SOCIETE GENERALE

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MIFID Review – SG group's answer to the Ferber questionnaire

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?

As a preliminary remark, Société Générale supports the European Commission's objective to narrow the scope of the exemptions for commodity firms. We are convinced that a level playing field for all market players engaged in similar activities should be ensured. The question of the relevant regulatory capital regime should be addressed as applying the entire regime to non financial entities would probably not be appropriate ; while a total absence of capital requirement would not guarantee a level playing field.

We have the following comments with regard to the exemptions proposed in Article 2 of the draft MiFID:

- We are of the opinion that <u>the proposed regime is too complex and could allow too many market participants to be exempted from the MiFID requirements</u>,

- Even if we agree with the general approach proposed by the European Commission (deletion of the exemption in Article 2(1)(k), narrow the scope of the exemptions for trading members), <u>we think that the European Parliament should propose a more efficient solution which would be based on the size of positions / level of activity.</u>

In that context, we think that <u>the regime should focus on a quantitative threshold to be monitored by ESMA which would be used to establish whether a firm would become subject to the MiFID</u>. In practice, if the total notional amount of the transactions traded by a firm exceed that threshold, then it would become subject to MiFID.

We draw the European Parliament's attention to the fact that the European authorities, including especially ESMA, should be appointed to provide regulatory standards aimed to determine the way this quantitative threshold is designed (for example excluding transactions related to the hedging of a group's positions or transactions)

At last, with regard to the exemptions proposed in Article 3 of the draft MiFID, we think that this Article should be removed as it could create significant differences among the EU. The above-mentioned regime focusing on a quantitative threshold is sufficient.

2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?

With regard to the inclusion of emission allowances and structured deposits, we think that the proposed drafting brings some positive outcomes.

3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?

Account providers are an essential pillar for investor protection due to the nature of their functions: safekeeping and administration of financial instruments.

The European Commission's proposal considers the safekeeping and administration of financial instruments as a core investment service but does neither specify how this concept should be understood nor propose specific provisions to address the rights and obligations of intermediaries and custodians and across the entire holding chain of securities and regarding protection of clients' financial instruments. As long as these points are not clarified, the requalification of "safekeeping and administration of financial instruments" as investment service would lead to considerable legal uncertainties.

Such reclassification is proposed without addressing the question of what kind of MIFID obligation is applicable to the custodians and their clients. In this respect, it should be stressed that account holding and custody services differ significantly from the trading and distribution of financial instruments targeted by MiFID. In general, these services are loosely associated with the investment decisions of clients.
Consequently, this classification could potentially lead to uncertainties and additional costs for all actors including the final investors.

Société Générale recommends that before envisaging any obligation for the account providers to comply with any provisions of the MiFID, the European Commission shall submit an impact assessment proposing concrete legislative proposals aiming at:

- Specify the scope of financial instruments that can be subject to safekeeping and administration (ie list of financial instruments that can be held in custody)
- Specify the type of entities that can be authorised to license safekeeping/custodian services through the MIFID
- Clarify and harmonise the obligations and rights of the account providers/custodians.

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?

These proposals must be considered with great care since they have the potential to introduce competition distortion in the absence of an equivalent framework in the relevant country (a reciprocity rule could be introduced). For example, in the United States, rule 15A6 is more restrictive (chaperoning, absence of active solicitation…) than what would be proposed in Europe. There is also the current issue of registration of swap dealers with SEC and CFTC.

On the other hand, we have seen recently that for certain operations, French regulation was more restrictive than the UK's, which has the potential to put a brake on certain activities (eg firm orders, block deals).

Thus, the Commission's directive and the regulation proposals organizing access to the EU for financial services providers based in third countries should be based on clear and mutual recognition rules. Such mutual recognition should be implemented under ESMA and Commission's control. In this respect, the Commission proposal should precise and clarified how this mutual recognition will be assessed. In other words, Société Générale believes that reciprocity of rights – just like the "equivalence" of the applicable rules - is the fundamental underlying principle on which the "third country regime" should be built. Europe cannot allow foreign investment firms to set up easily within the EU while no reciprocity exists for EU firms.

Key is the interpretation of "equivalence". Société Générale cautions against strict equivalence requirements. Any equivalence assessment should be a "top down" approach based on approximation in regulatory outputs, principles and objectives. Market access for EU banks to countries that have committed to a common set of regulatory principles for financial services reform (i.e. the members of the G20) should remain a primary policy objective.

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?

Firstly, we invite the European Parliament to ensure that the MIFID provisions on that matter mirror as close as possible the corresponding CRD4 provisions.

Secondly, we have the two following comments:
- Article 9 should pay more attention to the question of the involvement of Board members and executive management.

We think that Board members and executive management should have (1) the competence and experience which facilitates the understanding of issues and risks, (2) the ability to express their thoughts and formulate their opinions, (3) an involvement in

the exercise of their mandates. With this in mind, they must naturally resign from their functions if not able to meet these requirements. The supervisory board must be in charge of ensuring that all members of the management body fully exercise their functions.
That is why we are of the opinion that a strict limitation of the number of mandates would not bring enough security. Only the involvement of the board and the integrity of the members of the management body could bring it.

We suggest therefore to remove the following words of Article 9, paragraph 1(a):
"They shall not combine at the same time more than one of the following combinations:
(i) one executive directorship with two non-executive directorships
(ii) four non-executive directorships.
Executive or non-executive directorships held within the same group shall be considered as one single directorship.
Competent authorities may authorise a member of the management body of an investment firm to combine more directorships than allowed under the previous subparagraph, […]"

- In addition, we consider that article 9.8[1] should not mean that the chairman of the management body is prohibited from exercising simultaneously the functions of Chief Executive Officer within the same institution.

In our view the accumulation of CEO and Chairman of the management body responsibilities should be banned "if and only if" several executive directors are part of the management body. Indeed, when the CEO is the only executive officer to be part of the management body, such a provision does not make sense, since he will not be able to shape the decisions of the (largely independent) management body on his own.

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?

First of all, we would like to highlight that we fully agree with the general purpose underlying the concept of OTF which is to ensure greater pre-trade and post-trade transparency in the equity and non-equity markets, in line with the G20 recommendations.

That said it is difficult to see how this purpose can be achieved by adopting a totally uniform definition of OTFs for markets which are highly different. The difficulty here is that the Commission wants to cover both crossing networks (operated by brokers, which solely consists of matching clients' orders) operated in the equity world and dealers' platforms (where the investment service provider acts as market maker), which are quite different systems operated in the non-equity world.

Given the vital role of these markets for financing the economy, hedging risks and allocating savings, it is clear that - if used - this concept of OTF should be appropriately defined.

[1] *Member States shall require that the management of investment firms is undertaken by at least two persons*[…]

That is why we think that:

- regarding the equity markets, the definition of OTF appears to capture broker crossing networks. One must bear in mind that they have already reached (and cannot structurally go beyond) a marginal market share and do not therefore have any material impact on the price discovery mechanism. These systems offer innovative solutions which are highly appreciated by institutional investors in that they allow execution at mid spread of prices as observed on lit markets, while limiting the exposure of orders to arbitrages mechanisms which operate on the regulated markets and MTFs.

We are of the opinion that OTF operators should be allowed to deploy their own capital for the purpose of facilitating client trading. Within broker crossing networks and other internal matching engines, the operators of those engines frequently deploy capital to facilitate the business of their clients (e.g. facilitation). Strict prohibition on interaction with a firm's proprietary capital would make execution difficult, more costly and generally less efficient, while reducing the depth of liquidity pool offered to clients

- regarding the non-equity markets, the definition of OTF appears to capture interdealer broking activities, single dealer platforms and RFQ platforms that are not MTFs or RMs. The main concern comes from the proposed prohibition for investment firms that operate an OTF to use their proprietary capital, which is a market practice for these platforms.

Such a prohibition will have the impact of restricting the range of available venues for trading in OTC derivatives subject to the trading obligation and fixed income products, notably limiting the vital role played by the above mentioned platforms.

The regulatory objective of the ban on proprietary capital appears to be to ensure the operator's neutrality in relation to any transaction taking place on the OTF and that the duties owed to clients are not compromised. We think that this objective can be achieved by other relevant means, such as the implementation of appropriate conflict of interests' rules, consent of the client to be executed with proprietary capital, anonymity of the different orders flows, Chinese walls (for instance between legal entity, desks …), then all flows into the OTF -if treated equally-, should be eligible.

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?

Regarding the equity markets, the proposal will convert broker crossing networks from being classified as OTC to being classified as OTF business. This will meet the objective of regulating all organised trading in a consistent manner.

Regarding the non-equity markets, we believe that a more inclusive OTF regime, without the prohibition for investment firms that operate an OTF to use their proprietary capital and encouraging the various platforms (single-dealer platforms…) to attract business, would help encourage the channelling of OTC derivatives onto organised venues.

For bonds and other fixed income securities the definition of "organized frequent and systematic basis" under which trading is captured by the Systematic Internaliser regime (as opposed to remaining OTC trading) is of vital importance. Particularly the term "frequent" would benefit from careful definition in the Level 1 text. It should be made clear that this definition applies on a security by security basis (rather than by class of security), and the text should provide specific guidance to ESMA in this regard.

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?

We agree on the main proposals of the Commission concerning this activity, except the obligation for market makers to keep their B/O spreads whatever market conditions, which is both unrealistic and very dangerous (on a risk management perspective).

It is important to remind that HFT activity is not shocking per se. It corresponds to the traditional activity of arbitragist / market making / directional risk taking which are as old as the stock exchange, the only difference is that the service provider or the hedge fund who practice this have adapted their tools and equiped themselves with more and more powerful calculators in order to work with smaller and smaller units of time. In doing this, they have quite simply adapted to the technological evolutions of the markets themselves.

Several positive aspects resulting from high frequency trading should be highlighted:

- whatever the origin of liquidity, spreads naturally become narrower as volumes increase. This can be seen on all markets. It's a net gain for all players;
- another consequence of the presence of high frequency arbitrage is to guarantee prices which are close as possible to fair value;
- high frequency trading unifies prices across the various trading venues in the best interest of issuers and investors (including retail) in a context where we have a multiplicity of trading venues and consequently a multiplicity of prices for

the same shares. traders,

- in the case of crisis when markets are highly volatile, liquidity provided by high frequency trading is one of the best ways to reduce price volatility. In this context, we do not share the opinion of some market participants for which high frequency trading might lead to increased market volatility. Apart from the trend-following one, several strategies are used by high frequency traders including mean-reversion.

- In particular HFT activities, which only use market microstructure information (i.e. data from the order book) and which are insensible to news, may usefully correct price movements linked to rumors / false information which are today widespread very quickly via social networks (like twitter), a fake information can be twitted 100 000 times in a minute and can be available immediately on investors' forums or asset managers' blogs. The experience of the last summer would obviously deserve academical and empirical studies.

- lastly, a final important point to be remembered is that the additional liquidity generated by high frequency has a direct positive impact on the real economy. Liquid shares attract more investors and therefore the financing of business.

Having said that, Société Générale is totally opposed to the provision which impose each entity to provide "liquidity on a regular and ongoing basis to theses trading venues at all time, regardless of prevailing market conditions". Indeed "algo trading" comprises a large scale of activities and in particular it is carried out by investment firms in order to execute orders for their clients. Algorithmic trading strategies with the purpose of order facilitation should not be mandated to act as market maker. But even "algo traders" which deal only on own account, should not be assimilated to market makers, as the strategies they pursue does not systematically result in providing liquidity to the market. Moreover, The proposed regulation imposes rules that go well beyond those that apply to the IS and the traditional market making activity. It would be inconsistent with the rules of risk management imposed on investment firms.

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?

We support these requirements. The only comment we would like to raise is that the wording should be amended in order to clarify that circuit breakers should be coordinated between venues as far as possible.

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?

Even if we think that such requirements can usefully contribute to the prevention of market abuse, we have the following comments:

- this will add significant burden and cost.

- the proposed text contains an inconsistency. The requirement to keep records of relevant transactions data for five years in the Regulation (art. 22.1) is not consistent with the one to keep telephone conversations and electronic communications for three years in the Directive (art. 16.7)

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?

It seems fairly unrealistic to suppose that liquidity for a particular contract or place of execution could be decreed. Liquidity can also vary over time, meaning that the assessment of liquidity must be dynamic in nature. More, only a limited number of OTC derivatives contracts will be sufficiently liquid for trading on an organised platform.

That is why we believe that for the transparency to be increased, the European Parliament should focus on post-trade reporting to trade repositories rather than the trading obligation.

That being said, we do support the fact that the trading obligation does not apply to transactions that are not in fact cleared due to an exemption from the clearing obligation under EMIR. This will help ensure that the needs of end users are suitably accommodated.

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?

We agree with this proposal, but the essential issues concerning SMEs must be essentially done through prospectus / transparence directives.

13) Are the provisions on non-discriminatory access to market infrastructure and to benchmarks in Title VI sufficient to provide for effective competition between providers?
If not, what else is needed and why? Do the proposals fit appropriately with EMIR?

We welcome efforts to ensure that there is robust competition between trading venues and between providers of post-trade market infrastructure. We therefore support the requirement that CCPs provide non-discriminatory clearing access for financial instruments regardless of execution venue. We specifically welcome the fact that this covers access to the associated margin pool within the CCP.

We believe that it is vital to ensure that associated provisions are harmonized across EMIR and MiFIR to make sure that there is a level playing field between instruments subject to EMIR and those not. We believe that there should not be a difference in the Level 1 provisions on access under EMIR and MiFID. For this reason, we would suggest that Article 28 of MiFIR be amended such that it also applies to derivative contracts subject to EMIR access obligations. Level 2 measures should also support this goal.

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?

We would like to stress that:

1 - Given their arbitrary nature and their unproven positive aspects, we have serious doubts about imposing automatically hard/ex-ante position limits,

2 - We think that position management rules are more appropriate. In our view, the revision of the MiFID should be the opportunity to create position management rules which give powers to market operators to determine - in a dynamic way and according to alternative arrangements - if any participant is potentially building a position which raises a threat to the orderly functioning and integrity of financial markets, given the specific circumstances of the underlying market and taking into account such factors as the levels of open interest, liquidity and the supply of the underlying commodity. In that context, hard/ex-ante position limits would be used only as last resort measure in individual cases, if there is a threat to the orderly functioning and integrity of financial markets.

3 – We recommend the European Parliament to set up appropriate aggregation rules. Any aggregation regime should recognize that market participants that have completely separate management should not be aggregated. For entities which are governed through totally independent managements, the follow-up in real time of the various accounts in regards of the global position limit is irrelevant in terms of confidentiality and conflict of interests. It would be impossible to know/request positions taken by entities in which a company holds an equity interest since they are independently operated and regulated.

4 - Furthermore, while we agree with the European Commission general approach to give relevant powers to market operators to apply limits or alternative arrangements, we are of the opinion that ESMA should play a key role. ESMA should propose common guidelines across the EU so that the same methodology is applied by the various market operators.

5 - We think that this methodology should indicate how global exposure of market participants (resulting from their open positions on the physical and derivatives markets) could be taken into account.

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 idea consisting of distinguishing between independent financial advice and what amounts to commercial advice given by a salesperson is interesting. In our view, what is important in this debate, is ensuring that commercial activity or any mailshot is not deemed to constitute investment advice to the same extent as an interview preceded by a careful and thorough evaluation of a client's situation by an advisor.

16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?

We agree that a distinction should be made between complex UCITS and non-complex UCITS. It seems to us that ETFs (even synthetic ones) should be considered as non-complex (as they are equity like instruments).

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 do not see any reason that would justify such a change. There has been, to our knowledge, no market failure in this field.

18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?

The proposal which consists of clarifying that ISP must act honestly, fairly and in a professional manner even when they deal with eligible counterparty does not appear unreasonable. It is the way we have interpreted the current MiFID text. This being said, in OTC transactions where we are dealing with counterparties just as sophisticated as we are, the adoption of such a principle must not prevent or undermine the ability of an ISP to search for the best possible result for itself.

Concerning clients classification rules, here, the Commission is clearly going against the recommendations of CESR which were not to touch the present classification system which, by virtue of the opt-ups and opt-downs, enables all situations to be catered for and given the appropriate level of protection, including regulated entities.

One can understand why small financial entities might not be treated as ECPs , but they simply need to ask not to be.

As to local councils, this would not result in any change for France. This is already the situation.

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?

In order to avoid the stock-piling of both European and domestic legislation, the Level 2 MIF directive (dated 2006) provided in article 4 for a ban on member states adopting or maintaining purely domestic rules in areas covered by the directive. A relative ban maybe (they could in fact derogate in exceptional circumstances, as long as they notified the Commission and provided evidence that risks to be prevented were either particularly significant, were not taken into account by the directive, or had appeared after its issue), but a ban nonetheless.

It is an essential safeguard against member states' temptation to resort to "gold-plating" which is all the more damaging in that it creates, where it exists, a reverse discrimination against establishments of that member state, as a result of the application of the country of origin law to establishments acting as free service providers.

So, what have we seen happening over the last few months? A proliferation of domestic positions.

In the wake of the AMF and ACP's new measures for structured products (in France), the Belgian, British, Italian and Dutch authorities have all followed suit.

Such a proliferation of national measures is very detrimental to the creation of a single market, both for investors (who can not benefit from the same financial products from a country to another) and for banks which will find it more difficult to create products for a wide range of investors.

This ignores the fact that the creation of a pan-European market, with clear and stable rules for financial actors, is a sine qua non condition for an efficient European economy.

The more bank intermediaries are in a position to collect resources, the less they will rely on interbank markets for their activities. This is all the more crucial in these times of scarce liquidity when banks are considered too dependent on the interbank market.

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?

Regarding the waiver issue, we are of the opinion that the waiver regime should be applied "consistently and coherently" across the EU markets. Hence, the powers of ESMA should be increased (ESMA could for example issue a binding opinion (instead of an opinion) about the compatibility of a proposal of waiver with the requirements established by the European Commission in its delegated act.

We are also concerned that the imported price waiver, derived from art 4.3 (c), appears to be actionable only by regulated markets while MTF and OTF should be prevented from the use of this waiver. In our view, there is no objective reason to justify why this competitive advantage be offered to regulated markets only.

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?

As far as transparency rules are concerned, one must bear in mind that the frontier between standard OTC derivatives and non-standard OTC derivatives is very tight. A too rigid definition could have a material negative impact on the availability of financial instruments used by companies.

Indeed, the relocation of non-standard derivatives toward organised negotiation platforms (among other, OTF) could endanger their existence for the following reasons:

1. The non-equity markets are very specific. Indeed, we don't find on these markets natural bid-ask spreads, in particular with respect to the major transactions or the customized transactions. This absence of natural liquidity can be explained easily.

On the derivative markets, the companies that need to hedge their risk do not meet on the market the players with the concomitant symmetric need.

These markets suppose that the intermediary will accept the risk asked by the client, but that it won't keep it on the balance sheet. The intermediaries will hedge themselves on the markets.

2. A "too instantaneous" transparency of the negotiating conditions of there customized products could endanger the existence of this model. Indeed, these intermediaries are temporarily exposed to a market risk, or to a counterparty risk for the uncompensated operations. Accordingly, they must immobilize regulatory capital. It is thus mandatory for the survival of this market model that the margin earned on these operations be superior to the required cost of capital.

The assimilation of these customized products to standards products and their migration toward OTFs governed by prices because of the too rapid pre and post-trade transparency could cause these operations to be non-viable since it would favour arbitrage.

The delimitation of the frontier between standard derivatives and customized derivatives will be an important choice of the European supervisor.

This choice may result in a strong reduction of the customized services offered to the international and European companies and/or induce these companies to migrate toward the unregulated markets.

In summary, we feel that the draft pre-trade transparency requirements in the Regulation have been derived – though amended slightly - from those intended for equity markets. We believe this is fundamentally the wrong approach and that substantially more research should be done into the pre-trade transparency needs of these markets. This is particularly appropriate for the government and corporate bond markets when inappropriate pre-trade transparency rules will materially increase the costs of funding for both governments and corporates, with commensurate negative impacts on employment and growth.

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?

In our view, Pre-trade transparency already exists for vanilla and liquid instruments.

Investors have access to many sources of information displaying at what price they will be able to trade: multi-dealer trading venues offering composite pages, dealers propose access to single dealer platforms, most of the quotes displayed are now firm (click and trade), investors can also send RFQs (Request for Quote), where customer gets a firm bid/offer with no obligation to trade if not happy with the price.

As the competition is fierce on these products, dealers are forced to be as transparent as possible and to be extremely committed to remain on the counterparty list of their clients.

As we think that pre-trade transparency is already ensured for vanilla and liquid instruments; it seems impossible to us though to do the same for "structured products", listed or not, (even if the degree of sophistication is not very high) as these instruments are completely tailor-made and are each time designed to meet some very specific needs. Other instruments have a very small outstanding issued amount or are, by design, not liquid.

Therefore, we would recommend that any attempt at extension be limited to bonds and plain vanilla products admitted to trading on a regulated market or MTF and sufficiently liquid to support a pre-trade regime.

Concerning derivatives, while we support the general objective to create efficient and transparent markets, beneficial to their users, we believe that the OTC derivatives markets, because of the wide range of products concerned with varying degrees of liquidity and prices which are difficult to compare do not need pre-transparency obligation; as also recognised by CESR in its corresponding technical advice.

23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?

We consider that the waiver regime must be applied "consistently and coherently" across the EU markets. In that respect, we therefore think that powers of ESMA should be increased. We are of the opinion that ESMA should issue a binding opinion (instead of an opinion) about the compatibility of a local authority proposal of waiver with the requirements established by the European Commission in its delegated act..

We also consider that the imported price waiver should not be removed as it enables "crossing networks" and "dark pools" to offer investors innovative solutions which are highly appreciated by institutional investors in that they allow execution at mid spread of prices as observed on lit markets, while limiting the exposure of orders to arbirtragist mechanisms which operate on the regulated markets and MTFs.

Crossing engines created by intermediaries have already reached (and cannot structurally go beyond) a marginal market share and do not therefore have any material impact on the price discovery mechanism. Therefore we are concerned that the imported price waiver, derived from art 4.3 (c), appears to be actionable only by regulated markets while MTF and OTF should be prevented from the use of this waiver. In our view, there is no objective reason to justify why this competitive advantage will be offered to regulated markets only.

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)?

When assessing the outcomes of MIFID 1, there was a large consensus from various stakeholders (issuers, investors, regulators, market members) on the fact that a single tape where all the transactions should be consolidated in an organised and sound manner.

Therefore the proposal will not permit to achieve this goal even if progress can be noticed compared to the current framework.

We do not believe that the "market forces" will succeed in providing an European tape within two years when they had been unable to do it during the last four years.

We consider that the regulation should:

a) Impose ESMA to set up regulatory technical standards on data standards and reference data.
b) Define the condition of the setting up of one consolidated tape which comprises all transactions carried out on equity market.

As regards ARMs, a provision should be included to ensure ARMs' clients are provided with a satisfactory service level. This could be met inter alia by requesting ARMs to issue Service Level Agreements.

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?

An appropriate calibration of post trade reporting delays is crucial in order not to affect the market as a whole and its liquidity: the main objective of the deferred publication is to allow market participants and investors to offset their risks without potential adverse arbitrage, should the transaction be made public before its full execution on the relevant market. The reporting delays must take into account the characteristics of each underlying (liquidity, number of market participants, size of the market..), and must be calibrated accordingly by ESMA. In addition, as the liquidity may vary over time, the delays for reporting must be reasonably determined in order to allow some flexibility (at a given point in time, if the liquidity is low, the investors and market participants will need more time to execute their transactions. If the liquidity is high, the investors and market participants will be able to execute more rapidly their transactions).

In addition, in order to enhance the quality, and interest, of the post-trade information should be aggregated at a global level without any delays, and be made public accordingly (we favor the creation of a non for profit utility at the EU level, hosted within EU entities).

26) How could better use be made of the European Supervisory Authorities, including the Joint Committee, in developing and implementing MiFID/MiFIR 2?

We welcome close co-ordination on issues of cross-sector importance between ESMA, EIOPA and EBA. We also welcome the creation of a Joint Committee and the exchange of information between all three ESAs. However it is important that this is not just a process and formality but has actual and tangible impact on the consistency of policy decisions taken by the authorities.

Moreover, we feel that these European Supervisory Authorities should have both sufficient time to develop and implement their rules and sufficient resources in terms of human resources and IT. In our opinion, these requirements are not fulfilled today.

27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?

In our view, the transaction reporting mechanism is not efficient because it implies the development of reporting mechanisms in the 27 Member States, with inevitable national differences leading to inconsistencies and double reporting by financial institutions.

Since the effectiveness and accuracy of the reporting is absolutely fundamental to fight market abuse, the revision of the Directive is a missed opportunity to get things right in this area, i.e. the creation of a central reporting system with free access by competent authorities. An independent cost/benefit analysis of a mechanism based on 27 systems (expanded further to deal with all instruments and all markets) with interconnected links versus a central reporting system should be performed.

28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?

Several EU financial services legislation needs to be considered in developing MiFID/MiFIR. In particular these are the Market Abuse Directive and Regulation (MAD/MAR), Packaged Retail Investment Products initiative (PRIPs), the European Market Infrastructure Regulation (EMIR) and the Alternative Investment Fund Managers Directive (AIFMD). For example there are provisions on sanctions and corporate governance in both CRDIV and MiFID and third country proposals form part of MiFID/MiFIR, the AIFMD and EMIR.

It is notably important to ensure consistency between the definitions across the different texts, taking to account that most of these texts are in different stages of the EU legislative process.

29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?

There are numerous international requirements that will need to be borne in mind but probably the most significant is Dodd-Frank in the US.

The most significant areas covered by both Dodd-Frank and MiFID, relate to OTC derivatives, proprietary trading for banks, consumer protection, trading platforms (OTF category vs SEFs), pre-trade transparency (e.g. Shares traded on exchanges or ATS only) and post trade transparency (shares, bonds, derivatives vs all instruments regardless where traded for MiFID) and 3rd country access. For example, in so far as they are relevant platforms for meeting the derivatives trading obligation, the OTF and SEF concept should be aligned as far as possible.

Given that bond markets are outside the scope of the Dodd-Frank act – and in line with our comments in the answers to questions 21 and 22 about the significant differences between fixed income securities and equity securities (shares) – we believe that consideration should be given to the scope of some MiFID rules and, specifically, whether the benefits of applying certain provisions (pre/post trade transparency, best execution...) to fixed income securities outweigh the potential costs.

30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?

The reference to the consolidated turnover of the group as a basis for establishing the amount of the sanctions applicable to subsidiaries of a parent undertaking is likely to be disproportionate in many cases.

Furthermore, it will be crucial to take into account the gravity and the duration of the breach and to distinguish breaches which could have an impact on the integrity, competitiveness and efficiency of financial markets and those relating to conduct rules. For the last one, this maximum (10%) seems to be disproportionate.

31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?

At this stage we do not believe that the appropriate balance has been achieved. Whilst we appreciate that the Level 1 should provide the appropriate high-level framework, too much has been left to Level 2 implementation with certain technical standards not due to be implemented until the end of 2016. This can create uncertainty. It will be important the Commission revisits the current requirements for Level 2 rules to ensure that further technical details are provided only where there is a need for further clarity and legal certainty whilst avoiding over-prescriptive legislation likely to add undue burdens and unnecessary costs to the firms.

It is also important to note that whereas the regulation is supposed to be of direct effect, it refers in many and substantial instances to delegated acts, which not make the assessment of the provision possible. As a result, for the proposed two texts, the reading and assessment of the scope of some substantial provisions as well as the understanding of the decision-making process are particularly complex and uncertain.

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