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Committee on Economic and Monetary Affairs

2011/0298(COD)

15.5.2012

AMENDMENTS 218 - 367

Draft report

Markus Ferber

(PE485.882v01-00)

on the proposal for a directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast)

Proposal for a directive

(COM(2011)0656 – C7-0382/2011 – 2011/0298(COD))

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United in diversity

EN

Amendment 218

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) The financial crisis has exposed weaknesses in the functioning and in the transparency of financial markets. The evolution of financial markets have exposed the need to strengthen the framework for the regulation of markets in financial instruments in order to increase transparency, better protect investors, reinforce confidence, *reduce* unregulated areas, ensure that supervisors are granted adequate powers to fulfil their tasks.

Amendment

(4) The financial crisis has exposed weaknesses in the functioning and in the transparency of financial markets. The evolution of financial markets have exposed the need to strengthen the framework for the regulation of markets in financial instruments in order to increase transparency, better protect investors, reinforce confidence, *ensure there are no* unregulated areas, ensure that supervisors are granted adequate powers to fulfil their tasks.

Or. en

Amendment 219

Gunnar Hökmark

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) There is agreement among regulatory bodies at international level that weaknesses in corporate governance in a number of financial institutions, including the absence of effective checks and balances within them, have been a contributory factor to the financial crisis. Excessive and imprudent risk taking may lead to the failure of individual financial institutions and systemic problems in Member States and globally. Incorrect conduct of firms providing services to

Amendment

(5) There is agreement among regulatory bodies at international level that weaknesses in corporate governance in a number of financial institutions, including the absence of effective checks and balances within them, have been a contributory factor to the financial crisis. Excessive and imprudent risk taking may lead to the failure of individual financial institutions and systemic problems in Member States and globally. Incorrect conduct of firms providing services to

clients may lead to investor detriment and loss of investor confidence. In order to address the potentially detrimental effect of these weaknesses in corporate governance arrangements, the provisions of this Directive should be supplemented by more detailed principles and minimum standards. These principles and standards should apply taking into account the nature, scale and complexity of investment firms.

clients may lead to investor detriment and loss of investor confidence. In order to address the potentially detrimental effect of these weaknesses in corporate governance arrangements, the provisions of this Directive should be supplemented by more detailed principles and minimum standards. These principles and standards should apply taking into account the nature, scale and complexity of investment firms. ***On the matter of board members, it is the responsibility of shareholders to ensure that all members at all times are of sufficiently good repute and possess sufficient knowledge, skills and experience whilst it is acknowledged that directorships differ and that detailed provisions as well as quantitative limits on the number of positions to be held therefore are unwarranted.***

Or. en

Amendment 220
Pervenche Berès

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) The Heads of State and Government gave an undertaking at the Cannes G-20 Summit (4 November 2011) with a view to the creation of ‘a global legal entity identifier (LEI) which uniquely identifies parties to financial transactions’.

Or. fr

Amendment 221
Robert Goebbels, Antolín Sánchez Presedo, Udo Bullmann, Arlene McCarthy

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) It is appropriate to include in the list of financial instruments *certain* commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments.

Amendment

(8) It is appropriate to include in the list of financial instruments *all* commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments.

Or. en

Amendment 222
Sari Essayah

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) It is appropriate to include in the list of financial instruments certain commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments.

Amendment

(8) It is appropriate to include in the list of financial instruments certain commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments.

Contracts of insurance in respect of activities of classes set out in Annex I of Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of business of Insurance and Reinsurance (Solvency II) if entered into with an insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, are not derivatives or derivative contracts for the purposes of this Directive.

Or. en

Amendment 223

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) A range of fraudulent practices have occurred in spot secondary markets in emission allowances (EUA) which could undermine trust in the emissions trading schemes, set up by Directive 2003/87/EC, and measures are being taken to strengthen the system of EUA registries and conditions for opening an account to trade EUAs. In order to reinforce the integrity and safeguard the efficient functioning of those markets, including comprehensive supervision of trading activity, it is appropriate to complement measures taken under Directive 2003/87/EC by bringing emission allowances fully into the scope of this Directive and of Regulation ----/-- [Market Abuse Regulation], **by classifying them as financial instruments.**

Amendment

(9) A range of fraudulent practices have occurred in spot secondary markets in emission allowances (EUA) which could undermine trust in the emissions trading schemes, set up by Directive 2003/87/EC, and measures are being taken to strengthen the system of EUA registries and conditions for opening an account to trade EUAs. In order to reinforce the integrity and safeguard the efficient functioning of those markets, including comprehensive supervision of trading activity, it is appropriate to complement measures taken under Directive 2003/87/EC by bringing emission allowances fully into the scope of this Directive and of Regulation ----/-- [Market Abuse Regulation].

Or. en

Amendment 224

Robert Goebbels, Arlene McCarthy, Elisa Ferreira

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) It is necessary to establish a comprehensive regulatory regime governing the execution of transactions in 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

Amendment

(11) It is necessary to establish a comprehensive regulatory regime governing the execution of transactions in 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.

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 **and MTF** which **have benefited from a regulatory loophole under the current MiFID regime and that they** should be subjected to obligations designed to preserve the efficient and orderly functioning of financial markets.

Or. en

Amendment 225

Robert Goebbels, Arlene McCarthy, Elisa Ferreira

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) All trading venues, namely regulated markets, MTFs, and **OTFs**, should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to highly similar requirements regarding whom they may admit as members or participants, **OTFs** should be able to determine and restrict access based inter alia on the role and obligations which **their operators** have in relation to their clients.

Amendment

(12) All trading venues, namely regulated markets, MTFs, and **Systematic Internalisers**, should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to highly similar requirements regarding whom they may admit as members or participants, **Systematic Internalisers** should be able to determine and restrict access based inter alia on the role and obligations which **they** have in relation to their clients.

(This amendment (i.e. the deletion of "OTF") applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Justification

All trading platforms operated by market operators or investment firms should be properly regulated. As supported by the European Parliament in its December 2010 Report on Dark Pools, there is no need for the creation of a new trading venue category for any asset class (i.e. OTF). Therefore the OTF category and subsequent requirements, including the inclusion of 'OTF' in all other parts of the proposal for all asset classes should be deleted. Instead, the existing definitions of the public markets' categories (RM, MTF and SI) should be clarified and a clear definition of over-the-counter (OTC) transactions, which should not be subject to the public market rules, must be introduced. Systematic Internalisation needs to continue to be included expressly as a trading venue, and should be subject to transparent access rules. SIs should be able to limit their trading participants to their clients, given that the operator runs a risk by carrying out the trades on its own book.

Amendment 226 **Sirpa Pietikäinen**

Proposal for a directive **Recital 12**

Text proposed by the Commission

(12) All trading venues, namely regulated markets, MTFs, and **OTFs**, should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to highly similar requirements regarding whom they may admit as members or participants, **OTFs** should be able to determine and restrict access based inter alia on the role and obligations which their operators have in relation to their clients.

Amendment

(12) All trading venues, namely regulated markets, MTFs, and **Systematic Internalisers**, should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to highly similar requirements regarding whom they may admit as members or participants, **Systematic Internalisers** should be able to determine and restrict access based inter alia on the role and obligations which their operators have in relation to their clients.

(The deletion of the OTF-category included in this amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Justification

The main factor distinguishing the proposed OTFs from MTFs is discretion in executing

client orders which threatens to lead to abuses to the detriment especially of uninformed investors. In addition, new category is likely to fragment markets even further. SI should be considered as a MiFID execution venue and should be subject to transparent access rules. But SIs can limit in certain cases the access to the platform, as the SI operator runs a risk by carrying out the trades on its own book.

Amendment 227

Sylvie Goulard

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) All trading venues, namely regulated markets, MTFs, and **OTFs**, should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to highly similar requirements regarding whom they may admit as members or participants, **OTFs** should be able to determine and restrict access based inter alia on the role and obligations which their operators have in relation to their clients.

Amendment

(12) All trading venues, namely regulated markets, MTFs, and **Systematic Internalisers**, should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to highly similar requirements regarding whom they may admit as members or participants, **Systematic Internalisers** should be able to determine and restrict access based inter alia on the role and obligations which their operators have in relation to their clients

Or. en

Justification

The OTF category is deleted as all trading platforms operated by market operators or investment firms should be subject to proper market rules (i.e. transparency, non-discretionary execution, non-discriminatory access, and full market surveillance).

Amendment 228

Anne E. Jensen

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) All trading venues, namely regulated markets, MTFs, and OTFs, should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to **highly** similar requirements regarding whom they may admit as members or participants, OTFs should be able to determine and restrict access based inter alia on the role and obligations which their operators have in relation to their clients.

Amendment

(12) All trading venues, namely regulated markets, MTFs, and OTFs, should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to similar requirements regarding whom they may admit as members or participants, OTFs **providing organised execution and arranging of trading in financial instruments other than equities** should be able to determine and restrict access based inter alia on the role and obligations which their operators have in relation to their clients. **For OTFs providing organised execution and arranging of trading in equities any discretion with regard to determining or restricting access should be limited to allowing the operator of the OTF to only provide access to its clients excluding credit institutions and investment firms. In addition OTFs providing execution and arranging of trading in equities should, if it achieves significant market share of the trading in the relevant shares remove any access restrictions.**

Or. en

Amendment 229

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) All trading venues, namely regulated markets, MTFs, and OTFs, should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be

Amendment

(12) All trading venues, namely regulated markets, MTFs, and OTFs, should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be

subject to highly similar requirements regarding whom they may admit as members or participants, OTFs should be able to determine and restrict access based inter alia on the role and obligations which their operators have in relation to their clients.

subject to highly similar requirements regarding whom they may admit as members or participants, OTFs should be able to determine and restrict access based inter alia on the role and obligations which their operators have in relation to their clients. ***In order to provide investors with greater choice and flexibility, operators of regulated markets, MTFs and OTFs may provide for users to be able to specify the type of order flow that their orders interact with prior to their orders entering the system (based on the credit worthiness of the counterparty or other factors).***

Or. en

Justification

The users of venues, RMs, MTFs and OTFs, should be given the flexibility to determine the type of flow that their orders should interact with. This would allow them to choose to trade with pension funds but not high frequency traders, or to choose their counterparty based on their credit worthiness. This will enable firms to have greater control over managing the risk and type of liquidity that they are exposed to. This choice should not allow clients to discriminate between counterparties.

Amendment 230 Kay Swinburne

Proposal for a directive Recital 12 a (new)

Text proposed by the Commission

Amendment

(12 a) Within the definition of the MTF and the OTF, market participants should be able to exercise choice with respect to which category of market participant their orders interact with as long as this is done in an open and transparent manner and does not involve discrimination by the platform operator. As further identifiers and trade flags are introduced, trading venues should be able to set different categories of membership to facilitate this

as an additional, optional service to users as appropriate.

Or. en

Justification

Currently a number of MTFs, offer this kind of optionality to users either on a self selecting basis or through specifically designed technologies. As this legislation allows for the identification of certain categories of market participant, it should be made clear that MTFs and OTFs should be able to allow clients to select orders that they do not wish to interact with, such as high frequency trading firms.

Amendment 231
Astrid Lulling

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, MTFs and OTFs on an occasional, ad hoc and irregular basis. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. While an OTF is any system or facility in which multiple third party buying and

Amendment

(13) Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out ***as a result of an execution of an order*** with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. While an OTF is any system or facility in which multiple third party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third party buying and selling interests.

selling interests interact in the system, a systematic internaliser should not be allowed to bring together third party buying and selling interests.

Or. en

Amendment 232

Robert Goebbels, Arlene McCarthy, Elisa Ferreira

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, *MTFs* and *OTFs* on an occasional, ad hoc and irregular basis. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account *by* executing client orders outside a regulated market, an MTF *or an OTF*. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. ***While an OTF is any system or facility in which multiple third party buying and selling interests interact in the system, a*** systematic internaliser should not be allowed to bring together third party buying and selling interests.

Amendment

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out ***on an over-the-counter (OTC) basis. OTC trading refers to bilateral trading*** outside regulated markets and *MTFs* on an occasional, ad hoc and irregular basis ***with eligible counterparties and at sizes above standard market size***. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account ***when*** executing client orders outside a regulated market, ***or*** an MTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. ***A*** systematic internaliser should not be allowed to bring together third party buying and selling interests.

Or. en

Justification

It is necessary to ensure that all trading platforms operated by market operators or investment firms are subject to proper market rules. To close any existing regulatory loopholes, a clear definition of OTC is needed. Other important characteristics of OTC – eligible counterparties and standard market size – are also included for completeness. The reference to wholesale counterparties (not defined in MiFID and not precise) is changed into a reference to eligible counterparties (defined in MiFID and precise).

Amendment 233 Sirpa Pietikäinen

Proposal for a directive Recital 13

Text proposed by the Commission

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out ***outside regulated markets, MTFs and OTFs on an occasional, ad hoc and irregular basis***. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF ***or an OTF***. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. ***While an OTF is any system or facility in which multiple third party buying and selling interests interact in the system, a*** systematic internaliser should not be allowed to bring together third party buying and selling interests.

Amendment

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out ***on an OTC-basis***. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, ***or*** an MTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. ***A*** systematic internaliser should not be allowed to bring together third party buying and selling interests.

Amendment 234
Sylvie Goulard

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, MTFs **and OTFs** on an occasional, ad hoc and **irregular basis**. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF **or an OTF**. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. **While an OTF is any system or facility in which multiple third party buying and selling interests interact in the system, a** systematic internaliser should not be allowed to bring together third party buying and selling interests.

Amendment

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out **on OTC basis where trading refers to bilateral trading** outside regulated markets, **and** MTFs on an occasional, ad hoc **irregular basis** and **at sizes above standard market size and with eligible counterparties**. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, **or** an MTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. **A** systematic internaliser should not be allowed to bring together third party buying and selling interests.

Justification

The OTF category is deleted as all trading platforms operated by market operators or investment firms should during multilateral trading be subject to proper market rules (i.e.

transparency, non-discretionary execution, non-discriminatory access, and full market surveillance).

Amendment 235

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, MTFs and OTFs on an occasional, ad hoc and irregular basis. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. While ***an OTF is any system or facility*** in which multiple third party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third party buying and selling interests.

Amendment

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, MTFs and OTFs on an occasional, ad hoc and irregular basis. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. While ***trading venues are facilities*** in which multiple third party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third party buying and selling interests ***in functionally the same way as a trading venue***.

Or. en

Justification

MiFID/R should be future proofed to ensure that any future organised multilateral trading that is or is functionally similar to trading venues is regulated as such.

Amendment 236 **Kay Swinburne**

Proposal for a directive **Recital 13**

Text proposed by the Commission

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, MTFs and OTFs on an occasional, ad hoc and irregular basis. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. While an OTF is any system or facility in which multiple third party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third party buying and selling interests.

Amendment

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser ***or in certain circumstances an OTF***, unless the transactions are carried out outside regulated markets, MTFs and OTFs on an occasional, ad hoc and irregular basis. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. While an OTF is any system or facility in which multiple third party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third party buying and selling interests.

Or. en

Amendment 237
Wolf Klinz

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, MTFs and OTFs on an occasional, ad hoc and irregular basis. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. While an OTF is any system or facility in which multiple third party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third party buying and selling interests.

Amendment

(13) An investment firm executing client orders against own proprietary capital should be deemed a systematic internaliser, unless the transactions are carried out outside regulated markets, MTFs and OTFs on an occasional, ad hoc and irregular basis, **or with client consent**. Systematic internalisers should be defined as investment firms which, on an organised, frequent and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation No 1287/2006 implementing Directive 2004/39/EC. While an OTF is any system or facility in which multiple third party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third party buying and selling interests.

Or. en

Amendment 238
Sharon Bowles

Proposal for a directive
Recital 13 a (new)

(13a) While there should be measures in place preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating an OTF, there are market making activities which are in the clients' interests, such as enabling the investment firm to fulfil orders initiated by clients, to respond to clients' request to trade, to obtain best execution, or to execute a hedge to unwind the risk related to client trades. The deployment of proprietary capital in an OTF shall be subject to strict order handling rules to prevent conflicts of interest and the investment firm should disclose to its clients how its proprietary capital may be applied in the OTF.

Or. en

Amendment 239
Werner Langen

Proposal for a directive
Recital 14

Text proposed by the Commission

Amendment

(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account should not be covered by the scope of this Directive unless they are market makers , members or participants of a regulated market or MTF or they execute orders from clients by dealing on own account. By way of exception, persons who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as market makers in relation to commodity

(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account should not be covered by the scope of this Directive unless they are market makers , members or participants of a regulated market or MTF or they execute orders from clients by dealing on own account. By way of exception, persons who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as market makers in relation to commodity

derivatives, emission allowances, or derivatives thereof, as an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC, should not be covered by the scope of this Directive. Technical criteria for when an activity is ancillary to such a main business should be clarified in delegated acts.

Dealing on own account by executing client orders should include firms executing orders from different clients by matching them on a matched principal basis (back to back trading), which should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account. The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client orders.

derivatives, emission allowances, or derivatives thereof, as an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC, should not be covered by the scope of this Directive. Technical criteria for when an activity is ancillary to such a main business should be clarified in delegated acts. The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client orders.

Or. en

Justification

Back-to-Back transactions are a substantial part of the portfolio management for clients. They are entered into on own account, but with the same characteristics and often in the same amount as transactions entered into with clients. These transactions are indispensable, as it has to be ensured that companies continue to have the possibility to support the clients of their main business in reducing commercial risks.

Amendment 240

Olle Schmidt

on behalf of the ALDE Group

Wolf Klinz

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account should not be covered by the scope of this Directive unless they are market makers, members or participants of a regulated market or MTF or they execute orders from clients by dealing on own account. By way of exception, persons who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof, as an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC, should not be covered by the scope of this Directive. Technical criteria for when an activity is ancillary to such a main business should be clarified in *delegated acts*. ***Dealing on own account by executing client orders*** should include firms executing orders from different clients by matching them on a matched principal basis (back to back trading), ***which*** should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account. The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as

Amendment

(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account should not be covered by the scope of this Directive unless they are market makers, members or participants of a regulated market or MTF or they execute orders from clients by dealing on own account. By way of exception, persons who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof, as an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC ***of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions***, should not be covered by the scope of this Directive. Technical criteria for when an activity is ancillary to such a main business should be clarified in ***regulatory technical standards, taking into account the criteria specified in this Directive. These criteria should represent the ancillary character looking at the size and related risk of the activity in comparison to the size and risk of the main business. These criteria should also ensure that ancillary activities for the purpose of Article 2(1)(i) only include financial instruments used in relation to the main business, and not for purposes that have no link to the main business. By defining whether these activities are carried out on an ancillary basis, it has to***

dealing on own account by executing client orders.

be kept in mind that firms trading in OTC derivatives are subject to regulatory oversight by virtue of Regulation [] (EMIR), with the aim to make the trading in OTC derivatives more transparent and secure. Firms executing orders from different clients by matching them on a matched principal basis (back to back trading), should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account. The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client orders.

Or. en

Justification

This amendment ensures appropriate and proportionate treatment of ancillary activities in MiFID, focusing on the size and related risk of the activity in comparison to the size and risk of the main business.

Amendment 241

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account should not be covered by the

Amendment

(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account should not be covered by the

scope of this Directive unless they are market makers, members or participants of a regulated market or MTF or they execute orders from clients by dealing on own account. By way of exception, persons who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof, as an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC, should not be covered by the scope of this Directive. Technical criteria for when an activity is ancillary to such a main business should be clarified in delegated acts. Dealing on own account by executing client orders should include firms executing orders from different clients by matching them on a matched principal basis (back to back trading), which should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account. The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client orders.

scope of this Directive unless they are market makers, members or participants of a regulated market or MTF, or they ***are engaged in algorithmic trading, or they*** execute orders from clients by dealing on own account. By way of exception, persons who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof, as an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC, should not be covered by the scope of this Directive. Technical criteria for when an activity is ancillary to such a main business should be clarified in delegated acts. Dealing on own account by executing client orders should include firms executing orders from different clients by matching them on a matched principal basis (back to back trading), which should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account. The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client orders.

Or. en

Justification

High frequency traders shall not be exempted from MIFID requirements.

Amendment 242
Syed Kamall, Kay Swinburne

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) Insurance or assurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are subject to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) should be excluded.

Amendment

(16) Insurance or assurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are subject to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) should be excluded, ***except as described in Article 1(4).***

Or. en

Justification

This exception is required to ensure Article 1(4) has effect in applying the relevant conduct of business sections of MiFID to insurance-based investments.

Amendment 243
Syed Kamall, Kay Swinburne

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Investments are often sold to clients in the form of insurance contracts as an alternative to or substitute for financial instruments regulated under this Directive. To deliver consistent protection for retail clients, it is important that investments under insurance contracts are subject to the same conduct of business standards – in particular those

relating to managing conflicts of interest, restrictions on inducements, and rules on ensuring the suitability of advice or appropriateness of non-advised sales. The investor protection and conflicts of interest requirements in this Directive should therefore be applied equally to those investments packaged under insurance contracts. Since investments involving insurance can have specific features that differ from other financial instruments (for example, because such investment products can involve an element of life insurance and so may need to be personalised to the client), the Directive provides for ESMA and EIOPA to work together to ensure as much consistency as possible in the conduct of business standards for insurance packaged retail investment products subject to this Directive, and any subsequent provisions in level 2 as relevant.

Or. en

Justification

Given the similarities of insurance-based investments with MiFID financial instruments, it is important that they should be subject to the same conduct of business requirements;

Amendment 244
Kay Swinburne

Proposal for a directive
Recital 20

Text proposed by the Commission

Amendment

(20) It is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the

deleted

investment thereof, with the exception of bodies that are partly or wholly State-owned the role of which is commercial or linked to the acquisition of holdings.

Or. en

Amendment 245
Kay Swinburne

Proposal for a directive
Recital 20

Text proposed by the Commission

(20) It is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof, with the exception of bodies that are partly or wholly State-owned the role of which is commercial or linked to the acquisition of holdings.

Amendment

(20) It is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof, with the exception of bodies that are partly or wholly State-owned the role of which is commercial or linked to the acquisition of holdings.
However, no public entities should be exempt from transaction reporting to the competent authorities.

Or. en

Justification

If it is considered impossible to include central banks etc in the scope of this legislation, at the very least, they should be required to report their transaction to financial market supervisors.

Amendment 246
Kay Swinburne

Proposal for a directive
Recital 21

Text proposed by the Commission

Amendment

(21) In order to clarify the regime of exemptions for the European System of Central Banks, other national bodies performing similar functions and the bodies intervening in the management of public debt, it is appropriate to limit such exemptions to the bodies and institutions performing their functions in accordance with the law of one Member State or in accordance with the legislation of the Union as well as to international bodies of which one or more Member States are members.

deleted

Or. en

Amendment 247
Kay Swinburne

Proposal for a directive
Recital 21

Text proposed by the Commission

Amendment

(21) In order to clarify the regime of exemptions for the European System of Central Banks, other national bodies performing similar functions and the bodies intervening in the management of public debt, it is appropriate to limit such exemptions to the bodies and institutions performing their functions in accordance with the law of one Member State or in accordance with the legislation of the Union as well as to international bodies of which one or more Member States are members.

(21) In order to clarify the regime of exemptions for the European System of Central Banks, other national bodies performing similar functions and the bodies intervening in the management of public debt, it is appropriate to limit such exemptions to the bodies and institutions performing their functions in accordance with the law of one Member State or in accordance with the legislation of the Union as well as to international bodies of which one or more Member States are members. ***However, no public entities should be exempt from transaction reporting to the competent authorities.***

Or. en

Justification

If it is considered impossible to include central banks etc in the scope of this legislation, at the very least, they should be required to report their transaction to financial market supervisors.

Amendment 248
Werner Langen

Proposal for a directive
Recital 22 a (new)

Text proposed by the Commission

Amendment

(22 a) For a well-functioning internal market in electricity and natural gas, and for the carrying out of the Transmission System Operators' (TSOs) tasks under Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009, Regulation (EC) No 715/2009, or network codes and guidelines adopted pursuant to those Regulations, it is necessary that TSOs and their service providers are exempted when issuing transmission rights, in the form of either Physical Transmission Rights or Financial Transmission Rights, and when providing a platform for secondary trading. In order to enable efficient trade in transmission rights it is further necessary to exempt any person when buying or selling those transmission rights.

Or. en

Justification

Trading in Transmission Rights (Physical Transmission Rights – PTRs, or Financial Transmission Rights - FTRs) , is an important contribution to the efficient functioning of the internal energy market because of their risk hedging functions. The eventual reclassification of these as financial instruments may well result in market players refraining from trading in transmission rights as they may consider the requirements under MiFID as too burdensome. An explicit provision exempting these instruments is therefore necessary.

Amendment 249

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 32

Text proposed by the Commission

(32) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector has provided for detailed criteria for the prudential assessment of proposed acquisitions in an investment firm and for a procedure for their application. In order to provide legal certainty, clarity and predictability with regard to the assessment process, as well as to the result thereof, it is appropriate to confirm the criteria and the process of prudential assessment laid down in Directive 2007/44/EC. In particular, competent authorities should appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria: the reputation of the proposed acquirer; the reputation and experience of any person who will direct the business of the investment firm; the financial soundness of the proposed acquirer; whether the investment firm will be able to comply with the prudential requirements based on this Directive and other Directives, notably, Directives 2002/87/EC and 2006/49/EC ; whether there are reasonable grounds to suspect that money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the

Amendment

(32) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector has provided for detailed criteria for the prudential assessment of proposed acquisitions in an investment firm and for a procedure for their application. In order to provide legal certainty, clarity and predictability with regard to the assessment process, as well as to the result thereof, it is appropriate to confirm the criteria and the process of prudential assessment laid down in Directive 2007/44/EC. In particular, competent authorities should appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria: the reputation of the proposed acquirer; the reputation and experience of any person who will direct the business of the investment firm; the financial soundness of the proposed acquirer; whether the investment firm will be able to comply with the prudential requirements based on this Directive and other Directives, notably, Directives 2002/87/EC and 2006/49/EC ; whether ***the acquisition will create conflicts interests; whether*** there are reasonable grounds to suspect that money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the

risk thereof.

proposed acquisition could increase the risk thereof.

Or. en

Amendment 250

Robert Goebbels

Proposal for a directive

Recital 38

Text proposed by the Commission

(38) It is necessary to strengthen the role of management bodies of investment firms in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors. The management body of an investment firm should at all time commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the investment firm and its main risk. ***To avoid group thinking and facilitate critical challenge, management boards of investment firms should be sufficiently diverse as regards age, gender, provenance, education and professional background to present a variety of views and experiences. Gender balance is of a particular importance to ensure adequate representation of demographical reality.***

Amendment

(38) It is necessary to strengthen the role of management bodies of investment firms in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors. The management body of an investment firm should at all time commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the investment firm and its main risk. ***Member States should adopt adequate legislation allowing to hold accountable members of management bodies in case of severe mismanagement.***

Or. en

Justification

In case of severe mismanagement, members of managements boards should be brought to justice.

Amendment 251

Antolín Sánchez Presedo

Proposal for a directive
Recital 38

Text proposed by the Commission

(38) It is necessary to strengthen the role of management bodies of investment firms in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors. The management body of an investment firm should at all time commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the investment firm and its main risk. To avoid group thinking and facilitate critical challenge, management boards of investment firms should be sufficiently diverse as regards age, gender, provenance, education and professional background to present a variety of views and experiences. Gender balance is of a particular importance to ensure adequate representation of demographical reality.

Amendment

(38) It is necessary to strengthen the role of management bodies of investment firms in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors. The management body of an investment firm should at all time commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the investment firm and its main risk. To avoid group thinking and facilitate critical challenge, management boards of investment firms should be sufficiently diverse as regards age, gender, provenance, education and professional background to present a variety of views and experiences. Gender balance is of a particular importance to ensure adequate representation of demographical reality. ***Furthermore, Member States should adopt adequate legislation allowing to hold accountable members of management bodies in case of severe mismanagement.***

Or. en

Amendment 252
Olle Ludvigsson

Proposal for a directive
Recital 38

Text proposed by the Commission

(38) It is necessary to strengthen the role of management bodies of investment firms in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors.

Amendment

(38) It is necessary to strengthen the role of management bodies of investment firms in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors.

The management body of an investment firm should at all time commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the investment firm and its main risk. To avoid group thinking and facilitate critical challenge, management boards of investment firms should be sufficiently diverse as regards age, gender, provenance, education and professional background to present a variety of views and experiences. Gender balance is of a particular importance to ensure adequate representation of demographical reality.

The management body of an investment firm should at all time commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the investment firm and its main risk. To avoid group thinking and facilitate critical challenge, management boards of investment firms should be sufficiently diverse as regards age, gender, provenance, education and professional background to present a variety of views and experiences. Gender balance is of a particular importance to ensure adequate representation of demographical reality. ***Employee representation in management bodies should also, by adding a key perspective and genuine knowledge of the internal workings of the firms, be seen as a positive way of enhancing diversity.***

Or. en

Amendment 253
Kay Swinburne

Proposal for a directive
Recital 38 a (new)

Text proposed by the Commission

Amendment

(38 a) In order to take a fully coherent approach to corporate governance across all financial entities within the EU, the corporate governance provisions contained herein should be the same as those included in Directive ... [CRD IV], and proportionate to the size of the entity concerned.

Or. en

Amendment 254
Gay Mitchell

Proposal for a directive
Recital 39

Text proposed by the Commission

(39) In order to have an effective oversight and control over the activities of investment firms, the management body should be responsible and accountable for the overall strategy of the investment firm, taking into account the investment firm's business and risk profile. The management body should assume clear responsibilities across the business cycle of the investment firm, in the areas of the identification and definition of the strategic objectives of the firm, of the approval of its internal organization, including criteria for selection and training of personnel, of the definition of the overall policies governing the provision of services and activities, including the remuneration of sales staff and the approval of new products for distribution to clients. Periodic monitoring and assessment of the strategic objectives of investment firms, their internal organization and their policies for the provision of services and activities should ensure their continuous ability to deliver sound and prudent management, in the interest of the integrity of the markets and the protection of investors.

Amendment

(39) In order to have an effective oversight and control over the activities of investment firms, the management body should be responsible and accountable for the overall strategy of the investment firm, taking into account the investment firm's business and risk profile. The management body should assume clear responsibilities across the business cycle of the investment firm, in the areas of the identification and definition of the strategic objectives of the firm, of the approval of its internal organization, including criteria for selection and training of personnel, of the definition of the overall policies governing the provision of services and activities, including the remuneration of sales staff and the approval of new products for distribution to clients. Periodic monitoring and assessment of the strategic objectives of investment firms, their internal organization and their policies for the provision of services and activities should ensure their continuous ability to deliver sound and prudent management, in the interest of the integrity of the markets and the protection of investors. ***In relation to the launch of new products, product producers should also periodically review the performance of their products, to assess whether a product has performed in accordance with its design and to establish whether the target market for the product is still correct.***

Or. en

Amendment 255
Markus Ferber

Proposal for a directive
Recital 42

Text proposed by the Commission

(42) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive allows Member States to require, in the context of organisational requirements for investment firms, the recording of telephone conversations or electronic communications involving client orders. Recording of telephone conversations or electronic communications involving client orders is compatible with the Charter of Fundamental Rights of the European Union and is justified in order to strengthen investor protection, to improve market surveillance and increase legal certainty in the interest of investment firms and their clients. The importance of such records is also mentioned in the technical advice to the European Commission, released by the Committee of European Securities Regulators on 29 July 2010. For these reasons, it is appropriate to provide in this Directive for the principles of a general regime concerning the recording of telephone conversations or electronic communications involving client orders.

Amendment

(42) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive allows Member States to require, in the context of organisational requirements for investment firms, the recording of telephone conversations or electronic communications involving client orders. Recording of telephone conversations or electronic communications involving client orders is compatible with the Charter of Fundamental Rights of the European Union and is justified in order to strengthen investor protection, to improve market surveillance and increase legal certainty in the interest of investment firms and their clients. The importance of such records is also mentioned in the technical advice to the European Commission, released by the Committee of European Securities Regulators on 29 July 2010. For these reasons, it is appropriate to provide in this Directive for the principles of a general regime concerning the recording of telephone conversations or electronic communications involving client orders.
For communications between retail clients and financial institutions it is appropriate to allow the Member States to recognise instead appropriate written records of such communications for financial institutions established and branches located within their territory.

Or. en

Amendment 256

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 44

Text proposed by the Commission

(44) The use of trading technology has evolved significantly in the past decade and is now extensively used by market participants. Many market participants now make use of algorithmic trading where a computer algorithm automatically determines aspects of an order with minimal or no human intervention. A specific subset of algorithmic trading is high frequency trading where a trading system analyses data or signals from the market at high speed and then sends or updates large numbers of orders within a very short time period in response to that analysis. High frequency trading is typically done by the traders using their own capital to trade and rather than being a strategy in itself is usually the use of sophisticated technology to implement more traditional trading strategies such as market making or arbitrage.

Amendment

(44) The use of trading technology has evolved significantly in the past decade and is now extensively used by market participants. Many market participants now make use of algorithmic trading where a computer algorithm automatically determines aspects of an order with minimal or no human intervention. A specific subset of algorithmic trading is high frequency trading where a trading system analyses data or signals from the market at high speed, ***typically in milliseconds or microseconds***, and then sends or updates large numbers of orders within a very short time period in response to that analysis. High frequency trading is typically done by the traders using their own capital to trade and rather than being a strategy in itself is usually the use of sophisticated technology to implement more traditional trading strategies such as market making or arbitrage.

Or. en

Justification

Further specification on high frequency trading.

Amendment 257

Gunnar Hökmark

Proposal for a directive

Recital 45 a (new)

Text proposed by the Commission

Amendment

(45a) High-frequency trading as a general phenomenon is to be seen as a natural element of technological advancement and improved business models. Academic studies vindicate, as a general conclusion, that high-frequency trading adds liquidity and reduces volatility. It has also, at the same time, been concluded that the new technology as any other form of trading as such can be misused for purposes of market abuse.

Or. en

Amendment 258

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 46

Text proposed by the Commission

Amendment

(46) The use of trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct electronic access or sponsored and direct market access. ***Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating***

(46) The use of trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct electronic access or sponsored and direct market access. ***HFT brings trading volume to markets but very little executable liquidity, as quotes rest for milliseconds only in the order book and cancellation rates are extremely high. Slightly tighter spreads do not compensate for lack of depth, resting time of orders or inventory. There is evidence that this trading technology gives rise to a number of risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic***

duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. Finally, algorithmic trading or high frequency can lend itself to certain forms of abusive behaviour if misused.

trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. ***In particular there is evidence that high-frequency trading technology, in providing an information advantage to its users, may have contributed to the increased use of dark liquidity pools by institutional investors, such as pension funds, seeking to avoid potential negative impact on execution prices when their orders are detected by high-frequency traders.*** In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. ***In addition HFT profits made in this way come at the expense of other investors such as pension savers.*** Finally, algorithmic trading or high frequency can lend itself to certain forms of abusive behaviour if misused. ***Such risks imply high costs of infrastructure and surveillance associated with HFT.***

Or. en

Justification

It is important to underline that HFT gives traders an information advantage other players. This advantage is mainly due to the speed at which information can be captured and translated into orders and cancellations/modifications. This forces institutionals placing large orders either to engage in an "arms race", with significant costs for them and their ultimate clients or to attempt to escape HFT by moving to platforms to which they have no access or where orders can be better concealed.

Amendment 259

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 46

Text proposed by the Commission

(46) The use of trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct electronic access or sponsored and direct market access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. ***Finally, algorithmic trading or high frequency can lend itself to certain forms of abusive behaviour if misused.***

Amendment

(46) The use of trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct electronic access or sponsored and direct market access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. ***Independently of the above abusive behaviour is not allowed, regardless of the method used to participate in a market. Market abusive behaviour is dealt with in the Market Abuse Directive (2004/109/EC).***

Or. en

Justification

The technological developments, as laid down by the EU Commission, bring favourable and unfavourable effects to markets. However, it should not be the case that market abusive behaviour is associated only to participants using advanced technological software in their interaction with markets. Market abuse can occur at any level. Hence, it is necessary to refer to the Market Abuse Directive, in order to provide a holistic overview and needs to be addressed on its own at all levels.

Amendment 260
Gunnar Hökmark

Proposal for a directive
Recital 46

Text proposed by the Commission

(46) The use of trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct electronic access or sponsored and direct market access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. Finally, algorithmic trading or high frequency can lend itself to certain forms of abusive behaviour if misused.

Amendment

(46) The use of **high-frequency** trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct electronic access or sponsored and direct market access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this **high-frequency** trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. Finally, algorithmic trading or high frequency **trading** can lend itself to certain forms of abusive behaviour if misused. ***On the other hand, high-frequency trading in general does, as demonstrated by numerous academic studies, reduce volatility and contributes to improved price formation across different market places.***

Amendment 261
Kay Swinburne

Proposal for a directive
Recital 46

Text proposed by the Commission

(46) The use of trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct **electronic** access or sponsored **and direct market** access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. Finally, algorithmic trading or high frequency can lend itself to certain forms of abusive behaviour if misused.

Amendment

(46) The use of trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct **market** access, **unfiltered direct market access** or sponsored access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Yet, this trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. Finally, algorithmic trading or high frequency **trading** can lend itself to certain forms of abusive behaviour if misused.

Justification

References to direct electronic access should be changed to "direct market access" in order to be aligned with ESMA technical guidelines issued in February 2012 "Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities" ESMA/2012/122 (EN)

Amendment 262
Kay Swinburne

Proposal for a directive
Recital 46 a (new)

Text proposed by the Commission

Amendment

(46a) ESMA technical guidelines issued in February 2012 "Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities" (ESMA/2012/122) should be used as a comprehensive framework for including legally binding mechanisms in this Directive in order to strengthen the resilience of markets to take account of new trading technology. It is important that ESMA has the power to issue future guidelines in order to keep pace with rapid changes in trading technologies.

Or. en

Amendment 263
Olle Schmidt
on behalf of the ALDE Group

Proposal for a directive
Recital 46 a (new)

Text proposed by the Commission

Amendment

(46a) In order to cope with the technological developments, regulated markets and MTFs have set up system

safeguards and controls. In an effort to address the aforementioned risks associated with technologically advanced trading, ESMA has proposed guidelines to harmonise on a European level the requirements for organised markets and investment firms (ESMA/2011/456). Although the requirements are outlined for regulated markets, MTFs, OTFs and investment firms operating markets, it needs to be clarified that risk control is vital at the source of the order, since a substantial part of the risk responsibility is resumed at this stage.

Or. en

Justification

MiFID addresses the need to increase safeguards and controls for regulated markets, MTFs, OTFs, but it is absolutely crucial that risk control is already prevalent at the source of the order. It is not sufficient to have controls at the trading or clearing venue only. The goal should be to have gates at each step of the trading and clearing life-cycle. Hence, it is important to emphasize the necessity to have adequate controls. The ESMA guidelines on systems and controls address this fact.

Amendment 264

Robert Goebbels, Pervenche Berès

Proposal for a directive

Recital 47

Text proposed by the Commission

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that **all** high frequency trading **firms be authorised** when they are **a direct member of a trading venue**. This should ensure **they** are

Amendment

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that **algorithmic and** high frequency trading **is considered as investment services or activities including** when they are

subject to organisational requirements under the Directive and are properly supervised.

conducted on own account. This should ensure *that firms providing these activities* are *authorised as investment firms and* subject to organisational requirements under the Directive and are properly supervised.

Or. en

Justification

Consistency should be ensured between the above recital and Article 17 of the proposed MiFID concerning not only HFT but also AT and to clarify that the authorisation of the firms is required since these activities are considered investment services. Indeed, AT conducted through indirect access to the trading venues does not pose fewer risks to financial markets and stability than AT operated by a direct member of a trading venue. (ECB suggestion)

Amendment 265 **Sylvie Goulard**

Proposal for a directive **Recital 47**

Text proposed by the Commission

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that *all* high frequency trading *firms be authorised* when they are *a direct member of a trading venue*. This should ensure they are subject to organisational requirements under the Directive and are properly supervised.

Amendment

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that *algorithmic and* high frequency trading *is considered as investment services or activities including* when they are *conducted on own account*. This should ensure they *that firms providing these activities* are *authorised as investment firms and* subject to organisational requirements under the Directive and are properly supervised.

Or. en

Justification

Consistency should be ensured between the above recital and Article 17 of the proposed MiFID concerning not only HFT but also AT and to clarify that the authorisation of the firms is required since these activities are considered investment services. Indeed, AT conducted through indirect access to the trading venues does not pose fewer risks to financial markets and stability than AT operated by a direct member of a trading venue.

Amendment 266

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 47

Text proposed by the Commission

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that all high frequency trading firms be authorised when they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised.

Amendment

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that all high frequency trading firms be authorised when they are a direct member of a trading venue. ***It is also necessary to be able to clearly identify order flows coming from automated trading.*** This should ensure they are subject to organisational requirements under the Directive and are properly supervised.

Or. en

Justification

Algo and HF trades need to be clearly flagged in the order book in order for venues and regulators to be able to monitor them effectively.

Amendment 267

Markus Ferber

Proposal for a directive
Recital 47

Text proposed by the Commission

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that all high frequency trading firms be authorised when they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised.

Amendment

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of ***all*** trading venues that are accessed by such firms. It is desirable to ensure that all high frequency trading firms be authorised when they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised. ***It is also appropriate to end the practice of sponsored access to avoid the risk that firms with insufficient controls in place create disorderly market conditions and to ensure that market participants can be identified and held accountable for any disorderly conditions for which they are responsible.***

Or. en

Amendment 268
Burkhard Balz

Proposal for a directive
Recital 47

Text proposed by the Commission

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that all high frequency trading firms be authorised when

Amendment

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of ***all*** trading venues that are accessed by such firms. It is desirable to ensure that all high frequency trading firms be authorised when

they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised.

they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised. ***It is also appropriate that in cases of direct market access it is ensured that all reasonable steps are taken to avoid the risk that could arise if firms use insufficient controls including that market participants can be identified and held accountable for any disorderly conditions for which they are responsible.***

Or. en

Amendment 269
Jean-Paul Gauzès

Proposal for a directive
Recital 47

Text proposed by the Commission

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that all high frequency trading firms be authorised when they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised.

Amendment

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of trading venues that are accessed by such firms. It is desirable to ensure that all high frequency trading firms be authorised when they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised. ***In this respect, ESMA should play an important coordination role to define the appropriate tick size in order to ensure orderly markets at European level.***

Or. en

Amendment 270
Sirpa Pietikäinen

Proposal for a directive
Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) In order to clearly identify each method of accessing a trading venue, ESMA should draw up a list of the means and methods of accessing a trading venue through a registered investment firm and trading member.

Or. en

Amendment 271
Pascal Canfin
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 48

Text proposed by the Commission

Amendment

(48) Both firms and trading venues should ensure robust measures are in place to ensure that automated trading does not create a disorderly market and cannot be used for abusive purposes. Trading venues should also ensure their trading systems are resilient and properly tested to deal with increased order flows or market stresses and that circuit breakers are in place to temporarily halt trading if there are sudden unexpected price movements.

(48) Both firms and trading venues should ensure robust measures are in place to ensure that automated trading does not create a disorderly market and cannot be used for abusive purposes ***and that automated trading technology is thoroughly tested before access is granted to a venue.*** Trading venues should also ensure their trading systems are resilient and properly tested to deal with increased order flows or market stresses and that circuit breakers are in place to temporarily halt trading ***consistently on all trading venues*** if there are sudden unexpected price movements. ***Trading venues should not offer privileged access to information to operators of automated trading as this gives them an unfair advantage over other participants in the market.***

Justification

Venues often give HFT participants short previews of the order book and other information that other participants are not party to. This creates an uneven playing field and should not be allowed.

Amendment 272

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) Trading strategies that generate very large numbers of orders most of which are cancelled or closed out by the end of the day may take up a significant portion of the trading system capacity while providing little effective liquidity to other market participants. It is therefore necessary to ensure that the fee structures of trading venues are transparent, non-discriminatory and fair and that they are structured in such a way as to promote that costs of infrastructure are passed on to clients proportionally to their use of trading system capacity and orderly trading conditions in markets. It is therefore appropriate to ensure that higher fees apply to practices involving high messaging or cancellation rates relative to effective trades which could create such disorderly conditions.

Or. en

Justification

Many institutional investors have suggested that HFT provides little useful liquidity despite often receiving "rebates" ostensibly for this function.

Amendment 273
Sharon Bowles

Proposal for a directive
Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) It is also necessary to ensure that the fee structures of trading venues are transparent, non-discriminatory and fair and that they are not structured in such a way as to promote disorderly market conditions. Therefore regulated markets should have in place fee structures to incentivise a lower ratio of system messages to executed trades. This may include thresholds for higher fees for large cancellations or per message charges.

Or. en

Amendment 274
Pascal Canfin
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 49

Text proposed by the Commission

Amendment

(49) In addition to measures relating to algorithmic and high frequency trading it is appropriate to ***include controls relating to investment firms providing*** direct electronic access to markets for clients ***as electronic trading can be carried out via a firm providing electronic market access and many similar risks. It is also appropriate that firms providing direct electronic access ensure that persons using this service are properly qualified and that risk controls are imposed on the***

(49) In addition to measures relating to algorithmic and high frequency trading it is appropriate to ***ban*** direct electronic access to markets for clients.

use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.

Or. en

Amendment 275

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 49

Text proposed by the Commission

(49) *In* addition to measures relating to algorithmic and high frequency trading it is appropriate to include controls relating to investment firms providing direct electronic access to markets for clients as electronic trading can be carried out via a firm providing electronic market access and many similar risks. It is also appropriate that firms providing direct electronic access ensure that persons using this service are properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.

Amendment

(49) *While recognising the role that direct electronic access plays in facilitating investor activity in EU financial markets, and in* addition to measures relating to algorithmic and high frequency trading it is appropriate to include controls relating to investment firms providing direct electronic access to markets for clients as electronic trading can be carried out via a firm providing electronic market access and many similar risks. It is also appropriate that firms providing direct electronic access ensure that persons using this service are properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area. *It is for the express purpose of delivering the above controls that ESMA has, in consultation with the market, established the Guidelines on systems and*

controls in an automated trading environment for trading platforms, investment firms and competent authorities (ESMA/2011/456) and this is a welcome development.

Or. en

Justification

Direct electronic access is a key part of modern trading environments of many regulated markets and MTFs in the EU and beyond. Properly controlled, these offer investors and participants a choice of how and where they trade financial instruments. ESMA has worked with the market participants to produce clear and useful guidelines that offer a practical way in which trading venues can accept direct electronic access.

Amendment 276

Markus Ferber

Proposal for a directive

Recital 49

Text proposed by the Commission

(49) In addition to measures relating to algorithmic and high frequency trading it is appropriate to include controls relating to investment firms providing direct ***electronic*** access to markets for clients ***as electronic trading can be carried out via a firm providing electronic market access and many similar risks***. It is also appropriate that firms providing direct ***electronic*** access ensure that persons using this service are properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.

Amendment

(49) In addition to measures relating to algorithmic and high frequency trading it is appropriate to include controls relating to investment firms providing direct ***market*** access to markets for clients. It is also appropriate that firms providing direct ***market*** access ensure that persons using this service are properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.

Amendment 277
Burkhard Balz

Proposal for a directive
Recital 49

Text proposed by the Commission

(49) In addition to measures relating to algorithmic and high frequency trading it **is appropriate to include** controls relating to investment firms providing direct **electronic** access **to markets** for clients as electronic trading can be carried out via a firm providing **electronic** market access **and many similar risks**. It is also appropriate that firms providing direct **electronic** access ensure that persons using this service are properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.

Amendment

(49) In addition to measures relating to algorithmic and high frequency trading it **must be ensured that effective** controls **are set up** relating to investment firms providing direct **market** access for clients as electronic trading can be carried out via a firm providing **direct** market access. It is also appropriate that firms providing direct **market** access ensure that persons using this service are properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.

Amendment 278
Kay Swinburne

Proposal for a directive
Recital 49

Text proposed by the Commission

(49) In addition to measures relating to algorithmic and high frequency trading it is appropriate to include controls relating to

Amendment

(49) In addition to measures relating to algorithmic and high frequency trading it is appropriate to include controls relating to

investment firms providing direct **electronic** access to markets for clients as electronic trading can be carried out via a firm providing electronic market access and many similar risks. It is also appropriate that firms providing direct **electronic** access ensure that persons using this service are properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.

investment firms providing direct **market** access to markets for clients as electronic trading can be carried out via a firm providing electronic market access and many similar risks. It is also appropriate that firms providing direct **market** access ensure that persons using this service are properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. This should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.

Or. en

Justification

References to direct electronic access should be changed to "direct market access" in order to be aligned with ESMA technical guidelines issued in February 2012 "Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities" ESMA/2012/122 (EN)

Amendment 279

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 50

Text proposed by the Commission

(50) There is a multitude of trading venues currently operating in the EU , among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further harmonise the processes on the consequences for trading on other venues if one trading venue decides to suspend or

Amendment

(50) There is a multitude of trading venues currently operating in the EU, among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further harmonise the processes on the consequences for trading on other venues if one trading venue decides to suspend or

remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision unless continuing trading may be justified due to exceptional circumstances. In addition, it is necessary to formalise and improve the exchange of information and the cooperation of trading venues in *cases of exceptional conditions in* relation to a particular instrument that is traded on various venues.

remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision unless continuing trading may be justified due to exceptional circumstances. In addition, it is necessary to **further** formalise and improve the exchange of information and the cooperation of trading venues in relation to a particular instrument that is traded on various venues.

Therefore, the primary listing venue should be designated to take the overall responsibility for real-time surveillance and the primary and secondary venues should be required to cooperate. The primary listing venue should not be allowed to use information from the secondary venue for business purposes. There should be in place "Chinese walls", or ethical barriers between the business and surveillance departments of the primary listing venue in order to avoid conflict of interest or market manipulation. The secondary market should be allowed to use any surveillance technology that enables it to comply with its obligations in accordance with this Directive and Regulation ... [MAR], irrespective of which surveillance technology the primary listing venue uses.

Or. en

Justification

As the opportunities to abuse and manipulate markets with the use of cross-market strategies have increased with fragmentation of markets, the surveillance functions of these markets need to cooperate to ensure that also such cross-market strategies can be detected. The primary listing venue has the best opportunities to take the overall responsibility, due to it being closer to the information flow of the issuer. This will close the detection gap in a fragmented trading environment.

Amendment 280
Sirpa Pietikäinen

Proposal for a directive
Recital 50

Text proposed by the Commission

(50) There is a multitude of trading venues currently operating in the EU , among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further harmonise the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision unless continuing trading may be justified due to exceptional circumstances. In addition, it is necessary to formalise and improve the exchange of information and the cooperation of trading venues in ***cases of exceptional conditions in*** relation to a particular instrument that is traded on various venues.

Amendment

(50) There is a multitude of trading venues currently operating in the EU , among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further harmonise the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision unless continuing trading may be justified due to exceptional circumstances. In addition, it is necessary to ***further*** formalise and improve the exchange of information and the cooperation of trading venues in relation to a particular instrument that is traded on various venues.
Therefore, the competent authority of the primary listing venue should be designated to take the overall responsibility for real-time surveillance and the primary and secondary venues should be required to cooperate.

Or. en

Justification

As the opportunities to abuse and manipulate markets with the use of cross-market strategies

have increased with fragmentation of markets, the surveillance functions of these markets need to cooperate to ensure that such cross-market strategies can be detected. The competent authority of the primary listing venue has the best opportunities to take the overall responsibility, due to it being closer to the information flow of the issuer. The secondary markets need to be required to cooperate.

Amendment 281

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 50

Text proposed by the Commission

(50) There is a multitude of trading venues currently operating in the EU, among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further harmonise the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision ***unless continuing trading may be justified due to exceptional circumstances***. In addition, it is necessary to formalise and improve the exchange of information and the cooperation of trading venues in cases of exceptional conditions in relation to a particular instrument that is traded on various venues.

Amendment

(50) There is a multitude of trading venues currently operating in the EU, among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further harmonise the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision. In addition, it is necessary to formalise and improve the exchange of information and the cooperation of trading venues in cases of exceptional conditions in relation to a particular instrument that is traded on various venues.

Or. en

Justification

All markets shall stop at the same time in order to preserve market integrity and level playing field among trading venues.

Amendment 282 **Gunnar Hökmark**

Proposal for a directive **Recital 50**

Text proposed by the Commission

(50) There is a multitude of trading venues currently operating in the EU , among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further harmonise the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision unless continuing trading may be justified due to exceptional circumstances. In addition, it is necessary to formalise and improve the exchange of information and the cooperation *of trading venues* in *cases of exceptional conditions in* relation to a particular instrument that is traded on various venues.

Amendment

(50) There is a multitude of trading venues currently operating in the EU, among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further harmonise the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision unless continuing trading may be justified due to exceptional circumstances. In addition, it is necessary to formalise and improve the exchange of information and the cooperation in relation to a particular instrument that is traded on various venues. ***To achieve this, the primary listing venue should be responsible for the real-time surveillance of all order-books on both primary and secondary trading venues.***

Or. en

Justification

With the fragmentation of trading occurring as a result of the implementation of MiFID, opportunities to abuse and manipulate markets with the use of cross-market strategies have increased. There is no real-time surveillance function looking at the overall trading in one share, not the trading venues, nor the competent authorities. This loophole needs to be fixed. The surveillance function of the primary listing venue should do this job. It is closest to the information-flow of the issuer.

Amendment 283 **Kay Swinburne**

Proposal for a directive **Recital 50**

Text proposed by the Commission

(50) There is a multitude of trading venues currently operating in the EU, among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further **harmonise** the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others **follow** that decision unless continuing trading may be justified due to exceptional circumstances. In addition, it is necessary to formalise and improve the exchange of information and the cooperation of trading venues in cases of exceptional conditions in relation to a particular instrument that is traded on various venues.

Amendment

(50) There is a multitude of trading venues currently operating in the EU, among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further **coordinate** the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others **are informed of** that decision **and follow it** unless continuing trading may be justified due to exceptional circumstances. In addition, it is necessary to formalise and improve the exchange of information and the cooperation of trading venues in cases of exceptional conditions in relation to a particular instrument that is traded on various venues.

Or. en

Amendment 284
Sharon Bowles, Olle Schmidt

Proposal for a directive
Recital 51 a (new)

Text proposed by the Commission

Amendment

(51a) There are many ways in which the return on investments to investors is reduced, including fees, costs and other deductions. These can be embedded in multiple layers so that they are not obvious or even become restated as investment in a subsequent layer or envelope, making it difficult for investors to understand the cumulative level of deductions. Therefore is necessary for all deductions to be elaborated at a cumulative level and for investors to be given an illustration of the long term effect on returns by way of a direct comparison of return to the investor compared with total deduction. This should be given in advance of investment on the basis of a reasonable projection and at least once a year for each actual investment. ESMA should issue guidelines concerning appropriate formats of projections and presentations.

Or. en

Amendment 285
Herbert Dorfmann

Proposal for a directive
Recital 51 a (new)

Text proposed by the Commission

Amendment

(51a) In particular, Member States should ensure that investment firms assess a general consistency of the financial

instruments distributed (especially when directly designed), with due regard to their characteristics against the characteristics and needs of the potential target group of clients to whom these instruments are being addressed. Moreover, Member States should require that investment firms take reasonable steps to ensure that the sale and distribution policy is consistent with the suitability and appropriateness assessment rules.

Or. en

Amendment 286

Olle Schmidt

on behalf of the ALDE Group

Ramon Tremosa i Balcells

Proposal for a directive

Recital 52

Text proposed by the Commission

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice *on an independent basis* and whether *they* provide the clients with *the on-going* assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients *that the service is provided*

Amendment

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice and whether *the investment firms will* provide the clients with *a periodic* assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients *of the acceptance or receipt*

on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. In such cases, only limited non-monetary benefits as training on the features of the products should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC.

of third party inducement. When providing portfolio management the investment firm shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients, except if the client has been duly informed of such fees, commissions or monetary benefits before the provision of the relevant service or these fees, commissions or monetary benefits are to the ultimate benefit of the client.

Or. en

Justification

Monetary inducements should not be banned as long as they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Art. 26 of Directive 2006/73/EC. Non-monetary benefits provide important assistance for asset managers in the process of taking investment decisions and are subject to MiFID Level 2 requirement that they enhance the quality of the service. The use of inducements should always be subject to the clients express consent.

Amendment 287 **Kay Swinburne**

Proposal for a directive **Recital 52**

Text proposed by the Commission

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on

Amendment

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on

an independent basis and whether *they* provide the clients with *the on-going* assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to *further restrict the possibility for* firms to *accept or receive inducements* from third parties, and particularly from issuers or product providers, *when providing* the service of investment advice *on an independent basis and the service of* portfolio management. In such cases, only limited non-monetary benefits as training on the features of the products should be allowed subject to the condition that *they* do not impair the ability of investment firms to *pursue* the best interest of their clients, as further clarified in Directive 2006/73/EC.

an independent basis and whether *the investment firms will* provide the clients with *a periodic* assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to *prohibit* firms *from paying or receiving inducements* to or from third parties, and particularly from issuers, *firms executing orders on behalf of clients*, or product providers *in relation to* the service of investment advice, portfolio management *or non-advised sales to retail clients*. In such cases, only limited non-monetary benefits *such* as training on the features of the products *and, for firms providing portfolio management, services related to execution of orders and research*, should be allowed subject to the condition that *these services* do not, *or are not likely to*, impair the ability of investment firms to *act in* the best interest of their clients, as further clarified in Directive 2006/73/EC.

Or. en

Justification

The UK has introduced higher standards of consumer protection in the form of the Retail Distribution Review. In the interests of the EU single market and in order to provide protection to all consumers in the EU as well as a level playing field between financial advisers, it is appropriate to apply these higher standards throughout MiFID.

Amendment 288
Thomas Mann

Proposal for a directive
Recital 52

Text proposed by the Commission

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether **they provide** investment advice **on an independent basis** and whether **they** provide the clients with the **on-going** assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the **service** is provided **on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. In such cases, only limited non-monetary benefits as training on the features of the products should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC.**

Amendment

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether **the** investment advice **is provided in conjunction with the acceptance or receipt of third-party inducements** and whether **the investment firms** provide the clients with the **periodic** assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the **advice** is provided **in conjunction with the acceptance or receipt of third-party inducements. When providing portfolio management to professional and retail clients within the meaning of Article 4(1) points 9 and 10, the investment firm should, prior to the agreement, inform the client about the expected scale of inducements, and periodic reports should disclose all inducements paid or received.**

Justification

Investment firms providing financial portfolio management services are prohibited from accepting any monetary benefits paid by a third party for such services (except when received directly from investors). The obligation quoted fails to take into consideration that retail and professional clients generally require a higher level of protection compared to eligible counterparties. Against this background, the scope of this regulation should be limited to situations where financial portfolio management services are rendered to retail and professional clients.

Amendment 289**Catherine Stihler****Proposal for a directive****Recital 52***Text proposed by the Commission*

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis and whether they provide the clients with the on-going assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further

Amendment

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis and whether they provide the clients with the on-going assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further

restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. In such cases, only limited non-monetary benefits as training on the features of the products should be allowed subject to the condition that **they** do not impair the ability of investment firms to **pursue** the best interest of their clients, as further clarified in Directive 2006/73/EC.

restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. In such cases, only limited non-monetary benefits as training on the features of the products should be allowed subject to the condition that **these services** do not impair the ability of investment firms to **act in** the best interest of their clients, as further clarified in Directive 2006/73/EC. **To further protect consumers, it is appropriate to ensure investment firms do not remunerate or assess the performance of their staff in a way that conflicts with the firms duty to act in the best interests of their clients.**

Or. en

Amendment 290 **Sirpa Pietikäinen**

Proposal for a directive **Recital 52**

Text proposed by the Commission

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis and whether they provide the clients with the on-going assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory

Amendment

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis and whether they provide the clients with the on-going assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory

framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. In such cases, only limited non-monetary benefits as training on the features of the products should be allowed *subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC.*

framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. In such cases, only limited non-monetary benefits as training on the features of the products should be allowed. *When not expressly prohibited in accordance with this directive, inducements should be subject to the conditions currently established under Article 26 of Directive 2006/73/EC.*

Or. en

Amendment 291
Arlene McCarthy

Proposal for a directive
Recital 52

Text proposed by the Commission

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis and whether *they* provide the clients with *the on-going* assessment of the suitability of the

Amendment

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis and whether *the investment firm will* provide the clients with *a periodic* assessment of the

financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice *on an independent basis* and the service of portfolio management. In such cases, only limited non-monetary benefits as training on the features of the products should be allowed subject to the condition that *they* do not impair the ability of investment firms to *pursue* the best interest of their clients, as further clarified in Directive 2006/73/EC.

suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers, *firms executing orders on behalf of clients* or product providers, when providing the service of investment advice and the service of portfolio management. In such cases, only limited non-monetary benefits, *such as training on the features of the products and for firms providing portfolio management, services related to execution of orders and research* should be allowed subject to the condition that *these services* do not impair the ability of investment firms to *act in* the best interest of their clients, as further clarified in Directive 2006/73/EC. *To further protect consumers, it is also appropriate to ensure investment firms do not remunerate or assess the performance of their own staff in a way that conflicts with the firm's duty to act in the best interests of their clients, including by incentivising staff to favour a particular financial instrument in cases when another may better meet the client's needs.*

Or. en

Amendment 292
Corien Wortmann-Kool

Proposal for a directive
Recital 52

Text proposed by the Commission

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether **they provide** investment advice on an independent basis and whether **they** provide the clients with the **on-going** assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the **service** is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the **service** of investment advice **on an independent basis and the service of** portfolio management. In such cases, only limited non-monetary benefits as training on the features of the products should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC.

Amendment

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether **the investment advice is provided** on an independent basis and whether **the investment firms** provide the clients with the **periodic** assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the **advice** is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further restrict the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the **investment services** of investment advice, portfolio management **or another investment service whereby the client relies upon the judgement of the investment firm**. In such cases, only limited non-monetary benefits **such** as training on the features of the products **or the provision of investment research** should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best

interest of their clients, as further clarified in Directive 2006/73/EC.

Or. en

Amendment 293

Wolf Klinz

Proposal for a directive

Recital 52

Text proposed by the Commission

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis and whether they provide the clients with the **on-going** assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further **restrict** the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. In such cases, only limited non-monetary

Amendment

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, notably the range of products they consider in providing personal recommendations to clients, whether they provide investment advice on an independent basis and whether they provide the clients with the **regular** assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. In order to strengthen the protection of investors and increase clarity to clients as to the service they receive, it is appropriate to further **clarify** the possibility for firms to accept or receive inducements from third parties, and particularly from issuers or product providers, when providing the service of investment advice on an independent basis and the service of portfolio management. In such cases, only limited non-monetary

benefits as training on the features of the products should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC.

benefits **such** as training on the features of the products should be allowed subject to the condition that they do not impair the ability of investment firms to pursue the best interest of their clients, as further clarified in Directive 2006/73/EC.

Or. en

Amendment 294

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 52 a (new)

Text proposed by the Commission

Amendment

(52a) When investment advice is provided from the investment firm to the client disclosure of services and costs of advice should be provided in a key services document not exceeding [2 pages] setting out the principal services to be provided to the client, details of the qualification of the adviser as set out in [Article 24(9)] and the aggregate cost of the advice to be provided to the client. ESMA should prepare binding technical standards setting out the mandatory contents of the key services document. Where the cost of fees and inducements cannot be ascertained prior to the provision of the advice, then the manner of calculation should be disclosed in a comprehensive, accurate and understandable manner in the key services documents with the total aggregate cost and its impact on return of the advice being disclosed to the client as soon as practically possible thereafter. Where investment advice is provided on an ongoing basis disclosure as to the cost of investment advice, including inducements, should be provided on a periodic basis and at least annually. The periodic report should disclose all

inducements paid or received in the preceding period.

Or. en

Justification

The clients must be informed of the total cost of investment advice, including both fees paid directly by the client to the investment adviser as well as any fees, commissions and monetary benefits paid by a third party (“inducements”). This disclosure must be provided to the client in a manner prior to the provision of the investment advice. This disclosure should apply whether the advice is to be provided on an independent basis or not.

Amendment 295
Olle Ludvigsson

Proposal for a directive
Recital 52 a (new)

Text proposed by the Commission

Amendment

(52a) In order to ensure adequate investor protection, investment firms should be obliged to maintain appropriate recruitment policies and working conditions for those employees who give advice, provide services and sell financial products to clients. The firms should make certain that these employees are well-qualified, that they are continuously provided with relevant training and that they are given the time necessary to be able to deliver balanced and comprehensive advice. The firms should not make the employees subject to biased sales strategies, based for example on excessive sales targets or sales instructions pointing to a specific service or product, which create incentives not to deliver fair and honest recommendations in accordance with the best interest of clients.

Or. en

Amendment 296
Sharon Bowles

Proposal for a directive
Recital 52 a (new)

Text proposed by the Commission

Amendment

(52a) For those employees who advise on or sell financial products and instruments to retail clients, Member States should ensure that their remuneration by the firm will not affect employees' impartiality in making a suitable recommendation or appropriate sale or presenting information in a form that is fair, clear and not misleading. Remuneration in such situations should not be solely dependent on sales targets or the profit to the firm from a specific financial instrument. Remuneration based on sales or targets could be subject to retention clawback for misselling.

Or. en

Justification

Sales targets and other inducements can promote misselling. In an analogous way to bonuses, consideration could be given as to whether retention or clawback is appropriate if the inducements are large.

Amendment 297
Olle Schmidt
on behalf of the ALDE Group

Proposal for a directive
Recital 52 b (new)

Text proposed by the Commission

Amendment

(52b) For those employees who advise on or sell financial products and instruments to retail clients, Member States should

ensure that their remuneration by the firm will not affect employees' impartiality in making a suitable recommendation or appropriate sale or presenting information in a form that is fair, clear and not misleading. Remuneration in such situations should not be solely dependent on sales targets or the profit to the firm from a specific financial instrument.

Or. en

Justification

Member states to take action on remuneration practices within firms to prevent the risks of bias in advice and sales of financial instruments to clients. Remuneration schemes, such as significant sales bonuses attached to a specific financial instrument, should not be permitted where they risk an investment firm inappropriately recommending or selling products or services to clients.

Amendment 298

Olle Schmidt

on behalf of the ALDE Group

Ramon Tremosa i Balcells

Proposal for a directive

Recital 52 c (new)

Text proposed by the Commission

Amendment

(52c) For those employees who advise on or sell financial instruments to retail clients Member States should ensure that they possess an appropriate level of knowledge and competence in relation to the products offered. This is particularly important given the increased complexity and the continuous innovation in the design of investment products. Buying an investment product implies a risk and investors must be able to rely on the information and quality of assessments provided. It is furthermore necessary that employees are given adequate time and

resources to be able to provide all relevant information to clients about the products/instruments they provide.

Or. en

Justification

Employees of investment firms must possess an appropriate level of knowledge and competence in relation to the products offered.

Amendment 299
Kay Swinburne

Proposal for a directive
Recital 53

Text proposed by the Commission

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction ***and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments, including collective***

Amendment

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction.

investment in transferable securities (UCITS), which embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved.

Or. en

Justification

Instruments listed and traded on regulated markets are already subject to EU legislation relating to disclosure of key information, or are subject to risk management provisions. For this reason, these products should be available for execution by investors

Amendment 300

Jean-Paul Gauzès, Burkhard Balz

Proposal for a directive

Recital 53

Text proposed by the Commission

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. ***Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision.*** In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, ***since this increases the complexity of the transaction and makes more difficult the understanding of the risk involved.*** It is also appropriate to ***better define the criteria for the selection*** of the financial

Amendment

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved. It is also appropriate ***that more attention be paid to the transparency instead of the structure of*** financial instruments ***like*** collective investment in transferable securities (UCITS), which embed a derivative or incorporate a structure, ***given that the structure and the degree of the complexity do not necessarily determine whether a financial***

instruments *to which these services should relate in order to exclude the financial instruments, including* collective investment in transferable securities (UCITS), which embed a derivative or incorporate a structure *which makes it difficult for* the client to *understand* the risk involved.

product is risky or not. If necessary the risk that a product cannot be understood by a client, should be subject to a future overhaul on basis of an impact assessment, whereby regulated product information for investors like key investor information for UCITS should have the chance to prove its worth.

Or. en

Amendment 301
Pablo Zalba Bidegain

Proposal for a directive
Recital 53

Text proposed by the Commission

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments, *including collective investment in transferable securities (UCITS)*, which embed a

Amendment

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments, which embed a derivative or incorporate a structure which makes it difficult for the client to

derivative or incorporate a structure which makes it difficult for the client to understand the risk involved.

understand the risk involved. *In the case of share or units of structured Undertakings for Collective Investment in Transferable Securities (UCITS), all of them should be considered non-complex, except for those structured UCITS, as defined in Article 36 paragraph 1 subparagraph 2 of Commission Regulation (EU) No 583/2010, which do not comply with the general criteria issued by the European Commission to analyze the complexity of any other financial instrument not included in the list of automatically considered non complex products.*

Or. en

Amendment 302

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 53

Text proposed by the Commission

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction and makes more difficult the understanding

Amendment

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction and makes more difficult the understanding

of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments, **including collective investment in transferable securities (UCITS)**, which embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved.

of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments which embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved.

Or. en

Justification

The successful UCITS brand could suffer damage in the eyes of non-EU regulators and investors if some UCITS were no longer considered automatically non-complex, as they may be seen as unsuitable for retail investors. European investors' confidence in UCITS might also be affected. Complexity is not equal to risk. On the contrary, many of the UCITS features reduce risks for investors which are high in "plain vanilla" financial instruments such as stocks and bonds.

Amendment 303 **Robert Goebbels, Elisa Ferreira**

Proposal for a directive **Recital 53**

Text proposed by the Commission

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting

Amendment

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting

credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments, ***including collective investment in transferable securities (UCITS)***, which embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved.

credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments which embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved.

Or. en

Justification

The differentiation between complex and non-complex UCITS should be dealt with in the upcoming recast of the UCITS Directive.

Amendment 304 **Werner Langen**

Proposal for a directive **Recital 53**

Text proposed by the Commission

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with

Amendment

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with

the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments, **including collective investment in transferable securities (UCITS)**, which embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved.

the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments which embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved.

Or. de

Justification

By definition, UCITS are non-complex financial instruments. They meet all relevant requirements in line with the current definition under Article 38 of the MiFID implementing directive and are currently being provided with 'key investor information' so as to guarantee better investor protection. Any differentiation between funds causes needless red tape and dilutes the UCITS brand without guaranteeing that investors are better protected.

Amendment 305 **Kay Swinburne**

Proposal for a directive **Recital 53 a (new)**

Text proposed by the Commission

Amendment

(53a) In order to ensure that financial advice is only provided by individuals with a minimum level of competency, Member States should establish a qualification system for anyone providing advice, regardless of the distribution channel. Given the differences between retail markets and investor needs in each Member State this should be determined

at the level of the Member State.

Or. en

Amendment 306
Kay Swinburne

Proposal for a directive
Recital 54 a (new)

Text proposed by the Commission

Amendment

(54a) The best approach to be taken with regards to packaged retail investment products would be horizontal, so no matter the type of product, the same rules for distributors apply. As such, the highest level of coordination should take place between this Directive and Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

Or. en

Amendment 307
Kay Swinburne

Proposal for a directive
Recital 58

Text proposed by the Commission

Amendment

(58) It is necessary to impose an effective ‘best execution’ obligation to ensure that 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.

(58) It is necessary to impose an effective ‘best execution’ obligation to ensure that 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, ***but should also be extended to eligible counterparties when they are acting on behalf of a client who is also subject to the best execution obligation.***

Amendment 308
Kay Swinburne

Proposal for a directive
Recital 58 a (new)

Text proposed by the Commission

Amendment

(58a) In order to contribute to a wider shareholder base across the EU, the best execution framework should be enhanced for retail investors so they can access the wider range of execution venues that are now available across the EU. Advances in technology for monitoring best execution should be considered when applying the best execution framework.

Or. en

Justification

There have been significant technological advances since the introduction of MiFID in the area of best execution, these benefits should also be fully realised by retail investors.

Amendment 309
Kay Swinburne

Proposal for a directive
Recital 60

Text proposed by the Commission

Amendment

(60) Information provided by investment firms to clients in relation to their order execution policies often are generic and standard and do not allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on term most favourable to their clients. In order to enhance investor protection it is

(60) Information provided by investment firms to clients in relation to their order execution policies often are generic and standard and do not allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on term most favourable to their clients. In order to enhance investor protection it is

appropriate to specify the principles concerning the information given by investment firms to their clients on the order execution policies and to require firms to make public, on an annual basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year.

appropriate to specify the principles concerning the information given by investment firms to their clients on the order execution policies and to require firms to make public, on an annual basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year, ***unless they chose only to execute on the primary exchange, and to take account of that information and information published by trading venues on execution quality in their policies on best execution.***

Or. en

Amendment 310

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 60

Text proposed by the Commission

(60) Information provided by investment firms to clients in relation to their order execution policies often are generic and standard and do not allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on term most favourable to their clients. In order to enhance investor protection it is appropriate to specify the principles concerning the information given by investment firms to their clients on the order execution policies and to require firms to make public, on ***an annual*** basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year.

Amendment

(60) Information provided by investment firms to clients in relation to their order execution policies often are generic and standard and do not allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on term most favourable to their clients. In order to enhance investor protection it is appropriate to specify the principles concerning the information given by investment firms to their clients on the order execution policies and to require firms to make public, on ***a monthly*** basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year ***and a detailed analysis of the quality of execution.***

Justification

Annual basis is not frequent enough to provide a relevant information to investors regarding the quality of execution of one investment firm.

Amendment 311

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 61

Text proposed by the Commission

Amendment

(61) When establishing the business relationship with the client the investment firm might ask the client or potential client to consent at the same time to the execution policy as well as to the possibility that his orders may be executed outside a regulated market MTF , OTF or systematic internaliser .

deleted

Justification

Orders shall be executed on trading venues belonging to a MIFID category.

Amendment 312

Sylvie Goulard

Proposal for a directive

Recital 61

Text proposed by the Commission

Amendment

(61) When establishing the business relationship with the client the investment firm might ask the client or potential client to consent at the same time to the

(61) When establishing the business relationship with the client the investment firm might ask the client or potential client to consent at the same time to the

execution policy as well as to the possibility that his orders may be executed outside a regulated market MTF, **OTF** or systematic internaliser.

execution policy as well as to the possibility that his orders may be executed outside a regulated market MTF or systematic internaliser.

Or. en

Amendment 313
Robert Goebbels

Proposal for a directive
Recital 67

Text proposed by the Commission

(67) The financial crisis has shown limits in the ability of non-retail clients to appreciate the risk of their investments. While it should be confirmed that conduct of business rules should be enforced in respect of those investors most in need of protection, it is appropriate to better calibrate the requirements applicable to different categories of clients. To this extent, it is appropriate to extend some information and reporting requirements to the relationship with eligible counterparties. In particular, the relevant requirements should relate to the safeguarding of client financial instruments and monies as well as information and reporting requirements concerning more complex financial instruments and transaction. In order to better define the classification of municipalities and local public authorities, it is appropriate to clearly exclude them from the list of eligible counterparties and of clients who are considered to be professionals ***while still allowing these clients to ask a treatment as professional clients on request.***

Amendment

(67) The financial crisis has shown limits in the ability of non-retail clients to appreciate the risk of their investments. While it should be confirmed that conduct of business rules should be enforced in respect of those investors most in need of protection, it is appropriate to better calibrate the requirements applicable to different categories of clients. To this extent, it is appropriate to extend some information and reporting requirements to the relationship with eligible counterparties. In particular, the relevant requirements should relate to the safeguarding of client financial instruments and monies as well as information and reporting requirements concerning more complex financial instruments and transaction. In order to better define the classification of municipalities and local public authorities, it is appropriate to clearly exclude them from the list of eligible counterparties and of clients who are considered to be professionals.

Or. en

Justification

Municipalities and local public authorities should never be treated as professional clients as they rely on taxpayer's money.

Amendment 314
Sylvie Goulard

Proposal for a directive
Recital 72

Text proposed by the Commission

Amendment

(72) The provision of services by third country firms in the Union is subject to national regimes and requirements. These regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to introduce a common regulatory framework at Union level. The regime should harmonize the existing fragmented framework, ensure certainty and uniform treatment of third country firms accessing the Union, ensure that and equivalence assessment has been carried out by the Commission in relation to the regulatory and supervisory framework of third countries and should provide for a comparable level of protections to investors in the EU receiving services by third country firms.

deleted

Or. en

Justification

Moved from directive to regulation

Amendment 315
Robert Goebbels

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Proposal for a directive
Recital 72

Text proposed by the Commission

(72) The provision of services by third country firms in the Union is subject to national regimes and requirements. These regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to introduce a common regulatory framework at Union level. The regime should harmonize the existing fragmented framework, ensure certainty and uniform treatment of third country firms accessing the Union, ensure that and equivalence assessment has been carried out by the Commission in relation to the regulatory and supervisory framework of third countries and should provide for a comparable level of protections to investors in the EU receiving services by third country firms.

Amendment

(72) The provision of services by third country **investment firms and market operators** in the Union is subject to national regimes and requirements. These regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to introduce a common regulatory framework at Union level. The regime should harmonize the existing fragmented framework, ensure certainty and uniform treatment of third country **investment firms and market operators** accessing the Union, ensure that and equivalence assessment has been carried out by the Commission in relation to the regulatory and supervisory framework of third countries and should provide for a comparable level of protections to investors in the EU receiving services by third country **investment firms and market operators**.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Justification

This proposals aims at ensuring that MiFID establishes an adequate 3rd country regime for investment firms and market operators, rather than a regime covering only for some services provided by investment firms. This regime would ensure that all services offered by both third country investment firms and market operators that access the EU are brought under the scope of MiFID. The new proposals must state clearly what rules will apply to such market operators and which EU rules, if any, will not apply.

Amendment 316

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 72

Text proposed by the Commission

(72) The provision of services by third country firms in the Union is subject to national regimes and requirements. These regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. *It is appropriate to introduce a common regulatory framework at Union level. The regime should harmonize the existing fragmented framework, ensure certainty and uniform treatment of third country firms accessing the Union, ensure that and equivalence assessment has been carried out by the Commission in relation to the regulatory and supervisory framework of third countries and should provide for a comparable level of protections to investors in the EU receiving services by third country firms.*

Amendment

(72) The provision of services by third country firms in the Union is subject to national regimes and requirements. These regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. *While Member States should be able to retain those regimes and requirements, it is appropriate to introduce a common regulatory framework at Union level to allow third country firms that establish a branch in the Union to provide services and activities across the Union through the branch, where the branch has been authorised by the competent authorities in the Member State and, among other things, an equivalence assessment has been carried out by the Commission in relation to the regulatory and supervisory framework of the third country. It is also appropriate for the common framework to allow a third country firm to provide services or activities to eligible counterparties that are established in a Member State otherwise than through a branch in that Member State without requiring authorisation in that Member State or registration by ESMA. Third country firms that wish to be able to provide services or activities to "per se" professional clients across the Union should be able to do so, if they register with ESMA and (among other things) an equivalence assessment has been carried out by the Commission in relation to the regulatory and supervisory framework of*

the third country.

Or. en

Justification

Many investment services and activities are provided in the context of continuing relationships between the firm and the client. It would unduly limit the access of EU investors and counterparties to the services provided by third country firms if third country firms were effectively prohibited from providing information and research to their existing clients. A third country firm can provide information or marketing materials to a person in the EU at the request of that person.

Amendment 317
Kay Swinburne

Proposal for a directive
Recital 72

Text proposed by the Commission

(72) The provision of services by third country firms in the Union is subject to national regimes and requirements. These regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to introduce a common regulatory framework at Union level. The regime should harmonize the existing fragmented framework, ensure certainty and uniform treatment of third country firms accessing the Union, ensure *that and* equivalence assessment has been carried out by the Commission in relation to the regulatory and supervisory framework of third countries and should provide for a comparable level of protections to investors in the EU receiving services by third country firms.

Amendment

(72) The provision of services by third country firms in the Union is subject to national regimes and requirements. These regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to introduce a common regulatory framework at Union level. The regime should harmonize the existing fragmented framework, ensure certainty and uniform treatment of third country firms accessing the Union, ensure *an effective* equivalence assessment has been carried out by the Commission in relation to the regulatory and supervisory framework of third countries and should provide for a comparable level of protections to investors in the EU receiving services by third country firms. *It is of the utmost importance that third country firms continue to be able to access EU markets*

without undue barriers.

Or. en

Amendment 318
Sylvie Goulard

Proposal for a directive
Recital 73

Text proposed by the Commission

Amendment

(73) The provision of services to retail clients should always require the establishment of a branch in the Union. The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

deleted

Or. en

Justification

Moved from directive to regulation

Amendment 319

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 73

Text proposed by the Commission

(73) *The provision of services to retail clients should always require the establishment of a branch in the Union.*

The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States ***through the authorised and supervised branch***, subject to a notification procedure. ***The*** provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Amendment

(73) *Third country firms that establish a branch in the Union under the common Union framework for branches should be able to provide service and activities across the Union to retail clients from the branch but this should not prevent a retail client receiving services from a third country firm at the client's own exclusive initiative or otherwise receiving services outside the Union (or in accordance with a national regime).* The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States, subject to a notification procedure. ***Once authorized, the*** provision of services ***into the Union by a third country firm*** without branches should be limited to eligible counterparties ***and to professional clients***. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Or. en

Justification

Where dealing with professional clients, the position under AIFMD should be followed – it should be sufficient to appoint a legal representative. A physical presence in the form of a branch is not necessary.

Amendment 320

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 73

Text proposed by the Commission

(73) *The provision of services* to retail clients *should always require the establishment of a branch in the Union.* The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. ***Sufficient initial capital should be at free disposal of the branch.*** Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. ***The provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.***

Amendment

(73) ***Third country firms that establish a branch in the Union under the common Union framework for branches should be able to provide service and activities across the Union to retail clients from the branch but this should not prevent a retail client receiving services from a third country firm at the client's own exclusive initiative or otherwise receiving services outside the Union (or in accordance with a national regime).*** The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure.

Or. en

Justification

Providing cross-border services to a MiFID authorised firm should not trigger a licensing requirement. In addition, in many cases, an authorised EU firm will be mediating the transaction concerned, e.g. where an EU client is instructing an EU firm to act as its agent to execute transactions on a third country market through a third country firm. In these circumstances the indirect provision of services to the EU client should not be regarded as taking place in the EU.

Amendment 321

Wolf Klinz

Proposal for a directive

Recital 73

Text proposed by the Commission

(73) **The** provision of services to retail clients should always require the establishment of a branch in the Union. The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Amendment

(73) **Unless the legal and supervisory arrangements of a third country where a third country firm is authorised in are equivalent to the EU requirements, the** provision of services to retail clients should always require the establishment of a branch in the Union. The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties **and professional clients**. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Amendment 322
Robert Goebbels

Proposal for a directive
Recital 73

Text proposed by the Commission

(73) The provision of services to retail clients should always require the establishment of a branch in the Union. The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Amendment

(73) The provision of services to retail **and professional** clients should always require the establishment of a branch in the Union. The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Or. en

Justification

There must be an explicit inclusion of professional clients in the text and the same provisions of branch requirements and authorisation must apply to both retail and professional clients. The purpose of this inclusion is to avoid legal loopholes in the text and to ensure that 'professional investors' are not treated as 'eligible counterparties'.

Amendment 323
Kay Swinburne

Proposal for a directive
Recital 73

Text proposed by the Commission

(73) The provision of services to retail clients should always require the establishment of a branch in the Union. The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Amendment

(73) The provision of services to retail clients should always require the establishment of a branch in the Union. The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties **and professional investors**. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Or. en

Amendment 324
Pascal Canfin
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 73

Text proposed by the Commission

(73) The provision of services to retail clients should always require the establishment of a **branch** in the Union. The establishment of the branch shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Amendment

(73) The provision of services to retail clients should always require the establishment of a **subsidiary** in the Union. The establishment of the branch **to provide services to professional clients** shall be subject to authorisation and supervision in the Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services without branches should be limited to eligible counterparties. It should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

Or. en

Justification

Branch is not offering a sufficient level of protection to retail investors.

Amendment 325
Sylvie Goulard

Proposal for a directive
Recital 74

Text proposed by the Commission

(74) The provision of this directive

Amendment

deleted

regulating the provision of services by third country firms in the Union should not affect the possibility for persons established in the Union to receive investment services by a third country firm at their own exclusive initiative. When a third country firm provides services at own exclusive initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. In case a third country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client.

Or. en

Justification

Moved from directive to regulation

Amendment 326
Kay Swinburne

Proposal for a directive
Recital 74

Text proposed by the Commission

(74) The provision of this directive regulating the provision of services by third country firms in the Union should not affect the possibility for persons established in the Union to receive investment services by a third country firm *at their own exclusive initiative. When a third country firm provides services at own exclusive initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. In case a third*

Amendment

(74) The provision of this directive regulating the provision of services by third country firms in the Union should not affect the possibility for persons established in the Union to receive investment services by a third country firm.

country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client.

Or. en

Amendment 327

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 74

Text proposed by the Commission

(74) The provision of this directive regulating the provision of services by third country firms in the Union should not affect the possibility for persons established in the Union to receive investment services **by** a third country firm at their own exclusive initiative. When a third country firm provides services at own exclusive initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. In case a third country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client.

Amendment

(74) The provision of this directive regulating the provision of services **or activities** by third country firms in the Union should not affect the possibility for persons established in the Union to receive investment services **or activities from** a third country firm at their own exclusive initiative, **for investment firms authorised under this Directive or credit institutions authorised under Directive 2006/48/EC providing investment services or activities to receive investment services or activities from a third country firm or for clients of such an investment firm or credit institution to receive investment services or activities from a third country firm through the mediation of the investment firm or credit institution or for persons established in the Union to receive investment services or activities from a third country firm where those services or activities are provided outside the Union.** When a third country firm provides services **or activities** at **the** own exclusive initiative of a person established in the Union, the services **or activities** should not be deemed as provided in the territory of

the Union. In case a third country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union ***(otherwise than in the context of a continuing relationship between the third country firm and that person relating to the provision of those services or activities)***, it should not be deemed as a service ***or activity*** provided at the own exclusive initiative of the client. ***When a third country firm provides services or activities to or through the mediation of an investment firm authorised under this Directive or a credit institution authorised under Directive 2006/48/EC providing investment services or activities, the services or activities of the third country firm should not be deemed as provided in the territory of the Union. The investment firm acting as intermediary will remain responsible for providing the client with the protections under this Directive applicable to the service it has provided to the client. When a person established in the Union moves outside the Union to receive services or activities provided by a third country firm or the characteristic performance of the third country firm takes place outside the Union, the services or activities should not be deemed as provided in the Union.***

Or. en

Justification

It would unduly limit the access of EU investors and counterparties to the services provided by third country firms if third country firms were, for example, effectively prohibited from providing information and research to their existing clients. In addition, it should be made clear that a third country firm can provide information or marketing materials to a person in the EU at the request of that person.

Amendment 328

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 74

Text proposed by the Commission

(74) The provision of this directive regulating the provision of services by third country firms in the Union should not affect the possibility for persons established in the Union to **receive** investment services by a third country firm at their own **exclusive** initiative. When a third country firm provides services at own **exclusive** initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. In case a third country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own **exclusive** initiative of the client.

Amendment

(74) The provision of this directive regulating the provision of services by third country firms in the Union should not affect the possibility for persons established in the Union to **make use of** investment services by a third country firm at their own initiative. When a third country firm provides services at own initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. In case a third country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union **otherwise than in the course of an existing relationship requiring a continuing service provided by the firm to its client**, it should not be deemed as a service provided at the own initiative of the client.

Or. en

Justification

Many investment services and activities are provided in the context of already existing relationships between the firm and the client. It would unduly limit the access of EU investors and counterparties to the services provided by third country firms if third country firms were, for example, effectively prohibited from providing information and research to their existing clients.

Amendment 329

Wolf Klinz

Proposal for a directive
Recital 74

Text proposed by the Commission

(74) The provision of this directive regulating the provision of services by third country firms in the Union should not affect the possibility for **persons** established in the Union to receive investment services by a third country firm at their own exclusive initiative. When a third country firm provides services at own exclusive initiative of a **person** established in the Union, the services should not be deemed as provided in the territory of the Union. In case a third country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client.

Amendment

(74) The provision of this directive regulating the provision of services by third country firms **from third countries not meeting the equivalence criteria** in the Union should not affect the possibility for **retail clients** established in the Union to receive investment services by a third country firm at their own exclusive initiative. When a third country firm provides services at own exclusive initiative of a **retail client** established in the Union, the services should not be deemed as provided in the territory of the Union. In case a third country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client.

Or. en

Amendment 330
Kay Swinburne

Proposal for a directive
Recital 74 a (new)

Text proposed by the Commission

Amendment

(74a) When establishing effective equivalence for third country regimes, they should be limited to those provisions that have been agreed to at international fora such as the G20. While rules on the derivatives trading obligation should aim to be as coordinated as possible, in line with Regulation (EU) No .../... [EMIR], there are many parts of this Directive that are outside the G20 commitments, nor are

they aimed at the stability of the financial system and therefore may not be appropriate for third countries to adopt directly.

Or. en

Amendment 331
Kay Swinburne

Proposal for a directive
Recital 74 b (new)

Text proposed by the Commission

Amendment

(74b) When conducting the third country equivalence assessments the Commission should ensure that it follows an approach which prioritises the EU's largest trading partners first, leaving countries which only have a few firms accessing EU markets until after the more significant markets have been assessed.

Or. en

Justification

In line with rapporteur's amendment concerning the transitional provisions to be applied to third countries while they wait to be assessed for equivalence.

Amendment 332
Kay Swinburne

Proposal for a directive
Recital 74 c (new)

Text proposed by the Commission

Amendment

(74c) A third country firm should not require EU authorisation or registration when it is providing services on the initiative of the EU client, if it only

provides services to MiFID authorised firms, or if the service is being provided solely outside of the EU.

Or. en

Justification

In order to ensure that EU firms can access 3rd country markets this provision is necessary as certain countries will never reach EU equivalence levels and yet require the use of local entities to perform certain activities.

Amendment 333
Sylvie Goulard

Proposal for a directive
Recital 75

Text proposed by the Commission

(75) The authorisation to operate a regulated market should extend to all activities which are directly related to the display, processing, execution, confirmation and reporting of orders from the point at which such orders are received by the regulated market to the point at which they are transmitted for subsequent finalisation, and to activities related to the admission of financial instruments to trading. This should also include transactions concluded through the medium of designated market makers appointed by the regulated market which are undertaken under its systems and in accordance with the rules that govern those systems. Not all transactions concluded by members or participants of the regulated market, MTF *or OTF* are to be considered as concluded within the systems of a regulated market, MTF *or OTF*. Transactions which members or participants conclude on a bilateral basis and which do not comply with all the obligations established for a regulated

Amendment

(75) The authorisation to operate a regulated market should extend to all activities which are directly related to the display, processing, execution, confirmation and reporting of orders from the point at which such orders are received by the regulated market to the point at which they are transmitted for subsequent finalisation, and to activities related to the admission of financial instruments to trading. This should also include transactions concluded through the medium of designated market makers appointed by the regulated market which are undertaken under its systems and in accordance with the rules that govern those systems. Not all transactions concluded by members or participants of the regulated market *or* MTF are to be considered as concluded within the systems of a regulated market, MTF. Transactions which members or participants conclude on a bilateral basis and which do not comply with all the obligations established for a regulated market *or* an MTF under this

market, an MTF *or an OTF* under this Directive should be considered as transactions concluded outside a regulated market, an MTF *or an OTF* for the purposes of the definition of systematic internaliser. In such a case the obligation for investment firms to make public firm quotes should apply if the conditions established by this Directive are met.

Directive should be considered as transactions concluded outside a regulated market *or* an MTF for the purposes of the definition of systematic internaliser. In such a case the obligation for investment firms to make public firm quotes should apply if the conditions established by this Directive are met.

Or. en

Amendment 334

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Recital 78

Text proposed by the Commission

(78) The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of **trade transparency information that is available**. The envisaged solution is based on an authorisation of **providers working along pre-defined and supervised parameters which are in competition** with each other **in order to achieve** technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible.

Amendment

(78) The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of **market data**. The envisaged solution is based on an authorisation of **approved publication arrangements (APAs) to ensure consistent and accurate market data is made available by regulated markets, MTFs, OTFs, SIs and firms trading OTC to end users and commercial data providers, who could then compete commercially** with each other to **deliver** technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible.

Or. en

Justification

The proposed commercial solution for market data will deliver accurate and affordable

consolidated data only if ESMA issues common European data standards and if data quality and consistency are then assured by the regulated approved publication arrangements (APAs) who make the market data public.

Amendment 335

Anne E. Jensen

Proposal for a directive

Recital 78

Text proposed by the Commission

(78) The introduction of a **commercial solution for a** consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution **is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible.**

Amendment

(78) The introduction of a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available **at reasonable prices compared to the production costs.** The envisaged solution **would be operated by a single entity. However, this entity would be a commercial undertaking that is appointed following a public tender every third year upon the merit of its bid submitted to the European Commission.**

Or. en

Amendment 336

Kay Swinburne

Proposal for a directive

Recital 78

Text proposed by the Commission

(78) The introduction of a **commercial** solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade

Amendment

(78) The introduction of a **comprehensive** solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade

transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible.

transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible. ***By requiring all Consolidated Tape Providers to consolidate all APA data it will be assured that competition will take place in the field of client services, not breadth of data covered.***

Or. en

Amendment 337

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 78

Text proposed by the Commission

(78) The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible.

Amendment

(78) The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible. ***In case commercial solutions fail to provide an effective consolidated tape for equities, the European Commission should bring forward a public solution for a consolidated tape for equities able to achieve effective post-trade transparency.***

Amendment 338
Kay Swinburne

Proposal for a directive
Recital 78 a (new)

Text proposed by the Commission

Amendment

(78a) Given the systemic risk implications of synthetic exchange-traded funds (ETFs) in particular, and their use by retail clients, it is of the utmost importance that more transparency is provided to investors in these products. Consolidated Tape provisions should also apply to equity-like instruments, particularly ETFs.

Or. en

Justification

While the consolidated tape provisions appear to extend from equities to equity-like instruments this needs to be made explicit, particularly given the high uptake in use of ETFs by retail investors in recent years.

Amendment 339
Olle Schmidt
on behalf of the ALDE Group
Wolf Klinz

Proposal for a directive
Recital 83

Text proposed by the Commission

Amendment

(83) The G20 summit in Pittsburgh on 25 September 2009 agreed to improve the regulation, functioning and transparency of financial and commodity markets to address excessive commodity price volatility. The Commission

(83) The G20 summit in Pittsburgh on 25 September 2009 agreed to improve the regulation, functioning and transparency of financial and commodity markets to address excessive commodity price volatility. The Commission

Communications of 28 October 2009 on A Better Functioning Food Supply Chain in Europe, and of 2 February 2011 on Tackling the Challenges in Commodity Markets and Raw Materials outlined measures that fall to be taken in the context of the review of Directive 2004/39/EC.

Communications of 28 October 2009 on A Better Functioning Food Supply Chain in Europe, and of 2 February 2011 on Tackling the Challenges in Commodity Markets and Raw Materials outlined measures that fall to be taken in the context of the review of Directive 2004/39/EC.

The IOSCO Report of September 2011 on Principles for the Regulation and Supervision of Commodity Derivatives Markets set out to help to ensure that the physical commodity derivatives markets serve their fundamental price discovery and hedging functions, while operating free from manipulation and abusive trading schemes, and IOSCO emphasizes the key importance of transparency.

Or. en

Justification

As commodities markets are to certain degrees globally interconnected, it is relevant to take into account work conducted and recommendations published by IOSCO. This report includes recommendations to help to ensure that the physical commodity derivatives markets serve their fundamental price discovery and hedging functions, while operating free from manipulation and abusive trading. The principle assists authorities in constructing an appropriate regulatory and supervisory approach.

Amendment 340 Kay Swinburne

Proposal for a directive Recital 83 a (new)

Text proposed by the Commission

Amendment

(83a) In April 2011, IOSCO's Task force on Commodity Futures Markets formally reported to the Financial Stability Board stating that: "Powers of intervention should include formalised position management powers, including the authority to set ex ante position limits where appropriate, to take action over

positions which may potentially prejudice orderly market functioning at any stage of the contract; powers to impose price movement limits for given time periods (e.g. intra-day); or impose trading halts or cool down periods, all of which should be carefully designed and applied in the context of each specific commodity futures market."

Or. en

Justification

Both IOSCO and the G20 have done extensive work in the area of commodity derivatives, this work must be recognised and included in MiFID so as to follow the recommendations of experts in this area and to be as coordinated as possible globally.

Amendment 341
Kay Swinburne

Proposal for a directive
Recital 83 b (new)

Text proposed by the Commission

Amendment

(83 b) This approach was formally endorsed by the G20 Agriculture Ministers in their declaration in Paris on the 23 June 2011 "We support G20 Finance Ministers and Central Bank Governors stressing at their Washington Meeting on 14-15th April 2011, the need for participants on commodity derivatives markets to be subject to appropriate regulation and supervision, calling for enhanced transparency in both cash and derivatives markets as previously recommended by IOSCO, and looking forward to the finalization of IOSCO recommendations, by September 2011 on regulation and supervision in this area especially to address market abuses and manipulation, such as through formalized position management powers including

the authority to set ex-ante position limits where appropriate, among other powers of interventions."

Or. en

Justification

Both IOSCO and the G20 have done extensive work in the area of commodity derivatives, this work must be recognised and included in MiFID so as to follow the recommendations of experts in this area and to be as coordinated as possible globally.

Amendment 342
Kay Swinburne

Proposal for a directive
Recital 83 c (new)

Text proposed by the Commission

Amendment

(83c) In September 2011, IOSCO set out its Principles for the Regulation and Supervision of Commodity Markets covering: contract design principles; principles for surveillance of commodity derivatives markets; principles to address disorderly commodity derivatives markets including position management powers, including the power to set position limits; principles for enforcement and information sharing; and principles for enhancing price discovery on commodity derivatives markets.

Or. en

Justification

Both IOSCO and the G20 have done extensive work in the area of commodity derivatives, this work must be recognised and included in MiFID so as to follow the recommendations of experts in this area and to be as coordinated as possible globally.

Amendment 343
Kay Swinburne

Proposal for a directive
Recital 83 d (new)

Text proposed by the Commission

Amendment

(83d) The IOSCO Principles were subsequently endorsed by the G20 summit in Cannes on 4 November 2011, stating that "[a]s part of our financial regulation agenda, we endorse the IOSCO recommendations to improve regulation and supervision of commodity derivatives markets. We agree that market regulators should be granted effective intervention powers to prevent market abuses. In particular, market regulators should have and use formal position management powers, among other powers of intervention, including the power to set ex-ante position limits, as appropriate."

Or. en

Justification

Both IOSCO and the G20 have done extensive work in the area of commodity derivatives, this work must be recognised and included in MiFID so as to follow the recommendations of experts in this area and to be as coordinated as possible globally.

Amendment 344
Pascal Canfin
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 84

Text proposed by the Commission

Amendment

(84) The powers made available to competent authorities should be complemented with explicit powers to ***demand*** information from any person

(84) The powers made available to competent authorities should be complemented with explicit powers to ***obtain*** information ***on a regular basis*** from

regarding the size and purpose of a position in derivatives contracts related to commodities and to request the person to take steps to reduce the size of the position in the derivative contracts.

any person regarding the size and purpose of a position in derivatives contracts related to commodities and to request the person to take steps to reduce the size of the position in the derivative contracts.

Or. en

Amendment 345
Gunnar Hökmark

Proposal for a directive
Recital 85

Text proposed by the Commission

(85) Explicit powers should be granted to competent authorities to **limit** the **ability** of any person or class of persons **from entering into a derivative contract** in relation to a commodity. The **application of a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in particular, the** competent authority should ensure that **these** position **limits** are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market.

Amendment

(85) Explicit powers should be granted to competent authorities to **manage** the **positions** of any person or class of persons **in derivative contracts** in relation to a commodity. The competent authority should ensure that **the powers necessary to implement this position management** are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market. **Position limits should be employed only as appropriate and only in the delivery month, as they have the potential to have a material adverse impact on liquidity.**

Or. en

Amendment 346
Olle Schmidt
on behalf of the ALDE Group

Proposal for a directive
Recital 85

Text proposed by the Commission

(85) Explicit powers should be granted to competent authorities to limit the ability of any person or class of persons from entering into a derivative contract in relation to a commodity. The application of a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market.

Amendment

(85) Explicit powers should be granted to competent authorities to limit the ability of any person or class of persons from entering into a derivative contract in relation to a commodity. The application of a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market ***justified by a situation defined by ESMA through regulatory technical standards.***

Or. en

Justification

ESMA should be given powers to mitigate commodity market volatility and prevent market disorders.

Amendment 347

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 85

Text proposed by the Commission

(85) Explicit powers should be granted to competent authorities to limit the ability of any person or class of persons from entering into a derivative contract in relation to a commodity. The application of a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in

Amendment

(85) Explicit powers should be granted to competent authorities to limit the ability of any person or class of persons from entering into a derivative contract in relation to a commodity. The application of a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in

particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market.

particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market, *as well as to eliminate excessive speculation.*

Or. en

Amendment 348

Olle Schmidt

on behalf of the ALDE Group

Wolf Klinz

Proposal for a directive

Recital 86

Text proposed by the Commission

(86) *All* venues which offer trading in commodity derivatives should have in place appropriate **limits or suitable alternative** arrangements designed to support liquidity, prevent market abuse, and ensure the orderly pricing and settlement conditions. ESMA should maintain and publish a list containing summaries of all such measures in force. These **limits or** arrangements should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to whom they apply and any exemptions thereto, as well as to the relevant quantitative thresholds which constitute the limits or which may trigger other obligations. The Commission should be empowered to adopt delegated acts, including with a view to avoiding any divergent effects of the **limits or** arrangements applicable to comparable contracts on different venues.

Amendment

(86) *In addition to the powers made available to competent authorities to impose position limits, all* venues which offer trading in commodity derivatives should have in place appropriate **position management** arrangements designed to support liquidity, prevent market abuse, and ensure the orderly pricing and settlement conditions. **Such arrangements may include for instance identification of build-up of large position concentrations especially close to settlement, position limits, price movement limits, ordering liquidation or transfer of open positions, suspension of trading, altering delivery terms or conditions, cancelling trades and requiring delivery intentions. It must however be recognised that one trading venue is not able to view the aggregate positions taken by its members or participants in relation to the overall market.** ESMA should **define the key features of a harmonised position management regime through regulatory technical standards and** maintain and

publish a list containing summaries of all such measures in force. These arrangements should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to whom they apply and any exemptions thereto, as well as to the relevant quantitative thresholds which constitute the limits or which may trigger other obligations. The Commission should be empowered to adopt delegated acts, including with a view to avoiding any divergent effects of the arrangements applicable to comparable contracts on different venues.

Or. en

Justification

It should be clarified that MiFID II proposes powers for the competent authorities to impose position limits as well as some measures to be taken by trading venues. These measures should be complementary, not duplicating. There are numerous ways trading venues can, and do, take measures to ensure orderly markets. This should be recognised and position limits should be examples of measures that the trading venues shall put in place, but should not be mandatory.

Amendment 349

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 86

Text proposed by the Commission

(86) All venues which offer trading in commodity derivatives should have in place appropriate limits *or* suitable *alternative* arrangements designed to support liquidity, prevent market abuse, and ensure the orderly *pricing* and settlement conditions. ESMA should maintain and publish a list containing

Amendment

(86) All venues which offer trading in commodity derivatives should have in place appropriate limits *and* suitable *additional* arrangements designed to support liquidity, prevent market abuse, and ensure the orderly *price discovery function* and settlement conditions *as well as to eliminate excessive speculation*.

summaries of all such measures in force. These limits *or* arrangements should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to whom they apply and any exemptions thereto, as well as to the relevant quantitative thresholds which constitute the limits or which may trigger other obligations. The Commission should be empowered to adopt *delegated acts*, including with a view to avoiding any divergent effects of the limits *or* arrangements applicable to comparable contracts on different venues.

ESMA should maintain and publish a list containing summaries of all such measures in force. These limits *and* arrangements should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to whom they apply and any exemptions thereto, as well as to the relevant quantitative *and qualitative* thresholds which constitute the limits or which may trigger other obligations. The Commission should be empowered to adopt *regulatory technical standards*, including with a view to avoiding any divergent effects of the limits *and* arrangements applicable to comparable contracts on different venues.

Or. en

Amendment 350

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 87

Text proposed by the Commission

(87) Venues where the most liquid commodity derivatives are traded should publish an aggregated weekly breakdown of the positions held by different types of market participants, including the clients of those not trading on their own behalf. A comprehensive and detailed breakdown both by the type and identity of the market participant should be *made available* to the competent authority *upon request*.

Amendment

(87) Venues where the most liquid commodity derivatives are traded should publish an aggregated weekly breakdown of the positions held by different types of market participants, including the clients of those not trading on their own behalf. A comprehensive and detailed breakdown both by the type and identity of the market participant should be *notified* to the competent authority *on a regular basis*.

Or. en

Amendment 351
Robert Goebbels, Markus Ferber

Proposal for a directive
Recital 88

Text proposed by the Commission

Amendment

(88) Considering the communiqué of G20 finance ministers and central bank governors of 15 April 2011 on ensuring that participants on commodity derivatives markets should be subject to appropriate regulation and supervision, the exemptions from Directive 2004/39/EC for various participants active in commodity derivative markets should be modified to ensure that activities by firms, which are not part of a financial group, involving the hedging of production-related and other risks as well as the provision of investment services in commodity or exotic derivatives on an ancillary basis to clients of the main business remain exempt, but that firms specialising in trading commodities and commodity derivatives are brought within this Directive. **deleted**

Or. en

Justification

The recital does not respect the narrow exemptions in Article 2 and creates ambiguity.

Amendment 352
Werner Langen

Proposal for a directive
Recital 88

Text proposed by the Commission

Amendment

(88) Considering the communiqué of G20 finance ministers and central bank

(88) Considering the communiqué of G20 finance ministers and central bank

governors of 15 April 2011 on ensuring that participants on commodity derivatives markets should be subject to appropriate regulation and supervision, the exemptions from Directive 2004/39/EC for various participants active in commodity derivative markets should be modified to ensure that activities by firms, which are not part of a financial group, involving the hedging of production-related and other risks as well as the provision of investment services in commodity or exotic derivatives on an ancillary basis to clients of the main business remain exempt, **but that** firms specialising in trading commodities and commodity derivatives **are** brought within this Directive.

governors of 15 April 2011 on ensuring that participants on commodity derivatives markets should be subject to appropriate regulation and supervision, the exemptions from Directive 2004/39/EC for various participants active in commodity derivative markets should be modified to ensure that activities by firms, which are not part of a financial group, involving the hedging of production-related and other risks as well as the provision of investment services in commodity or exotic derivatives on an ancillary basis to clients of the main business remain exempt. ***It must be taken into account that firms whose main business is producing or supplying commodities and which trade on own account in commodity derivatives as an ancillary activity are already, under sector-specific rules, for example, subject to tailor-made regulatory oversight and to regulatory reporting obligations specifically concerning spot and physical forward transactions by virtue of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT) and are subject to regulatory reporting obligations in respect of standard derivative transactions and regulatory oversight by virtue of Regulation (EU) No .../... (EMIR).*** Firms specialising in trading commodities and commodity derivatives **should be** brought within this Directive, **however**.

Or. de

Justification

Unternehmen, die bereits unter die EMIR-Verordnung und sektorspezifische Regulierungen (wie z.B. die Verordnung 2011/1227/EG, REMIT) fallen, sollten vom Anwendungsbereich der MiFID ausgenommen werden, soweit ihre Aktivitäten eine Nebentätigkeit zu ihrer 3 Haupttätigkeit darstellen. Die REMIT-Verordnung sieht eine effektive und angemessene Marktüberwachung sowie Transaktionsmeldepflichten vor, die sich ausdrücklich auf Transaktionen beziehen, die nicht in den Anwendungsbereich der MiFID fallen. Zudem wird

die EMIR-Verordnung u.a. einen Rahmen für die Meldung von Transaktionen, zentrales Clearing sowie weitere Anforderungen an das Risikomanagement enthalten.

Amendment 353

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 88

Text proposed by the Commission

(88) Considering the communiqué of G20 finance ministers and central bank governors of 15 April 2011 on ensuring that participants on commodity derivatives markets should be subject to appropriate regulation and supervision, the exemptions from Directive 2004/39/EC for various participants active in commodity derivative markets should be modified to ensure that activities by firms, which are not part of a financial group, involving the hedging of production-related and other risks as well as the provision of investment services in commodity or exotic derivatives on an ancillary basis to clients of the main business remain exempt, but that firms specialising in trading commodities and commodity derivatives are brought within this Directive.

Amendment

(88) Considering the communiqué of G20 finance ministers and central bank governors of 15 April 2011 on ensuring that participants on commodity derivatives markets should be subject to appropriate regulation and supervision, the exemptions from Directive 2004/39/EC for various participants active in commodity derivative markets should be modified to ensure that activities by firms, which are not part of a financial group, involving the hedging of production-related and other risks as well as the provision of investment services in commodity or exotic derivatives on an ancillary basis to clients of the main business remain exempt ***if the size or the impact of this activity is not significant on that market***, but that firms specialising in trading commodities and commodity derivatives are brought within this Directive.

Or. en

Amendment 354

Werner Langen

Proposal for a directive

Recital 88 a (new)

Text proposed by the Commission

Amendment

(88a) In line with the communiqué of G20 and in order to promote global harmonization and avoid regulatory arbitrage, the definition of derivative financial instrument should more clearly exclude any contract of sale of a commodity for future delivery or deferred shipment as long as the transaction does not have the characteristics of other derivative financial instruments.

Or. en

Justification

An explicit exclusion of products physically delivered in the future is needed to clarify definitely that these products will not be considered as ‘other derivative financial instruments’ regardless the place of execution. This proposal would align the EU legislation with the definition of Swaps under the Dodd-Frank Act in the U.S., where contracts with underlying delivery of commodities in the future are not considered ‘swaps’.

Amendment 355
Kay Swinburne

Proposal for a directive
Recital 89

Text proposed by the Commission

Amendment

(89) It is desirable to facilitate access to capital for smaller and medium sized enterprises and to facilitate the further development of specialist markets that aim to cater for the needs of smaller and medium sized issuers. These markets which are usually operated under this Directive as MTFs are commonly known as SME markets, growth markets or junior markets. The creation within the MTF category of a new sub category of SME growth market and the registration of these markets should raise their visibility and

(89) It is desirable to facilitate access to capital for smaller and medium sized enterprises and to facilitate the further development of specialist markets that aim to cater for the needs of smaller and medium sized issuers. These markets which are usually operated under this Directive as MTFs are commonly known as SME markets, growth markets or junior markets. The creation within the MTF category of a new sub category of SME growth market and the registration of these markets should raise their visibility and

profile and aid the development of common pan-European regulatory standards for those markets.

profile and aid the development of common pan-European regulatory standards for those markets. ***Attention should be focussed on how to provide future legislation for the further fostering and promotion of use of this market as a new asset class that will be attractive for investors. All other EU market regulation should be updated to provide a lessening of administrative burdens and to provide further incentives for listing of SMEs on the SME growth markets.***

Or. en

Amendment 356
Sylvie Goulard

Proposal for a directive
Recital 94

Text proposed by the Commission

(94) In view of the significant impact and market share acquired by various MTFs, it is appropriate to ensure that adequate cooperation arrangements are established between the competent authority of the MTF and that of the jurisdiction in which the MTF is providing services. ***In order to anticipate any similar developments, this should be extended to OTFs.***

Amendment

(94) In view of the significant impact and market share acquired by various MTFs, it is appropriate to ensure that adequate cooperation arrangements are established between the competent authority of the MTF and that of the jurisdiction in which the MTF is providing services.

Or. en

Amendment 357
Olle Ludvigsson

Proposal for a directive
Recital 99

Text proposed by the Commission

(99) In order to detect potential breaches,

Amendment

(99) In order to detect potential breaches,

competent authorities should have the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of potential or actual breaches. These mechanisms should be without prejudice to adequate safeguards for accused persons. Appropriate procedures should be established to ensure the right of the reported person of defence and to be heard before the adoption of a final decision concerning him as well as the right to seek remedy before a tribunal against a decision concerning him.

competent authorities should have the necessary investigatory powers, and should establish effective **and reliable** mechanisms to encourage reporting of potential or actual breaches. **Employees reporting breaches within their own institutions should be well-protected and have full anonymity.** These mechanisms should be without prejudice to adequate safeguards for accused persons. Appropriate procedures should be established to ensure the right of the reported person of defence and to be heard before the adoption of a final decision concerning him as well as the right to seek remedy before a tribunal against a decision concerning him.

Or. en

Amendment 358
Robert Goebbels

Proposal for a directive
Recital 101

Text proposed by the Commission

(101) This Directive **should be** without prejudice to any provisions in the law of Member States relating to criminal sanctions.

Amendment

(101) This Directive **is** without prejudice to any provisions in the law of Member States relating to criminal sanctions.

Or. en

Justification

More precise

Amendment 359
Robert Goebbels, Markus Ferber, Arlene McCarthy, Antolín Sánchez Presedo

Proposal for a directive
Recital 108

Text proposed by the Commission

(108) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.

Amendment

(108) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission. ***To ensure consistent investor and consumer protection across financial services sectors, ESMA should carry out its tasks, to the extent possible, in close cooperation with the other two ESAs within the framework of the Joint Committee.***

Or. en

Justification

To ensure consistent investor and consumer protection across financial services sectors, ESMA should to the extent possible cooperate closely with the other two ESAs within the framework of the Joint Committee. (ECB suggestion)

Amendment 360
Sylvie Goulard

Proposal for a directive
Recital 108

Text proposed by the Commission

(108) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient

Amendment

(108) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it would be efficient

and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.

and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission. ***To ensure consistent investor and consumer protection across financial services sectors, ESMA should carry out its tasks, to the extent possible, in close cooperation with the other two ESAs within the framework of the Joint Committee.***

Or. en

Justification

To ensure consistent investor and consumer protection across financial services sectors, ESMA should to the extent possible cooperate closely with the other two ESAs within the framework of the Joint Committee.

Amendment 361

Olle Schmidt

on behalf of the ALDE Group

Wolf Klinz

Proposal for a directive

Recital 109

Text proposed by the Commission

(109) The Commission should adopt the draft regulatory technical standards developed by ESMA in Article 7 regarding procedures for granting and refusing requests for authorisation of investment firms, Articles 9 and 48 regarding requirements for management bodies, Article 12 regarding acquisition of qualifying holding, Article 27 regarding obligation to execute orders on terms most favourable to clients, Articles 34 and 54 regarding cooperation and exchange of information, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding

Amendment

(109) The Commission should adopt the draft regulatory technical standards developed by ESMA in Article 7 regarding procedures for granting and refusing requests for authorisation of investment firms, Articles 9 and 48 regarding requirements for management bodies, Article 12 regarding acquisition of qualifying holding, Article 27 regarding obligation to execute orders on terms most favourable to clients, Articles 34 and 54 regarding cooperation and exchange of information, Article 36 regarding freedom to provide investment services and activities, Article 37 regarding

establishment of a branch, Article 44 regarding provision of services by third country firms, Article 63 regarding procedures for granting and refusing requests for authorisation of data reporting services providers, Articles 66 and 67 regarding organisational requirements for APAs and CTPs and Article 84 regarding cooperation among competent authorities. The Commission should adopt these draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

establishment of a branch, Article 44 regarding provision of services by third country firms, Article **59 regarding application of position management in commodity derivatives markets**, Article 63 regarding procedures for granting and refusing requests for authorisation of data reporting services providers, Articles 66 and 67 regarding organisational requirements for APAs and CTPs and Article 84 regarding cooperation among competent authorities. The Commission should adopt these draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Or. en

Amendment 362 **Sylvie Goulard**

Proposal for a directive **Recital 110**

Text proposed by the Commission

(110) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to Article 7 regarding procedures for granting and refusing requests for authorisation of investment firms, Article 12 regarding acquisition of qualifying holding, Article 18 regarding trading process on finalisation of transactions in MTFs **and OTFs**, Articles 32, 33 and 53 regarding suspension and removal of instruments from trading, Article 36

Amendment

(110) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to Article 7 regarding procedures for granting and refusing requests for authorisation of investment firms, Article 12 regarding acquisition of qualifying holding, Article 18 regarding trading process on finalisation of transactions in MTFs, Articles 32, 33 and 53 regarding suspension and removal of instruments from trading, Article 36 regarding freedom

regarding freedom to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, Article 60 regarding position reporting by categories of traders, Article 78 regarding submission of information to ESMA, Article 83 regarding obligation to cooperate, Article 84 regarding cooperation among competent authorities, Article 85 regarding exchange of information and Article 88 regarding consultation prior to authorisation.

to provide investment services and activities, Article 37 regarding establishment of a branch, Article 44 regarding provision of services by third country firms, Article 60 regarding position reporting by categories of traders, Article 78 regarding submission of information to ESMA, Article 83 regarding obligation to cooperate, Article 84 regarding cooperation among competent authorities, Article 85 regarding exchange of information and Article 88 regarding consultation prior to authorisation.

Or. en

Amendment 363

Anne E. Jensen

Proposal for a directive

Recital 111

Text proposed by the Commission

(111) The Commission should submit a report to the European Parliament and the Council assessing the functioning of organised trading facilities, the functioning of the regime for SME growth markets, the impact of requirements regarding automated and high-frequency trading, the experience with the mechanism for banning certain products or practices and the impact of the measures regarding commodity derivatives markets.

Amendment

(111) The Commission should submit a report to the European Parliament and the Council assessing the functioning of organised trading facilities, the functioning of the regime for SME growth markets, the impact of requirements regarding automated and high-frequency trading, the experience with the mechanism for banning certain products or practices, ***the impact of the introduction of a consolidated tape for equities including the development in prices on market data in general*** and the impact of the measures regarding commodity derivatives markets.

Or. en

Amendment 364

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive
Recital 113

Text proposed by the Commission

(113) The establishment of a consolidated tape for non-equity instruments is deemed to be more difficult to implement than the consolidated tape for equity instruments and potential providers should be able to gain experience with the latter before constructing it. In order to facilitate the proper establishment of the consolidated tape for non-equity financial instruments, it is therefore appropriate to provide for an extended date of application of the national measures transposing the relevant provision.

Amendment

(113) The establishment of a consolidated tape for non-equity instruments is deemed to be more difficult to implement than the consolidated tape for equity instruments and potential providers should be able to gain experience with the latter before constructing it. In order to facilitate the proper establishment of the consolidated tape for non-equity financial instruments, it is therefore appropriate to provide for an extended date of application of the national measures transposing the relevant provision. ***In case commercial solutions fail to provide an effective consolidated tape for non-equity instruments, the European Commission should bring forward a public solution for a consolidated tape for non-equity instruments able to achieve effective post-trade transparency.***

Or. en

Amendment 365
Jean-Paul Gauzès

Proposal for a directive
Recital 113 a (new)

Text proposed by the Commission

Amendment

(113a) The European Commission should submit in the future Regulation on Securities Law concrete legislative proposals regarding the definition of safekeeping and administration of financial instruments that is listed in Annex I Section B indent (1), the type of EU and non-EU entities that can be licensed to perform this service and the

rights and obligations of these entities in order to guarantee integrity of the securities, absolute transparency and safeguard of the final investor's rights .

Or. en

Amendment 366
Sharon Bowles

Proposal for a directive
Recital 113 a (new)

Text proposed by the Commission

Amendment

(113a) For long term stability, supervisory control and understanding of aggregate financial flows, it is desirable to maximise real time or near real time transaction mapping and automated analysis procedures. With this in mind, standardisation of identifiers and certain data messaging segments should be promoted, with fair, reasonable and non discriminatory licensing provisions applied to any intellectual property rights.

Or. en

Amendment 367
Sharon Bowles

Proposal for a directive
Recital 113 b (new)

Text proposed by the Commission

Amendment

(113b) The Commission, in conjunction with ESMA, EBA and ESRB should promote work on identifiers which indicate the nature, asset content type and degree of complexity of structured and complex products.

Justification

It should be possible for identifiers to indicate, for example, whether a product contains derivatives or repos.