

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	Schroder Investment Management Limited
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Theme	Question	Answers
Scope	1) Are the exemptions proposed in Directive Articles 2 and 3 appropriate? 2) Are there ways in which more could be done to exempt corporate end users?	
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	
	4) Is it appropriate to regulate third country access to EU markets and, if so, what principles should be followed and what precedents should inform the approach and why?	

Corporate governance	5) What changes, if any, are needed to the new requirements on corporate governance for investment firms and trading venues in Directive Articles 9 and 48 and for data service providers in Directive Article 65 to ensure that they are proportionate and effective, and why?	
Organisation of markets and trading	6) Is the Organised Trading Facility category appropriately defined and differentiated from other trading venues and from systematic internalisers in the proposal? If not, what changes are needed and why?	
	7) How should OTC trading be defined? Will the proposals, including the new OTF category, lead to the channelling of trades which are currently OTC onto organised venues and, if so, which type of venue?	
	8) How appropriately do the specific requirements related to algorithmic trading, direct electronic access and co-location in Directive Articles 17, 19, 20 and 51 address the risks involved?	
	9) How appropriately do the requirements on resilience, contingency arrangements and business continuity arrangements in Directive Articles 18, 19, 20 and 51 address the risks involved?	
	10) How appropriate are the requirements for investment firms to keep records of all trades on own account as well as for execution of client orders, and why?	
	11) What is your view of the requirement in Title V of the Regulation for specified derivatives to be traded on organised venues and are there any adjustments needed to make the requirement practical to apply?	
	12) Will SME gain a better access to capital market through the introduction of an MTF SME growth market as foreseen in Article 35 of the Directive?	
	13) Are the provisions on non-discriminatory access to market	

	<p>infrastructure and to benchmarks in Title VI sufficient to provide for effective competition between providers?</p> <p>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 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?</p>	
	<p>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>	<p>Whilst we would agree that payments of commission can create a conflict of interest for an adviser, such a conflict will exist whether that distributor is an independent advisor, or when the choice is being made by a distributor to tie to a limited number of product providers (as the level of commission payments will be a factor in the commercial discussion to tie between the distributor and product provider).</p> <p>Imposing a ban on commission payments to independent advisers might result in a reversal of the general global trend for distributors to partner with a select number of providers. If this occurs distributors may revert to selling in-house products which could reduce consumer choice and reverse downward pressure on the cost of intermediation (since the cost of the intermediation remains wrapped within the price of the product).</p> <p>Studies have shown that most customers of financial firms either consider advice is free or are unwilling to pay for it. This suggests that the disclosure rules relating to commission payments are either too 'soft' or are not being correctly implemented.</p> <p>By banning commission payments to independent advisers,</p>

		<p>without providing for any alternative way to pay for advice, the provision of independent advice will likely reduce and be available only for those customers wealthy enough to pay for advice directly.</p> <p>A solution would be to allow customers the choice of paying for independent advice out of the product charges if they so wish. To facilitate this, the customer should agree the cost of advice with the adviser up front. Any rebates of commission available from the products chosen should be paid direct to a customer's account with the adviser. The cost of advice could then be paid by the customer and be funded in part, or in whole, by the rebates received.</p> <p>Such 'hard' disclosure in a customer's account would ensure the customer is informed of the cost of advice since the payments will be fully transparent. Furthermore, such an arrangement will encourage an on-going relationship between customer and adviser.</p> <p>Importantly, such 'hard' disclosure should not just be limited to 'independent' advisers but should apply equally to all advisers.</p>
	<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>	<p>We do not consider that UCITS products should be split into complex and non-complex products. UCITS are already subject to product regulation (something other financial products do not need to comply with). The product rules standards not only detail what may or may not be invested in - something EU regulators have agreed to through detailed negotiation, but also require high standards of risk management, segregation of the manager's assets from the fund's assets, frequent valuation, oversight of the fund by a depositary as well as a Key Investor Information Document written in a non technical language and subject to specific regulation in the way it looks and its contents.</p> <p>If it is decided to proceed with defining "structured UCITS" as</p>

		complex products, any further consideration of the UCITS framework should be undertaken within the UCITS Directive.
	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?	<p>We believe it is important that the product banning powers do not extend to UCITS products.</p> <p>It should be made clear in the MIFID text that product banning powers cannot fetter a Community right. UCITS products are unique in that they are already subject to product intervention powers, having been vetted and specifically authorised by a Member State's Competent Authority as meeting the requirements of the UCITS Directive.</p> <p>The UCITS certificate provides a community passport and permits the fund to be sold freely across the EU. Disputes between Competent Authorities are already subject to a mediation protocol which should continue to be the forum for settling disputes.</p>
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 .NEW	We urge that rules applying to MIFID firms will be applied equally, and at the same time, to firms operating under other Directives who offer packaged retail investment products. We would suggest transitional provisions are drafted in such a way as to ensure the implementation of the amended MIFID rules apply at the same time as changes to other Directives (such as IMD).	
Article ... :		
Article ... :		
Detailed comments on specific articles of the draft Regulation		
Article number	Comments	
Article ... :		
Article ... :		
Article ... :		