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	Thomson Reuters Thomson Reuters is the world's leading source of intelligent information for businesses and professionals. We combine industry expertise with innovative technology to deliver critical information to leading decision makers in the financial, legal, tax and accounting, healthcare, science and media markets, powered by the world's most trusted news organization. In financial markets, Thomson Reuters provides trading platforms and trading applications for a broad range of FX products. Thomson Reuters Matching is an anonymous electronic trading application for the FX spot and swap markets with a central order book model. Thomson Reuters Dealing is a leading global, multi-asset electronic trading platform with related data services providing trusted price transparency. More generally, Thomson Reuters provides exchanges, brokers, and market makers with the cross-border technical and communications capabilities, connectivity, trusted independent data, risk management and back office functionality that are essential to enable reliable and resilient market participation.

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?	Yes. We think the exemptions adequately cover end users such as corporates. We do not however think that the additional blanket exemption for central banks and other national bodies is required.
	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?	Not in the wholesale markets. Third country firms provide much needed services to EU authorities, corporates and financial firms which could be restricted, or even disallowed, if disproportionate regulations were applied to them. Great care must be taken not to restrict the ability of EU wholesale market participants to be able to invest in third countries. It is equally important to facilitate third country investment into the EU. Retail investors require adequate protection; wholesale market participants do not require the same level of protection. In addition, requiring an equivalence provision would risk cutting the EU off from many markets, either because the equivalence process would take a very long time, or because these countries have different regulatory regimes and approaches (or frankly because some countries may not be interested in dialogue with the EU at all). Similarly, requiring reciprocal access would risk restricting the freedom of EU entities to invest in fast growing markets and creating a "Prison Europe" rather than just a "Fortress Europe". A better approach, already adopted in some of member states, would be to allow EU wholesale market participants to receive a wide range of services directly from

		third country firms.
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?	See Q24
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?	Assuming that OTF rules allow for flexible trading functionality suited to less liquid products such as derivatives, we see no need for changes.
	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 the norm for the broad range of non equity financial instruments, many of which trade infrequently. Trading in such illiquid instruments can only really take place on a purely bilateral basis when a client asks a dealer for a price and trades on that specific quoted price (this is a request for quote or RFQ model). Exchanges, in contrast, typically offer high volume multilateral systems (central limit order books) for liquid instruments such as equities. So OTC <u>equity</u> trading tends to mean "off exchange" activity: trades executed outside the rules of an exchange or MTF. These are typically linked to large and illiquid derivative transactions executed bilaterally or to broker crossing systems. MIFID already applies common rules on pre trade and post trade transparency and best execution to all forms of equity trading to ensure market integrity and investor protection. We therefore expect OTC equity trading to remain relatively infrequent (but perhaps large in size) The situation for <u>non equities</u> is more complex. OTC trading is common because there is relatively less Exchange or MTF trading and there is little central clearing. But some organised trading platforms do offer a request for quote

		(RFQ) trading functionality for certain instruments such as bonds or foreign exchange. Indeed, for the most liquid assets, some platforms (such as our own Thomson Reuters Spot Foreign Exchange Matching) offer central limit order book functionality. Trading in these cases is carried out under the rules of the exchange or MTF. We would expect trading in these cash instruments to remain split between organised venues and pure OTC particularly where the nature of the instrument cannot be "standardized" in the manner anticipated by the proposed Directive/Regulation. For derivatives, however, the proposed MIFID/R will impose a requirement requiring investment firms to trade liquid, standardised instruments on an organised venue. OTC trading will therefore be limited to illiquid and non standardised products. Many derivatives may remain OTC because they are of a specialised "bespoke" nature and trade infrequently. For the more liquid products, we would expect them to move to RFQ arrangements provided by exchanges, MTFs or OTFs.
	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?	Art 17 The varied nature of algorithmic trading means that the detailed definition of a given algorithm can change frequently. The requirement on a firm to report any changes to its algorithm will therefore mean a potentially overwhelming flow of information being sent to the relevant authority. This is disproportionate. It may be more appropriate to require descriptions of the algorithms in a more general sense, rather than in exact detail. We similarly do not think it appropriate to apply a blanket market making provision to algorithmic trading. Art 51

		The requirements around system functionality seem appropriate, depending on the ultimate definition of some terms such as what constitutes a 'significant' price movement in a given instrument and how the relevant controls are required to be implemented. The provisions on the resilience of trading systems are also sensible. We suggest that the circumstances in which actions such as circuit breakers are invoked should be left to the discretion of the platform operator
	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?	These requirements are sensible and any established MTF will already have in place relevant contingency plans. Any new operators should also establish relevant plans.
	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?	There are obvious challenges for ESMA in defining all those instruments which should be required to trade on an organised trading venue, given the vast scope of instruments in existence and the differences within asset classes. As noted above, many derivatives are very illiquid. We agree with the parameters set out in Art 26 and recommend that ESMA be given plenty of time to consult on and apply these rules. A particular challenge is international coordination. It will clearly be damaging to market liquidity and to clients if different jurisdictions come to different opinions on mandatory trading rules and restrict the ability to trade internationally. EU firms could be unnecessarily restricted from accessing third country liquidity pools outside the EU under Art 24(1)(d). EU firms should be able to access any 3rd country organised trading venues in order to manage their risk profile as appropriate.

	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 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 support these provisions. It is important that investors have access to clearing via whichever trading functionality they choose to use. We would suggest that the mandatory clearing and trading rules not be applied until there is effective access to clearing.
	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 have some concerns over the mechanics of applying position limits. For example, would venues be required to track absolute positions (which would have to be defined and regularly refined by market) or as a percentage of traded volume/physical volume? How would firms and markets handle aggregate positions which may result from trading the same (or similar) commodity across multiple venues? We therefore recommend that MIFID instead propose a more general position management regime, with regulators imposing position limits as a temporary power in extreme circumstances, Organised trading venues should only be required to monitor positions on their own platforms and to intervene only in exceptional circumstances where their rules have been breached or they have been directed to take certain actions by the relevant regulator.
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?	
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	

	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?	As explained in Q7, many of these instruments are highly illiquid and depend on liquidity being provided by dealers. Requiring dealers to display quotes publicly to all will severely limit liquidity. We believe that a RFQ system in an organised trading venue providing prices on demand is adequate in most cases. ESMA should be able to define the more liquid instruments to be included within this requirement and to calibrate the requirement to zero for illiquid products using its waiver powers under Art 8. The definition of 'make public' should be clarified. The technology to disseminate and give access to prices to the professional market already exists through current data publishers such as Thomson Reuters. To require live pricing to be disseminated to the wider consumer public would add significant cost to the operation of a trading venue. Furthermore, the financial risk attached to the derivatives market is normally not appropriate for retail

		consumers and they should not be encouraged to access these professional markets.
	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?	See Q21
	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)?	We recognise the importance of accurate and timely pre and post trade data. We therefore welcome the proposal for an authorised APA regime requiring that all firms report trades not executed on exchange or MTF through one of these entities. ESMA should issue clear rules, following industry consultation, setting standards for market data. We also welcome the proposed unbundling of pre trade and post trade market data and the requirement that delayed post trade data be made available free of charge. This should satisfy the needs of many investors. We do not understand, however, why data reporting service providers, including CTPS, should be subject to the same authorisation regime, including corporate governance requirements, as authorised investment firms and market operators. We do not understand why the provision of real time pre or post trade data should itself be regulated or subject to price controls. Commercial competition will ensure that customers receive the data they require – which in many cases may well not be consolidated – in the most efficient and cost effective manner. Financial market data is generally regarded as an unregulated activity, subject to the freedoms set down in

		the WTO, and therefore the Commission should ensure that these proposals are compatible with WTO obligations.
	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?	As noted in Q7, liquidity in many instruments is dependent on dealers committing capital, even within organised trading venues, and could be put at risk in illiquid products from inappropriate pre and post trade transparency rules. The availability of liquidity to customers such as pension funds and asset managers in large or 'block' trades is particularly at risk. The proposal suggests that a time delay can be allowed in reporting block trades, in order to allow the dealer some time to offset his risk into the wider market. We agree. For many instruments, block trades can take days or even weeks to off-set. We therefore recommend that delays be calibrated to reflect the size of trades relative to average trade sizes and that actual traded amounts not be published above certain thresholds. Competent authorities and ESMA would still receive the full trade size attached to their view of post-trade 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?	We recommend that the ESAs be given a very clear mandate to oversee implementation and report back to the Parliament as well as the Commission. MIFID was implemented late and inconsistently. Both ESAs and Parliament itself should consult end users and investment firms to assess progress on implementation.
	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	The G20 has agreed a number of international standards that

	major jurisdictions outside the EU need to be borne in mind and why?	the EU should implement. These include standards for securities markets set by IOSCO, which include derivative trading. It is important for the stability of global markets that each G20 jurisdiction recognises the broad comparability of each others' application of these standards and avoids a fragmented or, even worse, a protectionist solution which could reduce international trade and restrict important economic activity. It is important therefore that non EU firms be permitted to trade on EU organised trading venues as set out in MIFID and, vice versa, that EU firms be permitted to trade on non EU venues (for example, Swap Execution Facilities or SEFs in the US) where standards are broadly compatible in line with those set by the G20 .
	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

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