest' may need to be adapted to the range of possible non-equity OTVs, by allowing an appropriate structure for waivers or calibration. Please also see our comments on Art 17 in Question 21 above.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	No, they are not. It would be more appropriate to: (1) develop a regime which is specifically adapted to the range of non-equity markets, rather than attempting to overlay the equities market model; (2) distinguish clearly between wholesale and retail markets; and (3) establish requirements appropriate to each product.
	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	In principle, the data service provider provisions are appropriate. However, for markets where reporting or consolidation systems are not already in place, the timetable of two years to build a consolidated tape are overly ambitious.

	Publication Authorities (APAs)?	The Parliament may be aware of work undertaken by the Association of Financial Markets in Europe (AFME); we are very supportive of this work and urge the Parliament to give due consideration to AFME feedback.
	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?	It is important to consider the range of audiences for the data: (1) the authorities, who will receive granular, settlement-level information about transactions, either directly or via utilities or trade repositories, under the transaction reporting rules; (2) market participants, who will need timely and accurate information to inform investment decision-making; and (3) the public, who will have an interest in aggregate, post-trade data to inform personal financial planning. Market data also has a role to play in the monitoring of best execution. We note that in non-equity markets, there is a significant interaction between trade size, liquidity, the potential for market movements, and thus poor execution and market instability from the early publication of illiquid trades. The need to provide for proper calibration of trade reporting delays to protect investors and seek to ensure reasonable market quality follows from this, and should be reflected in the text of the regulation.
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?	The ESAs and Joint Committee should also work on achieving appropriate consistency in the development and application of regulatory standards across sectors. We have already highlighted the potential for the product intervention powers to be difficult in our response to Question 19.

		Generally, we would welcome Parliament inserting an overarching provision in the text of the Regulation and the Directive which requires ESMA to apply internationally agreed standards and codes. For example, current work on Legal Entity Identifiers should be accepted by ESMA for the purposes of reporting requirements. In addition, it would be helpful if the ESAs and Joint Committee were required to seek proper technical advice when developing standards which require IT systems to be built or modified. It is very clear that there is a woeful lack of understanding of the time it takes to build and, particularly, to test IT solutions when we see the text of legislative proposals. The Joint Committee should develop and maintain a strong understanding of these issues to serve all the ESAs.
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	We have noted some concerns about the potential for competent authorities to subvert the single market via use of product intervention powers in response to Question 19.
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	The following: (1) EMIR (particularly access and interoperability) (2) forthcoming provisions on PRIPs (3) UCITS (4) CRD (application of bank governance rules to investment firms) (5) MAD / MAR (extension to OTFs) (6) Prospectus Directive (7) Transparency Directive

		(8) Omnibus Directive establishing the ESAs (9) Data Protection Directive (10) AIFMD (11) Securities Law Directive
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	We emphasise the need for MiFID to be revised, in all contexts, from the perspective of the EU not just as a single market, but as a leading international market, providing EU investors and issuers with opportunities and funding worldwide, and attracting third country investors and issuers to invest and raise capital in the EU. Legislation covering the markets must – in all cases, not just in the case of MiFID – be consistent with international standards set and led by the G20, the Financial Stability Board, and IOSCO. As mentioned in response to Question 26, the Parliament must ensure there is a provision in the text of MiFID and MiFIR (and other forthcoming dossiers) which requires ESMA to use internationally agreed standards such as that agreed on Legal Entity Identifiers (LEIs).
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	If the aim is to achieve a single market and maximum harmonisation, we would ask the Parliament to consider whether the sanctions regime achieves this as currently drafted. We note there is no mention of sanctions for APAs failing to meet requirements.
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	Much has been left to Level 2, and we would stress to the Parliament that this leaves firms and investors in a state of considerable uncertainty, increasing the squeeze and the cost on firms and ESMA for

		implementation. We would expect that some Articles, for example, those covering pre-trade transparency for non-equities, may need to be examined specifically to ensure that the balance between public policy principles and technical detail is right.
Detailed comments on specific articles of the draft Directive		
Article number	Comments	
Art 16(7)	Use of 'at least' will allow Member State competent authorities to extend the requirements beyond that specified in the Directive which may subject some firms to more onerous requirements than others. Also, the requirement to provide records of telephone conversations to clients raises some questions – can this be a paper transcript or is there an expectation that the firm will provide an audio record?	
Art 32(1)	If it is correct not to suspend an instrument due to information disclosure failure if doing so would cause significant damage to investor interest or orderly markets, then (notwithstanding that some investors may suffer detriment due to the continued trading of the instrument) should there not be some action designed to rectify the disclosure failure so that the market is in possession of all necessary information?	
Art 32(3)	Can the Commission really provide for all eventualities when listing what constitutes significant damage for investors' interests and the orderly functioning of internal markets.	
Art 48(7)	Should 'the management body of the firm' read 'the management body of the market operator'?	
Detailed comments on specific articles of the draft Regulation		
Article number	Comments	
Recital 18	Reference to 'wholesale counterparties' – a term not defined in the legislation, but please see our comments in response to Question	

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	7 above.
Recital 33	Note the use of term 'union markets' – not defined in legislation and may open up legal uncertainty
Recital 35	Text does not refer to 'professional clients', only to retail and eligible counterparties. Third country firms should be able to provide services to per se professional clients without establishing a branch.
Art 2(1)13	Definition of structured products includes 'regular payments', query how 'regular' may be defined by firms and regulators. It may be possible to construct a product which only pays out at the end of the product life; technically this would be outside of the scope of the regulation as it would not have regular payments (plural), but just one payment.
Art 2(1)22	Definition of supervisory function should be include the term 'data service provider'
Art 3(1)	Purely from a practical perspective, it is not clear what 'normal trading hours' may be – there are a number of timezones in the EU, servers which a platform uses may be located in different countries, etc.
Art 8(2)	This appears to repeat Art 8(1)
Art 8(3)	We wonder whether the report made by ESMA to the Commission should also be submitted to the Council and Parliament?
Art 16(3)d	What constitutes 'exceeding the norm' and does this not have the ability to fluctuate depending on the underlying market conditions at any time?
Art 17(6)	It is unclear what the Commission is seeking to achieve with references to 'the same or similar instruments' here – is it similar in terms of construction or in terms of underlying? Also used at Art 18(1).
Art 19	If the firm submits the information to the APA is its obligation fully discharged so that if the APA somehow fails to publish, the responsibility for the fault will rest with the APA?
Art 23(3)	Inclusion of the identity of the person or algorithm responsible for the investment may prove problematic – are we to envisage that individuals will 'carry' identification numbers with them from company to company?
Art 23(7)	It appears odd to allow a competent Member State authority to ignore transactions undertaken by a firm it supervises. We'd query how this aligns with supervisory responsibilities under the Market Abuse regime and with competent supervision more generally.
Art 28(4)	Is a refusal to join a CCP disclosed publicly?
Art 36(5)	Should there be some form of connection to a Member State for its jurisdiction to govern contracts – other than perhaps standard form contracts like ISDA?