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***I
REPORT

on the proposal for a European Parliament and Council directive on Investment services and regulated market , and amending Council Directives 85/611/EEC, Council Directive 93/6/EEC and European Parliament and Council 2000/12/EC (COM(2002) 625 – C5-0586/2002 – 2002/0269(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Theresa Villiers

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 20 November 2002 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 47(2) of the EC Treaty, the proposal for a European Parliament and Council directive on Investment services and regulated market, and amending Council Directives 85/611/EEC, Council Directive 93/6/EEC and European Parliament and Council Directive 2000/12/EC (COM(2002) 625 – 2002/0269 (COD)).

At the sitting of 16 December 2002 the President of Parliament announced that she had referred this proposal to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0586/2002).

The Committee on Economic and Monetary Affairs had appointed Theresa Villiers rapporteur at its meeting of 11 September 2001.

The committee considered the Commission proposal and draft report at its meetings of 4 June 2002, 4 November 2002, 2 December 2002, 28 January 2003, 18 February 2003, 25 March 2003, 20 May 2003, 11 June 2003, 17 June 2003, 7 July 2003, and 2 September 2003.

At the last meeting it adopted the draft legislative resolution by 25 votes to 8, with 4 abstentions.

The following were present : Christa Randzio-Plath, chairman; Philippe A.R. Herzog and John Purvis, vice-chairmen; Theresa Villiers, rapporteur; Richard A. Balfe (for Jonathan Evans), Pervenche Berès, Roberto Felice Bigliardo, Hans Blokland, Jean-Louis Bourlanges (for Brice Hortefeux), Renato Brunetta, Benedetto Della Vedova, Bert Doorn (for Mónica Ridruejo), Manuel António dos Santos (for a member to be nominated), Harald Ettl (David W. Martin), Göran Färm (for Helena Torres Marques), Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Lisbeth Grönfeldt Bergman, Catherine Guy-Quint (for Giorgos Katiforis pursuant to Rule 153(2)), Mary Honeyball, Christopher Huhne, Othmar Karas, Piia-Noora Kauppi, Christoph Werner Konrad, Werner Langen (for Hans-Peter Mayer), Astrid Lulling, Thomas Mann (for Ioannis Marinos), Helmuth Markov (for Armonia Bordes), Peter Michael Mombaur (for Ingo Friedrich), Gérard Onesta (for Miquel Mayol i Raynal pursuant to Rule 153(2)), Ioannis Patakis, Fernando Pérez Royo, José Javier Pomés Ruiz (for José Manuel García-Margallo y Marfil), Alexander Radwan, Bernhard Rapkay, Karin Riis-Jørgensen, Olle Schmidt, Peter William Skinner, Charles Tannock (for Generoso Andria), Bruno Trentin, Ieke van den Burg (for Hans Udo Bullmann).

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 4 September 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council directive on Investment services and regulated market , and amending Council Directives 85/611/EEC, Council Directive 93/6/EEC and European Parliament and Council Directive 2000/12/EC (COM(2002) 625 – C5-0586/2002 – 2002/0269(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2002) 625[1]),

– having regard to Article 251(2) of the EC Treaty and Article 47(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0586/2002),

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs and the Internal Market (A5-0287/2003),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament it intends to amend the proposal substantially or replace it with another text

3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
Amendment 1 Recital 4	
(4) It is appropriate to include in the list of financial instruments commodity derivatives which are constituted and traded in such a way as to give rise to regulatory issues comparable to traditional financial instruments such as certain futures or options contracts traded on regulated markets, which might be physically settled, where those contracts possess the characteristics of financial instruments, and swaps which are settled only in cash and	(4) It is appropriate to include in the list of financial instruments commodity derivatives which***, not being physical spot or forward commodity contracts,*** are constituted and traded in such a way as to give rise to regulatory issues comp arable to traditional financial instruments such as certain futures or options contracts traded on regulated markets ***or on a Multilateral Trading Facility (MTF)*** which, ***even though they may*** be physically settled, possess the

[1] OJ C 71E, 25.3.2003, p. 125.

where the amounts to be settled are calculated by reference to values of a full range of underlying prices, rates, indices and other measures. In this respect, regard may be had to whether, inter alia, they are cleared and settled through recognised clearing houses, give rise to daily margin calls, are priced in reference to regularly published prices, standard lots, standard delivery dates or standard terms as opposed to the terms of settlement being specified in individual contracts.

characteristics of financial instruments and swaps which are settled only in cash and where the amounts to be settled are calculated by reference to values of a full range of underlying prices, rates, indices and other measures. In this respect, regard may be had to whether, inter alia, they are cleared and settled through recognised clearing houses, give rise to daily margin calls, are priced in reference to regularly published prices, standard lots, standard delivery dates or standard terms as opposed to the terms of settlement being specified in individual contracts.

Justification

Amendment 74 by Kauppi should be supported as Annex I, C (4) of the proposal includes "options and futures contracts in respect of .... commodities or other derivatives instruments, indices or measures" and it is important that this scope of instruments covered by the directive is clarified in Recital 4 in order to avoid the ambiguous inclusion of physical dealings.

Amendment 2
Recital 5

(5) ***It is necessary to establish a comprehensive regulatory regime governing the execution of transactions on financial instruments irrespective of the trading methods used to conclude those transactions so as*** to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. A coherent and risk-sensitive framework for regulating the main types of order-execution arrangement currently active in the European financial marketplace should be provided for. ***It is necessary to recognise the emergence of a new generation of organised trading systems alongside regulated markets which should be subjected to obligations designed to preserve the efficient and orderly functioning of financial markets. With a***

(5) ***It is important that financial regulation establish a fair and level playing field for the different forms of intermediaries, both regulated markets and investment firms, offering securities execution services and that fair competition be permitted to thrive in order to deliver further efficiency. The twin objectives of regulation should be*** to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. A coherent and risk-sensitive framework for regulating the main types of order-execution arrangement currently active in the European financial marketplace should ***therefore*** be provided for ***to preserve the efficient and orderly functioning of financial markets. Where trading systems operated by investment***

view to establishing a proportionate regulatory framework provision should be made for the inclusion of a new investment service which relates to the operation of Multilateral Trading Facilities (MTFs).	***firms potentially raise market integrity concerns similar to those raised by regulated markets, they should be regulated as Multilateral Trading Facilities (MTFs) and subject to similar regulatory principles tailored to their specific circumstances.***

Justification

Regulation needs to balance establishing a level playing field with avoiding precautionary and unnecessary rules. In principle it is right that similar functionality should be regulated in a similar way, but it should also be recognised that investment firms operating electronic trading systems have generally not given rise to market integrity concerns. Some, as in the fixed income markets, have brought evident improvements. CESR has already issued recommended standards applicable to multilateral systems. At the very least, the ISD should ensure that regulators should apply these in a risk-based, proportionate and flexible manner.

Amendment 3
Recital 6

(6) Definitions of regulated market and MTF should be introduced and closely aligned with each other to reflect the ***fact that they represent the same*** organised trading functionality. The definitions should exclude bilateral systems where the investment firm enters into every trade on own account and not as a riskless counterparty interposed between the buyer and seller. The term "buying and selling interests" is to be understood in a broad sense and includes orders, quotes and indications of interest. The requirement that the interests be "brought together … in the system by means of non-discretionary rules set by the system operator" means that they are brought together under the system's rules or by means of the system's protocols or internal operating procedures (including procedures embodied in computer software). ***These rules should be approved by the competent authority.*** The expression "non-discretionary rules" means that these rules leave the investment firm operating an MTF with no discretion as to	(6) Definitions of regulated market and MTF should be introduced and closely aligned with each other to reflect the ***extent to which they represent a similar*** organised trading functionality. The definitions should exclude bilateral systems where the investment firm enters into every trade on own account and not as a riskless counterparty interposed between the buyer and seller. The term "buying and selling interests" is to be understood in a broad sense and includes orders, quotes and indications of interest. The requirement that the interests be "brought together … in the system by means of non-discretionary rules set by the system operator" means that they are brought together under the system's rules or by means of the system's protocols or internal operating procedures (including procedures embodied in computer software). The expression "non-discretionary rules" means that these rules leave the investment firm operating an MTF with no discretion as to how interests may interact. The definitions

how interests may interact. The definitions require that interests are brought together in such a way as to result in a contract, meaning that execution take place under the system's rules or by means of the system's protocols or internal operating procedures.	require that interests are brought together in such a way as to result in a contract, meaning that execution take place under the system's rules or by means of the system's protocols or internal operating procedures.

Justification

(i) MTFs have a number of elements in common with regulated markets but the functions they carry out, the methodology they use and the risks they pose are by no means always the same. It is necessary to provide flexibility in their treatment (see amendments to Articles 13, 24 and 27). Automatically applying regulated market rules to MTFs fails to address the regulatory risks such systems actually pose. (ii) There is no need for prior approval of rules and procedures. This should be handled under the notification process under authorisation rules.

Amendment 4
Recital 7

(7) The purpose of this Directive is to cover undertakings the ***normal*** business of which is to provide third parties with investment services on a professional basis. Its scope should not therefore cover any person with a different professional activity.	(7) The purpose of this Directive is to cover undertakings the ***regular*** business of which is to provide third parties with investment services on a professional basis. Its scope should not therefore cover any person ***or undertaking*** with a different professional activity ***or any person who uses the services of an investment firm to enter into transactions in financial instruments for its own account (whether the investment firm enters into the transaction as principal or agent or receives and transmits the order to a third party for execution).***

Justification

This proposed compromise combines all elements of 77 (Rapkay), 78 (Langen/Radwan), 79 (Konrad) and 80 (Katiforis). Firms which do not provide services to third parties and clients of investment firms who engage in trading for their own account using the services of investment firms should not need to be authorised under the directive. They should not need authorisation whether the investment firm acts as principal or executes the transaction as the client's agent with a third party or receives and transmits the client's order to a third party for execution.

The Commission uses the words "firm", "undertaking" and "person" interchangeably. There should a consistency of terminology. Using the terms "person or undertaking" seems to give the clearest result (for this change see also amendment to Article 2, paragraph 1, point (h) (i) and (j)).

Amendment 5
Recital 7a (new)

(7a) It is important to recognise that the execution, clearing and settlement of securities trades benefit from economies of scale. To avoid the emergence of monopolistic market structures, it is therefore necessary for regulation to be applied in a proportionate, risk-based manner that encourages innovation, new market entrants and competition. Regulation can all too often serve as an unnecessary barrier to entry.

Justification

It is important to recognise that regulation imposes costs and barriers to entry and can therefore itself serve to restrict competition and innovation. In markets that have a natural tendency to become monopolies or utilities, it is essential that regulation makes them more contestable, not less so.

Amendment 6
Recital 19

(19) Since the prudential framework established by Community law is not currently adapted to the specific situation of undertakings whose main business, ***when considered on a consolidated basis***, consists of dealing on own account in commodity derivatives it is appropriate to exclude them from the scope of this Directive.	(19) Since the prudential framework established by Community law is not currently adapted to the specific situation of ***persons or*** undertakings whose main business consists of dealing on own account in commodity derivatives it is appropriate to exclude them from the scope of this Directive.

Justification

Amendment 83 (Katiforis) should be supported, in accordance with the amendment below to Article 2, paragraph 1, point (i). The approach to terminology is used as above with a proposed switch from "undertakings" to "persons or undertakings", as discussed at 18/6 compromise meeting.

Amendment

Recital 21

For the purposes of ensuring that retail investors do not enter into unsuitable transactions, access to the systems operated by an MTF should be restricted to ***investment firms and credit institutions*** for the purposes of trading on own account or on behalf of their customers and other ***eligible counterparties.***	For the purposes of ensuring that retail investors do not enter into unsuitable transactions, access to the systems operated by an MTF should be restricted to ***professional investors, as defined in Annex II,*** for the purposes of trading on own account or on behalf of their customers and other ***professional investors.***

Amendment 8
Recital 24

(24) It is necessary to strengthen the Community's legislative framework to protect investors by enhancing obligations of investment firms when providing services with or on behalf of clients. In particular, it is indispensable for an investment firm ***acting*** on behalf of a client, in order to properly fulfil its agency obligations to its clients, to obtain information on the client's financial position, experience and investment objectives and to assess the suitability, for that client, of services or transactions in financial instruments which are being considered in the light of this information. The performance of this assessment should not require a separate authorisation to provide investment advice.	(24) It is necessary to strengthen the Community's legislative framework to protect investors by enhancing obligations of investment firms when providing services with or on behalf of client. In particular, it is indispensable for an investment firm ***providing advice or discretionary services*** on behalf of a client, in order to properly fulfil its agency obligations to its clients, to obtain information on the client's financial position, experience, and investment objectives and to assess the suitability, for that client, of services or transactions in financial instruments which are being considered in the light of this information. The performance of this assessment should not require a separate authorisation to provide investment advice.

Justification

See amendment to Article 18.4. It is inappropriate to require a "suitability test" for "execution-only" and "direct offer" business as these simple services do not involve the provision of advice. Instead, the investor uses his/her own judgement, relying on other conduct of business rules and product standards. A suitability test would drive up the costs of these services to the point at which they could become uneconomic, thereby severely limiting investor choice and discouraging saving.

Amendment 9
Recital 26

(26) It is necessary to impose an effective "best execution" obligation to ensure that the investment firms execute client orders on terms that are ***most favourable to the client.*** This obligation should apply to the firm which owes contractual or agency obligations to the client - irrespective of whether that firm executes the order itself or relies on another intermediary to do so.	(26) It is necessary to impose and effective "best execution" obligation to ensure that the investment firms execute client orders on terms that are ***the best reasonably achievable under the terms of the execution policy agreed between the firm and the client or, in the case of professional clients, in accordance with the client's specific instructions***. This obligation should apply to the firm which owes contractual or agency obligations to the client - irrespective of whether that firm executes the order itself or relies on another intermediary to do so. ***It is appropriate to require investment firms to have in place effective and efficient procedures so as to be able to demonstrate to the competent authority that it has met its best execution obligations.***

Justification

This combines amendments 3 and 85 in the same way that amendments 32 and 195 are combined in relation to the linked Article 19.1. This ensures consistency in the proposal.

Amendment 10
Recital 49

(49) With a view to take into account further developments in the financial markets the Commission should submit reports to the European Parliament and the Council on the application of the provisions concerning the professional indemnity insurance, the scope of the transparency rules and the possible authorisation of specialized dealers in commodity derivatives as investment firms	(49) With a view to take into account further developments in the financial markets the Commission should submit reports to the European Parliament and the Council on the application of the provisions concerning the professional indemnity insurance, the scope of the transparency rules and the possible authorisation of specialized dealers in commodity derivatives as investment firms**,** ***which shall include, in the latter case, a review of whether it is appropriate to make changes to the rules on regulatory capital laid down in Directive 93/6/EEC on the capital adequacy of credit institutions and investment firms to ensure that those rules are proportionate in relation to the business of dealing in:*** ***1. futures/options which contain a contractual requirement for physical settlement,*** ***2. commodities and,*** ***3. commodity derivatives***

Justification

Combines all of Amendment 93 (Katiforis), 94 (Kauppi) and 95 (García-Margallo) and the key additional elements contained in 91 (Konrad) and 92 (Langen and Radwan). The Commission should undertake a proper review of the regulatory capital rules applicable to credit institutions and investment firms to ensure that the rules are proportionate with regarding to dealing in (1) futures/options which contain a contractual requirement for physical settlement, (2) commodities, (3) commodity derivatives.

Amendment 11
Article 1, paragraph 1

1. This Directive shall apply to investment firms and regulated markets**.**	1. This Directive shall apply to investment firms and ***operators of*** regulated markets**.**

Justification

It is the operators of the regulated markets who have to comply with the directive, not the regulated markets themselves. Like the concept of a multilateral trading facility, the term "regulated markets" refers to a system or function run by a market operator rather than to an entity in itself. It is therefore more accurate to refer to "operators of regulated markets" rather than to "regulated markets" in this context.

Amendment 12
Article 1, paragraph 2

Articles 12 and 13 and Chapters II and III of Title II shall apply also to credit institutions authorised under Directive 2000/12/EC to perform one or more investment services	Articles 12 and 13 and Chapters II and II of Title II ***(with the exception of Articles 29 and 30)*** shall apply also to credit institutions authorised under Directive 2000/12/EC to perform one or more investment services.

Justification

This amendment deletes the application of Articles 29 and 30 to credit institutions since credit institutions already notify and benefit from the freedom to provide services under the Banking Consolidation Directive. This amendment is linked to the amendment which separates Article 30.7 from the rest of Article 30. Article 30.7 should apply to credit institutions.

Amendment 13
Article 2, paragraph 1, point (e)

(e) firms which provide investment services which involve both administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;	***Deleted***

Justification

Some employee share participation schemes can offer employees an integrated share dealing service which goes beyond mere administrative services. If such schemes are exempt from the scope of the directive, employees will not have the protection of conduct of business rules and particularly best execution.

Amendment 14
Article 2, paragraph 1, point (h)

(h) ***persons*** dealing on own account in financial instruments as an ancillary activity to their main business, where that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2000/12/EC;	(h) ***persons or undertakings*** dealing on own account in financial instruments as an ancillary activity to their main business, where that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2000/12/EC;

Justification

Amendments 104 (Rapkay) and 105 (Langen) should be supported since for reasons of consistency they change the term "persons" to "undertakings", instead of using differing terms. See also amendment to recital 7 above.

Amendment 15
Article 2, paragraph 1, point (i)

(i) Undertakings whose main business***, when considered on a consolidated basis,*** consists of dealing on own account in ***commodity*** derivatives;	(i) ***Persons or*** undertakings whose main business consists of dealing on own account in ***any*** derivatives ***referred to in points 4 and 6 of Section C of Annex I (except those in respect of securities, prices of securities, interest rates or yields or foreign exchange rates) and/or trading in commodities;***

Justification

This proposed compromise combines Amendment 106 (Katiforis) and elements of 107 (Langen/Radwan), 108 (Konrad), 109 (Rapkay), 110 (Kauppi) and 111 (García-Margallo). There should be an exclusion for a specialised entity whose main business is commodity-related business, regardless of the nature of the business of the consolidated group of which it

forms a part. This is because (1) it is impractical to make the licensing requirements applicable to a particular legal entity depend on the nature or extent of the activities of its parent company or its affiliated companies; (2) there is no need to address, in Article 2, issues related to the consolidated supervision of financial groups which include entities carrying on commodity derivatives business. Community legislation on financial groups already addresses the position where a group containing an EU-regulated credit institution (or investment firm) includes other entities carrying on financial business. See also amendment above to recital 19

Amendment 16
Article 2, paragraph 1, point (j)

(j) ***Firms*** which provide investment services consisting exclusively in dealing for their own account on ***financial futures or options*** markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, and where responsibility for ensuring the performance of contracts entered into by such ***firms*** is assumed by clearing members of the same markets;	(j) ***Persons or undertakings*** which provide investment services consisting exclusively in dealing for their own account on ***futures, options or other derivatives*** markets ***under the rules of those markets*** or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, and where responsibility for ensuring the performance of contracts entered into by such ***persons or undertakings*** is assumed by clearing members of the same markets;

Justification

Amendment 112 (Katiforis) should be supported in order to clarify that the exemption from the directive only applies to participants in regulated markets who do not trade across borders or over-the-counter (i.e. "locals" which are exempted in the current ISD).

Amendment 17
Article 2, paragraph 1, point (la) (new)

	(la) firms,
	which may not provide any investment service except the reception and transmission of orders in units in collective investment undertakings and which do not hold client's funds and which for that reason may not at any time place themselves in debit with their clients, and

which in the course of providing that service may transmit orders only to

(i) investment firms authorized in accordance with this Directive;

(ii) credit institutions authorized in accordance with Directives 2000/12/EC;

(iii) branches of investment firms or of credit institutions which are authorized in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive, in Directive 2000/12/EC or in Directive 93/6/EEC;

(iv) collective investment undertakings authorized under the law of a Member State to market units to the public and to the managers of such undertakings;

(v) investment companies with fixed capital, as defined in Article 15 (4) of Directive 77/91/EEC (13), the securities of which are listed or dealt in on a regulated market in a Member State;

the activities of which are governed at national level by rules or by a code of ethics.

Justification

In comparison with investment service firms regulated by the ISD, fund intermediation is characterised by atypical trading and distribution structures which do not lend themselves to regulation by the ISD. The inclusion of intermediation activities into the scope of the proposed ISD would result in unjustified requirements which would be burdensome on the affected companies since the regulation's focus is on market trading. A regulation system for fund intermediation, however, should focus on distribution services.

Amendment 18
Article 3, paragraph 1, point (1)

(1) *Investment firm* means any legal person whose regular occupation or business	(1) *Investment firm* means any legal person whose regular occupation or business

is the provision of investment services on a professional basis;	is the provision of investment services on a professional basis ***to third parties***;

Justification

The proposed Directive is intended to cover entities whose business is the provision of investment services to third parties. However, the experience with some domestic regulatory regimes shows that some clarification to the proposed wording is required in this respect to clearly limit the scope of applicability to entities that actually provide services to third parties. This would also help to clarify the concept of 'dealing on own account', used in exemptions 2(1)(h) and (i).

Amendment 19
Article 3, paragraph 1, point (2)

(2) *Investment service* means any of the services listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I;	(2) *Investment service* means any of the services***, provided for third parties,*** listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I;

Justification

Amendment 128 (Karas/Radwan/Bourlanges) should be supported in order to clarify that the definition of "investment service" relates to services provided for third parties.

Amendment 20
Article 3, paragraph 1, point (5)

(5) *Execution of orders on behalf of clients* means acting as an agent to conclude agreements to buy or sell one or more financial instruments on behalf of clients**;**	(5) *Execution of orders on behalf of clients* means acting as an agent to conclude agreements to buy or sell one or more financial instruments on behalf of clients, ***including acting on behalf of clients to conclude transactions in financial instruments on a regulated market or multilateral trading facility, or any comparable third country system, where the firm acts as principal by virtue of the rules of that market or system ;***

Justification

Amendment 130 (Katiforis) should be adopted in order to clarify that the definition of "execution of orders on behalf of clients" includes acting on behalf of clients where the firm acts as a principal in executing transactions on the exchange, even where the firm is acting on behalf of clients which are not members of that exchange.

Amendment 21
Article 3, paragraph 1, point (6)

(6) *Dealing on own account* means active trading against proprietary capital, on a regular and professional basis, resulting in the conclusion of transactions in one or more financial instruments;	(6) *Dealing on own account* means active trading against proprietary capital, on a regular and professional basis, resulting in the conclusion of transactions in one or more financial instruments ***and not based on a previous request or a mandate of a third party;***

Justification

The proposed Directive is intended to cover entities whose business is the provision of investment services to third parties. However, experience with some domestic regulatory regimes shows that some clarification to the proposed wording is required in this respect to clearly limit the scope of applicability to entities that actually provide services to third parties. This would also help to clarify the concept of 'dealing on own account', used in exemptions 2(1)(h) and (i).

Amendment 22
Article 3, paragraph 1, point (7)

(7) *Client* means any natural or legal person ***seeking the provision of investment and ancillary services from an investment firm***;	(7) *Client* means any natural or legal person ***to whom an investment firm provides investment or ancillary services***;

Justification

The aim is to make the definition clearer so that is possible to tell whether a person is a client or not.

Amendment 23
Article 3, paragraph 1, point (8)

(8) *Professional client* means a client ***who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs, in accordance with*** the criteria and procedures laid down in Annex II;	(8) *Professional client* means a client ***falling within*** the criteria and procedures laid down in Annex II ***and retail client means a client who is not a professional client.***

Justification

This amendment is necessary to make clear that the new EU framework supersedes traditional pre-existing civil liability. Without such clarification, investment firms in countries such as Germany could be subject to a double layer of regulation, with the old case-based rules undermining the distinction drawn in the ISD between professional and retail investors. See amendment to Annex II, Section I, paragraph 1. This amendment also provides a definition of "retail client". In the Commission proposal there is no such definition, despite the use of the term in the directive (for example in Article 18.9).

Amendment 24
Article 3, paragraph 1, point (9)

(9) *Market operator* means a person or persons who effectively direct the business of a regulated market;	(9) *Market operator* means a ***legal*** person or persons who effectively direct the business of a regulated market;

Justification

This amendment is necessary to clarify that when the notion of market operator is used in the ISD, it refers to the company and not to the physical persons who manage it.

Amendment 25
Article 3, paragraph 1, point (11)

(11) *Multilateral Trading Facility (MTF)* Means a multilateral system which brings together multiple third-party buying and	(11*) Multilateral Trading Facility (MTF)* means a multilateral system which brings together multiple third-party buying and

selling interests in financial instruments – in the system and in accordance with non-discretionary ***rules*** – in a way that results in a contract;	selling interests in financial instruments – in the system and in accordance with non-discretionary ***rules and trading methodologies*** – in a way that results in a contract ***and which is authorised and functions in accordance with the provisions of Title II;***

Justification

This compromise covers Amendment 144 (Balfe) and 145 (Huhne). The Commission use of the word "rules" should be supplemented by the term "trading methodologies" to reflect the fact that MTFs have clients and contracts, within a rule based framework. The compromise also provides clarification by linking the definition of MTF to the authorisation requirement in Title II, Chapter I of the proposal.

Amendment 26
Article 3, paragraph 1, point (12)

(12) *Market order* means an order to buy or sell a financial instrument at the best available price;	(12) *Market order* means an order to buy or sell a financial instrument at the best available price ***for a specified size***;

Justification

Additional specification is required, since size is a vital component of a market order.

Amendment 27
Article 3, paragraph 1, point (13)

(13) Limit order means an order to buy or sell a financial instrument at its specified limit or better.	(13) Limit order means an order to buy or sell a financial instrument at its specified limit or better ***for a specified size and without other conditions attached.***

Justification

Additional specification is required, since size is a vital component of a limit order. If there were to be other conditions attached, this would fundamentally change the nature of the order and it would no longer be regarded as a limit order.

Amendment 28
Article 3, paragraph 1, point (15), point (b)

(b) bonds or other forms of securitised debt	(b) bonds or other forms of securitised debt, ***and depositary receipts in respect of bonds***.

Justification

The purpose of this amendment is to bring the definition of bonds in line with the definition of shares in Article 3, paragraph 1, point (15), point (a) which refers to depository receipts. It is essential to have consistency between definitions.

Amendment 29
Article 3, paragraph 1, point (17) subpoint (b)

(b) in the case of a ***regulated market***, the Member State in which the ***regulated market*** is registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the ***regulated market*** is situated;	(b) in the case ***of the operator*** of a regulated market, the Member State in which the ***market operator*** is registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the ***market operator*** is situated; ***(c) in the case of a regulated market, the Member State granting the authorisation as a regulated market;***

Justification

(i) It is the operators of the regulated market who have to comply with the directive, not the regulated markets themselves. The term 'regulated market' refers to a system or function run by a market operator rather than to an entity in itself. The term 'operator of regulated market' rather than to the 'regulated market' should therefore be used in this context. Since regulated markets themselves are neither registered (as companies) nor have head offices, it is more appropriate to refer to the home member state of the head/registered office of the market operator. (ii) It is necessary to define the Home Member State of market operators notably to allow the application of Article 34(5).

Amendment 30
Article 3, paragraph 1, point (18)

(18) Host Member State means the Member State in which ***an*** investment firm has a branch or provides services;	*(18) Host Member State* means: ***(a) in the case of investment firms,*** the Member State in which ***the*** investment firm has a branch or provides services; ***(b) in the case of the operator of a regulated market, the Member State other than the home Member State where the market operator operates a regulated market or provides services;***

Justification

This amendment clarifies the text to ensure this it is clear which Member State has competence in relation to regulated markets in this context.

Amendment 31
Article 3, paragraph 1, point (22)

(22) *Tied agent* means a natural or legal person who, without being considered as an investment firm for the purposes of this Directive, promotes the investment and ancillary services of ***an investment firm*** to clients or prospective clients, collects and transmits instructions or orders from the client in respect of investment services or financial instruments to ***that investment firm***, and provides advice to clients or prospective clients in respect of the financial instruments or services offered by ***the investment firm*** under the full and unconditional responsibility of the investment ***firm*** on whose behalf it acts;	(22) *Tied agent* means a natural or legal person who, without being considered as an investment firm for the purposes of this Directive, promotes the investment and ancillary services of ***the investment firms for which it acts*** to clients or prospective clients, collects and transmits instructions or orders from the client in respect of investment services or financial instruments to ***those investment firms***, and provides advice to clients or prospective clients in respect of the financial instruments or services offered by ***those investment firms*** under the full and unconditional responsibility of the investment ***firms*** on whose behalf it acts;

Justification

This amendment clarifies the wording so that tied agents may act on behalf of more than one principal. It is an increasing trend in a number of Member States for agents to have distribution agreements with several different fund providers, rather than acting on behalf of just one principal. The article should be clarified to ensure that this practice can continue under the revised ISD.

Amendment 32
Article 3, paragraph 1, point (23)

(23) *Branch* means a place of business which is a part of an investment firm, which has no legal personality and which provides investment services for which the investment firm has been authorised;	(23) Branch means a place of business, ***other than the head office,*** which is part of an investment firm, which has no legal personality and which provides investment services ***or ancillary services*** for which the investment firm has been authorised;

Justification

It should be clarified that a head office could not be treated as a branch, as this would make no sense. Also, it needs to be specified that an investment firm may provide ancillary services through a branch. This is consistent with Article 5.

Amendment 33
Article 3, paragraph 1, 22a new

	Systematic internalisation means the execution, on a systematic, regular and continuous basis of: ***1. orders up to a standard market size undertaken by any type of clients or counterparties*** ***2. in shares admitted to or included in trading on a regulated market*** ***3. on own account or by means of matching with other client orders*** ***4. within a system, a component of which is primarily aimed at facilitating the activities set out in points 1 to 3***

	5. outside the rules or systems of a regulated market or MTF.
	Where executions in several securities are part of one transaction (such as portfolio transaction), the size of the total transaction shall determine whether the transaction was of a standard market size.

Amendment 34
Article 4, paragraph 1

1. Each Member State shall reserve the provision of investment services to investment firms. It shall ensure that all investment firms for which it is the home Member State operate only after authorisation in accordance with the provisions of this Directive.	1. Each Member State shall reserve the provision of investment services ***under this Directive*** to investment firms. It shall ensure that all investment firms for which it is the home Member State operate only after authorisation in accordance with the provisions of this Directive.
	Notwithstanding paragraph 1, the Member States may waive the requirement of authorisation under the provisions of this directive in the case of investment firms within the meaning of Article 2(2)(c) and (d) of Directive 93/6/EEC, which have already been registered under Directive 2002/92/EC by way of insurance mediation.

Justification

This amendment is necessary to ensure that the directive does not inadvertently prohibit credit institutions from providing investment services. Credit institutions are permitted to provide investment services under Article 1(2) of the proposal and are already permitted to provide investment services by Directive 2000/12.

The authorisation requirements of the investment services and insurance mediation directive should be harmonised so that independent financial mediators are only required to register once. For independent financial mediators who generally sell not only investment fund shares but also insurance and other financial products, it is essential to have uniform authorisation conditions for the performance of their business.

Amendment 35
Article 4, paragraph 2

2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate an MTF, subject to compliance with Articles 13, 24, 27 and 28.	2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate an MTF, subject to compliance with Articles ***12***, 13, 24, 27 and 28.

Justification

Article 13 makes reference to Article 12, therefore it should be included in Article 4(2).

Amendment 36
Article 11, paragraph 2

2. Member States shall ensure that investment firms exempted from the scope of Directive 93/6/EEC, pursuant to points (c) and (d) of Article 2(2) thereof, ***hold professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1 000 000 applying to each claim and in aggregate EUR 2 000 000 per year for all claims***.	2. Member States shall ensure that investment firms exempted from the scope of Directive 93/6/EEC, pursuant to points (c) and (d) of Article 2(2) thereof, ***have sufficient financial capacity. Such measures shall take one or more of the following forms:***
	(a) minimum initial capital of EUR 50 000; or
	(b) professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1 000 000 applying to each claim and in aggregate EUR 1 500 000 per year for all claims;
	(c) a combination of the two above options, in a form resulting in protection equivalent

to one of them. The Member States shall not be required to apply the above measures to investment companies that already comply under Directive 2002/920/EC on insurance intermediation.

Justification

To ensure that investment companies covered by Article 11 have sufficient financial capacity, without including in the investment directive provisions that belong in the insurance intermediation directive and are ill suited to this text.

Amendment 37
Article 11, paragraph 3a (new)

3a. Member States shall take all the necessary measures to ensure that investment firms exempted from the scope of Directive 93/6/EEC, pursuant to points (c) and (d) of Article 2(2) thereof, have sufficient financial adequacy. Such measures shall, take any one or more of the following forms:

(a) provisions laid down by law or contract whereby monies paid by the client to the investment firm (as defined in paragraph 1) are treated as having been paid to the investment firm providing the product, whereas monies paid by the investment firm providing the product to the investment firm are not treated as having been paid to the client until the client actually receives them;

(b) a requirement for investment firms to have financial capacity amounting, on a permanent basis, to 4% of the sum of annual premiums received, subject to a minimum of EUR 15 000;

(c) a requirement that clients' monies shall be transferred via strictly segregated client accounts and that these accounts shall not be used to reimburse other

	creditors in the event of bankruptcy;
	(d) a requirement that a guarantee fund be set up.
	Member States need not apply the measures referred to in the above paragraph to investment firms which already comply with them under the 2002/92/EC Directive on Insurance Mediation

Justification

Since firms often advise clients on both investment and insurance matters, firms providing services under the ISD should be given the same options as those available for authorised intermediaries under the Insurance Mediation Directive (2002/92/EC) for satisfying solvency requirements. This is essential to ensure that firms regulated by both directives are not subject to duplicative or inconsistent regulation, which could impact harshly on thousands of small investment advice firms.

Amendment 38
Article 12, paragraph 2

2. An investment firm shall establish adequate policies and procedures to ensure compliance of the firm and its directors, employees and tied-agents with its obligations under this Directive when conducting business with and on behalf of clients and which require it to act with market integrity. ***Those policies and procedures shall be such as to enable the investment firm to demonstrate, at the request of the competent authority, that it has acted in accordance with those obligations.***	2. An investment firm shall establish adequate policies and procedures to ***take reasonable steps to*** ensure compliance of the firm and its directors, employees and tied-agents with its obligations under this Directive when conducting business with and on behalf of clients and which require it to act with market integrity.

Justification

The term "ensure" causes difficulties in a number of languages and suggests the imposition of inappropriately absolute standards and strict liability. The text should be amended to make it clear that firms are required to "take reasonable steps to ensure" compliance. The final sentence should also be deleted since the original text reverses the onus of proof and puts the burden of proof on firms to show compliance. It should be for regulators to demonstrate

failure to comply with the directive, according to ordinary principles of human rights.

Amendment 39
Article 12, paragraph 4

4. An investment firm shall employ such systems, resources, and procedures as are necessary to ensure continuity and regularity in the provision of the service.	4. An investment firm shall ***take reasonable steps to*** employ such systems, resources, and procedures as are necessary to ensure continuity and regularity in the provision of the service.

Justification

Similarly to the amendment to Article 12, paragraph 2, the unqualified use of the term "employ" suggests the imposition of inappropriately absolute standard and strict liability. The text should be amended to make it clear that firms are required to "take reasonable steps" to ensure continuity and regularity of service provision.

Amendment 40
Article 12, paragraph 5

5. An investment firm shall ensure that, when relying on a third party for the performance of functions which are critical for the provision of continuous and satisfactory service to clients, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair the quality of its internal control and the ability of the supervisor to monitor the firm's compliance with all obligations.	5. An investment firm shall ensure that, when relying on a third party for the performance of functions which are critical for the provision of continuous and satisfactory service to clients, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair ***materially*** the quality of its internal control and the ability of the supervisor to monitor the firm's compliance with all obligations.

Justification

It is necessary to add a materiality test, since outsourcing may involve some non-material reduction of the quality of internal control, for example, while systems are being adapted during a transitional period.

Amendment 41
Article 12, paragraph 7

7. An investment firm shall arrange for records to be kept of ***all services and*** transactions undertaken by it which shall be sufficient to enable the competent authority to monitor compliance with the requirements under this Directive, and in particular to ascertain that the investment firm has complied with all obligations with respect to clients.	7. An investment firm shall arrange for records to be kept of transactions undertaken by it which shall be sufficient to enable the competent authority to monitor compliance with the requirements under this Directive, and in particular, ***where relevant***, to ascertain that the investment firm has complied with all obligations with respect to clients.

Justification

Recording requirements should focus on transactions and on actions which are relevant to compliance with regulatory standards. The ISD should not require records to be kept of every action by investment firms, since this would not contribute to investor protection and would add significantly to costs of investment services.

Amendment 42
Article 12, paragraph 11

11. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 2 to 10, the Commission ***shall*** adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which specify the ***concrete*** organisational requirements ***to be imposed on*** investment firms providing different investment and ancillary services or combinations thereof.	11. In order to take account of technical developments on financial markets and to ensure the uniform application of paragraphs 2 to 10, the Commission ***may*** adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which specify the ***high-level principles which should underlie*** organisational requirements ***adopted by*** investment firms providing different investment and ancillary services or combinations thereof.

Justification

In this context, the Commission should be given the flexibility to choose whether to adopt implementing measures. This will assist in rapid implementation of the directive which might otherwise be held, up pending finalisation of all implementing measures. It is also preferable to focus on general principles, rather than "concrete" organisational requirements, which would suggest an overly rigid approach, forcing regulators to try to micromanage investment firms.

Amendment 43
Article 13, paragraph 1

1. Member States shall require that investment firms operating an MTF, in addition to meeting the requirements laid down in Article 12, establish transparent and non-discretionary ***rules*** and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders ***so as to enable users to obtain the best price available on or through the MTF, at any given moment for the size of transaction envisaged. Those rules and procedures shall be subject to prior approval by the competent authority of the home Member State***.	1. Member States shall require that investment firms operating an MTF, in addition to meeting the requirements laid down in Article 12, establish transparent and non-discretionary ***rules and trading methodologies*** and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders, ***taking into account the nature of the users of the system and the type of instruments traded on it. The requirements of the competent authority of the home Member State shall be applicable and shall take into account the particular nature of each MTF.***

Or. en

Justification

This compromise covers 165 (Katiforis) and 166 (Huhne). The Commission use of the word "rules" should be supplemented by the term "trading methodologies" to reflect the fact that MTFs have clients and contracts, within a rule based system (which is the same change as in the proposed compromise amendment to Article 3.1.11 above).

The compromise includes the proposal that the trading methodologies and procedures should take account of the nature of users of the MTF and the type of instruments traded on it. For legal certainly it clarifies that the requirements of the competent authority of the home Member State are applicable and that the nature of each MTF should be taken into account.

Amendment 44
Article 13, paragraph 2

2. Member States shall require that investment firms operating an MTF provide for access to the facility in accordance with transparent and objective commercial conditions. ***Investment firms operating an MTF shall be able to make the use of its facilities and access thereto***	2. Member States shall require that investment firms operating an MTF provide for access to the facility in accordance with transparent and objective commercial conditions.

available only to eligible counterparties as referred to in Article 22(3).

Justification

Access to MTFs should not be restricted to eligible counterparties as this would be an unnecessary restriction on competition. It would prevent operators of MTFs from exercising treaty freedoms to trade across borders. It would exclude from membership a number of entities which currently use MTFs without causing regulatory problems. It would also prevent operators of MTFs from obtaining customers from non-EU countries and would thus damage the global competitiveness of EU financial markets.

Amendment 45
Article 13, paragraph 6

6. In order to take account of technical developments on financial markets and to ensure uniform application of paragraphs 1 and 2, the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures governing the content of trading rules to promote fair and orderly trading through the MTF.	***deleted***

Justification

There is no need for further rules to be adopted via comitology in this context. There is no difficulty in dealing with this issue using the full co-decision process: Article 13.1 and 13.2 provide ample, fair and orderly rules for trading on MTFs. Any unforeseen issues arising during or after implementation can be dealt with via co-operation between national regulators at Level 3.

Amendment 46
Article 15, paragraph 2

2. Member States shall require investment firms to notify the competent authorities of any material changes to their programme of operations ***and*** to provide the competent authorities with all information needed to verify that modified organisational	2. Member States shall require investment firms ***or their external auditor*** to notify the competent authorities of any material changes to their programme of operations***.*** ***Member States shall require investment firms*** to provide the competent authorities

requirements are sufficient to ensure continued compliance with the obligations under this Directive.	***on request*** with all information needed to verify that modified organisational requirements are sufficient to ensure continued compliance with the obligations under this Directive.

Justification

It should be possible for investment firms to notify to competent authorities of changes to their operations via external auditors. In some Member States, investment firms are used to notifying their external auditors of such changes, with a view to their inclusion in the annual audit report. It would be useful if this system could be used to cover the reporting requirements of this paragraph, with firms reporting to auditors, who then pass on the information to the competent authority.

Amendment 47
Article 16, paragraph 4, subparagaph 1

4. In order to take account of technical developments on financial markets and to ensure uniform application of paragraphs 1**,** 2, ***and 3***, the Commission ***shall*** adopt, in accordance with the procedure referred to in Article 59(2), implementing measures to:	4. In order to take account of technical developments on financial markets and to ensure ***consistent*** application of paragraphs 1 ***and*** 2, the Commission ***may*** adopt, in accordance with the procedure referred to in Article 59(2), implementing measures to ***specify the steps that investment firms might reasonably be expected to take to manage conflicts of interest, whether through organisational and administrative arrangements, or through disclosure.***

Justification

(i) The word 'consistent' is more appropriate than 'uniform' as complete uniformity will usually be inappropriate and unnecessary. The general aim is harmonised general standards of regulatory protection, with Member States permitted a degree of flexibility in adapting the rules in the directive to local conditions. (ii) The Commission should be given the flexibility to choose whether to adopt implementing measures. This will assist in rapid implementation of the directive which might otherwise be held up, pending finalisation of all implementing measures. (iii) The description of the implementing measures regarding conflicts of interest is expressed more succinctly above than in the Commission proposal.

Amendment 48
Article 16, paragraph 4, point (a)

(a) ***define*** the steps that investment firms might reasonably be expected to take to identify, prevent, manage and/or disclose conflicts of interest when providing various investment and ancillary services and combinations thereof;	(a) ***specify*** steps that investment firms might reasonably be expected to take to identify, prevent, manage and/or disclose conflicts of interest when providing various investment and ancillary services and combinations thereof, ***while leaving it to firms, subject to regulatory oversight, to determine the appropriate mix of prevention, management, and disclosure. With regard to the nature of the steps to be specified under this paragraph, the Commission shall take into account the frequency of conflicts of interest (whether they occur regularly or in limited individual cases) in different types of investment firms.***

Justification

(i) Replacing "define" with "specify" gives more flexibility to the Commission. (ii) It is also important to clarify that the role of regulators is to oversee, not to micromanage, the internal systems of investment firms. (iii) The Commission should not seek to apply a one-size-fits-all approach but should tailor measures to take account of the different risk profiles of different types of firms. The business models of some firms may involve fewer conflicts of interest than others.

Amendment 49
Article 16, paragraph 4a (new)

	4a. The competent authority of the home Member State shall ensure that the obligations of this provision and the implementing measures adopted under paragraph 4 are complied with by investment firms when providing services in other Member States. The competent authority of the Member State in which a branch is located shall enforce the obligations of this provision and any implementation measures adopted under

	paragraph 4 in respect of the services provided by a branch to its clients.

Justification

The Commission proposes that branches should be subject to the conduct of business rules of the state where the branch is located (Article 18). Conflict of interest obligations are very important. They are similar to conduct of business obligations and should operate in the same way. Hence branches should be subject to the conflict of interest rules of the state where the branch is located. The approach taken to branches in Article 18.11 and 18.12 should therefore be replicated in Article 16 in order to ensure consistency.

Amendment 50
Article 18, paragraph 1

1. Member States shall ensure that, when providing investment services to clients, an investment firm acts honestly, fairly and professionally in accordance with the best interests of its clients and complies, in particular, with the principles set out in paragraphs 2 to 8.	1. Member States shall ensure that, when providing investment services ***or ancillary services*** to clients, an investment firm acts honestly, fairly and professionally in accordance with the best interests of its clients and complies, in particular, with the principles set out in paragraphs 2 to 8.

Justification

This amendment is necessary in order to ensure that investment firms obtain the benefit of country of origin regulation for ancillary services, as well as for investment services.

Amendment 51
Article 18, paragraph 2

2. Marketing communications***, or information contained therein,*** addressed to clients or potential clients, shall be identified as such, and shall be fair, clear and not misleading.	2. Marketing communications addressed to clients or potential clients, shall be identified as such, and shall be fair, clear and not misleading.

Justification

The Commission's proposal specifies that the information contained in marketing communications should be appropriately identified. However, the manner in which the information contained in marketing communications is to be identified is unclear.

Amendment 52
Article 18, paragraph 3

3. Timely information shall be provided in a comprehensible form to clients or potential clients about the investment firm and its services, so that they are able to understand the precise nature and risks of the investment service and financial instrument that is being offered.	3. Timely information shall be provided in a comprehensible form to clients or potential clients about the investment firm and its services, so that they are able to understand the precise nature and risks of the investment service and financial instrument that is being offered. ***Information may be provided to clients in a standard form.***

Justification

Following the compromise meeting on 18th June it is proposed to include only 172 (Berès) in this compromise proposal and not the Rapporteur's amendment 27. The compromise therefore provides that information can be produced for clients in a standard format.

Amendment 53
Article 18, paragraph 4

4. The necessary information shall be obtained from the client regarding its knowledge and experience in the investment field, its investment objectives and financial situation so as to enable the investment firm to determine the investment services and financial instruments suitable for that client.	4. The necessary information shall be obtained from the client regarding its knowledge and experience in the investment field, its investment objectives and financial situation so as to enable the investment firm to determine the investment services and financial instruments suitable for that client. ***These obligations shall be modulated according to the complexity of the investment services and financial instruments being proposed and shall not apply where investment advice, as referred to in Article 3, paragraph 1, point (4), is not being provided. In such cases, product promotional literature and/or the initial***

	agreement with the client shall make clear that no advice is being provided.

Justification

In accordance with the discussions at the compromise meeting on 18th June, this proposal incorporates amendment 175 by Mr Purvis that the requirements of the suitability test should be modified according to different types of service.

It also ensures that suitability tests are not required for "non-advice business" (ie execution only and direct offer business), but only so long as such services are properly and transparently labelled by making it clear to the client that no advice is being given. This approach seeks to give extra protection to the investor and to make sure that he/she properly understands the nature of the service and can take an informed decision on whether to use an "execution only" service or seek professional investment advice.

This approach takes on board the compromise discussion on 18th June and recognises the concerns behind amendments 173 (Randzio Plath), 174 (Ettl) and 176 (Beres, Goebbels). It also draws on the approach of the Legal Affairs Opinion Rapporteur, Mrs McCarthy (Legal Affairs Committee amendment 31 to the McCarthy Opinion on the ISD).

A reference to the definiton of "investment advice" in Article 3, paragraph 1, point (4) has been added for further clarity, as in A15.

Amendment 54
Article 18, paragraph 5

5. Timely information shall be provided to the client regarding financial instruments, proposed investments and execution venues which is fair, clear and not misleading, so as to enable the client to take investment decisions on an informed basis.	5. Timely information shall be provided to the client regarding financial instruments, proposed investments and execution venues which is fair, clear and not misleading, so as to enable the client to take investment decisions on an informed basis. ***These obligations shall be modulated according to the complexity of the investment services and financial instruments being proposed and shall not apply where investment advice, as referred to in Article 3, paragraph 1, point (4), is not being provided. In such cases, product promotional literature and/or the initial agreement with the client shall make clear that no advice is being provided.***

Justification

This reproduces the same approach for Article 18.5 as has been suggested above for Article 18.4. Like the previous compromise, it seeks to recognise the concerns behind amendments 178 (Ettl), 179 (Randzio Plath) and 180 (Beres Goebbels). See above for a detail justification of this approach.

A reference to the definiton of "investment advice" in Article 3, paragraph 1, point (4) has been added for further clarity, as in A14.

Amendment 55
Article 18, paragraph 6

6. Appropriate guidance and warnings on the risks associated with investments in particular instruments or investment strategies shall be provided to the client, having particular regard to the client's knowledge and experience.	6. ***When providing advice or discretionary services,*** appropriate guidance and warnings on the risks associated with investments in particular ***types of*** instruments or investment strategies shall be provided to the client having particular regard to ***the information which the firm has obtained about*** the client's knowledge and experience.

Justification

(i) See the amendments to Article 18.4 and 18.5. It is inappropriate to require a "suitability test" for "execution-only" and "direct offer" business as these simple services do not involve advice, as the customer uses their own judgement, relying on other conduct of business rules and product standards. (ii) It is preferable to assess the risks of a particular class of investment or investment strategy, rather than focussing on individual instruments. (iii) It is not feasible for a firm to take account of information with which it has not been provided or which has been withheld. The focus should be on the information which the firm has obtained in accordance with its obligations.

Amendment 56
Article 18, paragraph 7

7. A documentary record of an agreement between the firm and the client shall be established which sets out the rights and obligations of the parties, and the other terms on which the firm will provide	7. A documentary record of an agreement between the firm and the client shall be established which sets out the rights and obligations of the parties, and the other terms on which the firm will provide

services to the client.	services to the client. ***A documentary record of an agreement can also be made in a standardised format.***

Justification

In view of common practice in many member states, it is proposed that this information can be obtained in a standardised format. As a result of this approach, processing expense can be reduced for the investment firm without a reduction in client protection.

Amendment 57
Article 18, paragraph 8

8. ***Reports shall be provided to the client on the progress of and the*** costs associated with the transactions and services undertaken on behalf of the client.	8. ***The client shall receive an order confirmation or a settlement note. The settlement note shall include*** the costs associated with the transactions and services undertaken on behalf of the client.

Justification

Article 18(8) of the Commission's proposal specifies the obligation for reports to be given on the status of order execution. This gives the impression that the firm must be in a position to provide information at all times.

Amendment 58
Article 18, paragraph 9, subparagraph 1

In order to ensure the necessary protection of investors and the ***uniform*** application of paragraphs 1 to 8, the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures to ensure that investment firms comply with the principles set out therein when providing investment or ancillary services to their clients. Those implementing	In order to ensure the necessary protection of investors and the ***consistent*** application of paragraphs 1 to 8 the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures to ensure that investment firms comply with the principles set out therein when providing investment or ancillary services to their clients. Those implementing

measures shall take into account:	measures shall take into account:

Justification

The word 'consistent' is more appropriate than 'uniform' as complete uniformity will usually be inappropriate and unnecessary. The general aim is harmonised general standards of regulatory protection, with Member States permitted a degree of flexibility in adapting the rules in the directive to local conditions.

Amendment 59
Article 18, paragraph 9, point (c)

(c) the retail or professional nature of the client or potential clients.	(c) the retail or professional nature of the client or potential clients ***including adequate grandfathering provisions for the categorisation of existing clients and leaving a sufficient degree of flexibility for investment firms when implementing the categorisation set out in Annex II.***
	Where appropriate, the implementing measures adopted under this paragraph may provide that the principles set out in paragraphs 1 to 8 shall not apply to professional clients or potential professional clients and/or that conduct of business rules may be waived by professional clients, if they so wish.

Justification

It should be made clear that the Commission's duty to differentiate between different classes of client extends to considering which rules should be applied to professionals and which should not. Failure to differentiate properly between professional and retail clients could severely disrupt markets. Applying protections to professionals which have been designed for retail markets drives up costs and damages the millions of retail clients who save via institutional investors such as UCITS, fund managers and pension funds.

Amendment 60
Article 18, paragraph 10, subparagraph 1

Member States shall ***allow*** an investment	Member States shall ***ensure that*** an

firm receiving an instruction to perform investment or ancillary services on behalf of a client ***through the medium of another*** investment firm to rely on client information transmitted by ***the*** firm ***which mediates the instructions.***	investment firm receiving ***from another investment firm*** an instruction to perform investment or ancillary services on behalf of a client ***of that other*** investment firm ***is able*** to rely on client information transmitted by ***that*** firm, ***and is not obliged to seek information about the underlying client of that other investment firm.***

Justification

This amendment interprets more clearly the aim of the original wording so that it is certain that it is not necessary for a firm which receives instructions on behalf of a client to obtain the necessary client information from the underlying client itself. It should be able to rely on client information provided by the firm with which it is dealing.

Amendment 61
Article 19, paragraph 1

1. Member States shall require that investment firms providing services which entail the execution***, whether by the firm itself or another investment firm,*** of client orders in financial instruments ensure that those orders are executed in such a way that the client obtains the best ***possible*** result ***in terms of price, costs, speed and likelihood of execution, taking into account the time, size and nature of customer orders, and any specific instructions from the client.***	1. Member States shall require that investment firms providing services which entail the execution of client orders in financial instruments ***are responsible for making arrangements designed to*** ensure that those orders are executed in such a way that the client obtains the best result ***reasonably achievable, under the execution policy described in Article 20.3, for the size and type of the customer's order, taking into account any specific instructions from the client. The execution policy shall cover price, costs, speed and likelihood of execution, and the execution venues to which the firm has access.*** ***In the case of professional clients who have retained discretion over the manner and market of execution, the investment firm's best-execution duty shall consist only of a need to follow the client's instructions***.

Justification

The compromise combines 32 (Rapporteur) and 195 (Katiforis). The compromise provides that best execution should be a more sophisticated concept - a process rather than a single

specific result, focussing on the steps to be taken to achieve the best result reasonably achievable. The compromise ensures that investors are provided with an execution policy which covers factors such as price, transaction costs, speed, market impact etc. It also provides that, for certain professional clients who have provided instructions on the execution method, the firm must only follow the client's instructions.

Amendment 62

Article 19, paragraph 1a (new)

	1a. The requirements imposed under paragraph 1 shall take into account the size and type of order and the professional or non-professional nature of the client.

Justification

As for other conduct of business standards, Article 19 should explicitly require regulators to take into account the professional or non-professional nature of the client in the application of best execution requirements. This is because some professional clients may not wish precisely the same obligations to be imposed on the investment firm acting for them as would apply when the firm is acting for an inexperienced investor.

Amendment 63
Article 19, paragraph 2

2. The competent authority shall verify that investment firms implement effective and efficient procedures ***which form a systematic, repeatable and demonstrable method*** for facilitating execution of client orders ***on terms that are most favourable to the client***. In assessing these procedures, regard shall be had to the extent to which the procedures enable the firm to obtain the best ***possible*** result having regard to the conditions prevailing in the marketplace to which the investment firm can reasonably be expected to have access.	2. The competent authority shall verify that ***such*** investment firms implement ***systematic,*** effective and efficient procedures for ***monitoring execution quality and*** facilitating execution of client orders ***in accordance with Paragraph 1.*** In assessing these procedures, regard shall be had to the extent to which the procedures enable the firm to obtain the best result ***reasonably achievable*** having regard to the ***conditions of the order, and the*** conditions prevailing in the marketplace to which the investment firm can reasonably be expected to have access ***under the terms of the execution policy. The competent authority must regularly monitor compliance of investment firms with these obligations.***

Justification

The compromise is a combination of 33 (Rapporteur), 200 (Berès and Goebbels) and 201 (Bourlanges). The requirement introduced to monitor execution quality is linked to the introduction of the execution policies in the compromise on 19.1. This obligation is designed to ensure that firms keep reviewing their execution policies to ensure that they continue to give clients high quality execution. The compromise also provides that the competent authority should not only supervise the setting up of procedures but also the effective implementation of these procedures on a continuous basis.

This amendment recognises the sophistication of the best execution concept and that the steps which should reasonably be taken to achieve "best execution" may vary in different cases, according to the needs of the client, the type of order and the prevailing conditions in the market. Therefore the processes used and the judgements made may not always form part of a repeatable and recurrent method, applicable in every case.

Amendment 64
Article 19, paragraph 3

3. Member States shall require investment firms to review, on a regular basis, ***the procedures which they employ*** to obtain the best ***possible*** result for their clients ***and, where necessary, to adapt those procedures so as to obtain access to the execution venues which, on a consistent basis, offer the most favourable terms of execution available in the marketplace.***	3. Member States shall require investment firms to review, on a regular basis, ***their execution arrangements and, where appropriate, make changes to them so as*** to obtain the best result ***reasonably achievable*** for their clients. ***Member States shall require that investment firms implement effective and efficient procedures for monitoring execution quality. In assessing these procedures, regard shall be had to the extent to which the procedures enable the firm to identify and correct, where appropriate, consistent inefficiencies in its execution practices.***

Justification

See amendments to Article 19.1 and Article 19.2. It is very important to ensure that investment firms put in place arrangements for regular and effective monitoring execution quality, which should identify any inefficiencies in execution policy. This is necessary to ensure that firms continuously update their practices to ensure investors get the highest standards of execution quality.

Amendment 65
Article 19, paragraph 4, point (a)

(a) the factors that may be taken into account for determining best execution or the calculation of best net price prevailing in the marketplace for the size and type of order and type of client;	(a) the factors that may be taken into account for determining best execution or the calculation of best net price prevailing in the marketplace for the size and type of order and type of client***, taking particular account of whether the client is a retail investor or a professional client***;

Justification

This compromise is 206 (Langen) . It ensures that Article 19 should draw the distinction between professional clients and small investors in applying the principle of best execution, since there are professional clients who do not wish the investment firm to adhere to precisely the same obligations for both professional clients and inexperienced investors.

Amendment 66
Article 19, paragraph 4a (new)

	4a. The competent authority of the home Member State shall ensure that the obligations of this provision and the implementing measures adopted under paragraph 4 are complied with by investment firms when providing services in other Member States. The competent authority of the Member State in which a branch is located shall enforce the obligations of this provision in respect of the services provided by a branch to its clients.

Justification

The Commission proposes that branches should be subject to the conduct of business rules of the state where the branch is located (Article 18). In reality, best execution rules are a type of conduct of business obligation and should operate in the same way. Hence, branches should be subject to the best execution rules of the state where the branch is located. The approach taken to branches in Article 18.11 and 18.12 should therefore be replicated in Article 19 in order to ensure consistency.

Amendment 67
Article 19, paragraph 4b(new)

4b. The obligation referred to in paragraph 1 shall not apply if the investment firm has agreed otherwise with a professional client,

Justification

Professional clients should be able to waive their rights for best execution. Compared to retail clients, professional clients have sufficient expertise and knowledge to judge the quality of execution for themselves and take the necessary remedial action. In practice, execution quality in professional markets polices itself. Poor execution is routinely queried and remedied; if it is not, the competitive nature of the market ensures that firms that provide poor execution lose business.

Amendment 68
Article 20, paragraph 2

2. Member States shall ensure that investment firms operate procedures or arrangements for executing otherwise comparable client orders ***in accordance with the time of their reception by the investment firm, and for preventing client interests from being adversely affected by any conflicts of interest.***	2. Member States shall ensure that investment firms operate procedures or arrangements ***or rules*** for executing otherwise comparable client orders ***which ensure that the firm does not knowingly execute orders out of time priority, unless this is carried out in accordance with a client order aggregation policy or by agreement with the client.***

Justification

Additional flexibility is required here since a rigid "time of reception rule" will sometimes operate against the investor's interest. Combining the orders of different investors and executing them in bulk is an important method of reducing costs. This would be outlawed by the Commission text, since aggregation will sometimes mean executing orders outside of strict time priority. This amendment also recognises that firms dealing with investors through a range of branches or desk locations may inadvertently execute orders out of time priority, without damaging the interests of these customers.

Amendment 69
Article 20, paragraph 3

3. Member States shall ensure that investment firms ***obtain the express prior consent of clients*** before proceeding to execute client orders outside the rules and systems operated by a regulated market or MTF. ***Member States shall allow the investment firm to obtain this consent either*** in the form of a general agreement or in respect of individual transactions. If the prior consent of clients is given in the form of a general agreement, it should be contained in a separate ***document and should be renewed annually.***	3. Member States shall ensure that investment firms, before proceeding to execute ***retail*** client orders***, disclose to their retail clients their execution policy including whether orders are to be executed under or*** outside the rules and systems operated by a regulated market or MTF, ***and obtain their consent it. This consent can be obtained either at the outset of the client relationship*** in the form of a general agreement or in respect of individual transactions. If the prior consent of clients is given in the form of a general agreement, it should be contained in a separate ***section***. ***Member States shall ensure that investment firms inform their clients of any significant change to their execution policy. Further to significant change, clients should always have the right to terminate without delay the contractual arrangement made with the investment firm***.

Or. en

Amendment 70
Article 20, paragraph 4

4. Member States shall require that, in the case of a client limit order which cannot be immediately executed under prevailing market conditions, investment firms are, unless the client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order by making public immediately ***the terms of that client limit order in a manner which*** is easily accessible to other market participants. Member States shall provide that the competent authorities are to be able to waive the obligation to make public a limit order that is large in scale compared with normal market size as determined under Article 41(2).	4. Member States shall require, that in the case of a client limit order ***for shares*** which cannot be immediately executed under prevailing market conditions, investment firms are, unless the client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order by making public immediately ***the client limit order in particular by forwarding the client limit order to a regulated market or MTF or by some other means which ensures that it*** is easily accessible to other market participants. Member States shall provide that the competent authorities are to be able to waive the obligation to make public a limit order that is large in scale compared with normal

	market size as determined under article 41(2).

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Amendment 71
Article 20, paragraph 5, subparagraph 1

In order to ensure that measures for the protection of investors and fair and orderly functioning of markets take account of technical developments in financial markets, and to ensure the uniform application of paragraphs 1 to 4, the Commission ***shall*** adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which define:	In order to ensure that measures for the protection of investors and fair and orderly functioning of markets take account of technical developments in financial markets, and to ensure the consistent application of paragraphs 1 to 4, the Commission ***may*** adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which define:

Justification

In this context, the Commission should be given the flexibility to choose whether to adopt implementing measures. This will assist in rapid implementation of the directive, which might otherwise be held up pending finalisation of all implementing measures.

Amendment 72
Article 20, paragraph 5, point (c)

(c) the different methods through which an investment firm can be deemed to have met its obligation to disclose unexecuted client limit orders to the market.	***Deleted***

Justification

This amendment is linked to the one on article 20(4). Implementing measures on the 'different methods through which the investment firm is deemed to have met its obligation to disclose unexecuted limit orders' are no longer necessary as the investment firm should in any case transmit promptly to a regulated market or a MTF limit order that it can not immediately

execute.

Amendment 73
Article 20, paragraph 5a (new)

5a. The competent authority of the home Member State shall ensure that the obligations of this provision and the implementing measures adopted under paragraph 4 are complied with by investment firms when providing services in other Member States. The competent authority of the Member State in which a branch is located shall enforce the obligations of this provision and any implementation measures adopted under paragraph 5 in respect of the services provided by a branch to its clients.

Justification

The Commission proposes that branches should be subject to the conduct of business rules of the state where the branch is located (Article 18). In reality, client order handling rules are a type of conduct of business obligation and should operate in the same way. Hence branches should be subject to the best execution rules of the state where the branch is located. The approach taken to branches in Article 18.11 and 18.12 should therefore be replicated in Article 19 in order to ensure consistency.

Amendment 74
Article 21

1. Member States shall ***require*** an investment firm ***to*** employ tied agents ***only*** for the purposes of promoting the services of the investment firm, soliciting business or collecting orders from clients or potential clients and transmitting these to that investment firm, and providing advice in respect of financial instruments or services offered by that investment firm.

1. Member States shall ***ensure that*** an investment firm ***may*** employ tied agents ***in particular*** for the purposes of promoting the services of the investment firm, soliciting business or collecting orders from clients or potential clients and transmitting these to that investment firm, and providing advice in respect of financial instruments or services offered by that investment firm ***and of all activities necessarily linked to it*** .

2. Member States shall require an investment firm employing a tied agent to

2. Member States shall require an investment firm employing a tied agent to

remain fully and unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the firm. Member States shall require the investment firm to ensure that a tied agent discloses immediately to any client or potential client the capacity in which he agent is acting and the firm which he is representing.	remain fully and unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the firm. ***Should the investment firm be subject to the own funds requirement, the amount of this requirement must be geared to the actual liability risk, having regard to existing insurance cover.*** States shall require the investment firm to ensure that a tied agent***, prior to mediating a particular product,*** discloses immediately to any client or potential client the capacity in which he agent is acting and the firm which he is representing.
3. Member States shall ensure that investment firms monitor the activities of their tied agents and adopt measures and procedures so as to ensure that they operate, on a continuous basis, in compliance with this Directive.	3. Member States shall ensure that investment firms monitor the activities of their tied agents and adopt measures and procedures so as to ensure that they operate, on a continuous basis, in compliance with this Directive.
4. Each Member State shall ensure that tied agents which act or wish to act on its territory are entered in a public register which is established and maintained under the responsibility of the competent authority.	4. Each Member State shall ensure that tied agents which act or wish to act on its territory are entered in a public register which is established and maintained under the responsibility of the competent authority.
The competent authority shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.	The competent authority shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client. ***The existence of appropriate general, commercial and professional knowledge may be determined by way of a grandfathering clause in terms of existing professional experience or appropriate training or further education measures.***
The register shall be updated on a regular basis. It shall be publicly available for consultation.	The register shall be updated on a regular basis. It shall be publicly available for consultation.

5. Member States shall ensure that investment firms employ only tied agents entered in the public registers referred to in paragraph 4.	5. Member States shall ensure that investment firms employ only tied agents entered in the public registers referred to in paragraph 4.
6. Member States may allow the competent authority to delegate the establishment and maintenance of the public register pursuant to paragraph 4 and the tasks of monitoring compliance of tied agents with the requirements of paragraph 4 to a body meeting the conditions laid down in Article 45(2).	6. Member States may allow the competent authority to delegate the establishment and maintenance of the public register pursuant to paragraph 4 and the tasks of monitoring compliance of tied agents with the requirements of paragraph 4 to a body meeting the conditions laid down in Article 45(2).
	7. The Member States shall ensure that the rights and obligations of tied agents are geared to the requirements of Directive 2002/92/EC on insurance mediation and that harmonisation is carried out accordingly.

Justification

The list of the activities permitted for tied agents should not be exhaustive, in order to prevent the bureaucratisation or restriction of the sale of financial products. Requirements under banking supervisory law should also be included, e.g. identity checks under the money laundering directive or the compilation of client data under the Rules of Conduct.

The own funds requirement should be determined in the light of the existing liability risk, and not on flat rate figures (e.g. running costs or transmitted provisions) without any other differentiation.

The requirement to disclose for which investment firm the agent is acting should take effect as soon as the agent mediates certain products to the investment firm. Uncertainties also arise as to the date from which the agent is required to state that he began acting for the investment firm.

In the interest of confidence protection, the directive should not impose any access restrictions on tied agents who are already active.

It seems necessary and sensible to harmonise this directive with the insurance mediation directive. In order to guarantee uniform consumer protection for clients of mediators, a section to this effect should be added to the relevant paragraph.

Amendment 75
Article 22, paragraph 1

1. The Member States shall ensure that investment firms authorised to execute	1. The Member States shall ensure that investment firms authorised to execute

orders on behalf of clients and/or to deal on own account, ***may enter into transactions with*** eligible counterparties without being obliged to comply with the obligations under Articles 18, 19 and 20 in respect of those ***transactions***.	orders on behalf of clients***, to operate an MTF, receive and transmit orders, provide investment advice*** and/or to deal on own account, may ***provide such services to*** eligible counterparties without being obliged to comply with the obligations under Articles 18, 19 and 20 in respect of those ***services***.

Justification

The obligation to comply with Articles 18, 19 and 20 applies to all investment firms and not just those authorised to execute client orders and/or deal on own account. The amendment is therefore necessary to ensure that those investment firms providing other investment services can also benefit from the dis-application of those articles when providing services to or on behalf of eligible counterparties.

Amendment 76
Article 22, paragraph 2

2. In order to conclude transactions in accordance with paragraph 1, the investment firm shall obtain confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty. This confirmation shall be obtained either before or during the course of the transaction, or in the form of a general agreement.	***Deleted***

Justification

This is amendment 242 (Balfe) is linked with the compromise proposal on 22.3. together these compromise proposals represent a simplified and harmonised regime for the definition of eligible counterparties .

Amendment 77
Article 22, paragraph 3

3. Member States shall recognise as eligible counterparties for the purposes of this Article ***and Articles 13 and 39 investment firms, credit institutions, insurance companies or any other authorised or regulated financial intermediary considered as such by Community***	3. Member States shall recognise as eligible counterparties for the purposes of this Article ***a. investment firms,*** ***b. credit institutions,***

legislation, but excluding UCITS and their management companies and pension funds and their management companies.	***c. insurance companies,***
	d. commodity and commodity derivatives dealers and other entities authorised or regulated to operate in financial markets, including entities authorised by a Member State under a Directive, entities authorised or regulated without reference to a Directive and entities authorised or regulated by a non-Member State
	e. any other authorised or regulated financial intermediary considered as such by Community legislation,
	f. central banks, national governments and their representatives and corresponding offices, including public bodies which are responsible for public debt,
	g. international and supranational organisations,
Member States ***may*** also recognise as eligible counterparties UCITS and their management companies, pension funds and their management companies, and other ***companies*** meeting pre-determined proportionate requirements, including quantitative thresholds***. In the event of a transaction where the prospective counterparties are located in different jurisdictions, the investment firm shall defer to the status of the other company as determined by the law or measures of the Member State in which that company is established.***	Member States ***shall*** also recognise as eligible counterparties UCITS and their management companies, pension funds and their management companies, and other ***undertakings*** meeting pre-determined proportionate requirements, including quantitative thresholds.
Classification as an eligible counterparty under the second subparagraph shall be without prejudice to the right of such entities to request treatment as clients whose business with the investment firm is subject to Articles 18, 19 and 20.	Classification as an eligible counterparty under the second subparagraph shall be without prejudice to the right of such entities to request treatment as clients whose business with the investment firm is subject to Articles 18, 19 and 20.

Justification

This compromise should be combined with the proposed amendment (above) on Article 22, paragraph 2. It covers all of 244 (Berès), the substance of 245 (Schmidt), all of 247 (Kauppi), all of 248 (Garcia Margallo), most of 249 (Balfe) and elements of 251 (Rapporteur).

The compromise proposes a harmonised definition of eligible counterparty which includes UCITS, pension funds, commodity and commodity derivatives dealers etc. It also provides that some firms that qualify as eligible counterparties may opt out of this regime and request to be treated as a client.

Point f has been supplemented to include public bodies which are responsible for public debt.

Amendment 78
Article 22, paragraph 4 (a) (new)

4a. Member States shall also recognise as eligible counterparties entities having their registered office or head office in third countries and subject to rules similar to those that apply to entities referred to in paragraph 3.

Justification

This proposed compromise makes a small revision to amendment 252 (Beres Goebbels) and turns the amendment into an addition rather than a substitution for 22.4. The test of equivalence has proved problematic in a number of contexts and therefore amendment 252 would operate more effectively if Member States recognised entities as eligible counterparties if they are so recognised by jurisdictions with similar or equivalent regulation.

Amendment 79
Article 22, paragraph 5

5. In order to ensure the ***uniform*** application of paragraphs 1, 2 and 3 in the light of changing market practice and to facilitate the effective operation of the single market, the Commission may adopt, in accordance with the procedure referred to in Article 59(2), implementing measures concerning the classification of eligible counterparties.	5. In order to ensure the ***consistent*** application of paragraphs 1, 2 and 3 in the light of changing market practice and to facilitate the effective operation of the single market, the Commission may adopt, in accordance with the procedure referred to in Article 59(2), implementing measures concerning the classification of eligible counterparties.

Justification

The word 'consistent' is more appropriate than 'uniform' as complete uniformity will usually be inappropriate and unnecessary. The general aim is harmonised general standards of regulatory protection, with Member States permitted a degree of flexibility in adapting the rules in the directive to local conditions.

Amendment 80
Article 23, paragraph 5

5. Member States shall provide that the reports are to be made to the competent authority either by the investment firm ***itself*** or by the regulated market or MTF through whose systems the transaction was completed. In cases where transactions on a regulated market or MTF are reported directly to the competent authority by the regulated market or MTF, the obligation on the investment firm laid down in paragraph 3 may be waived.	5. Member States shall provide that the reports are to be made to the competent authority either by the investment firm, ***a third party acting on its behalf*** or by the ***operator of the*** regulated market or MTF through whose systems the transaction was completed***, or by a trade-matching or reporting system approved by the competent authority***. In cases where transactions on a regulated market or MTF are reported directly to the competent authority by the regulated market or MTF, ***or where the transactions are reported directly to the competent authority by a trade matching or reporting system approved by the competent authority,*** the obligation on the investment firm laid down in paragraph 3 may be waived.

Justification

Firms should be allowed to report via a third party. This is particularly important in Germany, where many groupings of smaller savings banks and cooperative banks manage aspects of regulatory compliance and reporting through a central shared bank. It should also be possible to report via a "trade matching system", provided by a third party which is neither a regulated market or an MTF. These systems operate safely and effectively under existing regulatory practice and their continued use should not be put in doubt.

Amendment 81
Article 23, paragraph 6

6. In order to ensure that measures for the protection of market integrity are modified	6. In order to ensure that measures for the protection of market integrity are modified

to take account of technical developments in financial markets, and to ensure the uniform application of paragraphs 1 to 5, the Commission may adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which ***stipulate*** the methods and arrangements for reporting financial transactions, the form and content of these reports, as well as arrangements for communicating them to the competent authorities of other Member States.	to take account of technical developments in financial markets, and to ensure the uniform application of paragraphs 1 to 5, the Commission may adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which ***clarify*** the methods and arrangements for reporting financial transactions, the form and content of these reports, as well as arrangements for communicating them to the competent authorities of other Member States, ***having particular regard to the expenses incurred by any adjustment of existing reporting systems***.

Justification

Reporting requirements are a key part of the regulatory structure and hence should be determined by primary legislation, using the full co-decision process. The implementing measures should be confined to clarifying standards set at Level 1 and should not creating new, additional standards. The Commission should also take into account the costs of amending existing reporting systems.

Amendment 82
Article 23, paragraph 6a (new)

	6a. The competent authority of the home Member State shall ensure that the obligations of this provision and the implementing measures adopted under paragraph 4 are complied with by investment firms when providing services in other Member States. The competent authority of the Member State in which a branch is located shall enforce the obligations of this provision and any implementation measures adopted under paragraph 6 in respect of the services provided by a branch to its clients.

Justification

The competent authority in the Member State where the branch is located, is the authority which is best placed to regulate transaction reporting obligations. The general structure of

the directive specifies that branches are to be subject to the jurisdiction of the country where the branch is located. It would be unsatisfactory if branches were to be partly governed by the rules of the state of location and partly by the rules of the home state of the overall company. This could lead to confusion and uncertainty as to which regulator had responsibility and could jeopardise investor protection.

Amendment 83
Article 24, paragraph 1, subparagraph 1

Member States shall ensure that investment firms operating an MTF establish adequate and effective arrangements to facilitate the effective and regular monitoring of transactions undertaken on or through the facility in order to identify disorderly trading conditions or behaviour that may involve market abuse.	Member States shall ensure that, ***where necessary and appropriate given the MTF's position in the overall market for the investment concerned***, investment firms operating an MTF establish adequate and effective arrangements to facilitate the effective and regular monitoring of transactions undertaken on or through the facility in order to identify disorderly trading conditions or behaviour that may involve market abuse.

Justification

Sensible and effective reporting requirements are an essential way to police market abuse. However, regulation should be proportionate and risk-based. In imposing reporting requirements, Member States should take into account the size of share of the overall market which the MTF has. The market abuse risks will be lower where the market share is small and regulatory requirements should reflect this.

Amendment 84
Article 24, paragraph 1, subparagraph 2

Member States shall ensure that under those arrangements, investment firms supply immediately the information gathered pursuant to the first subparagraph to the competent authority and provide full assistance to the latter in investigating and prosecuting market abuse undertaken on or through the MTF.	Member States shall ensure that under those arrangements, ***which shall be proportionate to the share of trading undertaken on the MTF outside the rules of a regulated market,*** investment firms supply immediately the information gathered pursuant to the first subparagraph to the ***home state*** competent authority and provide full assistance to the latter in investigating and prosecuting market abuse undertaken on or through the MTF.

	Member States shall ensure that, in complying with their obligations under this Article, operators of MTFs have no legal liability to third parties.

Justification

(i) Sensible and effective reporting requirements are an essential way to police market abuse. However, regulation should be proportionate and risk-based. In imposing reporting requirements, Member States should take into account the size of share of the overall market which the MTF has. The market abuse risks will be lower where the market share is small and regulatory requirements should reflect this.

Amendment 85
Article 24, paragraph 1, subparagraph 3

In order to promote the orderly and effective monitoring of trading on MTFs so as to sustain overall market integrity, and to ensure the uniform application of paragraph 1, the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which define the arrangements referred to in paragraph 1.	In order to promote the orderly and effective monitoring of trading on MTFs so as to sustain overall market integrity, and to ensure the uniform application of paragraph 1, the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which define the arrangements referred to in paragraph 1. ***The Commission shall also adopt implementing measures which define circumstances in which MTFs' reporting requirements are restricted to situations where market abuse or disorderly trading is suspected.***

Justification

The Commission's powers should be explicitly extended to enable it to specify instances where reporting need only be carried out where market abuse or disorderly trading is actually suspected

Amendment 86

Article 25, paragraph 1

1. Member States shall require ***any*** investment ***firm*** authorised to deal on own	1. Member States shall require investment ***firms which practise systematic***

account to make public a firm bid and offer ***price*** for transactions of a size ***customarily undertaken by a retail investor in respect of*** shares ***in which it is dealing***, ***and*** where those shares are admitted to trading on a regulated market and for which there is a liquid market.	***internalisation in shares*** to make public firm bid and offer ***quotes*** for transactions of a ***standard market*** size***, in those*** shares, where those shares are admitted to trading on a regulated market and for which there is a liquid market***.***
Member States shall require that the investment firms referred to in the first sub-paragraph trade with ***other investment firms and eligible counterparties at the advertised prices***, except where justified by legitimate commercial considerations related to the final settlement of the transaction.	Member States shall require that the investment firms referred to in the first subparagraph trade with ***their systematic internalisation clients at a price equal to or better than that quoted,*** except where justified by legitimate commercial considerations***.***

Amendment 87
Article 25, paragraph 2

2. Member States shall provide that the obligation set out in paragraph 1 is waived in respect of investment firms ***which do*** not represent an important ***provider*** of liquidity for the share(s) in question on a regular or continuous basis.	2. Member States shall provide that the obligation set out in paragraph 1 is waived in respect of investment firms ***whose systematic internalisation does*** not represent an important ***provision*** of liquidity for the share(s) in question on a regular or continuous basis.

Amendment 88
Article 25, paragraph 3

3. Member States shall ensure that the bid and offer prices required under paragraph 1 are made public in a manner which is easily accessible to other market participants, ***free of charge,*** on a regular and continuous basis during normal trading hours.	3. Member States shall ensure that the bid and offer prices required under paragraph 1 are made public in a manner which is easily accessible to other market participants ***on reasonable commercial terms,*** on a regular and continuous basis during normal trading hours.
The competent authority shall ***verify that published quotes reflect prevailing market conditions for that share, and that the investment firm regularly updates the bid and offer prices that it makes public pursuant to paragraph 1.***	The competent authorities shall:
	a) Verify whether investment firms fulfill the criteria laid down in Article 3 paragraph 1, 22a;

b) Monitor whether investment firms regularly update the bid and offer prices published in accordance with paragraph 1 and maintain prices which are generally representative of overall market conditions.

Investment firms are permitted to decide, on the basis of their own commercial policies, the persons that they accept as clients and consequently with whom they deal on their prices quoted under sub-paragraph 1. However, Member States shall require that the investment firms subject to the obligation under sub-paragraph 1, which do not exercise their option under sub-paragraph 4, point d (i) of providing their quotes through the facilities of a regulated market or MTF, have clear standards for governing access for new systematic internalisation clients, based on objective, non-discriminatory, commercial criteria.

Amendment 89
Article 25, paragraph 4

4. In order to ensure the uniform application of paragraphs 1, 2 and 3, in a manner which supports the efficient valuation of shares and maximises the possibility of investment firms to obtain the best deal for their clients, the Commission shall, in accordance with the procedure referred to in Article 59(2), adopt implementing measures which:	4. In order to ensure the uniform application of paragraphs 1, 2 and 3, in a manner which supports the efficient valuation of shares and maximises the possibility of investment firms to obtain the best deal for their clients, the Commission shall, in accordance with the procedure referred to in Article 59 (2), adopt implementing measures which:
(a) specify ***the size of transactions customarily undertaken by a retail investor*** in respect of which the investment firm shall make public firm bid and offer ***prices***;	(a) specify ***what is a transaction of a standard market size*** in respect of which the investment firm shall make public firm bid and offer ***quotes having regard to, at least the following factors, and with the aim of ensuring transparent, competitive and liquid markets:***
	(i) prevailing local market conditions and practices and respective trading volumes in different Member States and the

	views of local competent authorities
	(ii) the effect on liquidity, competition, price formation and the general functioning of the market in different Member States
	(iii) the risks to which the obligation under paragraph 1 exposes firms, including associated obligations and risks regulated under the Capital Adequacy Directives
	(aa) (new) specify what is an order of standard market size for the purposes of Article 3, sub paragraph 1, point 22a above. The Commission shall take into account the aim and factors (i) to (iii) set out under point (a) above but shall not be obliged to adopt the same specification or definition of standard market size for the purposes of both Article 3, sub-paragraph 1, point 22a (new) above and for the purposes of Article 25, subparagraph 1 and may, if it considers this to be appropriate, adopt a different approach to the term in the two different contexts.
(b) define the shares or classes of share for which there is sufficient liquidity to allow application of the obligation under paragraph 1;	(b) define the shares or classes of share for which there is sufficient liquidity to allow application of the obligation under paragraph 1
(c) determine which types of investment firms shall be exempted, pursuant to paragraph 2, from the obligation under paragraph 1;	(c) determine which types of investment firms shall be exempted, pursuant to paragraph 2, from the obligation under paragraph 1;
(d) specify the means ***by which*** investment firms may comply with their obligations under paragraph ***3, which*** shall include the following possibilities:	(d) specify the means ***whereby*** investment firms may comply with their obligations under ***paragraph 1. These*** shall include the following possibilities:
i) through the facilities of any regulated market which has admitted the instrument in question to trading;	i) through the facilities of any regulated market which has admitted the instrument in question to trading;
ii) through the offices of a third party;	ii) through the offices of a third party;

iii) through proprietary arrangements.	iii) through proprietary arrangements.

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Amendment 90
Article 26, paragraph 1

1. Member States shall require investment firms which, either on own account or on behalf of clients, conclude transactions in shares admitted to trading outside the rules and systems of a regulated market or MTF, to make public the volume and price of those transactions and the time at which they were concluded. This information shall be made public ***immediately***, on a reasonable commercial basis, and in a manner which is easily accessible to other market participants.	1. Member states shall require investment firms which, either on own account or on behalf of clients, conclude transactions in shares admitted to trading on a regulated market outside the rules and systems of a regulated market or MTF, to make public the volume and price of those transactions and the time at which they were concluded. This information shall be made public ***in a timely manner***, on a reasonable commercial basis, and in a manner which is easily accessible

Justification

Some Member States encounter linguistic problems with the term "immediately", where it has less flexibility than it does in the English language.

Amendment 91
Article 26, paragraph 3, introductory phrase

3. In order to ensure the transparent and orderly functioning of markets and the ***uniform*** application of paragraph 1, the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which:	3. In order to ensure the transparent and orderly functioning of markets and the ***consistent*** application of paragraph 1, the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which:

Justification

The word 'consistent' is more appropriate than 'uniform' as complete uniformity will usually be inappropriate and unnecessary. The general aim is harmonised general standards of regulatory protection, with Member States permitted a degree of flexibility in adapting the rules in the Directive to local conditions.

Amendment 92
Article 26, paragraph 3, point (b)

(b) clarify the application of the obligation under paragraph 1 to transactions involving the use of shares for collateral, lending or other purposes where the exchange of shares is determined by factors other than the current market valuation of the share.	(b) clarify ***where*** the obligation under paragraph 1 ***should not apply*** to transactions involving the use of shares for collateral, lending or other purposes where the exchange of shares is determined by factors other than the current market valuation of the share***, and to other transactions which contain little or no useful price information***.

Justification

Properly regulated post-trade transparency is essential for liquid equity markets, in particular to enable investors to check the quality of execution, and to supplement information on orders and quotes with details of actual trades. However, in addition to circumstances where the exchange of shares is determined by factors other than the current market valuation, there are also instruments where the small volume and infrequency of trading means that the cost of trade reporting, and of establishing the infrastructure for it, might outweigh any benefit which the market would derive from the trade information. This is likely to be the case for many small caps, foreign stocks, and preference shares. Given that the establishment of an infrastructure for trade reporting is likely to take some time and resources in some Member States, it makes sense to focus Article 26 on liquid instruments by ensuring that implementing measures enable its application for less liquid securities and trades which do not convey pricing information to be considered at a later stage.

Amendment 93
Article 27, paragraph 1

1. Member States shall require that investment firms operating an MTF make public current bid and offer prices which are advertised through their systems in respect of shares admitted to trading on a regulated market. Member States shall provide that this information is to be made available to the public on a reasonable commercial basis, as close to real time as	1. Member States shall require that, ***where appropriate given the size and nature of trading undertaken on an MTF outside the rules of a regulated market,*** investment firms operating an MTF make public current bid and offer prices which are advertised through their systems ***to all users*** in respect of shares admitted to trading on a regulated market. Member

possible.	States shall provide that this information is to be made available to the public on a reasonable commercial basis, as close to real time as possible.

Justification

(i) The size and nature of trading on MTFs varies considerably and Member States should be given the flexibility to differentiate regulatory requirements accordingly. (ii) The provisions should not apply where MTF trades are already published under the rules of an exchange. (iii) Publication should only be required where firm bids and offers are visible to all users of the MTF. Without such an amendment, many useful and cost-effective crossing and auction systems, where prices are revealed only to limited number of customers, would become impossible to operate.

Amendment 94
Article 27, paragraph 2

2. The competent authority shall ensure that the content, timing and publication of pre-trade reporting by MTFs comply with the same requirements as apply pursuant to Article 41 in respect of transactions in those instruments when undertaken on a regulated market.	
Competent authorities shall ***also*** waive the obligations referred to in paragraph 1 ***in respect of trading methods operated by MTFs when exemptions are provided, under Article 41, for the same trading methods when operated by regulated markets.***	***2.*** Competent authorities shall waive ***or modify*** the obligations referred to in paragraph 1 ***when the particular structure of the MTF, or its small size relative to the overall market in an instrument, make it appropriate to do so.***

Justification

It is simplistic to assume that the rules drafted for exchanges are always suitable for the diverse spectrum of systems categorised as MTFs. The automatic read-across to exchange rules should be deleted. Member States should differentiate between MTFs which have a large share of the market in trading an instrument and those which have only a minor one. Alternative execution venues should not be deterred from providing innovative execution models by imposing on MTFs exactly the same pre-trade transparency obligations as regulated markets.

Amendment 95
Article 28, paragraph 1

1. Member States shall require that investment firms operating an MTF make public the price, volume and time of the transactions executed under its rules and systems in respect of shares which are admitted to trading on a regulated market. Member States shall require that details of all such transactions be made public, on a reasonable commercial basis, as close to real time as possible.	1. Member States shall require that investment firms operating an MTF make public the price, volume and time of the transactions executed under its rules and systems in respect of shares which are admitted to trading on a regulated market. Member States shall require that details of all such transactions be made public, on a reasonable commercial basis, as close to real time as possible. ***These requirements shall not apply where details of trades executed on an MTF are made public under the rules of a regulated market.***

Justification

The amendment clarifies that requirements for post-trade transparency for MTFs do not apply where the trade details are made public under the rules of a regulated market. This amendment will avoid unnecessary and confusing duplication of reporting.

Amendment 96
Article 29, paragraph 3

3. The competent authority of the home Member State shall, within one month of receiving the information, forward it to the competent authority of the host Member State. ***The investment firm may then start to provide the investment service or services concerned in the host Member State.***	3. The competent authority of the home Member State shall, within one month of receiving the information, forward it to the competent authority of the host Member State.

Justification

This amendment is necessary to bring the Directive into line with the Banking Consolidation Directive 2000, under which credit institutions do not need to wait for the home Member State to notify the host Member State before exercising the freedom to provide services.

Amendment 97
Article 30, paragraph 7

7. The competent authority of the host Member State shall assume responsibility	***deleted***

for ensuring that the services provided by the branch comply with the obligations laid down in Articles 12(7) and 18 and in measures adopted pursuant thereto.

The competent authority of the host Member State shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under Articles 12(7) and 18 and measures adopted pursuant thereto.

Justification

Article 30.7 should apply to credit institutions so that branches share with firms the benefit of regulation by the host Member State where appropriate. However, the rest of Article 30 should not apply to credit institutions, since they already notify and benefit from the freedom to provide services via the Banking Co-ordination Directive. Article 30.7 should therefore become a separate article to make it clear that it does apply to credit institutions under Article 1.2.

Amendment 98
Article 30a (new)

30a. The competent authority of the host Member State shall assume responsibility for ensuring that the services provided by the branch comply with the obligations laid down in Articles 12(7), 16, 18 , 19, 20, 21, 22, 23, 25 and 26 and in measures adopted pursuant thereto.

The competent authority of the host Member State shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under Articles 12(7), 16, 19, 20,21, 22, 23, 25, and 26 and 18 and measures adopted pursuant thereto.

Justification

Article 30.7 should apply to credit institutions so that branches share with firms the benefit of regulation by the host Member State where appropriate. However, the rest of Article 30

should not apply to credit institutions, since they already notify and benefit from the freedom to provide services via the Banking Co-ordination Directive. Article 30.7 should therefore become a separate article to make it clear that it does apply to credit institutions under Article 1.2. It is also necessary to extend the host State regulation of branches to a wider range of Articles.

Amendment 99
Article 32, paragraph 1

1. Member States shall ensure that investment firms from other Member States have the ***possibility*** of direct or indirect access to central counterparty, clearing and settlement systems in their territory for the purposes of finalising transactions in financial instruments.	1. Member States shall ensure that investment firms from other Member States have the ***right*** of direct or indirect access to central counterparty, clearing and settlement systems in their territory for the purposes of finalising transactions in financial instruments.

Justification

Firms should have the "right" of direct or indirect access to clearing and settlement systems, not merely the "possibility". The Commission text could allow the existing unsatisfactory state of affairs to continue, with many firms experiencing access difficulties, particularly in relation to indirect access.

Amendment 100
Article 32, paragraph 4, introductory phrase

4. In order to ensure the ***uniform*** application of paragraphs 1, 2 and 3, the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which clarify:	4. In order to ensure the ***consistent*** application of paragraphs 1, 2 and 3, the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures which clarify:

Justification

The word 'consistent' is more appropriate than 'uniform' as complete uniformity will usually be inappropriate and unnecessary. The general aim is harmonised general standards of regulatory protection, with Member States permitted a degree of flexibility in adapting the rules in the directive to local conditions.

Amendment 101
Article 33, paragraph 2

2. Member States shall require the regulated market to perform tasks relating to its organisation and operation under the supervision and responsibility of the competent authority. Member States shall ensure that competent authorities keep under regular review the compliance of regulated markets with the provisions of this Title.	2. Member States shall require the ***operator of a*** regulated market to perform tasks relating to the organisation and operation of the regulated market under the supervision and responsibility of the competent authority. Member States shall ensure that competent authorities keep under regular review the compliance of regulated markets with the provisions of this Title.

Justification

It is the operators of the regulated markets who have to comply with the directive, rather than the regulated markets themselves. Like the concept of a multilateral trading facility, the term "regulated markets" refers to a system or function run by a market operator rather than to an entity in itself. It is therefore more accurate to refer to "operators of regulated markets" rather than to "regulated markets" in this context.

Amendment 102
Article 33, paragraph 3

3. Without prejudice to any relevant provisions of Directive 2002/../EC [Market Abuse], the public law governing the transactions conducted under the rules and systems of the regulated market shall be that of the home Member State of the regulated market.	3. Without prejudice to any relevant provisions of Directive 2002/../EC [Market Abuse], the public law governing the transactions conducted under the rules and systems of the regulated market shall be that of the home Member State of the regulated market, ***unless the regulated market concerned determines that the law of another jurisdiction shall govern such transactions. The rules of the regulated market shall specify the governing law if it is not to be the law of the home Member***

State.

Justification

It should be possible for regulated markets and clearing houses to choose the governing law for contracts listed and positions cleared by them. This is a more precise text than the amendment contained in the draft report, with the same aim in mind.

Amendment 103
Article 33, paragraph 4, subparagraph 1

4. Member States shall require the ***regulated*** market to notify the competent authority of any intended change to the conditions under which authorisation was granted or to ***its*** programme of operations.	4. Member States shall require the market ***operator*** to notify the competent authority of any intended change to the conditions under which authorisation was granted or to ***the*** programme of operations ***of a regulated market***.

Justification

The article fails to recognise the distinction between regulated market - which is essentially a rulebook and market place - and a market operator, which is a legal person running one or more regulated markets. All duties should be placed on the market operator. The amendment is consistent with the rapporteur's Amendment 58.

Amendment 104
Article 34, paragraph 1

1. Member States shall require the market operator to be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the regulated market. Member States shall also require the ***regulated market*** to inform the competent authority of any changes to the identity of the ***persons who effectively direct the business*** of the ***regulated*** market.	1. Member States shall require the ***management of the*** market operator to be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the regulated market. Member States shall also require the ***market operator*** to inform the competent authority of any changes to the identity of the ***senior management and key personnel*** of the market ***operator.***
The competent authority shall refuse to approve proposed changes to the personnel of the market operator where there are objective and demonstrable grounds for believing that they pose a threat to the sound and prudent management of the regulated market.	The competent authority shall refuse to approve proposed changes to the ***senior management and key*** personnel of the market operator where there are objective and demonstrable grounds for believing that they pose a threat to the sound and prudent management of the regulated market.

Justification

The amendments serve the purpose of clarification. It may well be that the legal entity that intends to operate a market is newly established. What is important is that the senior management and the key personnel of the market operator are reputable and experienced.

Amendment 105

Article 34, paragraph 4

4. In order to ensure the ***uniform*** application of paragraph 3, the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures to determine the financial resources that a market operator is to be required to hold, taking into account any other arrangements that may be used by the regulated market to mitigate the risks to which it is exposed.	4. In order to ensure the ***consistent*** application of paragraph 3, the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures to determine the financial resources that a market operator is to be required to hold, taking into account any other arrangements that may be used by the regulated market to mitigate the risks to which it is exposed.

Justification

The word 'consistent' is more appropriate than 'uniform' as complete uniformity will usually be inappropriate and unnecessary. The general aim is harmonised general standards of regulatory protection, with Member States permitted a degree of flexibility in adapting the rules in the directive to local conditions.

Amendment 106

Article 35

1. Member States shall require the persons who are in a position to exercise, directly or indirectly, effective control of the regulated market to be suitable.	1. Member States shall require the persons who are in a position to exercise, directly or indirectly, effective control of ***the operator of*** the regulated market to be suitable.
2. Member States shall require the regulated market*:*	2. Member States shall require the ***operator of the*** regulated market:
(a) to provide the competent authority with, and to make public, information regarding its ownership structure, and in particular, the identity and scale of interests of any parties in a position to exercise control over its operation;	(a) to provide the competent authority with, and to make public, information regarding its ownership structure, and in particular, the identity and scale of interests of any parties in a position to exercise control over its operation;

(b) to inform the competent authority of and to make public any transfer of ownership which gives rise to change in the identity of the persons exercising effective control.	(b) to inform the competent authority of and to make public any transfer of ownership which gives rise to change in the identity of the persons exercising effective control.
3. The competent authority shall refuse to approve proposed changes to the controlling interests of the ***regulated market*** where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the regulated market.	3. The competent authority shall refuse to approve proposed changes to the controlling interests ***of the operator*** of the regulated market where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the regulated market.

Justification

It is the operators of the regulated market who have to comply with the Directive, not the regulated markets themselves. Like the concept of a multilateral trading facility, the term 'regulated markets' refers to a system or function run by a market operator rather than to an entity in itself. It is therefore more accurate to refer to 'operators of regulated markets' rather than to 'regulated markets' in this context.

Amendment 107

Article 36, paragraph 1, introductory phrase

1. Member States shall require the ***regulated market***:	1. Member States shall require the ***market operator***:

Justification

It is the operators of the regulated markets who have to comply with the Directive, not the regulated markets themselves. Like the concept of a multilateral trading facility, the term 'regulated markets' refers to a system or function run by a market operator rather than to an entity in itself. It is therefore more accurate to refer to 'operators of regulated markets' rather than to 'regulated markets' in this context.

Amendment 108

Article 36, paragraph 1, point (d)

(d) to have transparent and non-discretionary rules and procedures that provide for the efficient execution of orders in accordance with objective criteria ***so as to enable market participants to obtain the best price available on the market, at the time and for their size of interest. Those rules and procedures shall be subject to prior***	(d) to have transparent and non-discretionary rules and procedures that provide for the efficient execution of orders in accordance with objective criteria***, taking into account the nature of the users of the system and the type of instruments traded on. The requirements of*** the competent authority of the home Member State ***of the regulated***

approval by the competent authority of the home Member State;	***market shall be applicable***;

Justification

This article conflicts with Article 19, which recognises that price is not the only factor to consider. To avoid stifling innovation, the article should provide that the rules and procedures allow market participants to obtain efficient execution of their orders, but the focus on price should be removed.

Amendment 109

Article 37, paragraph 1

Member States shall ***ensure*** that regulated markets have clear and transparent rules regarding the admission of financial instruments to trading. Member States shall require those rules to be approved by the competent authority, taking into account all implementing measures adopted pursuant to paragraph 6.	Member States shall ***require*** that regulated markets have***, or are subject to,*** clear and transparent rules regarding the admission of financial instruments to trading. Member States shall require those rules to be approved by the competent authority, taking into account all implementing measures adopted pursuant to paragraph 6.
Those rules shall ensure that any financial instruments admitted to trading in a regulated market ***have been issued in a manner conducive to free negotiability and trading under conditions which are*** fair, orderly and efficient.	Those rules shall ensure that any financial instruments admitted to trading in a regulated market ***are capable of being traded in a*** fair, orderly and efficient ***manner and, in the case of transferable securities, are freely negotiable***.

Justification

Some exchanges, particularly derivative exchanges, tend not to have rules per se regarding the admission of financial instruments, but rely on meeting certain criteria. The amendment is therefore necessary to ensure that this situation can continue. The second element of the amendment is designed to improve the drafting.

Amendment 110

Article 37, paragraph 2

2. In the case of derivatives, the rules shall ensure in particular that the design of the derivative contract allows for orderly pricing both in the derivative and in the underlying market ***as well as for the existence of effective settlement conditions***.	2. In the case of derivatives, the rules shall ensure in particular that the design of the derivative contract allows for orderly pricing both in the derivative and in the underlying market ***and for effective and orderly settlement.***

Justification

This amendment clarifies the Commission's drafting

Amendment 111

Article 37, paragraph 3

3. In addition to the obligations set out in paragraphs 1 and 2, Member States shall require ***the*** regulated market to establish and maintain effective arrangements to verify that issuers of transferable securities being considered for admission to trading comply with their obligations under Community law in respect of initial, ongoing ***or*** ad hoc financial disclosure.	3. In addition to the obligations set out in paragraphs 1 and 2, Member States shall require ***a*** regulated market ***that admits transferable securities to trading*** to establish and maintain effective arrangements to verify that issuers of ***such*** transferable securities being considered for admission to trading comply with their obligations under Community law in respect of initial, ongoing ***and*** ad hoc financial disclosure.
The competent authority shall ensure that ***the*** regulated market establishes arrangements which facilitate its members or participants in obtaining access to information which has been made public under Community law.	The competent authority shall ensure that ***a*** regulated market ***that admits transferable securities to trading*** establishes arrangements which facilitate its members or participants in obtaining access to information which has been made public under Community law ***by issuers of such transferable securities under Community law in respect of initial, ongoing or ad hoc financial disclosure***.

Justification

This article applies only to regulated markets that admit transferable securities to trading. Furthermore, the information to be rendered accessible is specified here in order to be caught by the reference in Article 37(5).

Amendment 112
Article 37, paragraph 5

5. Member States shall provide that once a transferable security issued in their territory has been admitted to trading on a regulated market, it can subsequently be admitted to trading on other regulated markets without the consent of the issuer. The issuer shall be informed by the regulated market of the fact that its securities are traded on that regulated market. The issuer shall not be subject to any obligation to provide information required under paragraph 3 directly to any regulated market which has admitted the issuer's securities to trading without its consent.	5. Member States shall provide that once a transferable security issued in their territory has been admitted to trading on a regulated market, it can subsequently be admitted to trading on other regulated markets without the consent of the issuer ***in compliance with the provisions of [Article 4] of the Prospectus Directive*** The issuer shall be informed by the ***operator of the*** regulated market of the fact that its securities are traded on that regulated market. The issuer shall not be subject to any obligation to provide information required under paragraph 3 directly to any regulated market which has admitted the issuer's securities to trading without its consent. ***The operator of the regulated market shall also inform the home competent authority of the fact that securities have been included into trading without the consent of the issuer.***

Justification

(i) It is the operators of the regulated market who have to comply with the Directive, not the regulated markets themselves. Like the concept of a multilateral trading facility, the term 'regulated markets' refers to a system or function run by a market operator rather than to an entity in itself. It is therefore more accurate to refer to 'operators of regulated markets' rather than to 'regulated markets' in this context.

(ii) When securities are admitted to trading on other regulated markets without the consent of the issuer, the operator of the regulated market should inform the home competent authority, as well as the issuer.

(iii) *This amendment also ensures that the article covers all situations covered by the Prospectus Directive.*

Amendment 113
Article 37, paragraph 6, introductory phrase

6. In order to ensure the ***uniform*** application of paragraphs 1 to 5, the Commission shall, in accordance with the procedure referred to in Article 59(2) adopt implementing	6. In order to ensure the ***consistent*** application of paragraphs 1 to 5, the Commission shall, in accordance with the procedure referred to in Article 59(2) adopt

measures which:	implementing measures which:

Justification

The word 'consistent' is more appropriate than 'uniform' as complete uniformity will usually be inappropriate and unnecessary. The general aim is harmonised general standards of regulatory protection, with Member States permitted a degree of flexibility in adapting the rules in the directive to local conditions.

Amendment 114
Article 37, paragraph 6, point (b a) (new)

	(ba) clarify the arrangements that the regulated market is to establish in order to facilitate its members or participants in obtaining access to information which has been made public under Community law.

Justification

The type of arrangements that regulated markets are asked to provide is not clear. This provision must be specified under comitology arrangements.

Amendment 115
Article 38, paragraph 1, subparagraph 1

1. Without prejudice to the right of the competent authority under Article 46(1)(j) and (k) to demand suspension or removal of an instrument from trading, the regulated market may suspend or remove from trading a financial instrument which no longer complies with its rules unless such a step would be likely to prove detrimental to investors' interests or the orderly functioning of the market	1. Without prejudice to the right of the competent authority under Article 46(1)(j) and (k) to demand suspension or removal of an instrument from trading, the regulated market may suspend or remove from trading a financial instrument which no longer complies with its rules ***or other obligations*** unless such a step would be likely to prove detrimental to investors' interests or the orderly functioning of the market.

Justification

Existing market practice allows suspension or removal on a number of grounds other than breach of rules. There is no reason why this should not be permitted to continue.

Amendment 116
Article 39, paragraph 2

2. Member States shall ensure that regulated markets limit membership or access to ***eligible counterparties as referred to in Article 22(3)***.	2. Member States shall ensure that regulated markets ***may offer*** membership or access to ***anyone, with the exception of those who lack the requisite expertise, experience and financial resources to trade on the regulated market in question***. ***The competent authority shall assess whether the rules of a regulated market governing membership and access to that market are appropriate, taking into account the specific characteristics of the regulated market in question and, in particular, the nature of the financial instruments traded, as well as the infrastructure in place to facilitate management of the risks associated with access and with the orderly functioning of the market in question.***

Justification

Your Rapporteur proposes that Amendment 351 (Bourlanges) be adopted as part of the compromise package, instead of 62 as proposed originally by the Rapporteur.

Restricting access to regulated markets to eligible counterparties would exclude some current members of regulated markets (individual traders - 'locals' - credit institutions or entities licensed by a non-EU regulatory authority, certain commodity trader members) therefore the amendment proposes to permit open access, apart from those who lack the adequate expertise. The terms of access depend on the characteristics of the market in question, and it is therefore proposed that there is a flexible rule policed by the competent authority, i.e. the competent authority should assess whether the rules on access are appropriate.

Amendment 117
Article 40, paragraph 2

2. Member States shall require regulated markets to report breaches of their rules or of legal obligations relating to market integrity to the competent authority. Member States shall also require the regulated market to supply the relevant information immediately to the competent authority and to provide full assistance to the latter in investigating and prosecuting market abuse undertaken on or through the systems of the regulated market.	2. Member States shall require regulated markets to report breaches of their rules or of legal obligations relating to market integrity to the competent authority. Member States shall also require the regulated market to supply the relevant information immediately to the competent authority and to provide full assistance to the latter in investigating and prosecuting market abuse undertaken on or through the systems of the regulated market. ***Member States shall not require operators of***

	regulated markets to provide details of insignificant rule breaches.

Justification

Minor breaches of regulated market rules occur on a very regular basis. If every breach, no matter how minor, had to be reported, regulators would be deluged with unnecessary information. This would impair their ability to monitor significant rule breaches. It would also impose unnecessary costs on the operators of regulated markets, without producing any benefits in terms of investor protection or market integrity.

Amendment 118
Article 41, paragraph 2

2. Member States shall provide that the competent authorities are to be able to waive the obligation for regulated markets to make public the information referred to in paragraph 1 in respect of ***transactions*** that are large in scale compared with normal market size for the share or type of share in question	2. Member States shall provide that the competent authorities are to be able to waive the obligation for regulated markets to make public the information referred to in paragraph 1 in respect of ***quotes, orders and other indications of interest*** that are large in scale compared with normal market size for the share or type of share in question.

Justification

As a matter of logic, the obligation in Article 41(2) should apply to quotes, orders and other indications of interest, not to transactions. By definition, pre-trade transparency must predate the existence of a transaction. Transactions only come into existence when at least two parties interact and then contract with one another.

Amendment 119
Article 41, paragraph 3, introductory phrase

3. In order to ensure the ***uniform*** application of paragraphs 1 and 2, the Commission shall, in accordance with the procedure referred to in Article 59(2) adopt implementing measures as regards:	3. In order to ensure the ***consistent*** application of paragraphs 1 and 2, the Commission shall, in accordance with the procedure referred to in Article 59(2) adopt implementing measures as regards:

Justification

The word 'consistent' is more appropriate than 'uniform' as complete uniformity will usually

be inappropriate and unnecessary. The general aim is harmonised general standards of regulatory protection, with Member States permitted a degree of flexibility in adapting the rules in the directive to local conditions.

Amendment 120
Article 42, paragraph 3, introductory phrase

3. In order to provide for the efficient and orderly functioning of financial markets, and to ensure the ***uniform*** application of paragraphs 1 and 2, the Commission shall, in accordance with the procedure referred to in Article 59(2) adopt implementing measures in respect of:	3. In order to provide for the efficient and orderly functioning of financial markets, and to ensure the ***consistent*** application of paragraphs 1 and 2, the Commission shall, in accordance with the procedure referred to in Article 59(2) adopt implementing measures in respect of:

Justification

The word 'consistent' is more appropriate than 'uniform' as complete uniformity will usually be inappropriate and unnecessary. The general aim is harmonised general standards of regulatory protection, with Member States permitted a degree of flexibility in adapting the rules in the directive to local conditions.

Amendment 121
Article 43, paragraph 1

1. Member States shall provide that regulated markets have the right to enter into appropriate arrangements with a central counterparty or clearing house of another Member State with a view to providing for the novation or netting of some or all trades concluded by market participants under their rules and systems.	1. Member States shall provide that regulated markets have the right to enter into appropriate arrangements with a central counterparty or clearing house of another Member State, ***or appropriately authorised third country state*** with a view to providing for the novation or netting of some or all trades concluded by market participants under their rules and systems.

Justification

Regulated markets should not be restricted to using EU clearers if their customers wish to use a foreign clearer, such as the DTCC, or X-Clear.

Amendment 122
Article 48, paragraph 2, points (b) and (c)

(b) consumer organisations having a legitimate interest in protecting consumers;	***Deleted***
(c) professional organisations having a legitimate interest in acting to protect their members.	

Justification

The proposal to revise the Investment Services Directive regulates, in particular, the relationship between investment firms and the supervisory authorities under public law. Investors' interests are already sufficiently protected in this relationship by the supervisory authorities. There is therefore no need for organisations to have a right to appeal against decisions.

Amendment 123
Article 49, paragraph 2

2. Member States shall ensure that those bodies are not prevented by legal or regulatory provisions from *co-operating* effectively in the resolution of cross-border disputes.	2. Member States ***shall cooperate to identify, share and encourage best practices and*** shall ensure that those bodies are not prevented by legal or regulatory provisions from *co-operating* effectively in the resolution of cross-border disputes.

Justification

The Rapporteur proposes a compromise which covers 369 (Goebbels) and refines it. There should be cooperation between consumer redress bodies and also best practices should be identified and shared.

Amendment 124
Article 52, paragraph 2, subparagraph 2

Competent authorities shall ***be able to*** use their powers for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in that Member State.	Competent authorities shall use their powers ***to the full extent*** for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in that Member State.

Justification

This cooperation of competent authorities is substantial and should be a clear obligation for them.

Amendment 125
Article 57, paragraph 2

2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the investment firm persists in acting in a manner that is clearly prejudicial to the interests of host country investors or the orderly functioning of markets, the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. The Commission shall be informed of such measures without delay.	2. If ***in exceptional circumstances***, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the ***regulated market or*** investment firm persists in acting in a manner that is clearly prejudicial to the interests of host country investors or the orderly functioning of markets, the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. The Commission shall be informed of such measures without delay.

Justification

This compromise covers 64 (Rapporteur) and 377 (Van den Burg). The country of origin principle and control by the home state competent authority are fundamental pillars of the directive and derogations from these general principles should therefore be kept to a minimum - intervention by the host state competent authorities should therefore only occur in exceptional circumstances. Wherever possible, it is preferable to avoid situations where the authorities of two different Member States are both trying to perform the same task since this could impair the effectiveness of regulation and impose unnecessary costs on investment firms and their customers. It is also necessary that host competent authorities can ensure that the regulated market, as well as the investment firm, fulfils its duties properly.

Amendment 126
Article 59a (new)

	59a. The Commission shall seek to ensure that any implementing measures adopted under this directive are proportionate to the regulatory goals sought and shall take account of the impact of these measures (including cost impact) on the differing sizes, business activities and

business structures of credit institutions authorised under Directive 2000/12/EC, investment firms and operators of regulated markets.

Justification

Before adopting implementing measures, it is essential that the Commission take account of their impact of the different institutions within the scope of this directive, including small and medium size businesses. CESR must consult widely with interested groups and take account of the cost of any proposed measures.

Amendment 127
Article 60, paragraph -1 (new)

The committee referred to in Article 59(1) shall monitor and evaluate the impact of Article 25 - and of the exemptions provided for therein - in terms of market distortion, distortion of competition and creation of counterparty risk, and report to the Commission. On the basis of such reports, the Commission shall submit proposals for amendments to this Directive with a view to taking prompt remedial action.

Amendment 128

Article 60, paragraph 1

1. No later than [31 December 2008, 4 years after entry into force of this Directive], the Commission shall, on the basis of public consultation and in the light of discussions with competent authorities, report to the European Parliament and Council on:	1. No later than [31 December 2008, 4 years after entry into force of this Directive], the Commission shall, on the basis of public consultation and in the light of discussions with competent authorities, report to the European Parliament and Council on:
	(a) the continued appropriateness of the obligation in Article 25 for investment firms to make public bids and offers;
(a) the possible extension of scope of the provisions of the Directive concerning pre- and post-trade transparency obligations to	***(b)*** the possible extension of scope of the provisions of the Directive concerning pre- and post-trade transparency obligations to

transactions in classes of financial instrument other than shares.	transactions in classes of financial instrument other than shares.
On the basis of that report, the Commission may submit proposals for related amendments to this Directive	On the basis of that report, the Commission may submit proposals for related amendments to this Directive

Justification

Given the absence of empirical evidence justifying the introduction of pre-trade transparency requirements, a full review should be carried out to ascertain the precise nature of their impact upon the markets and whether there is any evidence to support the continued existence of such provisions.

Amendment 129
Article 60, paragraph 2, introductory phrase

2. No later than [***31.12.2006***] ***2*** years after the entry into force of this Directive, the Commission shall, on the basis of public consultations and in the light of discussions with competent authorities, report to the European Parliament and Council on:	2. No later than [***31.12.2009***] ***5*** years after the entry into force of this Directive, the Commission shall, on the basis of public consultations and in the light of discussions with competent authorities, report to the European Parliament and Council on:

Justification

Amendments 381 (Langen), 383 (García Margallo) and 384 (Kauppi) should be supported so that an appropriate amount of time passes between the entry into force of the directive and the review by the Commission of the exemption for commodities derivatives business. The review needs to take account of the energy supply market following the liberalisation of the EU's energy markets.

Amendment 130
Article 60, paragraph 2, point (a)

(a) the continued appropriateness of the exemption under point (i) of *article **2*** of this Directive for ***undertaking***s whose main business is dealing on own account in commodities derivatives;	(a) the continued appropriateness of the exemption under point (i) of Article ***2(1)*** of this Directive for ***persons or undertakings*** whose main business is dealing on own account in commodities ***and/or the*** derivatives ***referred to in that point***;

Justification

It is proposed that the committee accepts the approach of Katiforis amendment 385 (aimed at ensuring consistency with the text of Article 2(1)(i) (as amended). However, it is suggested that the compromise uses the terms "persons or undertakings" rather than "firms" to ensure consistency and in accordance with the conclusions of the compromise discussion on 18 June.

Amendment 131
Article 60, paragraph 2, point b a) (new)

ba) modifications to the rules laid down in Directive 93/6/EEC for those persons or undertakings which deal in commodities or the derivatives referred to in Article 2(1)(i) to ensure that those rules are proportionate, having regard to the nature of that business.

Justification

This proposed compromise combines elements of amendments 382 (Langen), 386 (García-Margallo), 387 (Katiforis), 388 (Kauppi) and 389 (Konrad). A Commission review should be made of whether changes should be made to the regulatory capital requirements for undertakings dealing in commodity or commodity derivatives.

Amendment 132
Article 60, paragraph 2 a (new)

2a. No later than five years after the entry into force of this Directive the Commission shall, on the basis of public consultations and in the light of discussions with the competent authorities, report to the European Parliament and Council on:

(a) the appropriateness of the criteria laid down in Article 3(1)(23) for classification as systematic internalisation;

(b) suitable requirements in relation to the practice of systematic internalisation.

On the basis of that report, the Commission may submit proposals for related amendments to this Directive.

Justification

As the future development of internalisation as a business model cannot be predicted, the development as well as the suitability of the supervisory regime for internalisation systems set out in this Directive shall be monitored by the Commission, subject to a report to the European Parliament.

Amendment 133
ARTICLE 62

Article 2, paragraph 2(d) (Directive 93/6/EEC)

d) investment firms which are authorised to provide only the service of investment advice.	d) Investment firms which are authorised to provide only the service of investment advice ***and firms which are authorised to provide only the services of investment advice and insurance advice.***

Justification

Many of the investment advice firms targeted by the Commission's exemption from the capital adequacy directive (93/6/EEC or "CAD") also give advice on insurance products. It should be made clear that the exemption from the CAD covers firms which give both investment and insurance advice.

Amendment 134
ARTICLE 62

Article 2, paragraph 2(da) (new) (Directive 93/6/EEC)

	The following point is added to paragraph 2:
	(da) investment firms that provide only the investment services covered in c) and d) above

Justification

Many of the investment advice firms targeted by the Commission's proposed exemption from the CAD (Directive 93/6/EEC) also arrange and transmit orders (where client assets are not held by the investment firm). This amendment ensures that those which carry out such business also fall within the exemption from the CAD.

Amendment 135
Article 63

Annex I of Directive 2000/12/EC is amended as follows:	Annex I of Directive 2000/12/EC is amended as follows:
(a) in point 7 the following point is added:	(a) in point 7 the following point is added:
"(f) commodity derivatives".	"(f) commodity ***and other*** derivatives".
(b) The following ***point is*** added:	(b) The following ***points are*** added:
"15. Operation of a multilateral trading facility"**.**	15. Operation of a multilateral trading facility"***;***
	"16. Services related to commodities".
	"17 Reception and transmission of orders in relation to one or more financial instruments;"
	"18. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments."

Justification

This proposed compromise combines the most important elements of Katiforis amendment 392 and Balfe amendment 391. The Katiforis amendment ensures consistency with the proposed text of Section B of Annex I.

The last 2 paragraphs of the Balfe amendment are also added. These are necessary to obtain consistency with the Banking Consolidation Directive. The passports which are provided to investment firms by the Investment Services Directive and to credit institutions conducting investment services under the Banking Consolidation Directive must be consistent. The Commission text did not include the financial instruments necessary to achieve this. Therefore certain additions must be made to the Banking Consolidation directive to bring it into line with the revised ISD.

Amendment 136
Article 65, subparagraph 1

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2006 [18 months of its entry into force] at the latest. ***They shall forthwith inform the Commission thereof.***	Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2006 [18 months of its entry into force] at the latest***, subject to any transitional provisions which may be***

	strictly necessary in order to cover the extension of licensing rights, in particular where it is necessary to create new systems or infrastructure (for instance in relation to transparency requirements for investment firms and MTFs) or to put in place new documentation.

Justification

It is necessary to make provision for transitional provisions since some of the technical changes which may be necessary for compliance with the Directive may take longer to put in place than is provided for by the implementation period.

Amendment 137
Annex I, Section B, point (4)

(4) Foreign exchange services ***where these are connected to the provision of investment services***.	(4) Foreign exchange services.

Justification

The passport should be made available for all foreign exchange business, without the need to establish a connection to the provision of investment services.

Amendment 138
Annex I, Section B, point (5 a) (new)

	(5a) Services related to commodities;

Justification

Services related to commodities are not currently covered by the draft Directive. If this exclusion remains, Member States could not only maintain licensing requirements relating to physical commodities which are outside the scope of the Directive, but also impose new regulation on these activities, which will not necessarily be limited to those rules required to implement the Directive. Services related to commodities should therefore be included in the list of ancillary services covered by the Directive. By so doing, institutions authorised under the ISD would have the benefit of the passport for these activities, too, whether or not these

activities are connected to the provision of investment services in that Member State.

Amendment 139
Annex II, Section I, subparagraph 1

The following should all be regarded as professionals in all investment services and instruments for the purposes of the Directive.	The following should all be regarded as professionals in all investment services and instruments for the purposes of the Directive. ***A professional is deemed to possess the experience, knowledge and expertise to make its own investment decisions and properly assess the risks it incurs.***

Justification

In some Member States, such as Germany, much investor protection is carried out via civil liability in the courts. With the codification of investor protection in the ISD, it should be made clear that the new EU framework supersedes traditional pre-existing civil liability. Without such clarification, investment firms in Germany could be subject to a double layer of regulation, with the old rules undermining the distinction drawn in the ISD between professional and retail investors.

Amendment 140
Annex II, Section I, paragraph 2, introductory phrase

(2) Large companies and other institutional investors:	(2) Large companies, ***charitable trusts*** and other institutional investors:

Justification

Charitable trusts have significant funds to invest. They should be defined as professional clients since they are required to have professional expertise in investment.

Amendment 141
Annex II, Section I, paragraph 2, point (a)

(a) large companies and partnerships meeting two of the following size requirements on a company basis: – balance sheet total : EUR ***20.000.000,*** – net turnover : EUR ***40.000.000,*** – own funds: EUR 2.000.000.	(a) large companies and partnerships meeting two of the following size requirements on a company basis: – balance sheet total : EUR ***12.500.000,*** – net turnover : EUR ***25.000.000,*** – own funds: EUR 2.000.000.

Justification

The thresholds should be amended otherwise retail protections would be inappropriately imposed on many firms which are too sophisticated to want or need them. This would result in unnecessary costs for companies which are, at the moment, operating as professional investors, without any problem. This change helps ensure more consistency with CESR standards.

Amendment 142
Annex II, Section I, point (3), subparagraph 2

The entities mentioned above are considered to be professionals. ***They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection.*** Where the client of an investment firm is a company or a partnership referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the client is deemed to be professional client, and will be treated as such unless the firm and the client agree otherwise.	The entities mentioned above are considered to be professionals. Where the client of an investment firm is a company or a partnership referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the client is deemed to be professional client, and will be treated as such unless the firm and the client agree otherwise.

Justification

It is unnecessary for professionals to be permitted to opt into the protective regime designed for retail investors. It adds unnecessary complexity to an already complex structure.

Amendment 143
Annex II, Section II, paragraph 1, subparagraph 2

Investment firms should therefore be allowed to treat any of the above clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. ***These clients should not, however, be presumed to possess market knowledge and experience comparable to***	Investment firms should therefore be allowed to treat any of the above clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled.

that of the categories listed in section I.

Justification

Investment firms should be able to treat investors who ask to be treated as professionals in the same way as those who are automatically considered to be professionals. The second sentence of this paragraph seems to add yet another category of investor to an already complex system. This additional "semi-professional" category is not referred to anywhere else in the proposed directive.

Amendment 144
Annex II, Section II, paragraph 1, subparagraph 4

The fitness test applied to managers and directors and entities licensed under European Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge.	***Deleted***

Justification

As the Annex sets out the criteria for identifying clients who may be classified as professionals under Article 3(1)(8), it is not necessary to include examples of the how the assessment might be made.

EXPLANATORY STATEMENT

The Commission's proposal contains much to recommend it. Your Rapporteur believes that Articles 20.4 and 25 cause fundamental difficulties but supports the Commission on many other important issues. The draft report contains a large number of amendments but many of these are aimed at clarification and fine-tuning, rather than radical change.

The goal of the ISD should be to create the conditions for high quality competitive, integrated, liquid, transparent, orderly and efficient markets, responsive to the needs of their users. It should not prescribe a particular market structure. It should be flexible enough to accommodate the diversity of market structures in different countries and to allow and encourage innovation.

One of our most important objectives must be to produce an ISD framework which encourages saving. It is crucial to ensure proper protection for retail investors and to help build investor confidence. A clear distinction should be drawn between retail and wholesale business. Regulation vital to protect retail investors can be disruptive, costly and unnecessary if applied to the wholesale market and would damage the interests of the many retail savers who invest via institutional vehicles such as pension funds.

Rules should be proportionate and justified in terms of their costs and benefits and should seek only to deal with problems where competition is unable to supply an appropriate solution. It is not sufficient simply to apply similar rules to competing trading methodologies. Rules should be tailored to the characteristics of individual transactions or systems and should be a proportionate response to a thorough assessment of their risks.

Suitability Tests

Suitability tests should be confined to services where advice is given. A suitability test is not appropriate for execution-only brokerage and direct offer business, where consumers wish to take their own investment decisions on the basis of published information, rather then paying for professional advice.

These non-advice services are already sufficiently regulated using contract law, conduct of business rules, product regulation, regulation of produce promotional and explanatory literature and money laundering rules.

Applying a suitability test, requiring a fact find, is expensive and time consuming and would push up the price of non-advice services (including internet-based share dealing), to the point at which they could become uneconomic. This would deprive consumers of a low cost, simple method of saving.

Best Execution

The requirement of “best execution” is a vital part of the regulatory structure in a competitive market with a choice of execution venues. We need to clarify how it will work in practice.

It is unlikely that the Commission intends the requirement of “best execution” to impose on firms an absolute and unqualified duty to get the very best possible price available anywhere

in the market or to require them to poll every execution venue for every transaction. It is even more difficult to verify that the absolute best possible result has been achieved on the basis of all the factors making up best execution (such as costs, speed etc). An absolute duty would lead to excessive legal uncertainty, particularly as individual customers will have different priorities, so the "best result" will differ between customers.

It should be made clear that it is sufficient if the firm makes reasonable efforts to get best execution for its clients. To ensure that customers and firms know exactly what this means, it is important for them to agree an execution policy, which includes the range of execution venues to be used.

It is very important to ensure that investment firms put in place arrangements for regular and effective monitoring execution quality, which should identify any inefficiencies in execution policy. This is necessary to ensure that firms continuously update their practices to ensure investors get the highest standards of execution quality.

An informed choice of execution venue

In a framework of competing execution venues, it is important to ensure that retail clients are able to make a free and informed choice about how they want their orders to be executed. The Commission proposes that "the express prior consent" is obtained from a client before trades are executed "outside the rules and systems operated by a regulated market". This should be amended to require firms and their retail clients to agree an execution policy. This will give appropriate transparency and ensure the client has a clear understanding of which execution venues are to be used. The Commission's proposal is too simplistic and creates an unnecessary preference for exchange execution.

Retail clients need to be provided with explicit mechanisms to lead them through steps which will ensure that they are aware of and consent to, the choice of execution venue for their trades. I therefore propose a re-wording to oblige investment firms to disclose to retail clients their execution policy and to obtain their consent. Investment firms should make retail clients aware of any major changes to the execution policy.

This is a balanced investor protection package. There is no need to record the agreement in a document separate from the other contractual terms agreed with the client. Nor should the ISD require annual renewal. Investors will frequently forget to return the consent form. Their trades will have to be routed through regulated markets, often meaning best execution is not achieved. It will be very costly to chase up customers who fail to return the annual consent form. Costs for clients will rise as firms will no longer be able to aggregate orders and deal with them on a bulk basis, since some will have renewed consent and some will not.

Competition between execution venues: Securing Investor Choice and Investor Protection

Significant changes have occurred in the market for share execution since the original ISD was adopted. In the past, almost all trades were executed through traditional stock exchanges. Exchanges have now demutualised and become profit making companies competing in the "execution business". A variety of execution methods have emerged, in competition to exchanges, including MTFs and internalised trading.

No single model can accommodate the needs of all market users. We should not seek, in the new ISD, to favour one particular model; still less to confer monopoly rights on particular market players. The regulatory framework for investment services should treat different market models fairly.

Internalisation by investment firms and the operation of MTFs can provide the genuine competition for exchanges needed to ensure a diverse and competitive market. If regulation keeps investment firms out of the market for execution of shares, this would confer a monopoly on exchanges.

Investors should be given a choice of execution venues and competition between venues should be permitted and encouraged. This will lead to more choice, lower transaction costs, better prices, reduced volatility, increased innovation and increased liquidity.

The Commission is correct to propose that concentration rules should be abolished and replaced by a strong combination of post-trade transparency and best execution rules, allowing investors freedom to choose from a range of execution venues. Competitive pressure and regulatory rules on conduct of business, conflicts of interest, best execution and post-trade transparency will protect investors, regardless of which execution venue they choose.

The Commission is wrong, however, to propose Articles 20.4 and 25 (see below). This issue is clearly controversial and your rapporteur is open to compromise proposals. However, no workable or acceptable alternative to deletion has yet emerged.

Article 20.4 - "the client limit order display rule"

Article 20.4 requires an investment firm to make the terms of client limit orders public when it is unable to execute them immediately. This should be deleted because Articles 20.1 and 20.2 provide appropriate customer protection, buttressed by the conduct of business rules and the best execution requirement. These oblige investment firms to deal with client orders fairly, expeditiously and according to clients' interests.

Article 20.4 would cause limit orders to be routed via regulated markets, since there is no infrastructure in place for publishing and providing access to such orders. This would unfairly favour exchanges.

The Commission's proposal would damage many investors, not protect them. Diverting orders to regulated markets will drive up costs and can prevent best execution from being obtained. Revealing client orders could cause markets to move against them, making trade execution more difficult and pushing liquidity to jurisdictions outside the EU. Article 20.4 could thus reduce liquidity and increase volatility.

The exclusions for “orders which are large in scale compared with the normal market size” are unworkable. Even via comitology, it would be impossible to devise a meaningful pan-European size threshold, given the day to day diversity of fast moving European stock markets.

US laws on limit order publication are much more limited and contain many more safeguards

and qualifications than Article 20.4.

Article 25 – "the quote disclosure rule"

Article 25 should be deleted because it would undermine the abolition of concentration rules (particularly when combined with the effects of Article 20.3 and 20.4). It would re-introduce provisions which would have the same effect and would be mandatory, forcing Member States which have never had concentration rules to adopt them. Your Rapporteur therefore proposes that Article 25 should be deleted.

Article 25 is not really a transparency obligation at all. It would actually compel investment firms to buy and sell securities (or "make a market") in securities, regardless of the type of customer or size of order.

This obligation will be very significant barrier to entry into the market for execution services. It will stunt competition and innovation and confer a de facto monopoly on exchanges. The obligation to quote gives rise to high risk and costs. No proper consultation or cost assessment has been carried out on Article 25.

Article 25 will not promote investor protection or market integrity. Nor is it necessary to prevent fragmentation of the market. Competition between execution venues can potentially lead to some liquidity being distributed round different venues but it actually increases liquidity across the market as a whole. Brokers' access to different venues, new technology and post trade transparency can link different areas of liquidity, bringing prices together. Post trade information is far more useful than Article 25 for investors wishing to understand the real state of the market because it contains information about real trades, not artificially generated quotes.

Nor is Article 25 necessary to preserve liquidity. Those markets where internalisation is permitted, tend to be more not less liquid than other markets, with lower market impact for large orders. They have seen investors (particularly retail) benefit from narrower spreads, better prices and lower transaction costs. Despite the absence of a quote disclosure rule, spreads have not widened and the price formation process has not been damaged. Investment firms increase not decrease liquidity across the market as a whole by using their capital to facilitate trades by their clients. Article 25 would actually damage liquidity as it will discourage market making.

Nor is Article 25 necessary for proper enforcement of best execution. Post trade transparency is the most effective way for investors and regulators to identify "best execution" because it shows the range of prices which are actually being obtained in the markets.

Nor is Article 25 justified on the basis that it imposes similar rules to those applicable to regulated markets. Rules which can work well for firms using a regulated markets model can impact harshly on firms using a market maker model. The obligation to trade and put one's own capital on risk (as required by Article 25) is not the same as the obligation to publish bids and offers by other people.

Nor is Article 25 justified on the basis that parallel rules exist in the US. Unlike in the US, there is no available infrastructure for making quotes public or providing access to other

market participants and no indication from the Commission of how it would be created. Nor is there any infrastructure to turn the information produced by Article 25 into a usable format for investors. Many of the protections available to liquidity providers under the US rules are not available under Article 25: for example, counter party risk in the US is limited as published quotes can only be accessed by exchange members and all trades are settled through a centralised clearing and settlement system.

Article 25 contains a significant number of ambiguities and the definitions are very vague (eg "transactions of a size customarily undertaken by a retail investor", "liquid".) Consequently, it is impossible to predict with certainty how Article 25 would work in practice. Far too many questions are left to be answered by comitology. The key decisions about how Article 25 would work in practice would be made by CESR and the Commission not the European Parliament. Given the political controversy attached to this topic, this is unacceptable. Devising pan-European definitions for concepts such as shares "…for which there is a liquid market" would be virtually impossible. Even assuming that workable definitions for all the terms in Article 25 can be found, it is difficult to see how regulators will be able to monitor and enforce these categories, which are bound to shift depending on the condition of the market.

Article 25 appears to require all firms actively trading in a particular stock to be ready to buy and sell that stock at any time with any party. This would subject firms to unreasonable credit and counterparty risk, as they would be unable to control or limit the types of customer with whom they deal. The exemption for "legitimate commercial considerations related to the final settlement of the transaction" is not clear.

On one reading of Article 25, firms would not be permitted to offer price improvement over the published quote. They would have to offer the same price to everyone, even investment firm competitors. This exposes them to strategic trading by their competitors, which also increases risk.

In the face of these increased risks, prudent risk management will require firms to widen their published spread and prices for investors will deteriorate. This effect will be greatest for retail customers because firms would no longer be permitted to offer better prices to retail customers than to competitors. At present, firms are able to offer better prices to retail clients because these investors are unlikely to have information about the market which the investment firm does not. The risk associated with the transaction is low and it is priced accordingly. The risks involved in doing business with competitor investment firms are higher, because such customers may well have information which the other firm does not.

Article 25 would compel firms who only deal on an occasional or wholesale basis to become market makers for retail trades. This will discourage firms from dealing in securities and reduce liquidity. The exemption for firms "which do not represent an important provider of liquidity" is unclear. It raises the same difficulties as the distinction between "systematic and incidental internalisation" which was rejected during the consultation process.

Comitology

The Commission should be obliged to take into account, the estimated cost of implementing measures and their impact on a range of different type and size of business. In certain cases, it

is proposed to give the Commission additional flexibility by giving them the option to produce implementing measures rather than compelling them to do so. In some other cases, the text at Level 1 is sufficiently detailed and a comitology clause would intrude on the political agreement reached at Level 1 using the full co-decision process (eg "best execution").

Investment Advice

On balance, I can support the inclusion of investment advice as an ISD core service. Advice services are one of the main points of contact between consumers and the financial services industry. If consumers receive poor investment advice, other regulatory protections may be undermined. The new ISD provides a good opportunity to strengthen protection for investors across Europe. While it might be possible to plug the existing regulatory gaps using national legislation, the new ISD gives reform a political momentum which they would not otherwise have. Although the passport may be of limited use at present, cross border trade can be expected to increase.

However, it is vital to ensure that any regulation which comes with the ISD is tailored to the specific characteristics and risk profile of investment advice firms. We should ensure that the legislation does not impose an unreasonable cost burden on the many thousands of small firms which give investment advice.

Many investment advice firms are already covered by the Insurance Mediation Directive ("IMD") since they give advice on insurance products as well as on other investments. It is vital to ensure that such firms are not subject to duplicative or inconsistent regulation.

The read-across between the ISD and the IMD which is already envisaged by the Commission, should be strengthened with the goal of ensuring that those already complying with the solvency requirements of the IMD will not be subject to extra regulation under the ISD. In the IMD, it is recognised that solvency requirements can sensibly be met in a number of different ways. All these methods should be available under the ISD.

Other Issues

A wide range of trading venues will be captured by the Commission's definition of an MTF. It is therefore essential that the ISD differentiates between the characteristics and risks of different systems. Member States, CESR and the Commission should be given more flexibility to differentiate between the varying regulatory risks posed by different MTFs.

Prices which are exchanged between MTF customers on a bilateral basis should be excluded from pre-trade transparency provisions. Otherwise it would be impossible to continue to run crossing and auction networks which are popular with market users and have brought transaction costs down for institutional investors.

There is no justification for restricting the membership of MTFs and regulated markets to eligible counterparties. This is an unreasonable restriction on the freedom to do business across borders and might even breach treaty obligations.

The Commission's definition of eligible counterparty should be extended to cover UCITS and

pension funds. These are sophisticated entities which should be treated as eligible counterparties.

2 July 2003

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Economic and Monetary Affairs

on the proposal for a European Parliament and Council directive on Investment services and regulated market , and amending Council Directives 85/611/EEC, Council Directive 93/6/EEC and European Parliament and Council 2000/12/EC (COM(2002) 625 – C5-0586/2002 – 2002/0269(COD))
Draftsman: Arlene McCarthy

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Arlene McCarthy draftsman at its meeting of 28 January 2003.

It considered the draft opinion at its meetings of 22 April 2003, 12 May 2003, 10 June 2003, and 1 July 2003.

At thelast meeting it adopted the following amendments unanimously.

The following were present for the vote Giuseppe Gargani (chairman), Ioannis Koukiadis (vice-chairman), Bill Miller (vice-chairman), Arlene McCarthy (draftsman), Paolo Bartolozzi, Ward Beysen, Brian Crowley, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Lord Inglewood, Piia-Noora Kauppi (for Kurt Lechner), Klaus-Heiner Lehne, Sir Neil MacCormick, Manuel Medina Ortega, Marcelino Oreja Arburúa (for Marianne L.P. Thyssen), Anne-Marie Schaffner, Peter William Skinner (for Carlos Candal pursuant to Rule 153(2)), Theresa Villiers (for Rainer Wieland) and Joachim Wuermeling

SHORT JUSTIFICATION

The objective of the original investment services directive (ISD) adopted in 1993 was to establish conditions in which authorised investment firms and banks could provide specified services across the EU (brokerage, dealing, portfolio management, reception and transmission of investor orders, etc) on the basis of home-country authorisation and supervision. The ISD also enshrined the right of direct or remote access of any authorised investment service firm to participate in trading on regulated markets in other Member States.

The new directive is needed because the existing instrument contained outdated investor-protection principles, did not cover the full range of investor-oriented services (advice, new distribution channels, financial dealing) and did not address competition issues when exchanges enter into competition with each other.

Recent reverses in equities markets mean that we need a robust legal and regulatory framework to support investor confidence and liquidity so as to enable financial markets to thrive.

Certain principles need to be followed if we are to have a properly functioning internal market in investment services to cut the cost of capital for business and promote investment, innovation and competition, while securing and creating employment in the EU. What is needed is protection for investors, savers and consumers, who must have the confidence to save and invest and to be able to reap the benefits of market efficiency. Secondly, market integrity must be safeguarded and market abuse avoided. The new ISD must take into account the various market models and practices across the EU, while trying to anticipate the new emerging securities market in Europe.

Accordingly, your rapporteur has concentrated on two key issues.

Best Execution:

Your rapporteur welcomes the Commission approach requiring the achievement of the "best possible result for the investor" in Article 20(4). There is clearly a need for firms to review their internal order practices regularly and rigorously to achieve best execution. However, Article 20(3) requiring firms to obtain client consent to execute orders away from the regulated market or MTF would discriminate against off-exchange venues that are part and parcel of increasingly innovative and dynamic financial markets and could potentially prevent investors from receiving best execution.

Transparency:

Your rapporteur thinks that the best execution rule should be complemented by comprehensive transparency requirements requiring market participants to make public the terms on which they are willing to trade (pre-trade transparency) and details of transactions they have executed (post-trade transparency) to ensure efficient markets and provide investor protection.

Article 25 introduces a mandatory quote disclosure rule on investment firms. The Commission has drawn on the experience of the US and the Security Exchanges Commission's (SEC) "firm quote" rule. Caution should be exercised in drawing direct comparisons with the US system of the securities market. It is clear that the scope of the US "firm quote rule" has been consistently reviewed since its introduction in 1978, in response to best execution arrangements, market practice and new technology. There is some evidence that if designed in a certain way, taking into account sizes and different levels of liquidity, a quote disclosure rule can enhance trading volumes and market liquidity. In the US, the SEC's transparency rules clearly draw a distinction between retail limit orders and block orders in the SEC's order execution rules.

However Article 25 is not well defined in its scope of application and it is unclear as to the exceptions that would apply. Your rapporteur is concerned that this will lead to a lack of clarity and legal certainty. The Commission's intention is to leave it to Level 2, CESR, to work out the implementing details of this quote disclosure rule.

Your rapporteur is reluctant to leave the decision to the comitology process, but equally recognises that a certain level of expertise is required to determine the scope of the application of Article 25: much work is still necessary in order to arrive at the right balance.

The key task for CESR is to ensure the overall goal of transparency, but equally to prevent any unintended consequences of any mandatory quote disclosure rule, such as counterparty exposure, reduced liquidity and a reduction in competition between trading venues to the detriment of the investor.

Your rapporteur has nonetheless included an amendment to allow firms to offer price improvements over published quotes, as the current text prohibits price improvement and could harm business or markets.

In addition your rapporteur has included a review clause to ensure monitoring of pre-trade transparency proposals as regards the consequences of the scope and application of Article 25.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
Amendment 1	
Recital 21	

[1] OJ C 71 (E), 25.3.2003, p. 62.

For the purposes of ensuring that retail investors do not enter into unsuitable transactions, access to the systems operated by an MTF should be restricted to ***investment firms and credit institutions*** for the purposes of trading on own account or on behalf of their customers and other ***eligible counterparties.***	For the purposes of ensuring that retail investors do not enter into unsuitable transactions, access to the systems operated by an MTF should be restricted to ***professional investors, as defined in Annex II,*** for the purposes of trading on own account or on behalf of their customers and other ***professional investors.***

Amendment 2

Recital 24

It is necessary to strengthen the Community's legislative framework to protect investors by enhancing obligations of investment firms when providing services with or on behalf of clients. In particular, it is indispensable for an investment firm ***acting*** on behalf of a client, in order to properly fulfil its ***agency*** obligations to its clients, to obtain information on the client's ***financial position***, experience and investment objectives and to assess the suitability, for that client, of services or transactions in financial instruments which are being considered in the light of this information. ***The performance of this assessment should not require a separate authorisation to provide investment advice***.	It is necessary to strengthen the Community's legislative framework to protect investors by enhancing obligations of investment firms when providing services with or on behalf of clients. In particular, ***it is indispensable that, prior to the provision of any investment service, investment firms observe essential 'know your customer' procedures designed to identify the client and verify his financial situation. Also, when providing investment services, the investment firm should ensure that the client receives fair, clear and not misleading information about the investment product or service and its risks and costs. Firms providing non-advisory services should clearly disclose to the client that they are not providing investment advice and should not proceed with orders given to the firm without express consent, if they are aware of any reason why the transaction is unsuitable for the client***. It is ***also*** indispensable for an investment firm ***providing advisory and portfolio management services*** on behalf of a client, in order to properly fulfil its obligations to its clients, to obtain information on the client's experience ***of the financial markets*** and investment objectives and to assess the suitability, for that client, of services or transactions in financial instruments which are being considered in the light of this information.

Justification

These amendments give further effect to the Commission approach as outlined by Commissioner Bolkestein and to the principles of proportionality stated in Article 18(9). They also provide the necessary clarification that all investment firms, irrespective of the level and type of service provided to their customers, must apply a 'de minimis' duty of care to ensure that basic investor protections are delivered.

Amendment 3

Recital 26

(26) It is necessary to impose an effective "best execution" obligation to ensure that the investment firms execute client orders on terms that are ***most favourable to the client.*** This obligation should apply to the firm which owes contractual or agency obligations to the client - irrespective of whether that firm executes the order itself or relies on another intermediary to do so.	(26) It is necessary to impose an effective "best execution" obligation to ensure that the investment firms execute client orders on terms that are ***the best reasonably achievable under the terms of the execution policy agreed between the firm and the client***. This obligation should apply to the firm which owes contractual or agency obligations to the client - irrespective of whether that firm executes the order itself or relies on another intermediary to do so. ***It is appropriate to require investment firms to have in place effective and efficient procedures so as to be able to demonstrate to the competent authority that it has met its best execution obligations.***

Justification

It is too one-dimensional to see "best execution" as an absolute and inflexible requirement to produce one particular result in a given case. Best execution is a more sophisticated concept - a process rather than a single specific result. The Directive should focus on the steps taken to obtain the best result reasonably achievable in the circumstances. Further clarity for investors and firms is provided by outlining those steps in an agreed execution policy. The firm should have effective and efficient procedures in place for obtaining best execution.

Amendment 4

Recital 27

(27) In order to enhance confidence in the impartiality and quality of execution services and to improve the overall price-formation process, it is essential that the	***Delete***

	investment firm which receives a limit order and is unable to execute such an order on specified terms immediately, routes it to a "regulated market" or MTF, or discloses the terms of the trading interest to the market in some other way.

Justification

The limit order rule would not assist price discovery and would be against the interests of clients. The market could move against the client if its order were published. Market infrastructure limitations mean that Article 20(4) would force limit orders on to regulated markets, acting as a de facto concentration rule, the deletion of which has obtained virtually unanimous assent. Execution on a regulated market may also prevent best execution from being obtained.

Amendment 5

Recital 30

(30) For the purposes of ensuring that conduct of business rules are enforced in respect of those investors most in need of these protections, and in reflection of well-established market practice throughout the Community, it is appropriate to clarify that conduct of business rules ***may be waived*** in the case of transactions between eligible counterparties.	(30) For the purposes of ensuring that conduct of business rules are enforced in respect of those investors most in need of these protections, and in reflection of well-established market practice throughout the Community, it is appropriate to clarify that conduct of business rules ***do not apply*** in the case of transactions between eligible counterparties.

Justification

Certain highly sophisticated investors (such as investment firms, national governments, etc) fall into the category of eligible counterparties. In these circumstances, conduct of business rules should not apply.

Amendment 6

Recital 33

In order to ensure a degree of pre-trade information needed to support the efficient formation of prices in shares and to allow market participants to determine the most favourable terms for concluding transactions, it is appropriate to require	In order to ensure a degree of pre-trade information needed to support the efficient formation of prices in shares and to allow market participants to determine the most favourable terms for concluding transactions, it is appropriate to require

investment firms ***dealing on own account*** to make public ***a firm two-sided quote for transactions of a specified size in respect of liquid shares.***	investment firms ***practising systematic internalisation,*** to make public ***a firm bid and offer price for transactions of a specified size in respect of liquid shares.***

Amendment 7

Article 2, paragraph 1, point (l a) (new)

	(la) natural and legal persons
	- which do not hold client's funds or securities and which for that reason may not at any time place themselves in debit with their clients, and
	- which, by way of investment services, provide investment advice and receive and transmit orders concerning shares in collective investment undertakings, and
	- which in the course of providing those services may transmit orders only to:
	(a) investment firms authorised in accordance with this Directive;
	(b) credit institutions authorised in accordance with Directives 77/780/EEC and 89/646/EEC;
	(c) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive and in Directives 89/646/EEC or 93/6/EEC;
	(d) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of such undertakings; and
	- investment companies with fixed capital, as defined in Article 16 (4) of Directive 77/91/EEC, the securities of which are listed or dealt in on a regulated market in a Member State

- the activities of which are governed at national level by rules or by a code of ethics.

Justification

The exemption under Article 2(2)(g) of the current investment services directive can be maintained. If investment services relate only to shares in collective investment undertakings, brokering and advice concerning those products need not be brought within the scope of the investment services directive. The products are already subject to prudential rules and can only be issued by supervised institutions. A further level of supervision also covering firms which only broker and advise on such products would simply duplicate supervision and lead to needless red tape.

Amendment 8

Article 3, paragraph 1, point (6a) new

6 a) Systematic internalisation means the execution of an investment firm's client orders in shares admitted to trading on a regulated market or MTF, in amounts less than block size, by means of proprietary trading or by means of matching with other client orders, outside the rules or systems of a regulated market or MTF to an extent which is material to the market with regard to the share in question.

6 b) Order execution shall only be deemed to be material to a market where the volume executed by the investment firm outside the rules and system of a regulated market or MTF over the previous six months amounts to one per cent or more of the aggregate reported trading volume in all regulated markets and MTFs for the share in question. All trades executed in a given security by an investment firm acting as principal shall be taken into account by Member States in determining whether order execution is material to a market except for trades where the investment firm can demonstrate are separate from its systematic internalisation activities and where the investment firm can demonstrate that it has implemented an effective system of internal controls to maintain a functional separation from its systematic

	internalisation activities.

Amendment 9

Article 11, paragraph 2

2. Member States shall ensure that investment firms exempted from the scope of Directive 93/6/EEC, pursuant to points (c) and (d) of Article 2(2) thereof, hold professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1 000 000 applying to each claim and in aggregate EUR ***2 000 000*** per year for all claims.	2. Member States shall ensure that investment firms exempted from the scope of Directive 93/6/EEC, pursuant to points (c) and (d) of Article 2(2) thereof, hold professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1 000 000 applying to each claim and in aggregate EUR ***1 500 000*** per year for all claims. ***Member States need not apply the requirement contained in this paragraph to investment firms as defined in this paragraph which already comply with them under the 2002/92/EC Directive on Insurance Mediation.***

Justification

This amendment aims to harmonise the ISD level of capital requirements with those of the Insurance Mediation Directive (2002/92/EC). Also, the amendment clarifies that any firm which is within the scope of both directives (i.e. it offers investment and insurance intermediation to clients) need only have a single professional indemnity policy in place. This is essential in order to ensure that firms regulated by both directives are not subject to duplicative or inconsistent regulation.

Amendment 10

Article 11, paragraph 3a (new)

	3a. Member States shall take all the necessary measures to ensure that investment firms exempted from the scope of Directive 93/6/EEC, pursuant to points (c) and (d) of Article 2(2) thereof, have sufficient financial adequacy. Such measures shall take any one or more of

	the following forms: ***(a) provisions laid down by law or contract whereby monies paid by the client to the investment firm (as defined in paragraph 1) are treated as having been paid to the investment firm providing the product, whereas monies paid by the investment firm providing the product to the investment firm are not treated as having been paid to the client until the client actually receives them;*** ***(b) a requirement for investment firms to have financial capacity amounting, on a permanent basis, to 4% of the sum of annual premiums received, subject to a minimum of EUR 15 000;*** ***(c) a requirement that clients' monies shall be transferred via strictly segregated client accounts and that these accounts shall not be used to reimburse other creditors in the event of bankruptcy;*** ***(d) a requirement that a guarantee fund be set up.*** ***Member States need not apply the measures referred to in the above paragraph to investment firms which already comply with them under the 2002/92/EC Directive on Insurance Mediation.***

Justification

Since firms often advise clients on both investment and insurance matters, firms providing services under the ISD should be given the same options as those available for authorised intermediaries under the Insurance Mediation Directive (2002/92/EC) for satisfying solvency requirements. This is essential to ensure that firms regulated by both directives are not subject to duplicative or inconsistent regulation, which could impact harshly on thousands of small investment advice firms.

Amendment 11

Article 13, paragraph 1

1. Member States shall require that investment firms operating an MTF, in addition to meeting the requirements laid down in Article 12, establish transparent and	1. Member States shall require that investment firms operating an MTF, in addition to meeting the requirements laid down in Article 12, establish transparent and

non-discretionary rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders ***so as to enable users to obtain the best price available on or through the MTF, at any given moment for the size of transaction envisaged. Those rules and procedures shall be subject to prior approval by the competent authority of the home Member State.***	non-discretionary rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders***, taking into account the nature of the users of the system and the type of instruments traded on it. The requirements of the competent authority of the home Member State shall be applicable and shall take into account the particular nature of the MTF, including whether or not it is also subject to regulation by another regulator whether of a Member State or a third country.***

Amendment 12

Article 13, paragraph 2

2. Member States shall require that investment firms operating an MTF provide for access to the facility in accordance with transparent and objective commercial conditions. Investment firms operating an MTF shall ***be able to*** make the use of its facilities and access thereto available only to ***eligible counterparties*** as ***referred to in Article 22(3).***	2. Member States shall require that investment firms operating an MTF provide for access to the facility in accordance with transparent and objective commercial conditions. Investment firms operating an MTF shall make the use of its facilities and access thereto available only to ***professional clients*** as ***defined in Annex II.***

Amendment 13

Article 13, paragraph 6

6. In order to take account of technical developments on financial markets and to ensure uniform application of paragraphs 1 and 2, the Commission shall adopt, in accordance with the procedure referred to in Article 59(2), implementing measures governing the content of trading rules to promote fair and orderly trading through the MTF.	***Delete***

Justification

There is no need for further rules to be adopted via comitology in this context. There is no difficulty in dealing with this issue using the full co-decision process: Article 13(1) and 13(2) provide ample, fair and orderly rules for trading on MTFs. Any unforeseen issues arising during or after implementation can be dealt with via co-operation between national regulators at Level 3.

Amendment 14

Article 18, paragraph 2

Marketing communications***, or information contained therein,*** addressed to clients or potential clients, shall be identified as such, and shall be fair, clear and not misleading.	Marketing communications addressed to clients or potential clients, shall be identified as such, and shall be fair, clear and not misleading.

Justification

The Commission's proposal specifies that the information contained in marketing communications should be appropriately identified. However, the manner in which the information contained in marketing communications is to be identified is unclear.

Amendment 15

Article 18, paragraph 4

4. The necessary information shall be obtained from the client regarding its knowledge and experience in the investment field, its investment objectives and financial situation so as to enable the investment firm to determine the investment services and financial instruments suitable for that client.	4. ***When providing investment advice or discretionary services*** the necessary information shall be obtained from the client regarding its knowledge and experience in the investment field, its investment objectives and financial situation so as to enable the investment firm to determine the investment services and financial instruments suitable for that client.

Justification

It is inappropriate to require a "suitability test" for "execution-only" and "direct offer" business as these simple services do not involve the provision of advice. Instead, the investor uses its own judgement, relying on other conduct of business rules and product standards. A suitability test would drive up the costs of these services to the point at which they could become uneconomic, thereby severely limiting investor choice and discouraging saving.

Amendment 16

Article 18, paragraph 4 a (new)

	Paragraph 4 shall not apply to 'execution only' business, provided that the client has expressly and specifically accepted the terms and conditions on which the business will be conducted and has been advised of the risks at the start of the business relationship.

Justification

Paragraph 18 (4) can be interpreted as prohibiting the sale of investment products or services where the suitability of these to a potential consumer has not been accessed in advance, having regard to consumers' knowledge and experience, financial situation and attitude to risk.

Amendment 17

Article 18, paragraph 5

5. Timely information shall be provided to the client regarding financial instruments, proposed investments and execution venues which is fair, clear and not misleading, so as to enable the client to take investment decisions on an informed basis.	5. ***When providing advice or discretionary services,*** timely information shall be provided to the client regarding financial instruments, proposed investments and execution venues which is fair, clear and not misleading, so as to enable the client to take investment decisions on an informed basis.

Justification

It is inappropriate to require a "suitability test" for "execution-only" and "direct offer" business as these simple services do not involve the provision of advice. Instead, the investor uses its own judgement, relying on other conduct of business rules and product standards. A suitability test would drive up the costs of these services to the point at which they could become uneconomic, thereby severely limiting investor choice and discouraging saving.

Amendment 18

Article 18, paragraph 6

6. Appropriate guidance and warnings on the risks associated with investments in particular instruments or investment	6. ***When providing advice or discretionary services,*** appropriate guidance and warnings on the risks associated with investments in

strategies shall be provided to the client, having particular regard to the client's knowledge and experience.	particular ***types of*** instruments or investment strategies shall be provided to the client having particular regard to ***the information which the firm has obtained about*** the client's knowledge and experience.

Justification

First, it is inappropriate to require a "suitability test" for "execution-only" and "direct offer" business as these simple services do not involve advice, as the customer uses her or her own judgement, relying on other conduct of business rules and product standards. Secondly, it is preferable to assess the risks of a particular class of investment or investment strategy, rather than focussing on individual instruments. Thirdly, it is not feasible for a firm to take account of information with which it has not been provided or which has been withheld. The focus should be on the information which the firm has obtained in accordance with its obligations.

Amendment 19

Article 18, paragraph 7

7. A documentary record of an agreement between the firm and the client shall be established which sets out the rights and obligations of the parties, and the other terms on which the firm will provide services to the client.	7. A documentary record of an agreement between the firm and the client shall be established which sets out the rights and obligations of the parties, and the other terms on which the firm will provide services to the client. ***A documentary record of an agreement can also be made in a standardised format.***

Justification

In view of common practice in many Member States, it is proposed that this information can be obtained in a standardised format. As a result of this approach, processing expense can be reduced for the investment firm without a reduction in client protection.

Amendment 20

Article 18, paragraph 8

8. ***Reports shall be provided to the client on the progress of and*** the costs associated with the transactions and services undertaken on behalf of the client.	8. ***The client shall receive an order confirmation or a settlement note. The settlement note shall include*** the costs associated with the transactions and services undertaken on behalf of the client.

Justification

Article 18(8) of the Commission's proposal specifies the obligation for reports to be given on the status of order execution. This gives the impression that the firm must be in a position to provide information at all times.

Amendment 21

Article 18, paragraph 9, point (c)

(c) the retail or professional nature of the client or potential clients.	(c) the retail or professional nature of the client or potential clients***, including adequate grandfathering provisions for the categorisation of existing clients and leaving a sufficient degree of flexibility for investment firms when implementing the categorisation set out in Annex II.***
	Where appropriate, the implementing measures adopted under this paragraph may provide that the principles set out in paragraphs 1 to 8 shall not apply to professional clients or potential professional clients and/or that conduct of business rules may be waived by professional clients if they so wish.

Justification

It should be made clear that the Commission's duty to differentiate between different classes of client extends to considering which rules should be applied to professionals and which should not. Failure to differentiate properly between professional and retail clients could severely disrupt markets. Applying protections to professionals which have been designed for retail markets drives up costs and damages the millions of retail clients who save via institutional investors such as UCITS, fund managers and pension funds.

Amendment 22

Article 18, point 10

10. Member States shall allow an investment firm receiving an instruction to perform investment or ancillary services on behalf of a client through the medium of another investment firm to rely on client information transmitted by the firm which mediates the	10. Member States shall allow an investment firm receiving an instruction to perform investment or ancillary services on behalf of a client through the medium of another investment firm to rely on client information transmitted by the firm which mediates the

instructions.	instructions. ***The investment firm receiving the information shall not be required to obtain client information in accordance with paragraph 4.***
The investment firm which receives an instruction to undertake services on behalf of a client in this way shall also be able to rely on any recommendations in respect of the service or transaction that have been provided to the client by another investment firm.	The investment firm which receives an instruction to undertake services on behalf of a client in this way shall also be able to rely on any recommendations in respect of the service or transaction that have been provided to the client by another investment firm.
The investment firm which receives client instructions or orders through the medium of another investment firm shall remain responsible for concluding the service or transaction, based on any such information or recommendations, in accordance with measures adopted pursuant to paragraph 9.	The investment firm which receives client instructions or orders through the medium of another investment firm shall remain responsible for concluding the service or transaction, based on any such information or recommendations, in accordance with measures adopted pursuant to paragraph 9.

Justification

It is not clear in the proposal that where a transaction is executed in separate steps via intermediaries, the firm without direct client contact may rely on the results of the client investigation made by the firm with direct client contact. Therefore, a clarification is proposed.

Amendment 23

Article 19, paragraph 1

1. Member States shall require that investment firms providing services which entail the execution, whether by the firm itself or another investment firm, of client orders in financial instruments ensure that ***those*** orders are executed in such a way that the client obtains the best possible result in terms of price, costs, speed and likelihood of execution, taking into account the time, size and nature of customer orders, and any ***specific instructions from the client.***	1. Member States shall require that investment firms providing services which entail the execution, whether by the firm itself or another investment firm, of client orders in financial instruments ensure ***by using all reasonable efforts*** that orders are executed in such a way that the client obtains the best possible result in terms of price, costs, speed and likelihood of execution, taking into account the time, size and nature of customer orders and any ***other order dimension relevant to the transaction. In the case of professional clients who have retained discretion over or have given specific instructions to the investment firm regarding the manner and market of execution, the investment firm's best***

	execution duty shall consist only of following the clients' instructions.

Amendment 24

Article 19, paragraph 2

2. The competent authority shall verify that investment firms implement effective and efficient procedures ***which form a systematic, repeatable and demonstrable method*** for facilitating execution of client orders ***on terms that are most favourable to the client***. In assessing these procedures, regard shall be had to the extent to which the procedures enable the firm to obtain the best ***possible*** result having regard to the conditions prevailing in the marketplace to which the investment firm can reasonably be expected to have access.	2. The competent authority shall verify that ***such*** investment firms implement ***systematic,*** effective and efficient procedures for ***monitoring execution quality and*** facilitating execution of client orders ***in accordance with paragraph 1.*** In assessing these procedures, regard shall be had to the extent to which the procedures enable the firm to obtain the best result ***reasonably achievable*** having regard to the ***conditions of the order, and the*** conditions prevailing in the marketplace to which the investment firm can reasonably be expected to have access ***under the terms of the execution policy.***

Justification

(i) This amendment recognises the sophistication of the best execution concept. The steps which should reasonably be taken to achieve "best execution" may vary in different cases, according to the needs of the client, the type of order and the prevailing conditions in the market. Thus the processes used and the judgements made may not always form part of a repeatable and recurrent method, applicable in every case. (ii) There should be an obligation to monitor execution quality.

Amendment 25

Article 19, paragraph 3

3. Member States shall require investment firms to review, on a regular basis, ***the procedures which they employ*** to obtain the best ***possible*** result for their clients ***and, where necessary, to adapt those procedures so as to obtain access to the execution venues which, on a consistent basis, offer the most favourable terms of execution***	3. Member States shall require investment firms to review, on a regular basis, ***their execution arrangements and, where appropriate, make changes to them so as*** to obtain the best result ***reasonably achievable*** for their clients.

available in the marketplace.

Member States shall require that investment firms implement effective and efficient procedures for monitoring execution quality. In assessing these procedures, regard shall be had to the extent to which the procedures enable the firm to identify and correct, where appropriate, consistent inefficiencies in its execution practices

Justification

It is very important to ensure that investment firms put in place arrangements for regular and effective monitoring execution quality, which should identify any inefficiencies in execution policy. This is necessary to ensure that firms continuously update their practices to ensure investors get the highest standards of execution quality.

Amendment 26

Article 19, paragraph 4

4. In order to ensure the protection necessary for investors, the fair and orderly functioning of markets, and to ensure the uniform application of paragraphs 1, 2 and 3, the Commission shall, in accordance with the procedure referred to in Article 59(2), adopt implementing measures concerning:

(a) the factors that may be taken into account for determining best execution or the calculation of best net price prevailing in the marketplace for the size and type of order and type of client;
(b) the procedures which, taking into account the scale of operations of different investment firms, may be considered as constituting reasonable and effective methods of obtaining access to the execution venues which offer the most favourable terms of execution in the marketplace

Delete

Justification

The terms of execution quality requirements are explicit in the Directive and technical implementing measures are therefore unnecessary in this context. "Best execution" is a key pillar of the regulatory framework of the Directive and, as such, it should be governed by primary legislation, subject to the full co-decision process.

Amendment 27

Article 20, paragraph 2

2. Member States shall ensure that investment firms operate procedures or arrangements for executing otherwise comparable client orders ***in accordance with the time of their reception by the investment firm, and for preventing client interests from being adversely affected by any conflicts of interest.***	2. Member States shall ensure that investment firms operate procedures or arrangements ***or rules*** for executing otherwise comparable client orders ***which ensure that the firm does not knowingly execute orders out of time priority, unless this is carried out in accordance with a client order aggregation policy or by agreement with the client.***

Justification

Additional flexibility is required here since a rigid "time of reception rule" will sometimes operate against the investor's interest. Combining the orders of different investors and executing them in bulk is an important method of reducing costs. This would be outlawed by the Commission text, since aggregation will sometimes mean executing orders outside of strict time priority. This amendment also recognises that firms dealing with investors through a range of branches or desk locations may inadvertently execute orders out of time priority, without damaging the interests of these customers.

Amendment 28
Article 20, paragraph 3

Member States shall ensure that investment firms obtain the express prior consent of clients before proceeding to execute client orders outside the rules and systems operated by a regulated market or MTF. Member States shall allow the investment firm to obtain this consent either in the form of a general agreement or in respect of individual transactions. If the prior consent of clients is given in the form of a general agreement, it should be contained in a separate document and	***Delete***

should be renewed annually.

Justification

This provision could in fact cut across the best-execution requirement.It incorrectly presumes that best execution will only take place on a regulated market or MTF and consigns investors to poor execution if firms are deterred by the prohibitive costs imposed by the obligation to seek the client's permission. This incorrect presumption would be anti-competitive as it unfairly advantages execution on regulated markets and MTFs at the expense of other forms of execution.

The requirement to renew consent annually is particularly burdensome (Recital 28 makes no mention of the need to renew annually). In the case of firms with thousands of clients, very significant costs would be incurred in complying with the provision. Such costs would entail creating the necessary documentation, postage, monitoring their return, recording and filing the information received and monitoring compliance. One must also not forget the potential lost opportunities for investors where forms have been held up/lost in the post/system.

If a firm did not have its customer's consent to execute away from a regulated market (e.g. because the form was delayed in the post), and if the firm had access to better prices away from a regulated market or MTF, then the ISD would deny that customer the benefit.

Amendment 29

Article 20, paragraph 4

4. Member States shall require that, in the case of a client limit order which cannot be immediately executed under prevailing market conditions, investment firms are, unless the client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order by***making public immediately the terms of that client limit order in a manner which is easily accessible to other market participants***. Member States shall provide that the competent authorities are to be able to waive the obligation to make public a limit order that is large in scale compared with normal market size as determined under Article 41(2).	4. Member States shall require that, in the case of a client limit order which cannot be immediately executed under prevailing market conditions ***but nevertheless represents price improvement over the prevailing market conditions either in price or in market depth that exceeds by 10% or more the aggregate published volume***, investment firms are, unless ***the order is a block size or*** the client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order ***either*** by ***immediately routing it to a "regulated market" or MTF, or by immediately publishing it in such a manner as provides an equivalent degree of transparency, and providing means for market participants to execute transactions***

immediately, or as soon as is practicable, against the displayed order. Member States shall provide that the competent authorities are to be able to waive the obligation to make public a limit order that is large in scale compared with normal market size as determined under Article 41(2).

Amendment 30
Article 20, paragraph 6 (new)

6. Subject to paragraph 7, the competent authority of the home Member State shall require that the obligations of this provision and the implementing measures adopted under paragraph 5 are complied with by investment firms including when providing services in other Member States.

Justification

The amendment clarifies that this article should be applied on a country of origin basis as the appropriate basis for regulation. This means that an investment firm will be able to provide services on a cross-border basis.

Where a firm provides cross-border service via a branch it will be subject to the authorisation and rules of its home Member State; however, the conduct of business rules of the Member State where the branch is located will apply.

Amendment 31
Article 20, paragraph 7 (new)

7. The competent authority of the Member State in which a branch is located shall apply and enforce the obligations referred to in this provision and the implementing measures adopted pursuant to paragraph 5 in respect of the services provided by the branch to its clients.

Justification

The amendment clarifies that this article should be applied on a country of origin basis as the appropriate basis for regulation. This means that an investment firm will be able to provide services on a cross-border basis.

Where a firm provides cross-border service via a branch it will be subject to the authorisation and rules of its home Member State; however, the conduct of business rules of the Member State where the branch is located will apply.

Amendment 32

Article 21

1. Member States shall ***require*** an investment firm ***to*** employ tied agents ***only*** for the purposes of promoting the services of the investment firm, soliciting business or collecting orders from clients or potential clients and transmitting these to that investment firm, and providing advice in respect of financial instruments or services offered by that investment firm.	1. Member States shall ***ensure that*** an investment firm ***may*** employ tied agents ***in particular*** for the purposes of promoting the services of the investment firm, soliciting business or collecting orders from clients or potential clients and transmitting these to that investment firm, and providing advice in respect of financial instruments or services offered by that investment firm ***and of all activities necessarily linked to it***.
2. Member States shall require an investment firm employing a tied agent to remain fully and unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the firm. Member States shall require the investment firm to ensure that a tied agent discloses immediately to any client or potential client the capacity in which he agent is acting and the firm which he is representing.	2. Member States shall require an investment firm employing a tied agent to remain fully and unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the firm. ***Should the investment firm be subject to the own funds requirement, the amount of this requirement must be geared to the actual liability risk, having regard to existing insurance cover.*** States shall require the investment firm to ensure that a tied agent***, prior to mediating a particular product,*** discloses immediately to any client or potential client the capacity in which he agent is acting and the firm which he is representing.
3. Member States shall ensure that investment firms monitor the activities of their tied agents and adopt measures and procedures so as to ensure that they operate, on a continuous basis, in compliance with this Directive.	3. Member States shall ensure that investment firms monitor the activities of their tied agents and adopt measures and procedures so as to ensure that they operate, on a continuous basis, in compliance with this Directive.

4. Each Member State shall ensure that tied agents which act or wish to act on its territory are entered in a public register which is established and maintained under the responsibility of the competent authority.	4. Each Member State shall ensure that tied agents which act or wish to act on its territory are entered in a public register which is established and maintained under the responsibility of the competent authority.
The competent authority shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.	The competent authority shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client. ***The existence of appropriate general, commercial and professional knowledge may be determined by way of a grandfathering clause in terms of existing professional experience or appropriate training or further education measures.***
The register shall be updated on a regular basis. It shall be publicly available for consultation.	The register shall be updated on a regular basis. It shall be publicly available for consultation.
5. Member States shall ensure that investment firms employ only tied agents entered in the public registers referred to in paragraph 4.	5. Member States shall ensure that investment firms employ only tied agents entered in the public registers referred to in paragraph 4.
6. Member States may allow the competent authority to delegate the establishment and maintenance of the public register pursuant to paragraph 4 and the tasks of monitoring compliance of tied agents with the requirements of paragraph 4 to a body meeting the conditions laid down in Article 45(2).	6. Member States may allow the competent authority to delegate the establishment and maintenance of the public register pursuant to paragraph 4 and the tasks of monitoring compliance of tied agents with the requirements of paragraph 4 to a body meeting the conditions laid down in Article 45(2).
	7. The Member States shall ensure that the rights and obligations of tied agents are geared to the requirements of Directive 2002/92/EC on insurance mediation and that harmonisation is carried out accordingly.

Justification

Article 21 needs to be made more flexible. The list, in Article 21(1), of the activities permitted for tied agents should not be exhaustive, in order to prevent the bureaucratisation or restriction of the sale of financial products. Requirements under banking supervisory law

should also be included, e.g. identity checks under the money laundering directive or the compilation of client data under the Rules of Conduct.

The own funds requirement should be determined in the light of the existing liability risk, and not on flat rate figures (e.g. running costs or transmitted provisions) without any other differentiation.

The requirement to disclose for which investment firm the agent is acting should take effect as soon as the agent mediates certain products to the investment firm. Uncertainties also arise as to the date from which the agent is required to state that he began acting for the investment firm.

In the interest of confidence protection, the Directive should not impose any access restrictions on tied agents who are already active.

It seems necessary and sensible to harmonise this Directive with the insurance mediation directive. In order to guarantee uniform consumer protection for clients of mediators, a section to this effect should be added to the relevant paragraph.

Amendment 33

Article 22, paragraph 1

The Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account, may ***enter into transactions with*** eligible counterparties without being obliged to comply with the obligations under Articles 18, 19 and 20 in respect of those ***transactions***.	The Member States shall ensure that investment firms authorised to execute orders on behalf of clients***, to operate an MTF, receive and transmit orders, provide investment advice*** and/or to deal on own account, may ***provide such services to*** eligible counterparties without being obliged to comply with the obligations under Articles 18, 19 and 20 in respect of those ***services***.

Justification

The obligation to comply with Articles 18, 19 and 20 applies to all investment firms and not just those authorised to execute client orders and/or deal on own account. The amendment is therefore necessary to ensure that those investment firms providing other investment services can also benefit from the dis-application of those articles when providing services to or on behalf of eligible counterparties.

Amendment 34

Article 22, paragraph 2

In order to conclude transactions in accordance with paragraph 1, the investment firm shall obtain confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty. This confirmation shall be obtained either before or during the course of the transaction, or in the form of a general agreement.	***Delete***

Justification

A two-way notification is unnecessary and will lead to the imposition of unnecessary costs on firms.

Amendment 35

Article 22, paragraph 3

Member States shall recognise as eligible counterparties for the purposes of this Article ***and Articles 13 and 39*** investment firms, credit institutions, insurance companies or any other authorised or regulated financial intermediary considered as such by Community legislation, but excluding UCITS ***and their management companies*** and pension funds ***and their management companies.***	Member States shall recognise as eligible counterparties for the purposes of this Article ***national Governments and their corresponding offices, international and supranational institutions and organisations,*** investment firms, credit institutions, insurance companies, ***UCITS management companies, pension fund management companies, undertakings exempted from the application of this Directive under Articles 2(1)(f), (i) and (j),*** or any other authorised or regulated financial intermediary considered as such by Community legislation, but excluding UCITS and pension funds.
Member States may also recognise as eligible counterparties UCITS ***and their management companies***, pension funds ***and their management companies***, and other ***companies*** meeting pre-determined proportionate requirements, including quantitative thresholds. ***In the event of a transaction where the prospective counterparties are located in different jurisdictions, the investment firm shall defer to the status of the other company as determined by the law or measures of the Member State in which that company is***	Member States may also recognise as eligible counterparties UCITS, pension funds, and other ***undertakings*** meeting pre-determined proportionate requirements, including quantitative thresholds.

established.

Classification as an eligible counterparty under the second subparagraph shall be without prejudice to the right of such entities to request treatment as clients whose business with the investment firm is subject to Articles 18, 19 and 20.	Classification as an eligible counterparty under the second subparagraph shall be without prejudice to the right of such entities to request treatment as clients whose business with the investment firm is subject to Articles 18, 19 and 20.

Justification

It is appropriate to include in the list of eligible counterparties national governments and other international bodies as well as UCITS and pension fund management companies. While Member States should not be obliged to classify UCITS and pension funds themselves as eligible counterparties, they should have an option to do this. Where Member States choose to recognise UCITS and pensions funds as eligible counterparties, these institutions should have the option to request to be treated as a customer.

Amendment 36

Article 25

1. Member States shall require any investment firm ***authorised to deal on own account*** to make public a firm bid and offer ***price*** for transactions of a size customarily undertaken by a retail investor ***in respect of shares in which it is dealing, and where those shares are admitted to trading on a regulated market and for which there is a liquid market.***	1. Member States shall require any investment firm, ***which practises systematic internalisation in shares admitted to trading on a regulated market or MTF,*** to make public a firm bid and offer for transactions of a size customarily undertaken by a retail investor ***for the relevant shares.***
Member States shall require that the investment firms referred to in the first sub-paragraph trade with other investment firms and eligible counterparties at the advertised prices, except where justified by legitimate commercial considerations related to the final settlement of the transaction.	Member States shall require that the investment firms referred to in the first sub-paragraph trade with other investment firms and eligible counterparties at the advertised prices ***or better,*** except where justified by legitimate commercial considerations related to the final settlement of the transaction, ***such as counterparty credit or anti-money laundering***.
2. Member States shall ***provide*** that the ***obligation set out in paragraph 1 is waived in respect of*** investment firms ***which do not represent an important provider of liquidity for the share(s) in question on a regular or continuous basis.***	2. Member States shall ***require*** that the ***competent authority exempt*** investment firms ***as referred to in paragraph 1 from the obligation to publish the information prescribed in paragraph 1 in relation to trades in amounts greater than block size.***
3. Member States shall ensure that the bid	3. Member States shall ensure that the bid

and offer prices required under paragraph 1 are made public in a manner which is easily accessible to other market participants, ***free of charge***, on a regular and continuous basis during normal trading hours.

and offer prices required under paragraph 1 are made public in a manner which is easily accessible to other market participants ***on a reasonable commercial basis and*** on a regular and continuous basis during normal trading hours.

A quotation shall be deemed to be public if it has been published in such a manner as provides an equivalent degree of transparency to orders routed to a "regulated market" or MTF, and shall be deemed to be accessible if means are provided for market participants to execute transactions immediately, or as soon as is practicable, against the displayed quotation.

The competent authority shall verify that published quotes reflect prevailing market conditions for that share, and that the investment firm regularly updates the bid and offer prices that it makes public pursuant to paragraph 1.

The competent authority shall verify that published quotes reflect prevailing market conditions for that share, and that the investment firm regularly updates the bid and offer prices that it makes public pursuant to paragraph 1.

4. In order to ensure the uniform application of paragraphs 1, 2 and 3, in a manner which supports the efficient valuation of shares and maximises the possibility of investment firms to obtain the best deal for their clients, the Commission shall, in accordance with the procedure referred to in Article 59(2), adopt implementing measures which:

4. In order to ensure the uniform application of paragraphs 1, 2 and 3, in a manner which supports the efficient valuation of shares and maximises the possibility of investment firms to obtain the best deal for their clients, the Commission shall, in accordance with the procedure referred to in Article 59(2), adopt implementing measures which:

(a) specify the size of transactions customarily undertaken by a retail investor in respect of which the investment firm shall make public firm bid and offer prices;

(a) specify the size of transactions customarily undertaken by a retail investor in respect of which the investment firm shall make public firm bid and offer prices;

(a i) specify the size of block size transaction;

(a ii) specify that published quotations be reasonably related to the prevailing market;

(b) define the shares or classes of share for which there is sufficient liquidity to allow application of the obligation under paragraph 1;

(b) define the shares or classes of share for which there is sufficient liquidity to allow application of the obligation under paragraph 1;

(c) determine which types of investment firms shall be exempted, pursuant to paragraph 2, from the obligation under

(c) determine which types of investment firms shall be exempted, pursuant to paragraph 2, from the obligation under

paragraph 1;	paragraph 1;
(d) determine which types of investment firms shall be exempted, pursuant to paragraph 2, from the obligation under paragraph 1;	(d) determine which types of investment firms shall be exempted, pursuant to paragraph 2, from the obligation under paragraph 1;
i) through the facilities of any regulated market which has admitted the instrument in question to trading;	i) through the facilities of any regulated market which has admitted the instrument in question to trading;
ii) through the offices of a third party;	ii) through the offices of a third party;
iii) through proprietary arrangements.	iii) through proprietary arrangements.

Or. en

Amendment 37
Article 27 paragraph 1

1. Member States shall require that investment firms operating an MTF make public current bid and offer prices which are advertised through their systems in respect of shares admitted to trading on a regulated market. Member States shall provide that this information is to be made available to the public on a reasonable commercial basis, as close to real time as possible.	1. Member States shall require that, ***where appropriate given the size and nature of trading undertaken on an MTF outside the rules of a regulated market,*** investment firms operating an MTF make public current bid and offer prices which are advertised through their systems ***to all users*** in respect of shares admitted to trading on a regulated market. Member States shall provide that this information is to be made available to the public on a reasonable commercial basis, as close to real time as possible.

Justification

(i) The size and nature of trading on MTFs varies considerably and Member States should be given the flexibility to differentiate regulatory requirements accordingly. (ii) The provisions should not apply where MTF trades are already published under the rules of an exchange. (iii) Publication should only be required where firm bids and offers are visible to all users of the MTF. Without such an amendment, many useful and cost-effective crossing and auction systems, where prices are revealed only to limited number of customers, would become impossible to operate.

Amendment 38

Article 28, paragraph 1

1. Member States shall require that investment firms operating an MTF make public the price, volume and time of the transactions executed under its rules and systems in respect of shares which are admitted to trading on a regulated market. Member States shall require that details of all such transactions be made public, on a reasonable commercial basis, as close to real time as possible.	1. Member States shall require that investment firms operating an MTF make public the price, volume and time of the transactions executed under its rules and systems in respect of shares which are admitted to trading on a regulated market. Member States shall require that details of all such transactions be made public, on a reasonable commercial basis, as close to real time as possible. ***These requirements shall not apply where details of trades executed on an MTF are made public under the rules of a regulated market***

Justification

The amendment clarifies that requirements for post-trade transparency for MTFs do not apply where the trade details are made public under the rules of a regulated market. This amendment will avoid unnecessary and confusing duplication of reporting.

Amendment 39

Article 39, paragraph 2

2. Member States shall ensure that regulated markets limit membership or access to eligible counterparties as referred to in Article 22(3).	2. Member States shall ensure that regulated markets limit membership or access to eligible counterparties, as referred to in Article 22(3), ***and professional investors.***

Justification

As with MTFs, access to regulated markets should not be restricted to eligible counterparties. This would be an unnecessary restriction on competition. It would prevent operators of regulated markets from exercising treaty freedoms to trade across borders. It would exclude from membership a number of entities which currently use regulated markets, without causing regulatory problems, such as "non-ISD locals". It would prevent operators of regulated markets from obtaining customers from non-EU countries and would thus damage the global competitiveness of EU financial markets.

Amendment 40

Article 59a (new)

	59a. The Commission shall seek to ensure that any implementing measures adopted under this Directive are proportionate to

the regulatory goals sought and shall take account of the impact of these measures (including cost impact) on the differing sizes, business activities and business structures of credit institutions authorised under Directive 2000/12/EC, investment firms and operators of regulated markets.

Justification

Before adopting implementing measures, it is essential that the Commission take account of their impact of the different institutions within the scope of this Directive, including small and medium-sized businesses. CESR must consult widely with interested groups and take account of the cost of any proposed measures.

Amendment 41
Article 60, paragraph -1 (new)

The committee referred to in Article 59(1) shall monitor and evaluate the impact of Article 25 - and of the exemptions provided for therein - in terms of market distortion, distortion of competition and creation of counterparty risk, and report to the Commission. On the basis of such reports, the Commission shall submit proposals for amendments to this Directive with a view to taking prompt remedial action.

Amendment 42

Article 60, paragraph 1

1. No later than [31 December 2008, 4 years after entry into force of this Directive], the Commission shall, on the basis of public consultation and in the light of discussions with competent authorities, report to the European Parliament and Council on:	1. No later than [31 December 2008, 4 years after entry into force of this Directive], the Commission shall, on the basis of public consultation and in the light of discussions with competent authorities, report to the European Parliament and Council on:
	(a) the continued appropriateness of the obligation in Article 25 for investment firms to make public bids and offers;

(a) the possible extension of scope of the provisions of the Directive concerning pre- and post-trade transparency obligations to transactions in classes of financial instrument other than shares.	***(b)*** the possible extension of scope of the provisions of the Directive concerning pre- and post-trade transparency obligations to transactions in classes of financial instrument other than shares.
On the basis of that report, the Commission may submit proposals for related amendments to this Directive	On the basis of that report, the Commission may submit proposals for related amendments to this Directive

Justification

Given the absence of empirical evidence justifying the introduction of pre-trade transparency requirements, a full review should be carried out to ascertain the precise nature of their impact upon the markets and whether there is any evidence to support the continued existence of such provisions.

Amendment 43

ARTICLE 62

Article 2, paragraph 2(d) (Directive 93/6/EEC)

d) investment firms which are authorised to provide only the service of investment advice.	d) investment firms which are authorised to provide only the service of investment advice ***and firms which are authorised to provide only the services of investment advice and insurance advice.***

Justification

Many of the investment advice firms targeted by the Commission's exemption from the capital adequacy directive (93/6/EEC or "CAD") also give advice on insurance products. It should be made clear that the exemption from the CAD covers firms which give both investment and insurance advice.

Amendment 44

ARTICLE 62

Article 2, paragraph 2(da) (new) (Directive 93/6/EEC)

	(da) investment firms that provide only the investment services covered by c) and d) above.

Justification

Many of the investment advice firms targeted by the Commission's proposed exemption from the CAD (Directive 93/6/EEC) also arrange and transmit orders (where client assets are not held by the investment firm). This amendment ensures that those which carry out such business also fall within the exemption from the CAD.

Amendment 45

Annex II, Section I, point (3), subparagraph 2

The entities mentioned above are considered to be professionals. ***They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection.*** Where the client of an investment firm is a company or a partnership referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the client is deemed to be professional client, and will be treated as such unless the firm and the client agree otherwise.	The entities mentioned above are considered to be professionals. Where the client of an investment firm is a company or a partnership referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the client is deemed to be professional client, and will be treated as such unless the firm and the client agree otherwise.

Justification

The entities mentioned above are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the client of an investment firm is a company or a partnership referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the client is deemed to be professional client, and will be treated as such unless the firm and the client agree otherwise.

Amendment 46

Annex II, Section II, paragraph 1, subparagraph 2

Investment firms should therefore be allowed to treat any of the above clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. ***These clients should not, however, be presumed to possess market knowledge and experience comparable to that of the***	Investment firms should therefore be allowed to treat any of the above clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled.

categories listed in section I.

Justification

Investment firms should be able to treat investors who ask to be treated as professionals in the same way as those who are automatically considered to be professionals. The second sentence of this paragraph seems to add yet another category of investor to an already complex system. This additional "semi-professional" category is not referred to anywhere else in the proposed directive.