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	 Milan, 13 January 2012. **Global Regulatory Counsel** – Antonio La Rocca, Francesco Martiniello (Main Contributors) **Regulatory Affairs** – Sergio Lugaresi, Riccardo Brogi, Marco Laganà, Andrea Mantovani (Contributors and Coordination Team) **Corporate Investment Banking:** Christian Aufhauser, Joern Ebernmann, Franz Grillmeier (Contributors)

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?	UniCredit strongly supports the need for an effective and uniform application of MiFID discipline all over EU Countries, limiting as much as possible (or abolishing) every national options or discretions.

		As far as the amendment proposed for article 2.1.d.(ii) is concerned, we do not understand the reason why being a member of or a participant in OTF should be excluded from the scope of the exemption, given that only the operators of OTFs - and not even members or participant - are banned to deal on own account. Considering the importance of having as much as possible a uniform application of the MiFID discipline, we therefore suggest to adjust accordingly art.3 or abolish it.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	UniCredit considers important that the definition of structured deposits will be further clarified in order to exclude from the scope of MiFID those products that, although linking the payment of any interest or premium to a specific or a combination of derivatives, indices, commodities or foreign exchange rates, are free of capital risk for the client. Due to these characteristic, these products would in fact have to be assimilated to simple deposits which raise materially different consumer protection issues (*e.g.* in terms of distribution and transparency) from those raised by investment products. Moreover, they will remain subject to the rules being in force for banking products which make such products benefiting from the guarantee provided by deposit guarantee schemes. It is noteworthy that structured deposits also represent an important and stable funding channel for commercial banking groups and it is therefore advisable that their distribution rules

		are kept as simple as possible.
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	UniCredit suggests to clarify the rationale of the proposed amendment aimed at qualifying the "safekeeping and administration of securities for the account of clients, including custodianship and related services such as cash/collateral management" as an investment service (from an ancillary one). We make our final stance towards the Commission's approach conditional to an impact assessment exercise bound to seize the implications (mainly costs and benefits) on stakeholders (basically market players and investors). Should the Parliament confirm the Commission's approach, UniCredit believes that it will be crucial for the Directive to set out a clear and complete definition of each components of such "complex" service (safekeeping and administration, custodianship and related services, cash/collateral management), considering: - the European passport of the authorisation given by a single Member State and - criminal sanctions required by some Member States (such as Italy) in case of providing investment services without the authorization pursuant to the national rules implementing MiFID. Finally, we believe that this review could also represent an opportunity to provide the Directive for a complete definition of all the conducts underlying the investment services (please note that there is no current definition of the "placing" service in MiFID).

	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?	UniCredit supports the approach of the EU Commission which inter alia considers amongst parameters and criteria on which the equivalence assessment would be based: 1. investment firms to be duly authorized; 2. public registers/ledgers to be set up for authorized market users; 3. existence of a local legal framework covering areas regulated by MIFID; 4. local regulators whose activity basically follows MIFID principles. However, the *rationale* of the proposed and combined amendments related to the articles 41.2 and 44.1 should be further clarified in order to allow a fully understanding of the obligation to establish at least a branch in a EU Member State for "*a third country firm intending to provide investments services and activities together which any ancillary service to retail clients*" in a Member State's territory. In fact, if such *rationale* was aimed at requiring the compliance of the MiFID business conduct rules (where the prudential, supervisory and organisational requirements can only to be qualified as "equivalent"), the branch should always be established in the Member State where the third country firm intend to effectively offer its services, in order to avoid any regulatory/fiscal arbitrage. In addition, taking into account the wording of the mentioned art. 41.2 (see above the underlined text), we suggest to clarify that the provision of investments services and activities is the only legal requirement to be considered for the obligation of establishing a branch in the EU, regardless of the joint provision

		of ancillary services.
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?	UniCredit remarks the importance to take into consideration the business model of the intermediaries (in terms of services provided, activities performed, business volumes and target clients and territories). For instance, in the case of a small local bank, putting in place a policy intended to promote geographical diversity, this doesn't make sense. We highlights that similar rules will be issued in the near future by the EBA as part of the new directive on capital adequacy of credit institutions and investment firms (i.e. CRD IV). In this respect, therefore, a provision for coordination between the two Directives would be appropriate. More generally, it would be advisable that rules provided by MIFID on corporate governance could be consistent with those set forth in other provisions for further financial market players (*e.g.* management or investment companies, insurance companies) so as to lead to a more harmonized European framework on this matter.
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?	Considering the "closed list" of the organised venues in the proposed Legislation, the definition of OTF should clearly define the dividing lines between MTF and OTFs. In particular, the Legislation should clarify: • the exact meaning of the "*discretion over how a transaction is to be executed*" left to operators of OTFs; • whether the criterion for distinguishing OTFs from facilities

		"*where there is no genuine trade execution or arranging taking place*" (such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, electronic post-trade confirmation services) is the possible execution of transactions, always to be excluded in non-OTF systems; • whether the mentioned discretion "*over how a transaction is to be executed*" can impact on the application of the best execution to OTFs; • whether an investment firm/market operator operating an MTF will continue to be able to operate an MTF where in a segment whose client orders are executed against client orders rather than being required, in such circumstance, to apply for a (further) authorisation in respect of an OTF.
	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?	The concept of OTC trading definition is not obvious as the consequences of its wording depend to some degree on the definition of organised trading facilities (OTF). A success of MiFID is a more competitive trading landscape and that future alterations should aim at supporting market liquidity and efficiency. One way of doing this is to allow for competition of trading locations, including Over the Counter (OTC). OTC is complimentary to organised trading venues and is better suited for certain demands. A "growing spotlight" on OTC should therefore be understood as more scrutiny and oversight, but not as denying its purpose. We appreciate the idea of a common definition of categories for organized trading facilities, however there are a number of shortcomings to be addressed such as clearer definition of the

		OTF category, as mentioned in the reply to the question 6. UniCredit, as a potential user/customer of those OTFs, would see benefits for the whole market functioning from the smooth implementation of new rules in the MiFIR, under the oversight of ESMA. This would avoid increasing volumes of transactions to be executed outside of admitted venues without being subject to an equivalent degree of regulation and transparency. Also proprietary trading by investment companies and market operators would be included in the OTF.
	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?	UniCredit welcomes the proposal to strengthen the requirements for organisational and risk controls of the intermediaries performing algorithmic trading, as well as the supervision of high-frequently trading, including the application of the prohibition of market abuse to all types of trading. Such new requirements should be flexible in their application in order to allow best market practices. In addition, we remark that the definition contained in art. 4(30) seems excessively broad, potentially may be including all the 'trading activity' nowadays very frequently based on 'operating algorithms'. Therefore, UniCredit believes a review of the proposed definition would be appropriate in order to avoid any potential major deviation from the EU legislator's intention and to guarantee the necessary legal certainty.
	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?	UniCredit considers those requirements are appropriate and does not have further comments or suggestions on this matter.
	10) How appropriate are the requirements for investment firms	UniCredit believes the scope of the question is unclear.

	to keep records of all trades on own account as well as for execution of client orders, and why?	If it refers to art. 22 of the MiFIR draft, the proposal does not seem innovating the provisions in force about the retention of records obligation but there is a risk of double workload record for record keeping by the market operator and the relevant market maker. If it refers to MiFID art. 16.7 then UniCredit believes that a unique discipline of the telephone and electronic recording, applicable all over EU countries, should be introduced at EU level, without providing any national option regime, but allowing for some EU-wide exceptions where alternative mechanisms to protect the same clients' interest are considered sufficient (*e.g.* document conversations in writing and subsequent delivery the client a copy of this documentation).
	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?	UniCredit acknowledges the arguments for pushing some derivatives to be traded on organised venues, also due to severe difficulties in the recent past with pricing of risk and to some market participants assuming positions they were not capable to handle in times of stress. However, these problems are being dealt by establishing CCP clearing, better risk management for uncleared trades and a new transparency regimes via Trade Repositories for regulatory authorities (EMIR). In our view, there is no need for a requirement for derivatives to be traded on organised venues. Transparency towards supervision is ensured by Trade Repositories. Trade Repositories also offer the technical facilities to allow for consolidating and aggregating information and therefore providing transparency towards the market, as appropriate for market efficiency,

		resilience and integration. Should the Parliament confirm the Commission's approach, substantial work by ESMA, by means of public consultation, seems warranted. To this end, we suggest to clarify a number of the provisions contained in MiFIR Title V proposal. More in detail, we consider important: - to further clarify the meaning of having a derivative contract "*a direct, substantial and foreseeable effect within the Union or where such obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation*" (art. 24.2); - to evaluate the interaction between the art. 24.2 ("*Derivatives declared subject to the trading obligation shall be eligible to be admitted to trading or to trade on any trading venue as referred to in paragraph 1 on a nonexclusive and non-discriminatory basis*") and the provisions stating a discretion on executing transactions to operators of an OTF; - in declaring a class of derivatives subject to the trading obligation in accordance with the procedure set out in art. 26, to take into account that some derivative contracts cannot be standardised but only be tailored to the needs of investors (*e.g.* instruments with hedging purposes).
	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?	UniCredit notes that the proposed definition of SMEs, as provided by art. 4 (12) of the Directive, is based solely on the "average market capitalisation". An alternative set of criteria that relates to other quantitative elements, is provided by art. 2.1.(*f*) of the Prospectus Directive

		defines 'small and medium-sized enterprises' as *"...companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43 000 000 and an annual net turnover not exceeding EUR 50 000 000*". We would suggest to consider the use of both sets of criteria to define SMEs, also considering that in some Member States (*e.g.* Italy) such enterprises generally consist in non-listed companies.
	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?	UniCredit welcomes the provisions on non-discriminatory access to market infrastructure and to benchmarks in Title VI. At the same time, we consider that these provisions need to be detailed and further elaborated at Level 2, which will allow a fully fledged impact assessment of the applicable regulation.
	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?	The proposed amendment's on this matter - as expressed in the MiFID review consultation paper of 8 December 2010 - was to give national regulators "*powers to adopt hard position limits for some or all types of derivative contracts…*", presumably deferring the relevant choice in relation to the outcome of the consultation (see questions 145 – 148 on page 83). The text of the Commission's proposal contains indications not clear where: - in the Explanatory memorandum, it is not specified the framework of the new powers, referring in general to "*derivative markets*", "*positions held in the derivative instruments*" and "*derivative contract*", without any further indication (see par. 3.4.13);

		- in the whereas n. 84 - 85, it is highlighted that the new supervisory powers available for the competent Authorities regard "*derivatives contracts related to commodities*" and "*derivative contract in relation to a commodity*"; - in the articles 59-60, it only refers to "*commodity derivatives*" when imposes position limits and reporting obligations to regulated market, operators of MTFs and OTFs which admit to trading such type of derivatives and, in the article 72(1)(g), it only mentions "*commodity derivatives*" as contracts for which the competent Authorities can "*limit the ability of any person or class of persons ... from entering ... including by introducing non-discriminatory limits on positions or the number of such* [commodity] *derivatives contracts per underlying which any given class of persons can enter into over a specified period of time ...*"; - on the contrary, in the article 71(2)(i), it is provided that competent authorities can be able to demand information, including all relevant documentation, from any person regarding the size and purpose of "*a position or exposure entered into via a derivative, and any assets or liabilities in the underlying market*" and, in the article 72(1)(f), it is still set forth that such Authorities can request any person provided information in accordance with Article 71(2)(i) to subsequently take steps to reduce the size of the position or exposure. In light of the above and assuming the peremptory relevance of the articles, we could assume that the framework of the new powers (considering the investment services and activities discipline) is: - for the "ex post" powers (request of information and

		following request to take actions to reduce the position), all the derivatives contracts; - for the "ex ante" powers (imposition of limits), that of course are stronger than the previous ones, only the commodity derivatives. UniCredit considers relevant a modification aimed at aligning the rules and the related recitals. Should the text remain the same, the national regulators could have an high discretionary power to implement such new rules.
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?	As far as the **independent investment advice** is concerned, UniCredit believes that the relevant difference between "independent" and "not independent" investment advice should not impact on the "quality" of the advice provided, whose meaning needs to be specified carefully. The driver which more qualifies the 'independent advice label' should rather be based on the other pillar underpinning the provision of advice, namely the fee structure. In fact, the type of "remuneration" (either direct remuneration on a fee basis or indirect remuneration *via* commission) does not belong the domain of the quality of an advice. The Impact Assessment accompanying the EC legislative proposal refers to the policy concern about the quality of advice in terms of making sure that "the basis on which the advice is provided, e.g. the range of products being considered and assessed be explained". That said approach hence rests on the field of transparency and comparability. To put it another way, the new requirements just allow a *mode* to provide such service and not a different type of service, due to

		the intermediaries always having a specific obligation to conduct their business "*in accordance with the best interests of its clients*" (art. 19, par. 1, MiFID), irrespective to the adopted business model. Considering the Commission's proposal, the key conditions of the independent advice are: (1) a broad range of the products (in terms of different types, issuers or product providers) assessed by the advisor, that should not be limited in any case to financial instruments issued or provided by entities having close links with the bank; (2) a remuneration model essentially based on a monetary fee to be directly paid by clients. Given that art. 24.5.(ii) of such proposal states "*When the investment firms informs the client that investment advice is provided on an independent basis…*", we assume that such mode of providing the advice depends on a discretionary choice of the advisor when both the mentioned conditions are verified. Consequently, even a non-independent advice can be based on an assessment of a large number of financial instruments and, then, it can not be considered a low quality service in comparison with the independent one.In our view, only a broad range of products - in terms mentioned above - could attest an high-quality advice, even though the remuneration model is based on fees paid by third party. As we anticipated, only the latter is an independence "requirement".

		The experience made with independent advice within the Group already shows that particularly retail clients who have only a small investment portfolio and only conduct a small number of transactions per year are reluctant to pay high fees for advice. Therefore, it would be better to adopt a descriptive and neutral term ("*only/not only fee advice*" or "*advice provided with/without third party inducements*"), also considering the appropriate level of transparency guaranteed by the provisions in force. On another side, it makes sense to offer a selected number of recommended products. Investment advice, after all, presupposes in-depth knowledge of the recommended financial instruments (*know your product*). It is also advisable from an economic standpoint for intermediaries to gear the choice of financial instruments to the demand from their own clients. A limited choice of products tailored to clients' needs is therefore more likely to enhance the quality of investment advice. It would ultimately be incompatible with market principles if banks were to be effectively forced to offer their competitors' products as well so as to avoid the incorrect "non-independent adviser" label. Moreover, we are very skeptical about the wording proposed. More specifically, we strongly believe that the meaning of "*sufficiently large number of financial instruments available on the market … diversified with regard to their type and issuer or product provider*" should be clarified, considering that the quality of advice does not exclusively depend on the number of

		recommendable products but, amongst others, also on the ability of advisors to 'cover' the markets of asset classes. Overall, we think that the policy objectives aimed at improving the quality of advice should be addressed by: - keeping the existing requirement about the remuneration model; - replacing the requirement about the broad range of products (which, as said above, might be conducive to unintended policy consequences) with more emphasis on the standardization of the information to the customer which increases transparency and comparability. As far as the **portfolio management** is concerned, the Commission's proposal to ban third-party inducements in connection with portfolio management could deprive the client of the chance to decide freely between – higher-priced – portfolio management without any fees, commissions or monetary benefits paid by third parties and portfolio management where part of the management fees paid stem from these third parties. In the latter case, details of third-party inducements would of course have to be provided to allow the client to make such a decision on a informed basis.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	From UniCredit's point of view the question whether a product is complex or not is strictly linked to how risks are encompassed by the investor. Therefore, we suggest to further define the "complex product" category in relation to the principle set by the wording of the art.

		25. More specifically - given that the complexity of a financial instrument is based on the difficulties "*for the client to understand the risk involved*" - we consider crucial to clarify that a financial instrument embedding a derivative has not to be qualified as "complex" *per se* but only if the derivative component can create difficulties for clients in understanding the potential risks of the whole instrument (*e.g.* we would not consider complex product simple structured debt securities as *step-up*, *step-down* or *corridor* bonds). Moreover, UniCredit believes that generally all UCITS should be included in the list of non-complex products, given that they have to comply with obligations concerning the investment policies provided by UCITS IV Directive. In fact, we believe that "*structured UCITS*" (for which are generally used complex portfolio management techniques) imply an element of complexity for the management company that does not automatically increase the complexity for the clients. Moreover, the structured UCITS can be easily sold and do not imply necessary a major risk for the client. On another side, we do not agree with the proposed exclusion from the range of non-complex products of bonds not traded on regulated markets or MTFs as this is based on a legally-presumed liquidity of such trading venues. On this issue, it should be considered that though acknowledging that a poor level of liquidity actually represents a factor of product complexity and it can therefore make it difficult for retail clients to understand the risk associated with the investment, "the condition of liquidity, presumed but not legally guaranteed by

		listing of the security on regulated markets or MTFs, could also be guaranteed by an intermediary buy-back commitment based on predefined criteria and mechanisms in line with those leading to pricing of the product on the primary market". This approach was followed by Consob in providing its guidance on illiquid products (see Communication no. 9019104, dated 2 March 2009). In the light of the above, definition of non-complex products should including at least: a) bonds traded on a systematic internaliser (which will also be allowed to trade in such bonds); b) bonds traded by the issuer or the intermediary according to predefined criteria and mechanisms in line with those leading to the pricing of the product on the primary market. As far as the **adequate reports** provided by the proposed art. 25.5 are concerned, we highlight that an overly non-standardised disclosure (where proposed text requires for such reports to take into account "*the type and the complexity of financial instruments involved and the nature of the service provided to the client*") would be burdensome and particularly costly from an operational point of view.
	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?	UniCredit believes that execution policies should remain comprehensible and concise, in order to avoid the clients to be overloaded with information. In case of too detailed execution policies, information in which the client is interested in may be hard to find out and not easily separated from irrelevant information.

		The requirement to summarise and make public the top five execution venues seems not in line with the investor protection needs. About best execution obligation, our Group experience shows investors can be distinguished into clients who, regardless of classification, usually decide on their own also the execution venues where their orders have to be executed. These clients do not need the information and are thus not interested in the customary information on best execution policy.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	The current client categorization system under MiFID offers an adequate level of investor protection and it has shown to work well. UniCredit shares the proposal aimed at expressly applying to ECP the MiFID's principles (to act honestly, fairly and professionally and be fair, clear and not misleading when informing the client) but suggests to not extend the specific requirements provided by art. 24.3 and 25 because ECP are not "clients" but, precisely, "counterparties" of intermediaries (unless they have required to be classified as professional or retail clients). Should the Parliament confirm the Commission's approach, we consider appropriate for ECP protection a general obligation to be adequately informed by services providers in order to allow a less expensive regime for communications and reports to be addressed to such category.
	19) Are any adjustments needed to the powers in the Regulation on product intervention to ensure appropriate protection of	UniCredit considers this provision as critical as it may leave a discretionary margin to the competent authorities of each

	investors and market integrity without unduly damaging financial markets?	member State and consequently could legitimate an uneven playing field, allowing prohibitions or restrictions for certain products only in a Country and not in the potential others where the same product is marketed, distributed or sold. Therefore, UniCredit suggests that such a provision should be integrated by envisaging: - a preliminary and mandatory opinion of ESMA based upon their assessment of the circumstances triggering the power; - no exceptional cases occurring which there would be no consultation power amongst Member States; - a summary impact analysis before intervening; - suitable measures in order to ensure business continuity in the interest of clients, when the banning or restricting decision is adopted. More generally, we believe that the proposed possibility should represent an *extrema ratio* measure to be used only in cases of severe threats to market.
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?	We remark that the art. 13.3, sentence 3, of the MiFIR draft in English requires for publication of a "*firm bid and offer price*" whereas the Italian and German versions, amongst others, refer to a "*firm bid and/or offer price*".
	21) Are any changes needed to the pre-trade transparency requirements in Regulation Articles 7, 8, 17 for all	UniCredit does not find the *rationale* and the need to regulate pre-trade transparency for these financial instruments, as market

	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?	forces are naturally best-suited to provide as much as pre-trade as needed by their clients/investors. The issue here is very different from post-trade where market coordination is at stake. While forcing this kind of transparency would be extremely burdensome, it would not deliver any tangible benefits, in contrast with other forms of transparency. The proposal for pre-trade transparency requirements in the non-equity sector, extended also for SIs, would be seriously detrimental to functioning markets. Nevertheless we understand that regulation can provide incentives to market forces to overcome the risks of coordination failures and therefore enhance market efficiency, fairness and integration. Against this background, we support EC proposal to set out in delegated acts the conditions under the pre- trade transparency obligations may be waived, as pre-trade transparency requirements for bonds, structured products and derivatives, extended also for Systematic Internalisers, would likely be detrimental for smooth market functioning and liquidity. We also have strong concerns about what we consider a limited coordination role played by ESMA but also the lack of flexibility of the transparency framework, under normal and stress conditions. We think that ESMA should be granted effective powers to issue, in a shorter timeframe than currently foreseen binding decisions to ensure level playing field when assessing the waivers' request. Presently, the application of waivers risks being arbitrary.

	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?	If the obligation of pre-trade transparency for SI dealing with non-equities , is retained, it should be made explicit that it refers to the SI's clients if the size involved is below a certain threshold. Moreover such threshold should be adjusted with an high degree of flexibility as market conditions may vary over time and as the functioning of the market in future would then depend to a crucial extent on how the "size specific to the instrument" is defined.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	UniCredit broadly supports the Commission's proposal to review waivers from pre-trade transparency in order to reflect market evolution since MiFID was adopted. The text needs to ensure flexibility, such that waiver and deferred publication criteria can be reassessed and recalibrated on a regular basis to account for changes in the market. It is also very important that ESMA is provided with the necessary flexibility to take prompt actions to re-calibrate the requirements if market conditions require. The lack of flexibility and the time required for adapting the calibration are among those concerns which lead us thinking that ESMA should also create the conditions to favour self-regulatory solutions promoted by market participants.
	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)?	UniCredit believes a 'partial consolidation' system, involving only trading venues and intermediaries qualifying as 'significant' in terms of 'trading liquidity', should be envisaged. This 'partial consolidation' would also decrease costs of publication through APAs. Indeed, the provision of a mandatory use of APAs also

		for small intermediaries (*i.e.* with limited trading flows) raises some worries as these entities that could not continue to use their own proprietary systems (*e.g.* web sites) for public disclosure of data, losing an important source of cost savings. If the market forces fail to deliver, it could be considered to introduce a centralised reporting system appointed by ESMA, adapting investment firm's reporting requirements. Reporting burden should be limited to the strictly necessary, avoiding duplications but also fragmentations. A centralised database will promote faster convergence towards single reporting standards and level playing field, avoiding the provision of unnecessary data to national competent authorities.
	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?	UniCredit fully supports the efforts to increase post-trade transparency in the non-equity marketplace provided the reporting time is not reduced to real time for manual transactions (3 minutes is better), such as those executed on the phone, as well as for end-of day volumes publication for block trades (more days should be considered). While close to real-time publication of prices should not hamper the provision of liquidity, the publication of volumes can be problematic and should be deferred, especially for block trades or for very illiquid financial instruments, and taking into account the considerable differences for the financial instruments under scrutiny (for bond and structure finance products further delays should be envisaged). Provided post-trade transparency is in place, it could be considered the possibility of a holding transparency regime,

		applicable to investors and not dealers: delayed (months) information on who is holding a specific asset (by ISIN) without detailed information on quantities above a minimal threshold. Such information should be easily accessible to market participants. We support the empowerment of ESMA to ensure level playing field but also to ensure necessary flexibility, with dynamic assessment of market conditions and instruments specificities. In this regard we welcome the possibility for ESMA to deploy a range of measures (deferred publication and omission) concerning some pre-defined transactions in some market segments. The industry is already working on a post trade reporting framework to ensure that liquidity is not damaged and that an adequate transparency framework is put in place. A objective we would encourage could be to implement, with different tested stages, properly deferred publication of volumes, for certain transactions, with a sufficient level of flexibility. Such flexibility cannot be achieved at the level 1 but can be incentivised by ESMA. To this end, it is crucial that the design of the level 1 proposal does not foreclose this market-led work and that a structured dialogue is envisaged between ESMA and the industry in order to allow that the latter to effectively able to pursue the needed flexibility in the dynamic context.
Horizontal issues	26) How could better use be made of the European Supervisory Authorities, including the Joint Committee, in developing	UniCredit considers crucial that a single rule book for EU financial markets should be set-up by ESMA. This would serve

	and implementing MiFID/MiFIR 2?	the purpose of pursuing level playing field in EU, reducing costs for market participants and enhancing a coordinated supervision in the securities and markets sector where the concept of country location can no longer be easily defined.
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	As mentioned in the reply to question 24, it is important that it ESMA is equipped to monitor all relevant information in a single reporting system, adapting intermediaries reporting requirements. A single database is a precondition to ensure that competent authorities, in the European System of Financial Supervisors, can supervise the requirements effectively, efficiently and proportionately. Harmonization of data set required for reporting at European level is welcome at level 1 of EU legislation. Nevertheless, it is also important to avoid excessive and unnecessary requests such as a systematic inclusion of client ID, when routing an order to a trading venue. Transmission of client details to trading venues does not seem necessary to execute the client order.
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	**a) EMIR** In principle, we would not object to more transparency in the OTC derivative markets. However we wish to express concerns about the extension of transaction reporting to all OTC derivatives since it would highly impact the transaction reporting as such and would require access to all information on the instruments and the possibility to unequivocally identify such instruments. Otherwise, the data quality would suffer and lead to a distorted reporting. Also, the identification of instruments may be difficult to assess systematically via electronic lists as this

		requirement contains valuation principles which will be difficult to report and to control electronically. However, we would like to raise the concern that the transaction register and any reporting requirements in connection therewith should be simultaneously put in place in order to avoid any discrepancies to the European Market Infrastructure Directive; therefore, art. 25 MiFID should not be effective before the transaction register is put in place. Therefore, the reporting for OTC derivatives should only be obligatory as of the establishment of the register. **b) CRD IV** The Liquidity Coverage Ratio implies an assessment of the liquidity of certain financial instruments. The work, which will be undertaken by ESMA when assessing the waivers for post-trade transparency requirements for certain financial instruments, should be brought into and aligned with the CRD IV EU legislation. **c) PRIPs** Further interactions are foreseen with the PRIPS project and the potential involved Directives, such as UCITS IV, Solvency II Prospectus Directive and Insurance Mediation Directive.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	UniCredit suggests that interactions between IOSCO and the EU (ESMA) could be set up in order to reach more efficient and effective coordination and harmonization of the relevant regulations and legislations.
	30) Is the sanctions regime foreseen in Articles 73-78 of the	Considering the importance to prevent the infringements and the

	Directive effective, proportionate and dissuasive?	traditional deterrence effect linked to the sanctions regime, UniCredit believes that another mechanism could be further considered: in particular, we refer to the potential benefits linked to a cooperative-approach between market players and the competent authority, subject to the peer reviews of ESMA In this respect, therefore, the regulatory system should not provide for automatic sanctions when a violation is detected. Infringers could be further incentivised to put in place a pro-active behaviour aimed at - for example - removing damages and/or restoring the *status quo ante* violation.
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	UniCredit calls for further specification of the purposes of the rules to be drafted at Level 2. Moreover, we consider ESMA's various authorizations without sufficient legal basis to be critical, especially in art. 25 (periodic communications). It is important that Level 1 legislation defines a more detailed framework that makes the future requirements discernible for all market participants as well as the scope of the delegation for Level 2 measures clearly defined. Past experience with MiFID 1 has shown that because of some unclear Level 1 provisions and/or far-reaching delegation for Level 2, the implementing Level 2 measures took some quite unexpected and different results.