

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?	
	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?	<p>We are concerned by the sweeping nature of the definition of an “organised trading facility”. We think it is important to ensure that the provision of registrar services to issuers and market makers offering a retail service provider (RSP) service is clearly outside the definition.</p> <p>We do not believe that maintaining corporate share registers is intended to be caught by this definition. However we think that it is so wide that it may inadvertently do so.</p> <p>If the RSP model were to be caught by the definition, it could have an adverse effect on the retail market in company shares, especially in the UK. It would potentially have an impact on smaller companies’ ability to attract investment, as a great deal of their liquidity comes from execution only clients trading online and over the telephone via the RSP model.</p>

	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?	<p>Yes, we welcome the European Commission's proposals for SME Growth Markets, which will provide a useful platform for SMEs to raise finance, grow and create employment throughout Europe. We believe that the SME Growth Market category will provide better access to capital markets for SMEs by allowing for more appropriate and proportionate listing and ongoing disclosure requirements in a transparent way that attracts investors.</p> <p>This category of MTF should remain flexible in terms of</p>

		<p>operating criteria and optional for market operators, as outlined in the proposals. This will allow for SME Growth Markets to suit various national differences in terms of market size, structure and culture, thus providing an optimal environment for SMEs to grow in.</p> <p>We welcome the definition of Small and Medium-Sized Enterprises in Article 4:</p> <ul style="list-style-type: none"> a) However we would caution against lowering the size criteria or making it more rigid. This could result in creating a market that is illiquid or has companies controlling their size and growth plans to ensure that they ‘fit’ into the SME Growth Market size criteria to stay on the market. b) We also note that there are a variety of definitions of SMEs throughout European legislation. We strongly believe that the whole area of regulatory treatment of SMEs which are or aspire to access public markets in the EU requires a holistic approach to ensure that all the applicable regulations are consistent.
	<p>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?</p>	
	<p>14) What is your view of the powers to impose position limits, alternative arrangements with equivalent effect or manage</p>	

	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?	<p>While we do not have any comments on the effect of the new requirements of Article 24 on independent advice, we note that there is confusion around the ability of issuers to put sponsored research on their website and more generally distribute it to their investors, which we believe may result from the wording in Article 13(3) 2004/39/EC and Article 24 and 25 of MiFID implementing directive 2006/73/EU.</p> <p>This is a particular problem for small and mid-cap quoted companies, which often have to pay for their own research due to low levels of analyst coverage.</p> <p>We believe that MiFID may play a role in depriving retail investors of investment research. We would like clarification on the independence of investment research as outlined in MiFID and the ability of issuers to distribute sponsored research.</p>
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	<p>We believe that the Commission has appropriately identified the balance between complex and non-complex shares. Most importantly, MTF shares have been classed as non-complex securities.</p> <p>We view the classification of MTF shares as non-complex as vital to the success of the proposed 'SME Growth Market'</p>

		<p>category in MiFID II. SME markets must have the ability to create adequate levels of liquidity which necessarily involve being able to attract sufficient interest from a wide array of investors to create an active trading environment. In setting the tailored regulatory regime, it is important to take into account barriers which may deter investor interest and even prevent investor participation in these markets.</p> <p>To ensure this, we see it as essential that ordinary shares on SME markets are automatically classed as non-complex under MiFID to facilitate retail and professional investor involvement in the markets. The shares quoted on these markets are not complex products and should not be treated as ‘complex’ only because there is a perception that they are risky. These additional perceived risks (ie, the risk of the company not succeeding and the risk of illiquidity) are not complex and are readily comprehensible compared with the risks of trading in blue chip stocks.</p> <p>However, a key element of the relevance of complex/non-complex instruments is the nature of the client in question. It is essential that the provisions from the existing MiFID Implementing directive Article 36 remain to allow firm’s to assume that a professional client has the necessary experience and knowledge to understand relevant risks involved.</p> <p>We note that this classification of complex and non-complex shares is linked to the Commission’s decision to allow execution-only services to continue in the trading of non-complex shares. Execution-only services are a key instrument for</p>
--	--	--

		<p>involving retail investors in publicly-traded SMEs and a substantial source of liquidity. By way of example, The Compeer UK Wealth Management Industry Report 2010 shows that total trades transacted by stockbrokers in 2009 was 22.4 million of which 16.1 million were execution-only trades, representing 72 per cent of the total trades in the UK.</p> <p>Execution-only services provide an important ability for individual investors to directly participate in SME share ownership and add directly and significantly to liquidity, reducing market spreads and facilitating the establishment of robust market prices. Most institutional investors in SMEs are longer term holders, while EU tax incentive schemes to encourage entrepreneurial investment also encourage long term holding. However successful secondary market activity requires significant levels of short term activity and trading. Abolishing execution-only services would deprive SME markets of a substantial source of potential liquidity.</p> <p>Overall, the classification of MTF shares as non-complex securities and preservation of execution-only services will help to drive investment into SMEs, facilitating more retail and professional participation in companies on SME Growth Markets.</p>
	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?	
	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	
Article ... :		
Article ... :		
Article ... :		
Detailed comments on specific articles of the draft Regulation		
Article number	Comments	
Article 6 :	<p>We welcome the European Commission’s proposals to allow competent authorities to authorise deferred publication of the details of certain large transactions.</p> <p>The deferred publication regime is a critical factor in maintaining liquidity and trading in SME shares. The market in SME shares relies heavily on the significant capital commitment from liquidity providers, such as market makers. The willingness of the market maker to place capital at risk will rely on their ability to unwind that risk in a controlled manner through appropriate, deferred publication.</p>	

Appendix – About the Quoted Companies Alliance

THE QUOTED COMPANIES ALLIANCE (QCA)

A not-for-profit organisation funded by its membership, the Quoted Companies Alliance represents the interests of small and mid-cap quoted companies, their advisors and investors. It was founded in 1992, originally known as CISCO.

The Quoted Companies Alliance is governed by an elected Executive Committee, and undertakes its work through a number of highly focussed, multi-disciplinary committees and working groups of members who concentrate on specific areas of concern, in particular:

- taxation
- legislation affecting small and mid-cap quoted companies
- corporate governance
- employee share schemes
- trading, settlement and custody of shares
- structure and regulation of stock markets for small and mid-cap quoted companies;
- political liaison – briefing and influencing Westminster and Whitehall, the City and Brussels
- accounting standards proposals from various standard-setters

The Quoted Companies Alliance is a founder member of European **Issuers**, which represents quoted companies in fourteen European countries.

Quoted Companies Alliance's Aims and Objectives

The Quoted Companies Alliance works for small and mid-cap quoted companies in the United Kingdom and Europe to promote and maintain vibrant, healthy and liquid capital markets. Its principal objectives are:

Lobbying the Government, Brussels and other regulators to reduce the costing and time consuming burden of regulation, which falls disproportionately on smaller quoted companies

Promoting the smaller quoted company sector and taking steps to increase investor interest and improve shareholder liquidity for companies in it.

Educating companies in the sector about best practice in areas such as corporate governance and investor relations.

Providing a forum for small and mid-cap quoted company directors to network and discuss solutions to topical issues with their peer group, sector professionals and influential City figures.

Small and mid-cap quoted companies' contribute considerably to the UK economy:

Appendix – About the Quoted Companies Alliance

- There are approximately 2,000 small and mid-cap quoted companies
- They represent around 85% of all quoted companies in the UK
- They employ approximately 1 million people, representing around 4% of total private sector employment
- Every 5% growth in the small and mid-cap quoted company sector could reduce UK unemployment by a further 50,000
- They generate:
 - corporation tax payable of £560 million per annum
 - income tax paid of £3 billion per annum
 - social security paid (employers' NIC) of £3 billion per annum
 - employees' national insurance contribution paid of £2 billion per annum

The tax figures exclude business rates, VAT and other indirect taxes.

For more information contact:

Tim Ward

The Quoted Companies Alliance

6 Kinghorn Street

London EC1A 7HW

020 7600 3745

www.theqca.com