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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.**

RESPONSE FROM TRADEWEB EUROPE LIMITED

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?	No comment
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	No comment
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	No comment
	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?	No comment

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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?	No comment
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?	We are concerned that some provisions regarding the proposed OTF category are not consistent with the following two important principles: • there should be a level playing field among trading venues in order to ensure fair competition and avoid opportunities for regulatory arbitrage; and • there needs to be a clear regulatory classification for each trading venue, i.e., venues providing similar types of services should clearly fit within the same regulatory category, i.e., regulated market, MTF or OTF. <u>Level Playing Field: Equal Regulatory Obligations</u> In order to ensure a level playing field and avoid regulatory arbitrage, it is important that OTFs are subject to similar regulatory obligations as are imposed upon MTFs and regulated markets where their activities are equivalent. However, there are a number of instances in the MiFID/MiFIR proposals where OTFs are subject to less onerous regulatory standards than MTFs and regulated markets. For example, MTFs are subject to obligations regarding systems resilience/circuit breakers in Article 51 of MiFID whereas OTFs are subject to a more limited set of these obligations (see Article 19(4) for MTFs vs, Article 20(4) for OTFs). In addition, MTFs are subject to conflict of interest obligations (Article 19(3)) that are not applied to OTFs. Regulatory

		obligations should be harmonised across venues in these instances. <u>Clear Regulatory Classification</u> The OTF category requires further clarification. A firm should not be able to register its system or facility as an OTF if this system/facility will be providing services substantially equivalent to those furnished by MTFs. Clarification to the OTF category should be made in at least the following two ways in order to address this concern: 1. <u>Discretionary Rules</u>. Recital 8 to MiFIR indicates that whereas MTFs/regulated markets are characterised by <u>non-discretionary</u> execution of transactions, the operator of an OTF will have <u>discretion</u> over how a transaction is to be executed. However, it is not clear whether an OTF could also operate a facility/system characterised by non-discretionary execution. In order to ensure an appropriate distinction between OTFs, on the one hand, and MTFs/regulated markets, on the other hand, the proposals should be amended to clarify that OTFs <u>may not</u> be characterised by non-discretionary execution of transactions. 2. <u>Multilaterality/Third Party Interests</u>. The multilateral nature of the OTF category requires further clarification. A regulated market/MTF is defined as a "*multilateral* system…which brings together…multiple third-party buying and selling interests". An OTF, on the other hand, is defined as a "system or facility…in which multiple third-party buying and selling interests…are able to interact". We do not understand how the multilateral nature of the regulated market/MTF is intended to vary from the multilateral nature of the OTF (though we note that the definitions of regulated market/MTF

		refer to a "multilateral" system whereas the definition of OTF does not). It is our understanding that regulated markets/MTFs/OTFs are all intended to cover markets involving participation by multiple third party buying interests and multiple third party selling interests. This contrasts with a Systematic Internaliser (SI), which is not "multilateral" because clients of the SI may transact with only one liquidity provider, i.e., the firm acting as an SI. The differing definitions of regulated markets/MTF and OTFs in this respect will cause substantial confusion in the markets. Because it is our understanding that the multilateral nature of all three venues, as described above, is intended to be the same, we urge that the OTF definition mirror the definition of regulated markets/MTFs with respect to multiple third party interactions. Specifically, the multilateral nature of OTFs (like MTFs and regulated markets) should be defined to require that these venues <u>bring together multiple third-party buying and multiple third-party selling interests</u>. In the alternative, it is critical to set out very clearly how the nature of multilateral participation differs in OTFs from regulated markets/MTFs, 3. <u>Dual Classifications</u>. On a related note, it is important to confirm that a firm is entitled to operate one system as an MTF and a separate system as an OTF. In other words, if a firm operating an MTF wishes to establish a new system that meets the characteristics of an OTF, that firm should not be required to establish a new entity to house the OTF business.
	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	We would recommend deleting entirely the reference to "OTC" in MiFID/MiFIR. The "OTC" designation is now used so inconsistently in the market that its usage is often more confusing than helpful. For

	type of venue?	example, under the Europe in Market Infrastructure Regulation (EMIR), trading on an MTF is considered "OTC" trading. However, under the draft MiFIR, trading on an MTF would not be considered "OTC" trading. The fact that the European Commission would propose one definition of "OTC" in one piece of legislation and another definition in a separate (but related) piece of legislation is a reflection of the level of confusion that surrounds this term. We would urge that MiFIR/MiFID not add further to this confusion. If the intent of the proposals is to channel trades onto organised venues and systems (i.e., regulated markets/MTFs/OTFs/Systematic Internalisers), the key issue will be how "ad hoc" and "irregular" trading is defined. This is because such "ad hoc" and "irregular" trading activity with wholesale counterparties in above market standard sizes can be conducted outside such organised venues/systems and will not be subject to pre-trade transparency requirements and other obligations applicable to such venues/systems. It is important to recognise in this regard that frequency of trading can vary substantially across different asset classes and different instruments. For example, whereas a particular equity security listed on a regulated market may trade thousands of times per day on that market, the most frequently traded European government bond and European corporate bond in 2011 traded only approximately 30 times and 4 times per day, respectively, on Tradeweb. Even recognising that such bonds trade on other platforms, too, this provides an indication of how much trading frequency can vary across asset classes and instruments. European regulators should consider calibrating what constitutes "ad hoc" and "irregular" trading based on the asset class and/or instrument. Obviously, a more narrow definition of "ad hoc" and

		"irregular" trading would lead to more trading on organised venues/systems. On the contrary, a broader definition of "ad hoc" and "irregular" trading will lead to a broader range of trading outside of organised venues/systems where pre-trade transparency and other obligations would not apply.
	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?	The definition of algorithmic trading is too broad as this encompasses a wide variety of activities. The rules which then derive from the use of this term are not calibrated to take into account the ways that trading occurs in different markets (see more detail in our response to question 9).
	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?	Generally speaking, it would appear appropriate that trading platforms have requirements on resilience, contingency arrangements and business continuity. However, these requirements need to be tailored to the nature of the individual markets concerned. In order to ensure that the proposed requirements are applied on a proportionate and appropriate basis, it is critical that these obligations are calibrated to reflect different trading models, asset classes, technology and market participants. These factors all contribute, for example, to the extent to which a particular venue may be subject to disorderly trading conditions. Therefore, the proposed circuit breakers, transaction restrictions and minimum tick sizes, while perhaps appropriate in the context of retail markets characterized by high volumes in individual securities and order book style trading mechanisms such as in the equities or futures markets, are not necessary for wholesale fixed income and derivatives markets characterised by less frequent trading on individual securities and "request for quote" (RFQ) models. A "one size fits all" approach to this issue is not appropriate.

		Tradeweb provides tools for participants to set limits on individual trade sizes and to transact only on the best price made available during a transaction negotiation. However, as an MTF, Tradeweb does not intermediate in the trade or determine for its clients an absolute volume size/price threshold over which they should not be able to transact. Moreover, we do not have visibility into pricing on other venues (either electronic or voice-based) in order to be able to monitor price movements on those venues, as appears to be contemplated in the proposals. It is also important to note that the majority of trading activity with respect to the instruments available on the Tradeweb system is still carried out on a voice (i.e. by telephone) basis. As a result, in these markets it would not seem appropriate for electronic venues to set limits or restrictions which are not enforced for the majority of the market (i.e., which is still transacting by voice). For the foregoing reasons, the proposed requirements regarding circuit breakers and transaction limits should not be imposed upon trading venues unless they are appropriate and proportionate in light of the nature of the markets in which they are intended to operate. This would give the authorities the ability to apply the rule rigidly in appropriately relevant markets but with more flexibility where the introduction of such rules would not carry the same level of benefit to that market.
	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?	No comment
	11) What is your view of the requirement in Title V of the Regulation	We support the regulators' goal of moving the trading of derivatives

	for specified derivatives to be traded on organised venues and are there any adjustments needed to make the requirement practical to apply?	onto multilateral electronic platforms. Moreover, we support the approach adopted by the Commission in providing market participants with flexibility in determining how to execute their transactions on regulated markets/MTFs/OTFs, e.g., through a "request-for-quote", "click-to-trade" or central limit order book model, rather than mandating specific trading protocols. This flexibility is key to ensuring choice for end-users and promoting competition among trading venues. We note that the European and US authorities are in some respects approaching differently the test for determining the scope of derivatives instruments subject to the trading mandate. On the one hand, both propose that for a derivative instrument to be subject to the trading mandate, it must first be designated as subject to the clearing mandate, which will include an examination of the liquidity of the instrument. On the other hand, whereas the European Commission under MiFIR has proposed that the instrument must also be "sufficiently liquid" to be subject to the trading mandate, US regulators have proposed that the derivatives instrument must be "made available for trade" in order to be subject to the trading mandate. In order to avoid the possibility of regulatory arbitrage resulting from differing standards across jurisdictions, we would urge the European and US regulators to consider a harmonised approach for determining the scope of derivatives that will be subject to the trading mandate.
	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?	No comment

	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 the Commission's proposals to require central counterparties ("***CCPs***") to provide non-discriminatory access to trading venues. This is critical to ensure a level playing field among trading venues and competitive pricing for end-users. With legislation requiring that certain classes of derivatives must be subject to clearing through central counterparties, CCPs are a central component of the derivatives market infrastructure. As a result, it is critical that CCPs provide derivatives trading venues (and thereby their participants) with objective and non-discriminatory access to their facilities and services. Only under these circumstances will market participants be able to clear their contracts with operational and cost efficiency, whilst still having access to multiple competing trading venues. A key factor in the health of these markets is affording end-users (such as pension funds and central banks) a choice of execution methods and the opportunity to obtain the best price – both of which come from fostering competition among liquidity providers and competition among execution venues. Vertical silos that incorporate both clearing houses and trading venues present particular concerns from a competition perspective. CCPs within vertical silos may be incentivised to implement measures that favour their own trading venues at the expense of competing venues. Moreover, new entrants within the derivatives clearing market are likely to encounter substantial obstacles in competing with incumbent CCPs due to the nature of the clearing business. The current MiFIR and EMIR drafts include a general provision requiring CCPs to provide equal access to trading venues. However, unless there are specific and detailed standards applicable to CCPs that are enforced by regulators on a concerted and ongoing basis, the general principle of equal access reflected in MiFIR EMIR will likely be insufficient to protect trading venues from potential discriminatory

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		treatment by CCPs. A CCP (particularly from within a vertical silo) could provide preferential access to a particular trading venue through various overt or subtle measures. Such preferential treatment could result in a significant competitive advantage and potentially a dominant market position for the favoured trading venue notwithstanding the general principle of non-discrimination proposed to be incorporated into MiFIR and EMIR. Such measures could include, for example: - <u>Earlier access</u>. A venue of execution that gains access to a CCP even one month earlier than a competitor (perhaps even before a product is required to be cleared under the regulations) could make a large and permanent difference to competiveness. - <u>Faster / preferential updates</u>. It is a requirement of participants executing derivatives transactions that the CCP registers the transactions as soon as possible after the time of execution, to reduce counterparty and/or execution risk. If a CCP provides faster updates (whether through frequency and/or speed of updates) to a particular execution venue, it would likely to be a significant competitive advantage to that venue of execution. - <u>More streamlined flow</u>. Participants take into account the efficiency of clearing workflow in their choice of execution platform; e.g., if a participant is required to undergo a more cumbersome and manually intensive confirmation process in the access arrangements then this will represent a competitive disadvantage. - <u>Cost</u>. Direct and indirect costs are clearly a factor. Price

		discrimination clearly impacts competitive advantage. Equitable and transparent pricing structures are vital, to ensure fair competition. - Access specifications. Availability, accuracy and clarity of detailed access arrangements and technical specifications are clearly important to ensure equitable access. - Reliability of access. If there is even a perception that one execution venue has more reliable access than a competitor, then this will affect competitiveness. - Equal access to user testing facilities. If a venue of execution is provided with less favourable access to testing facilities then this could have an impact on the ability of that venue to compete with other venues to provide its clients with access to the CCP.
	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?	No comment
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?	No comment
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and	No comment

	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?	No comment
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	No comment
	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?	No comment
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?	Our comments below with respect to the fixed income/derivatives markets apply equally to the ETF market, which is also characterised by significantly less liquidity than the equities market and whose trading mechanisms and participants are more akin to the fixed income/derivatives markets. For example, we estimate that only 25% of ETF trading volume in the dealer-to-institutional customer segment of the ETF market takes place on an exchange whereas 75% of such trading takes place by voice/internet messaging and, increasingly, over other electronic venues such as Tradeweb. Moreover, it is important to recognise that the average transaction size on an exchange is quite low, in part because market participants are willing to provide publicly available pre-trade pricing through an exchange's limit order book only for small-sized trades. As discussed in more detail below, this is because market participants are concerned that publicly available pre-trade data for larger sizes could adversely impact liquidity.
	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	Our biggest concern with the draft MiFIR relates to the proposal requiring trading venues to make publicly available on a continuous basis pre-trade prices and depth of trading interests at those prices in the fixed income/derivatives markets. As described below, we believe

	different instruments? Which instruments are the highest priority for the introduction of pre-trade transparency requirements and why?	that the regulatory goals the European Commission may be seeking to achieve through these pre-trade transparency proposals are better addressed through post-trade mechanisms. In brief, we believe these proposals: • could adversely affect liquidity for end-users, leading to worse prices and less efficient execution for them; • could lead to increased costs of funding for governments and corporate issues in the primary markets; and • should be modified to ensure equal treatment for Systematic Internalisers, on the one hand, and exchanges/MTFs/OTFs, on the other hand. <u>Background Regarding Transparency in Fixed Income/Derivatives Markets</u> As an electronic trading platform, Tradeweb (and other venues operating in the dealer-to-institutional customer segment of the fixed income/derivatives markets) provides pre-trade transparency to buy-side participants through the following methods, as described in more detail below: • indicative composite bid and offer prices; • executable "streaming prices"; and • responses to "requests for quotes". As a preliminary matter, buy-side participants enjoy substantial pre-trade price transparency through a continuous display of the Tradeweb composite bid and offer prices. Through prices supplied by

		participating dealers, Tradeweb generates an indicative composite bid and offer price for each of the relevant securities and display this on composite price screens on the Tradeweb system. These real-time and continuous composite prices are specifically intended to give an accurate indication of the bid or offer prices at which participants can buy or sell the particular instrument at any moment in time, in reasonable size. These composite prices are displayed to all Tradeweb users participating in that particular market and distributed publicly, on commercial terms, via information vendors. Clients who participate on the Tradeweb system use these composite prices as a basis for sending requests-for-quotes on a fully-disclosed basis to dealers with which they have relationships, setting out the details of the trade they wish to execute (including size, direction, clearing arrangements, etc). Users on the Tradeweb system are also able to view click-to-trade "streaming prices" in certain products, from dealers which have enabled them for this service. These prices are tailored to the particular client, and each dealer specifies the quantity level that underlies the prices that they are providing. The price and size details are able to be updated by each dealer on a continuous basis. These "streaming prices" provide the specific customer with additional pre-trade transparency. Buy-side clients also benefit from pre-trade transparency on the Tradeweb system through responses provided by dealers to these clients' "requests-for-quotes" (RFQs). It is important to recognise that the click-to-trade and RFQ models

		operate on a fully-disclosed basis, i.e., the dealer and client are aware of each other's identity when the dealer is quoting prices and when the transaction is effected. In the dealer-to-client segment of the fixed income/derivatives markets, end-users execute an overwhelming majority of their trades through fully-disclosed trading models (whether electronically or by voice), which are entirely different to the anonymous order book model that is more typical in the equities and futures markets. <u>Potential Impact on Liquidity and Primary Market Pricing; Misleading Information</u> We believe that the Commission's proposals to require publication on a continuous basis of pre-trade prices and depth of related trading interests are fundamentally inappropriate when applied to the dealer-to-client segment of the fixed income/derivatives market, which are characterised by lower liquidity and fully-disclosed, quote-driven trading models. We are particularly concerned that these proposals could be interpreted to require publication not only of indicative composite prices (which we already make publicly available on commercial terms), but also of the "streaming prices" and responses to requests-for-quotes (RFQs), as described above. We believe that the public dissemination of these streaming and RFQ prices (beyond the market participant trading in the instrument) would not add to greater transparency beyond the dissemination of composite prices and could be potentially misleading, as such prices depend on client-specific factors, such as the client's creditworthiness in relation to the particular characteristics of the transaction.

		We are also very concerned that publication of these prices could adversely impact liquidity, as liquidity providers may choose not to make markets in certain instruments or widen their bid-offer spreads so as to price in the risk associated with such information being broadcast to the entire market. It is important to recognize that firms providing liquidity in the dealer-to-institutional client segment of the fixed income and derivatives markets typically seek to hedge out this risk in the dealer-to-dealer market. If other dealers are aware of the "winning dealer's" hedging requirement, they may take positions in the interdealer market that raise the hedging costs for the "winning dealer" (i.e., "winner's curse"). As a result, this dealer may in turn need to pass along the risk of higher hedging costs to their institutional clients in the form of wider bid-offer spreads. If end-users are not able to execute efficiently larger-sized derivatives trades due to this loss of liquidity, they will be forced to trade in smaller sizes in efforts to effectuate their hedging strategy. This introduces more risk for the client as it has to undertake several trades to achieve the same objective while the price potentially fluctuates in the midst of the various trades. An OTC derivatives market characterised by numerous smaller-sized trades would provide less price certainty for end-users needing to hedge larger sizes and could end up inadvertently leading to the development of high frequency trading in this market. Finally, reduced liquidity in the secondary fixed income and derivatives markets could lead to increased costs of funding for governments and corporate issuers in the primary markets.

		Level Playing Fields Across Trading Venues/Systematic Internalisers We are concerned that inconsistencies in public pre-trade transparency obligations applicable to organised trading venues (i.e., regulated markets/MTFs/OTFs), on the one hand, and Systematic Internalisers, on the other hand, may have the unintended consequences of dis-incentivising transactions on organised trading venues. We support the proposal in MiFIR that whatever pre-trade transparency obligations are mandated for organised trading venues should be applied equally to regulated markets, MTFs and OTFs. As a corollary, it is important that any obligations imposed on organised trading venues to make public pre–trade data are applied equally to Systematic Internalisers. Although the MiFIR proposals impose an obligation on SIs to make pre-trade data publicly available for smaller-sized trades, it is not clear how this compares to the public pre-trade obligations for regulated markets/MTFs/OTFs. As noted above, public transparency obligations applicable to a trading venue can impact the liquidity available on such venue and, accordingly, the use of such venue by market participants. If a market participant knows that the prices it provides to clients through regulated markets/MTFs/OTFs will be made publicly available but the prices provided to the same clients over its SI will not be made publicly available, there is a risk that this discrepancy could end up unintentionally dis-incentivising transactions on organised trading venues. Again, for the purposes of clarity, we do not believe that public pre-trade transparency obligations should be mandated in the dealer-to-institutional client segment of the fixed income and derivatives markets. However, any obligations that may be imposed should be

		applied equally across regulated markets/MTFs/OTFs, on the one hand, and Systematic Internalisers, on the other hand. On a related note, further consideration may need to be given to how pre-trade transparency obligations may be met and monitored in a voice trading or discretionary environment to ensure a level playing field.
	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?	The Commission's proposals seek to address the pre-trade transparency concerns described above regarding impact on liquidity through potential waivers based on a broad set of factors. We believe, however, that adequately addressing these concerns through the proposed calibrations will be extremely challenging. For example, it is unclear how the proposed calibration relating to liquidity profile could work in practice. Presumably, calibration for liquidity would be required on an instrument-by-instrument basis over tens of thousands of bonds and a much larger number of derivatives. Moreover, given that new bonds are issued every day, the calibration would need to be undertaken very frequently. It is hard to imagine that the regulators would have the information or resources to handle this daunting task. Moreover, various difficult questions would arise in applying the liquidity calibration, including the following: • How to measure liquidity? • How to address the fact that bonds change their liquidity profile over time? • How granular to apply the analysis within a particular asset class, e.g., corporate bonds or government bonds? • How to dis-apply requirements if liquidity suddenly falls?

		Although the Commission's proposals regarding pre-trade transparency accompanied by waivers may sound appealing in theory, they most likely will not be workable in practice.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	For the reasons described above, we urge amendments to MiFIR so that trading venues would not be required to make publicly available on a real-time and continuous basis in the fixed income/derivatives markets either streaming prices or prices provided in response to RFQs on a fully-disclosed basis (i.e., where the parties know each other's identity at the time prices are being provided and when the transaction is effected). It is difficult to see the benefit of making available on a real-time basis to the public pre-trade data that is the subject of privately negotiated transactions between a liquidity provider and its client. In fact, as noted above, there are potentially substantial costs of such a policy, e.g., in the form of lower liquidity, worse prices and reduced efficiency for end-users. We believe that the Commission's proposal to require publication of pre-trade data in order to enhance price discovery for market participants would be better achieved through the mechanism of post-trade transparency. Providing to the public pre-trade data relating to a privately negotiated transaction following the execution of such transaction, subject to appropriate deferral periods, would be the most effective way to maintain liquidity while simultaneously providing other market participants information that may be helpful in their price discovery process. In other words, such pre-trade data could form a component of the information required to be made available under the post-trade transparency obligations of MiFIR.

		This information received on a post-trade basis could aid in the price discovery process and supplement the other forms of pre-trade data that are currently available through electronic trading platforms and information vendors in the dealer-to-client segment of the fixed income/derivatives markets, as described above.
	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)?	No comment.
	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?	We agree that appropriate levels of post-trade transparency could benefit market participants, subject to appropriate calibration. For example, it is critical that the timing of the disclosure of any such post-trade data be deferred to avoid any adverse impact on liquidity available to end-users In addition, we would urge that post-trade transparency obligations in the fixed income/derivatives markets be introduced in a gradual manner. For example, post-trade transparency obligations could be introduced starting with smaller trade sizes in more liquid instruments. European regulators could then assess the impact such post-trade disclosure had on liquidity in such instruments before introducing post-trade transparency obligations in larger sizes or less liquid instruments. It is also important to recognise that factors other than just the size of the transaction need to be considered. For example, in simple terms, a large trade in a bond with relatively small issuance will be more significant to persons holding or wanting to buy or sell that security when compared to a large trade in a bond with relatively large issuance. Moreover, daily turnover in an instrument is also an

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		important factor in determining an appropriate deferral period for a particular instrument.
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?	No comment
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	No comment
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	At a minimum, MiFID/MiFIR needs to be considered in conjunction with related provisions in: • European Markets Infrastructure Regulation • Markets Abuse Directive/Regulation • Capital Requirements Directive (CRD) IV
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	We support the efforts of regulators in Europe, the US and Asia to coordinate with respect to reform initiatives in the derivatives markets. Materially different derivatives regulation across jurisdictions will lead to fragmented and less efficient markets, as well as potentially contributing to regulatory arbitrage.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	No comment
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	No comment
Detailed comments on specific articles of the draft Directive		

Article number	Comments
Article 27(2)	This article requires a trading venue to make available free of charge data relating to the quality of execution of transactions on such venue, including details about price, speed of execution and likelihood of execution for individuals financial instruments. While this obligation might make sense for the highly liquid equities markets where there are a limited number of instruments traded on each venue, this requirement is not proportionate for venues operating in the less liquid fixed income and derivatives markets. On Tradeweb, for example, there are tens of thousands of instruments offered through the system, many of which do not trade frequently. It is also important to note that trading venues currently provides tailored reports to clients as one of the additional services that are offered, on commercial terms, with respect to trading in specific instruments. The information that is provided to clients is confidential and obviously specific to their trading activity. We are concerned that the proposed obligations could be interpreted to require trading venues to publish free of charge information that is of commercial value to those venues. As an alternative, trading venues in the fixed income and derivatives markets could provide information on an aggregated basis, e.g., for European government bonds, European corporate bonds, etc. as asset classes. This would allow market participants to compare execution across venues in respect of designated asset classes.
Article 32:	Article 32 provides that when an MTF suspends or removes from trading a financial instrument, the MTF must communicate this information to the public and to the competent authority, as well as informing other regulated markets/MTFs/OTFs that trade the same instrument. While this proposal may make sense for equities, it is not appropriate or workable for the fixed income and derivatives markets. An MTF may temporarily suspend trading in a particular instrument for technical or operational reasons. Moreover, an MTF may not know what other venues are trading a particular fixed income or derivative instrument. We would consequently urge the deletion of this requirement as relates to the fixed income and derivatives markets. In the alternative, this requirement should apply only when the MTF suspends or removes from trading a financial instrument for an extended period of time for reasons unrelated to operational or technical matters. Finally, any required communications should be directed only to the competent authority, which can then coordinate communication to other market participants as necessary.
Article 34 :	Article 34 requires operators of MTFs/OTFs to inform investment firms and other MTFs/OTFs/regulated markets of disorderly trading and system disruptions on their platforms. The information referenced in Article 34 is likely to be sensitive in terms of client confidentiality and/or commercial operation. We consequently propose that any such information exchange continues to take place exclusively through regulatory bodies. Trading venues that are competing with each other for client business are not best placed to share information with each other about who is trading what on their systems. In addition, clients may in some cases have commercial reasons for not wishing other

	MTFs/OTFs/regulated markets to have access to their trade information. Finally, trading venues also owe their clients obligations of confidentiality with regards to such information. As a result, any required communications should be directed only to the competent authority, which can then coordinate communication to other market participants as necessary.
Detailed comments on specific articles of the draft Regulation	
Article number	**Comments**
Article 25	We strongly support the proposed extension of the clearing mandate from “OTC” derivatives under EMIR to derivative instruments traded on regulated markets under MiFIR. Given that the mandated clearing of derivatives is intended to achieve the important regulatory goal of reducing systemic risk, it is important that a derivative instrument traded off-exchange is treated the same when it is traded on-exchange. Otherwise, a significant regulatory loophole could be created that would undermine the goals of promoting central clearing of derivatives and reducing systemic risk. In addition, distinguishing between trading venues for purposes of the clearing mandate could lead to an unfair competitive situation between trading venues. The requirement to clear derivatives transactions could significantly increase costs for counterparties as a result of collateral posting obligations associated with clearing. If regulations do not require clearing of a derivatives instrument when traded on-exchange but do require clearing when traded on other venues, an incentive may be arbitrarily created favouring trading on exchanges over other venues. This distinction runs contrary to the regulators’ goal of creating a level playing field across trading venues. For these reasons, it is also important to extend the obligations imposed on CCPs regarding the clearing of off-exchange derivatives under EMIR to the clearing of exchange-traded derivatives under MiFIR. For example, EMIR requires CCPs to offer segregated accounts to clients in order to provide a higher level of protection upon any insolvency of the clearing member or CCP. Of course, these segregated accounts may be more costly for the client, but at least the client will have a choice regarding the treatment of the collateral that it posts when clearing derivatives traded off-exchange under EMIR. In order to ensure equal treatment for market participants trading the same instrument on different venues and to promote a level playing field among venues, it is important that CCPs are subject to the same obligation regardless of where a particular instrument may be traded. Therefore, the obligations imposed on CCPs under EMIR in connection with the clearing of derivatives traded off-exchange should be extended to CCPs under MiFIR regarding the clearing of derivatives traded on-exchange
Article 46	This Article provides that most of the Regulation will be effective [24 months after entry into force], with exceptions for certain Articles that

	will apply immediately upon entry into force. We urge that Article 25 (extending the scope of the clearing mandate to exchange-traded derivatives) be included among the provisions that are immediately effective. Whereas market participants may need some time to implement a number of MiFIR's provisions, CCPs should be able to implement Article 25 immediately. In addition, we note that under the Commission's proposals, the trading mandate for derivatives would not be implemented until the end of 2014, which is two years later than the timeline contemplated in the G-20 commitment and is significantly later than the timeline to be implemented in the US.

We hope you have found our comments helpful.

Please feel free to contact Eric Kolodner (+44 (0)20 7776 0923) or our International General Counsel, Alex Rutter, (+44 (0)20 7776 0913) if you wish to discuss any aspects of this response.