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Committee on Economic and Monetary Affairs

2011/0298(COD)

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AMENDMENTS

368 - 640

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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PE489.464v01-00

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United in diversity

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Amendment 368
Philippe De Backer

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive shall apply to investment firms, regulated markets, data reporting service providers and third country firms providing investment services or activities in the Union.

Amendment

1. This Directive shall apply to investment firms, financial instruments (***including investment-related instruments***), regulated markets, data reporting service providers and third country firms providing investment services or activities in the Union.

Or. nl

Amendment 369
Pervenche Berès

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive shall apply to investment firms, regulated markets, data reporting service providers and third country firms providing investment services or activities in the Union.

Amendment

1. This Directive shall apply to investment firms, ***employee share ownership***, regulated markets, data reporting service providers and third country firms providing investment services or activities in the Union.

Or. en

Amendment 370
Syed Kamall, Kay Swinburne

Proposal for a directive
Article 1 – paragraph 3

Text proposed by the Commission

3. The following provisions shall also apply to credit institutions authorised under Directive 2006/48/EC, when providing one or more investment services and/or performing investment activities and when selling or advising clients in relation to deposits other than those **with a rate of return which is determined in relation to an** interest rate :

- *Articles 2(2), 9(6), 14, 16, 17 and 18,*
- *Chapter II of Title II excluding second subparagraph of Article 29(2),*
- *Chapter III of Title II excluding Articles 36(2), (3) and (4) and 37(2), (3), (4), (5), (6), (9) and (10),*
- *Articles 69 to 80 and Articles 84, 89 and 90.*

Amendment

3. The following provisions shall also apply to credit institutions authorised under Directive 2006/48/EC, when providing one or more investment services and/or performing investment activities and when selling or advising clients in relation to deposits other than those **linked solely and directly to a key benchmark interest rate at Member State or EU level, or at a generally accepted international reference interest rate of a third country.**

Or. en

Justification

This definition of interest rates ensures that major rate indices like EURIBOR, LIBOR, Federal Reserve Rates, be they fixed or floating, are considered as basic products. Other forms of rates created according to a formula may be considered structured and thus subject to appropriate regulation under MiFID.

Amendment 371

Sven Giegold

on behalf of the Verts/ALE Group

**Proposal for a directive
Article 1 – paragraph 3**

Text proposed by the Commission

3. **The following provisions** shall also apply to credit institutions authorised under Directive 2006/48/EC, when providing one

Amendment

3. **This directive** shall also apply to **the authorisation and operation conditions of** credit institutions authorised under

or more investment services and/or performing investment activities and when selling or advising clients in relation to deposits other than those with a rate of return which is determined in relation to an interest rate:

- *Articles 2(2), 9(6), 14, 16, 17 and 18,*
- *Chapter II of Title II excluding second subparagraph of Article 29(2),*
- *Chapter III of Title II excluding Articles 36(2), (3) and (4) and 37(2), (3), (4), (5), (6), (9) and (10),*
- *Articles 69 to 80 and Articles 84, 89 and 90.*

Directive 2006/48/EC, when providing one or more investment services and/or performing investment activities and when selling or advising clients in relation to deposits other than those with a rate of return which is determined in relation to an interest rate.

Or. en

Amendment 372
Philippe De Backer

Proposal for a directive
Article 1 – paragraph 3 – introductory part

Text proposed by the Commission

3. The following provisions shall also apply to credit institutions authorised under Directive 2006/48/EC, when providing one or more investment services and/or performing investment activities and when selling or advising clients in relation to deposits other than those with a rate of return which is determined in relation to an interest rate:

Amendment

3. The following provisions shall also apply to credit institutions authorised under Directive 2006/48/EC, when providing one or more investment services and/or performing investment activities and when selling or advising clients in relation to deposits other than those with a rate of return which is determined in relation to an interest rate, ***as well as to any other undertaking performing investment services and/or investment activities or offering investment-related instruments:***

Or. nl

Amendment 373
Sharon Bowles

Proposal for a directive
Article 1 – paragraph 3 – introductory part

Text proposed by the Commission

3. The following provisions shall also apply to credit institutions authorised under Directive 2006/48/EC, when providing one or more investment services and/or performing investment activities and when selling or advising clients in relation to deposits ***other than those with a rate of return which is determined in relation to an interest rate:***

Amendment

3. The following provisions shall also apply to credit institutions authorised under Directive 2006/48/EC, when providing one or more investment services and/or performing investment activities and when selling or advising clients in relation to ***structured*** deposits:

Or. en

Justification

Pure deposits such as savings books and fixed and floating rate deposits should remain outside the remit of MiFID and only structured deposits should be included.

Amendment 374
Markus Ferber

Proposal for a directive
Article 1 – paragraph 3 – introductory part

Text proposed by the Commission

3. The following provisions shall also apply to credit institutions authorised under Directive 2006/48/EC, when providing one or more investment services and/or performing investment activities and when selling or advising clients in relation to deposits other than those with a rate of return which is determined in relation to an interest rate:

Amendment

3. The following provisions shall also apply to credit institutions authorised under Directive 2006/48/EC, when providing one or more investment services and/or performing investment activities and ***credit institutions and investment firms*** when selling or advising clients in relation to deposits other than those with a rate of return which is determined in relation to an interest rate:

Or. en

Amendment 375
Syed Kamall, Kay Swinburne

Proposal for a directive
Article 1 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The following provisions shall also apply to insurance undertakings and insurance intermediaries, including tied insurance intermediaries, authorised or registered under, respectively, Directive 2002/83/EC, Directive 2009/138/EC or Directive 2002/92/EC, when selling or advising clients in relation to insurance-based investments:

- Article 16(3);***
- Articles 23 to 26; and***
- Articles 69-80 and 83-91 where necessary for competent authorities to give effect to the above Articles in relation to insurance-based investments.***

Or. en

Justification

This new paragraph applies the specific conduct of business sections of MiFID to insurance-based investments, while not applying any unnecessary Articles which may have unforeseen effects for insurance-based investments or insurance firms;

Amendment 376
Pascal Canfin
on behalf of the Verts/ALE Group

Proposal for a directive
Article 2 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. **This** Directive shall not apply to:

1. **Without prejudice to the reporting obligation referred to in Title IV, this** Directive shall not apply to:

Or. en

Justification

Position reporting in commodities markets shall suffer no exemptions.

Amendment 377
Philippe De Backer

Proposal for a directive
Article 2 – paragraph 1 – point a

Text proposed by the Commission

Amendment

a) insurance undertakings or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 2009/138/EC;

a) insurance undertakings or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 2009/138/EC **insofar as they do not offer investment-related instruments;**

Or. nl

Amendment 378
Syed Kamall, Kay Swinburne

Proposal for a directive
Article 2 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) insurance undertakings or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 2009/138/EC;

(a) insurance undertakings or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 2009/138/EC, **except as described in Article 1(4);**

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 379

Kay Swinburne

Proposal for a directive

Article 2 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(a a) foreign exchange spot markets;

Or. en

Amendment 380

Robert Goebbels, Arlene McCarthy

Proposal for a directive

Article 2 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions ***or a code of ethics governing the profession which do not exclude the provision of that service;***

(c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions;

Or. en

Justification

A code of ethnics can never match legal or regulatory provisions.

Amendment 381

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph 1 – point d – point ii

Text proposed by the Commission

(ii) are a member of or a participant in a regulated market or MTF; or

Amendment

(ii) are a member of or a participant in a regulated market or MTF **or have a direct electronic access in a regulated market or MTF**; or

Or. en

Amendment 382

Werner Langen

Proposal for a directive

Article 2 – paragraph 1 – point d – point ii

Text proposed by the Commission

(ii) are a member of or a participant in a regulated market or MTF; or

Amendment

(ii) are a member of or a participant in a regulated market or MTF **and their activity does constitute high frequency trading**; or

Or. en

Justification

The limitation of the exemptions should be more targeted to the purpose of including in MiFID activities that constitute high-frequency trading without affecting activities of firms which are not central to MiFID.

Amendment 383

Pablo Zalba Bidegain

Proposal for a directive

Article 2 – paragraph 1 – point d – point ii

Text proposed by the Commission

Amendment

(ii) are a member of or a participant in a regulated market or MTF; or

(ii) are a member of or a participant in a regulated market or MTF ***and their activity does constitute high frequency trading as defined in Article 4***; or

Or. en

Amendment 384

Robert Goebbels, Markus Ferber, Pervenche Berès, Arlene McCarthy

Proposal for a directive

Article 2 – paragraph 1 – point d – point ii a (new)

Text proposed by the Commission

Amendment

(iia) engage in algorithmic trading;

Or. en

Justification

The requirements applicable to AT and HFT firms should be established irrespective of whether they trade on behalf of clients or on their own account, since dealing on own account does not relieve the concerns underlying the need to regulate and supervise AT, taking into account the complexity, sensitivity and seriousness of the risks and issues raised by this kind of dealing activity. (ECB suggestion)

Amendment 385

Sylvie Goulard

Proposal for a directive

Article 2 – paragraph 1 – point d – point ii a (new)

Text proposed by the Commission

Amendment

(iia) engage in algorithmic trading; or

Or. en

Justification

The requirements applicable to AT and HFT firms should be established irrespective of whether they trade on behalf of clients or on their own account, since dealing on own account does not relieve the concerns underlying the need to regulate and supervise AT, taking into account the complexity, sensitivity and seriousness of the risks and issues raised by this kind of dealing activity.

Amendment 386

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph 1 – point d – point ii a (new)

Text proposed by the Commission

Amendment

(ii) deal on own account by using algorithmic trading; or

Or. en

Justification

amendement based on Commission suggestion in non-paper on HFT. It is necessary to ensure all High Frequency Traders is in scope of the Directive.

Amendment 387

Kay Swinburne

Proposal for a directive

Article 2 – paragraph 1 – point d – point ii a (new)

Text proposed by the Commission

Amendment

(ii) are deemed to have a significant market presence by the competent authority;

Or. en

Amendment 388

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph 1 – point d – point iii

Text proposed by the Commission

(iii) deal on own account **by** executing client orders;

Amendment

(iii) deal on own account **when** executing client orders; **or**

Or. en

Amendment 389

Sylvie Goulard

Proposal for a directive

Article 2 – paragraph 1 – point d – point iii

Text proposed by the Commission

(iii) deal on own account **by** executing client orders;

Amendment

(iii) deal on own account **when** executing client orders **outside a regulated market or an MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;**

Or. en

Amendment 390

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph 1 – point d – point iii a (new)

Text proposed by the Commission

Amendment

(iiia) are not operators with compliance obligations under Directive 2003/87/EC (Emission Trading Scheme) in the case of emission allowances;

Justification

Other actors trading ETS shall be covered by MIFID

Amendment 391

Robert Goebbels, Arlene McCarthy

Proposal for a directive

Article 2 – paragraph 1 – point d – subparagraph 2

Text proposed by the Commission

Amendment

This exemption does not apply to persons exempt under Article 2(1)(i) 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; *deleted*

Justification

All market makers and members of a regulated market or MTF should be authorised as investment firms, irrespective of the type of financial instrument they deal with.

Amendment 392

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph 1 – point d – subparagraph 2

Text proposed by the Commission

Amendment

This exemption does not apply to persons exempt under Article 2(1)(i) who deal on own account in financial instruments as members or participants of a regulated *deleted*

market or MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof;

Or. en

Amendment 393
Sylvie Goulard

Proposal for a directive
Article 2 – paragraph 1 – point d – subparagraph 2

Text proposed by the Commission

Amendment

This exemption does not apply to persons exempt under Article 2(1)(i) 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;

deleted

Or. en

Amendment 394
Olle Schmidt
on behalf of the ALDE Group

Proposal for a directive
Article 2 – paragraph 1 – point d – subparagraph 2

Text proposed by the Commission

Amendment

This exemption does not apply to persons exempt under Article 2(1)(i) 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;

*Persons exempt under Article 2(1)(i) 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 **do not also need to meet the terms of this exemption;***

Justification

The relation between the exemptions under (d) and (i) should be clarified.

Amendment 395
Werner Langen

Proposal for a directive
Article 2 – paragraph 1 – point d – subparagraph 2

Text proposed by the Commission

This exemption does not apply to persons exempt under Article 2(1)(i) 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;

Amendment

This exemption does not apply to persons exempt under Article 2(1)(i) 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, ***to be exempted under any other applicable exemption included in article 2;***

Justification

The text proposed by the Commission is confusing and needs to be clarified.

Amendment 396
Pablo Zalba Bidegain

Proposal for a directive
Article 2 – paragraph 1 – point d – subparagraph 2

Text proposed by the Commission

This exemption does not ***apply to*** persons ***exempt under Article 2(1)(i)*** who deal on own account in financial instruments as members or participants of a regulated

Amendment

This exemption does not ***prevent*** persons who deal on own account in financial instruments as members or participants of a regulated market or MTF, including as

market or MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof;

market makers in relation to commodity derivatives, emission allowances, or derivatives thereof, ***to be exempted under any other applicable exemption included in Article 2;***

Or. en

Justification

The text “This exemption does not apply to persons exempt under Article 2(1)(i) (..)” in the Commission proposal is confusing and needs to be clarified. The limitation of the exemptions should be more targeted to the purpose of including in MiFID activities that constitute high-frequency trading without affecting activities of firms which are not central to MiFID.

Amendment 397

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 2 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) persons which provide investment services consisting exclusively in the administration of employee-participation schemes;

deleted

Or. en

Justification

During the financial crisis employees and their families lost savings due to the dramatic loss of value of their employer’s shares. Concentrating investment risk and the risk to lose his salary on the same company are not reasonable. Offering shares by the employer should be assimilated to an investment advice.

Amendment 398

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive
Article 2 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) persons which provide investment services consisting exclusively in the administration of employee-participation schemes;

deleted

Or. en

Amendment 399

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive
Article 2 – paragraph 1 – point f

Text proposed by the Commission

Amendment

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

(f) persons which provide investment services which only involve the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

Or. en

Justification

Consumers should not be less protected when the employer is involved than when the investment advice is issued by an investment firm.

Amendment 400

Jean-Paul Gauzès

Proposal for a directive
Article 2 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) public institutions which receive funds from, or hold securities for, third parties under a statutory public-interest remit and, in so doing, provide one or more investment services;

Or. fr

Amendment 401

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph 1 – point i – indent 1

Text proposed by the Commission

Amendment

– deal on own account in financial instruments, excluding persons who deal on own account ***by*** executing client orders, or

– deal on own account in financial instruments, excluding persons who deal on own account ***when*** executing client orders, or ***by using algorithmic trading, or***

Or. en

Amendment 402

Peter Simon

Proposal for a directive

Article 2 – paragraph 1 – point i – indent 1

Text proposed by the Commission

Amendment

– deal on own account in financial instruments, ***excluding persons who deal on own account by executing client orders, or***

– deal on own account in financial instruments or

Or. de

Amendment 403
Sylvie Goulard

Proposal for a directive
Article 2 – paragraph 1 – point i – indent 1

Text proposed by the Commission

– deal on own account in financial instruments, excluding persons who deal on own account **by** executing client orders, or

Amendment

– deal on own account in financial instruments, excluding persons who deal on own account **when** executing client orders or

Or. en

Amendment 404
Werner Langen

Proposal for a directive
Article 2 – paragraph 1 – point i – indent 1 a (new)

Text proposed by the Commission

Amendment

– deal on own account in financial instruments by executing orders of their owners and their affiliates in the case of jointly managed undertakings;

Or. de

Justification

The proposed definitions of parent undertaking and subsidiary do not take account of certain corporate structures. In the energy industry, small and medium-sized businesses have set up joint trading houses in order to remain or become active on the market. The MiFID revision must take account of these structures in order to ensure balanced and fair regulation.

Amendment 405
Pascal Canfin
on behalf of the Verts/ALE Group

Proposal for a directive
Article 2 – paragraph 1 – point i – indent 2 a (new)

Text proposed by the Commission

Amendment

– deal on own account in emission allowances, excluding persons who are not operators with compliance obligations under Directive 2003/87/EC (Emission Trading Scheme);

Or. en

Amendment 406

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph 1 – point i – indent 3

Text proposed by the Commission

Amendment

– provide investment services, other than dealing on own account, in commodity derivatives or derivative contracts included in Annex I, Section C 10 or emission allowances or derivatives thereof to the clients of their main business,

– provide investment services, other than dealing on own account, in commodity derivatives or derivative contracts included in Annex I, Section C 10 or emission allowances or derivatives thereof to the clients of their main business, ***to the extent that the transactions involved in the investment services provided are directly related to the hedging of its main commercial business and physical activity,***

Or. en

Amendment 407

Werner Langen

Proposal for a directive

Article 2 – paragraph 1 – point i – subparagraph 2

Text proposed by the Commission

Amendment

provided that in all cases this is an ancillary activity to their main business, when considered on a group ***basis***, and that

provided that in all cases this is an ancillary activity to their main business, when considered on ***the basis of either a***

main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC;

consolidated or not consolidated group, ***or to the main business of the owners and their affiliates in case of jointly managed undertakings and*** that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC;

Or. en

Justification

The provision of an obligation for persons to report annually the basis on which they consider their activity ancillary to the main business is burdensome and disproportionate. This provision would put the burden of proof on continuous basis on persons that should demonstrate that they do not perform activities subject to the legislation. Moreover for the other exemptions a self-assessment applies. The amendment proposed is instead intended to avoid discriminations towards small and medium commercial companies that cannot afford to participate directly in traded markets to manage the risks related to their main business. This type of business model is widely used in the energy sector.

Amendment 408

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph 1 – point i – subparagraph 2

Text proposed by the Commission

provided that in all cases this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC ;

Amendment

provided that in all cases this is an ancillary activity to their main business, when considered on a group basis, and that ***the size and characteristics of the ancillary business does not represent a significant proportion or has a significant impact in the market in which it operates, and that*** main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC;

Or. en

Amendment 409
Gunnar Hökmark

Proposal for a directive
Article 2 – paragraph 1 – point i – subparagraph 2

Text proposed by the Commission

provided that in all cases this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC;

Amendment

provided that in all cases this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC **or acting as a market maker in relation to commodity derivatives**;

Or. en

Justification

The definition of "ancillary to main business" should be narrow so as to minimize the possibility of an uneven regulatory playing field in which entities that conduct the same activities are subject to different regulation. A level regulatory playing field would protect participants, end consumers and market integrity and would eliminate the possibility of regulatory arbitrage by providing for consistent treatment of the same activities.

Amendment 410
Sylvie Goulard

Proposal for a directive
Article 2 – paragraph 1 – point i – subparagraph 2

Text proposed by the Commission

provided that in all cases **this** is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC ;

Amendment

provided that in all cases **such provision of investment services is of limited importance and is** an ancillary activity to their main business when considered on a group basis and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC;

Amendment 411
Peter Simon

Proposal for a directive
Article 2 – paragraph 1 – point i – subparagraph 2

Text proposed by the Commission

provided that in all cases this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC;

Amendment

provided that in all cases this is an ancillary activity to their main business, when considered on a ***consolidated or non-consolidated*** group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC;

Or. de

Amendment 412
Robert Goebbels, Markus Ferber, Arlene McCarthy

Proposal for a directive
Article 2 – paragraph 1 – point i – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

unless they are a member or a participant on a trading venue;

Or. en

Justification

Any actor, regardless of its main business, that is participating on a trading venue should be covered by the same regulatory framework.

Amendment 413
Kay Swinburne

Proposal for a directive
Article 2 – paragraph 1 – point k

Text proposed by the Commission

Amendment

(k) firms which provide investment services and/or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets; ***deleted***

Or. en

Justification

This exemption no longer seems relevant in today's markets.

Amendment 414
Sylvie Goulard

Proposal for a directive
Article 2 – paragraph 1 – point k

Text proposed by the Commission

Amendment

(k) firms which provide investment services and/or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by ***deleted***

clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets;

Or. en

Amendment 415
Werner Langen

Proposal for a directive
Article 2 – paragraph 1 – point n

Text proposed by the Commission

(n) transmission system operators as defined in Article 2(4) of Directive 2009/72/EC or Article 2(4) of Directive 2009/73/EC when carrying out their tasks under those Directives or Regulation (EC) 714/2009 or Regulation (EC) 715/2009 or network codes or guidelines adopted pursuant those Regulations.

Amendment

(n) transmission, **distribution, storage and LNG** system operators as defined in Article 2(4) **and Article 2(6)** of Directive 2009/72/EC, or Article 2(4), **Article 2(6) or Article 2(9)** of Directive 2009/73/EC when carrying out their tasks under those Directives or Regulation (EC) 714/2009 or Regulation (EC) 715/2009 or network codes or guidelines adopted pursuant those Regulations.

Or. en

Justification

The recognition of transmission system operators is an important notion and adequate to be included in the text. However, the same should apply to distribution system operators and “storage and LNG System Operators” according to Directive 2009/73/EC.

Amendment 416
Sari Essayah

Proposal for a directive
Article 2 – paragraph 1 – point n a (new)

Text proposed by the Commission

Amendment

(na) persons who exclusively deal on own account, as part of another non-financial corporate activity, or as part of a non-financial commodity trading activity, to hedge the production/consumption/non-financial activities of the group to which the person belongs.

Or. en

Amendment 417
Werner Langen

Proposal for a directive
Article 2 – paragraph 1 – point n a (new)

Text proposed by the Commission

Amendment

(na) non-financial counterparties which are not subject to the clearing obligation under Article 10 of Regulation (EU) No .../... [EMIR].

Or. de

Justification

There should be comparable treatment of non-financial firms under EMIR and MiFID II. Under MiFID II, non-financial firms exempted under EMIR from the clearing obligation must not be defined as financial institutions, otherwise the EMIR clearing obligation exemption for non-financial firms would be undermined. The amendment therefore makes it clear that non-financial counterparties which are not subject to the clearing obligation under Article 10 of EMIR are not investment firms within the meaning of MiFID either (and accordingly are not financial counterparties).

Amendment 418
Robert Goebbels, Arlene McCarthy

Proposal for a directive
Article 2 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Persons and firms as referred in points i, j and k shall not be considered exempted unless the relevant competent authority will grant the exemption.

Or. en

Justification

Certain investment firms and/or persons should need to justify themselves for being exempted from this Directive.

Amendment 419

Jürgen Klute

Proposal for a directive

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Requirements which institutions and persons as referred to in paragraph 1 of this Article cannot be excepted from, include, but are not limited to:

- reporting obligations;***
- prohibitions;***
- position limits;***
- consumer protection; and***
- licensing requirements.***

Or. en

Amendment 420

Olle Schmidt

on behalf of the ALDE Group

Wolf Klinz

Proposal for a directive
Article 2 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of exemptions (c) and (i), to clarifying when an activity is to be considered as ancillary to the main business on a group level as well as for determining when an activity is provided in an incidental manner.

deleted

Or. en

Justification

Delegated acts clarifying specific exemptions and clarifying when an activity is to be considered as ancillary or provided in an incidental manner are not necessary since such variations may differ from Member State to Member State and therefore should be dealt with through national implementation.

Amendment 421
Jürgen Klute

Proposal for a directive
Article 2 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of exemptions (c) and (i), to clarifying when an activity is to be considered as ancillary to the main business on a group level as well as for determining when an activity is provided in an incidental manner.

ESMA shall analyse once a year whether the respective market participants still meet the criteria for the relevant exemption.

ESMA informs the respective market participant about the outcome of the analyses within three working days.

In case a market participant does not meet the criteria any more, the market participant has to fulfil all standards set

in this directive beginning eight days after the market participant has received the information from ESMA as referred to in the third subparagraph. The market participant has to fulfil all standards until it gives evidence to ESMA that the criteria for an exemption are met again.

Or. en

Amendment 422

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of exemptions (c) and (i), to clarifying when an activity is to be considered as ancillary to the main business on a group level as well as for determining when an activity is provided in an incidental manner.

Amendment

*ESMA shall submit draft regulatory technical standards to the Commission concerning measures in respect of exemptions (c) and (i), to clarifying when an activity is to be considered as ancillary to the main business on a group level **and specifying a threshold determining the market proportion and impact that shall be considered significant** as well as for determining when an activity is provided in an incidental manner.*

Or. en

Amendment 423

Sylvie Goulard

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of exemptions (c) and

Amendment

The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of exemptions (c) and

(i), to clarifying when an activity is to be considered as ancillary to the main business on a group level as well as for determining when an activity is provided in an incidental manner.

(i), to clarifying when an activity is to be considered as ancillary to the main business on a group level **and of limited importance** as well as for determining when an activity is provided in an incidental manner.

Or. en

Amendment 424
Jürgen Klute

Proposal for a directive
Article 2 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of exemptions (c) and (i), to clarifying when an activity is to be considered as ancillary to the main business on a group level as well as for determining when an activity is provided in an incidental manner.

Amendment

The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of exemptions (c), **(d)** and (i), to clarifying when an activity is to be considered as ancillary to the main business on a group level as well as for determining when an activity is provided in an incidental manner.

Or. en

Amendment 425
Sylvie Goulard

Proposal for a directive
Article 2 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The criteria for determining whether an activity is ancillary to the main business shall take into account at least the following elements:

– the extent to which the activity is objectively measurable as reducing risks directly related to the commercial activity

Amendment

deleted

or treasury financing activity,
– the capital employed for carrying out
the activity.

Or. en

Amendment 426

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – introductory part

Text proposed by the Commission

The criteria for determining whether an activity is ancillary to the main business shall take into account at least the following elements:

Amendment

The criteria for determining whether an activity is ancillary to the main business ***and that the size and characteristics of the ancillary business does not represent a significant proportion or has a significant impact in the market in which it operates*** shall take into account at least the following elements:

Or. en

Amendment 427

Olle Schmidt

on behalf of the ALDE Group

Wolf Klinz

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – indent 1

Text proposed by the Commission

– the extent to which the activity is objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity,

Amendment

(a) the extent to which the activity is objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity,

Or. en

Amendment 428

Olle Schmidt

on behalf of the ALDE Group

Wolf Klinz

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – indent 2

Text proposed by the Commission

– the capital employed for carrying out the activity.

Amendment

(b) the capital employed for **and the risk related to** carrying out the activity **as a proportion to the activities of the group;**

Or. en

Justification

It is necessary to provide a clear exemption for activities by non-financial firms “involving the hedging of production-related and other risks”. The definition of ancillary activity should therefore not only include a) the extent to which the ancillary activity reduces risk, but b) the ancillary character also needs to be justified by comparing the size of the activity (by means of capital or risk employed) to the size of the main business.

Amendment 429

Werner Langen

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – indent 2

Text proposed by the Commission

– the capital employed for carrying out the activity.

Amendment

– the capital employed for carrying out the activity ***or the risk stemming from the activity, in both cases as a proportion of the activities of the group as a whole, with the ancillary activity taking place at least on the markets related to the other activities.***

Or. de

Justification

Nichtfinanzunternehmen, die in erster Linie handeln um produktionsbezogene und sonstige Risiken abzusichern und zu optimieren, sollten von der Nebentätigkeitsausnahme Gebrauch machen können und vom Anwendungsbereich dieser Richtlinie ausgenommen bleiben. Neben dem Kriterium nach Buchstabe a muss die Frage, ob es sich um eine Nebentätigkeit handelt, mittels eines Vergleichs des Umfangs der Tätigkeit (anhand des eingesetzten Kapitals oder der eingegangenen Risiken) mit dem Umfang der Haupttätigkeit beantwortet werden und dabei sollte sichergestellt werden, dass die Unternehmen nur mit Finanzinstrumenten handeln, die mit der Haupttätigkeit der Unternehmensgruppe zusammenhängen.

Amendment 430

Alfredo Pallone

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – indent 2

Text proposed by the Commission

– the capital employed for carrying out the activity.

Amendment

– the ***proportion of the*** capital employed for carrying out the activity ***in relation to the capital on a group basis;***

Or. en

Justification

Further elements should be considered in order to define an activity ancillary to the main business of a non financial counterparty. This is in particular important for energy companies that need to develop activities, also in financial instruments, in order to manage risks related to the fluctuation of prices in commodities needed for the commercial business of their group.

Amendment 431

Pablo Zalba Bidegain

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – indent 2

Text proposed by the Commission

– the capital employed for carrying out the activity.

Amendment

– the ***proportion of the*** capital employed for carrying out the activity ***in relation to the capital on a group basis,***

– the activity relates to the management of commodity risks or other risks arising from the commercial business of the group.

Or. en

Justification

Further elements should be considered in order to define an activity ancillary to the main business of a non financial counterparty. This is in particular important for energy companies that need to develop activities, also in financial instruments, in order to manage risks related to the fluctuation of prices in commodities needed for the commercial business of their group.

Amendment 432
Gunnar Hökmark

Proposal for a directive
Article 2 – paragraph 3 – subparagraph 2 – indent 2

Text proposed by the Commission

– the capital employed for carrying out the activity.

Amendment

– the capital employed for carrying out the activity; ***and***
– the extent to which the activity provides a material source of revenue on a group level.

Or. en

Justification

The definition of "ancillary to main business" should be narrow so as to minimize the possibility of an uneven regulatory playing field in which entities that conduct the same activities are subject to different regulation. A level regulatory playing field would protect participants, end consumers and market integrity and would eliminate the possibility of regulatory arbitrage by providing for consistent treatment of the same activities.

Amendment 433
Olle Schmidt
on behalf of the ALDE Group
Wolf Klinz

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – indent 2 a (new)

Text proposed by the Commission

Amendment

c) the extent to which the activity is used for managing the commercial risks or treasury financing risks of the main business;

Or. en

Justification

As third criterion c), it should be ensured that commercial firms are only dealing in financial instruments related to the main business of the group of companies to which the entity/ person belongs.

Amendment 434

Werner Langen

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – indent 2 a (new)

Text proposed by the Commission

Amendment

– the activity relates to the management of commodity risks or other risk arising from the commercial business of the group.

Or. de

Justification

Um die in Erwägung 88 erwähnten Prinzipien anzuwenden, muss eine klare Ausnahmeregelung für die Tätigkeiten von Nicht-Finanzunternehmen geschaffen werden, die der Absicherung mit der Produktion verbundener und weiterer Risiken dienen. Es sollte auch geklärt werden, ob es sich um eine Nebentätigkeit handelt, und zwar indem der Umfang der Tätigkeit (anhand des eingesetzten Kapitals oder der eingegangenen Risiken) mit dem Umfang der Haupttätigkeit verglichen wird. Dabei sollte sichergestellt werden, dass die Unternehmen nur mit Finanzinstrumenten handeln, die mit der Haupttätigkeit der Unternehmensgruppe zusammenhängen, der das Unternehmen/die Person angehört.

Amendment 435

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – indent 2 a (new)

Text proposed by the Commission

Amendment

***– the market share on the specific market
and the size of positions held.***

Or. en

Amendment 436

Alfredo Pallone

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – indent 2 a (new)

Text proposed by the Commission

Amendment

***– the activity relates to the management of
commodity risks or other risk arising from
the commercial business of the group.***

Or. en

Justification

Further elements should be considered in order to define an activity ancillary to the main business of a non financial counterparty. This is in particular important for energy companies that need to develop activities, also in financial instruments, in order to manage risks related to the fluctuation of prices in commodities needed for the commercial business of their group.

Amendment 437

Olle Schmidt

on behalf of the ALDE Group

Wolf Klinz

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – indent 2 b (new)

Text proposed by the Commission

Amendment

d) systemic relevance of the sum of net positions and exposures of a firm as referred to in Article 10 of Regulation (EU) No .../...[EMIR].

Or. en

Justification

A fourth criterion d) ensures that the EMIR exemption for non-financials with no systemic relevance stays valid with MiFID II. By including this criterion it is to be avoided that non-financial firms that are not systemically importance, and therefore stay below the clearing threshold in EMIR.

Amendment 438
Werner Langen

Proposal for a directive
Article 2 – paragraph 3 – subparagraph 2 – indent 2 b (new)

Text proposed by the Commission

Amendment

– intra-group transactions within the meaning of Article 3 of Regulation (EU) No .../... [EMIR] for purposes of liquidity and/or risk management.

Or. de

Justification

Nicht-finanzielle Firmen sind von EMIR und MiFID II in vergleichbarer Weise zu behandeln: Nach EMIR von der Clearingverpflichtung ausgenommene nicht-finanzielle Firmen dürfen nach MiFID II nicht als Finanzinstitutionen definiert werden, da ansonsten die Ausnahme von der Clearingverpflichtung für nicht-finanzielle Firmen nach EMIR unterlaufen würde. Nach EMIR unterliegen interne Transaktionen nicht der Clearingverpflichtung bzw. sind bei der Beurteilung, ob ein nicht-finanzielles Unternehmen die Clearingschwellenwert überschreitet, außer Betracht zu lassen. Üblicherweise werden die kommerziellen Risiken der verschiedenen Unternehmen einer Unternehmensgruppe durch interne Transaktionen zum Zwecke eines zentralen, effektiven Risikomanagements auf ein einziges Unternehmen oder eine Unternehmenseinheit übertragen, welche(s) dann diese Risiken für die gesamte Unternehmensgruppe über externe Transaktionen mit Finanzinstrumenten reduzieren soll.

Amendment 439
Werner Langen

Proposal for a directive
Article 2 – paragraph 3 – subparagraph 2 – indent 2 c (new)

Text proposed by the Commission

Amendment

– obligations for market making on regulated markets and MTF.

Or. de

Justification

There should be comparable treatment of non-financial firms under EMIR and MiFID II. Under MiFID II, non-financial firms exempted under EMIR from the clearing obligation must not be defined as financial institutions, otherwise the EMIR clearing obligation exemption for non-financial firms would be undermined. Under EMIR, internal transactions are not subject to the clearing obligation, i.e. they are disregarded when an assessment is made as to whether a non-financial undertaking exceeds the clearing threshold.

Amendment 440
Pascal Canfin
on behalf of the Verts/ALE Group

Proposal for a directive
Article 2 – paragraph 3 – subparagraph 2 a and 2b (new)

Text proposed by the Commission

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by [31 December 2012].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 441
Corien Wortmann-Kool

Proposal for a directive
Article 2 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. ESMA shall develop draft regulatory technical standards to specify the criteria for determining whether an activity is ancillary to the main business, taking into account at least the following:

(a) the extent to which the activity is objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity;

(b) the capital employed for carrying out the activity and the risk stemming from the activity, both as a proportion to the activities of the group;

(c) the activity relates solely to the management of commodity risks or other risks arising from the commercial business of the group.

Or. en

Amendment 442
Markus Ferber

Proposal for a directive
Article 2 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. ESMA shall develop draft regulatory technical standards to specify the criteria for determining whether an activity is ancillary to the main business, taking into account at least the following:

(a) the extent to which the activity is objectively measurable as reducing risks directly related to the commercial activity

or treasury financing activity;

(b) the need for ancillary activities to constitute a minority of activities at group level, and at an entity level unless services provided only to other members of the same group;

(c) the level of trading undertaken or investment services provided relative to that undertaken by financial institutions undertaking the same activities or providing the same services;

(d) the desirability of limiting net credit risk exposures to non-systemically significant levels;

(e) the scale of market risk associated with the activity relative to the market risk arising from the main business.

*ESMA shall submit those draft regulatory technical standards to the Commission by [...]**

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

**OJ please insert date: 12 months after the entry into force of this Directive*

Or. en

Amendment 443
Jürgen Klute

Proposal for a directive
Article 3

Text proposed by the Commission

Amendment

[...]

Article deleted

Or. en

Justification

Exemptions being introduced on a national basis could bring forward a further race to the weakest regulation instead of a European harmonisation.

Amendment 444

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. Member States may choose not to apply this Directive to any persons *for which they are the home Member State* that:

Amendment

1. Member States may choose not to apply **Articles 9, 15, 36, 37, 38, 39 and 41-58 of** this Directive to any persons that:

Or. en

Amendment 445

Burkhard Balz

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – indent 2

Text proposed by the Commission

– are not allowed to provide any investment service except the provision of investment advice, with or without the reception and transmission of orders in transferable securities and units in collective investment undertakings, and

Amendment

– are not allowed to provide any investment service except the provision of investment advice, with or without the reception and transmission of orders in transferable securities and units in collective investment undertakings, and **the reception and transmission of orders in transferable securities and units in collective investment undertakings at the initiative of the client, and**

Or. en

Amendment 446
Burkhard Balz

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – closing part

Text proposed by the Commission

provided that the activities of those persons are authorised and regulated at national level. National regimes should submit those persons to requirements which are at least analogous to the following requirements under the present directive:

Amendment

provided that the activities of those persons are authorised and regulated at national level. National regimes should submit those persons to requirements which are at least analogous to the following requirements under the present directive ***taking into account their size, risk profile and legal nature:***

Or. en

Amendment 447

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – indent 3 – point v – point i

Text proposed by the Commission

(i) conditions and procedures for authorisation and on-going supervision as established in Article 5 (1) and (3), Articles 7, 8, 9, 10, 21 **and** 22;

Amendment

(i) conditions and procedures for authorisation and on-going supervision as established in Article 5 (1) and (3), Articles 7, 8, 9, 10, 21, 22 **and 23 and the respective implementing measures adopted by the Commission by means of delegated acts in accordance with Article 94;**

Or. en

Justification

Conflicts of interest provisions should be included.

Amendment 448

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – indent 3 – point v – point ii a (new)

Text proposed by the Commission

Amendment

(ii) organisation requirements as established in Article 16 (3) and the respective implementing measures adopted by the Commission by means of delegated acts in accordance with Article 94.

Or. en

Justification

It is necessary to ensure that conflicts of interests are well prevented by adequate organisation.

Amendment 449

Burkhard Balz

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Member States shall require persons excluded from the scope of this Directive under paragraph 1 to be covered under an investor-compensation scheme recognized in accordance with Directive 97/9/EC or under a system ensuring equivalent protection to their clients.

Member States shall require persons excluded from the scope of this Directive under paragraph 1 to be covered under an investor-compensation scheme recognized in accordance with Directive 97/9/EC or under a system ensuring equivalent protection to their clients. ***Member States may allow professional indemnity insurances as an alternative coverage, where this would be appropriate and proportionate in the view of the size, risk profile and legal nature of the persons excluded from the scope of this Directive under paragraph 1.***

Amendment 450
Astrid Lulling

Proposal for a directive
Article 3 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The present requirement is not applicable to products that are already subject to investor protection requirements pursuant to a dedicated regime such as but not limited to UCITS.

Or. en

Justification

Products such as UCITS are subject to a specific legal regime that already contains and is built around detailed retail investor protection requirements and, according to the latest status of discussions on the review of the ICSD, are not to be included in the scope of this text.

Amendment 451
Pascal Canfin
on behalf of the Verts/ALE Group

Proposal for a directive
Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. These national regimes may allow the competent authorities to delegate administrative, preparatory or ancillary tasks related to the granting of an authorisation, the review of the conditions for initial authorisation and the regular monitoring of operational requirements mentioned in Articles 5, 21 and 22, in accordance with the conditions laid down in Article 69(2).

Amendment 452

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 4 – paragraph 2 – point 1 – paragraph 1

Text proposed by the Commission

1) ‘Investment services and activities’ means any of the services and activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I;

Amendment

1) ‘Investment services and activities’ means any of the services and activities listed in Section A of Annex I relating to any of the instruments listed in Section C **and Ca** of Annex I;

Or. en

Justification

Emission allowances shall be covered by MIFID/MAR/MAD but as not of the same nature as a financial instrument and need to be placed in a special section.

Amendment 453

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 4 – paragraph 2 – point 1 – paragraph 1

Text proposed by the Commission

The Commission shall adopt by means of delegated acts in accordance with Article 94 measures specifying:

Amendment

ESMA may develop draft regulatory technical standards to specify:

Or. en

Justification

Should be ESMA – technical

Amendment 454

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 4 – paragraph 2 – point 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by [...]*

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

****OJ please insert the date: ...***

Or. en

Amendment 455

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 4 – paragraph 2 – point 3

Text proposed by the Commission

Amendment

3) ‘Investment advice’ means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments;

3) ‘Investment advice’ means the ***independent*** provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments ***not issued by the advisor or an economically dependent issuer, which is unbiased by any fees, commissions, incentives or any 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;

Or. en

Justification

Inspired by a proposal by BEUC

Amendment 456

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 4 – paragraph 2 – point 3 a (new)

Text proposed by the Commission

Amendment

3a) 'Product information' means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments.

Or. en

Amendment 457

Jürgen Klute

Proposal for a directive

Article 4 – paragraph 2 – point 3 a (new)

Text proposed by the Commission

Amendment

3a) 'independent investment advice' means an investment advice based on a comprehensive and fair analysis of all retail investment products which are capable of meeting the investment needs and objectives of a retail client and providing advice which is unbiased and unrestricted and directly remunerated by the client, which excludes fees,

commissions or any 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;

Or. en

Amendment 458
Sharon Bowles

Proposal for a directive
Article 4 – paragraph 2 – point 4

Text proposed by the Commission

4) ‘Execution of orders on behalf of clients’ means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients. Execution of orders includes the conclusion of agreements to sell financial instruments issued by a credit institution or an investment firm at the moment of their issuance;

Amendment

4) ‘Execution of orders on behalf of clients’ means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients ***including under a back-to-back trading model***. Execution of orders includes the conclusion of agreements to sell financial instruments issued by a credit institution or an investment firm at the moment of their issuance;

Or. en

Justification

The wording proposed by the Commission does not make it clear that the execution of orders on a back to back principal model, which is widely used for client clearing in the EU, would be viewed as the execution of a client order.

Amendment 459
Pascal Canfin
on behalf of the Verts/ALE Group

Proposal for a directive
Article 4 – paragraph 2 – point 5

Text proposed by the Commission

5) 'Dealing on own account' means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;

Amendment

5) 'Dealing on own account' means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments, ***including 'riskless principal trading' which consists in the execution of orders from different clients by matching them on a matched principal basis;***

Or. en

Amendment 460
Werner Langen

Proposal for a directive
Article 4 – paragraph 2 – point 6

Text proposed by the Commission

6) 'Market maker' means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him;

Amendment

6) 'Market maker' means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments ***being present simultaneously on both the bid and the ask side of the market*** against his proprietary capital at prices defined by him. ***This definition excludes persons acting as market makers by virtue of obligations or regulatory imposition;***

Or. en

Justification

It is important that market participants that perform the activity of market makers as a consequence of regulatory provisions (e.g. sector specific) are not brought under the scope of MiFID.

Amendment 461
Robert Goebbels, Arlene McCarthy

Proposal for a directive
Article 4 – paragraph 2 – point 6

Text proposed by the Commission

6) ‘Market maker’ means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital ***at prices defined by him***;

Amendment

6) ‘Market maker’ means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital;

Or. en

Justification

As also advised by SEC/CFTC, market makers should be encouraged "to regularly provide buy and sell quotations that are reasonable and related to the market".

Amendment 462
Arlene McCarthy

Proposal for a directive
Article 4 – paragraph 2 – point 12

Text proposed by the Commission

12) ‘Small and medium-sized enterprise’ for the purposes of this Directive, ***means a company that had an average market capitalisation of less than EUR 100 000 000 on the basis of end-year quotes for the previous three calendar years***;

Amendment

12) ‘Small and medium-sized enterprise’ for the purposes of this Directive, ***refers to the existing national concepts in different Member States.***

Or. en

Justification

MiFID should mirror the Transparency Directive, where there is no definition of an SME and it is left up to the discretion of Member States to interpret according to existing national concepts. Indeed the Commission has stated in its Impact Assessment on the Transparency

Directive that: “...what is considered to be a small listed company in one Member State could be considered as a large company in another Member State. Therefore, when the present impact assessment refers to "small and medium-sized issuers", it refers to the existing national concepts in different Member States.”

Amendment 463

Wolf Klinz

Proposal for a directive

Article 4 – paragraph 2 – point 12

Text proposed by the Commission

12) ‘Small and medium-sized enterprise’ for the purposes of this Directive, means a company that had an average market capitalisation of less than **EUR 100 000 000** on the basis of end-year quotes for the previous three calendar years;

Amendment

12) ‘Small and medium-sized enterprise’ for the purposes of this Directive, means a company that had an average market capitalisation of less than **EUR 200 000 000** on the basis of end-year quotes for the previous three calendar years;

Or. en

Amendment 464

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 4 – paragraph 2 – point 14

Text proposed by the Commission

14) ‘Financial instrument’ means those instruments specified in Section C of Annex I;

Amendment

14) ‘Financial instrument’ means those instruments specified in Section C of Annex I **and CA of Annex I for the exclusive purpose of this Directive, the Regulation (EU) No .../... [MiFIR] and of the Regulation (EU) No .../... [Market Abuse Regulation] and the Directive (EU) No .../... [Market Abuse Directive];**

Or. en

Justification

Emission allowances are by nature not financial instruments but shall be covered by MIFID/MIFIR and MAD/MAR

Amendment 465

Werner Langen

Proposal for a directive

Article 4 – paragraph 2 – point 24

Text proposed by the Commission

24) ‘Parent undertaking’ means a parent undertaking as defined in Articles 1 and 2 of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts;

Amendment

24) ‘Parent undertaking’ means a parent undertaking as defined in Articles 1 and 2 **as well as a jointly managed undertaking as defined in Article 32** of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts;

Or. en

Justification

The definitions of parent undertakings and subsidiaries (Art. 2.1.b referring to Art. 4.2) is deficient as subsidiaries which are owned by several shareholders will not be eligible. This company structure needs to be addressed in the current proposal to guarantee well-balanced and fair regulation. Therefore, the exemption should be expanded to jointly managed undertakings as defined in Art. 32 of the Seventh Council Directive 83/349/EEC of 13 June 1983.

Amendment 466

Werner Langen

Proposal for a directive

Article 4 – paragraph 2 – point 25

Text proposed by the Commission

25) ‘Subsidiary’ means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC, including any subsidiary of a subsidiary undertaking of

Amendment

25) ‘Subsidiary’ means a subsidiary undertaking as defined in Articles 1 and 2 **as well as a jointly managed undertaking as defined in Article 32** of Directive 83/349/EEC, including any subsidiary of a

an ultimate parent undertaking;

subsidiary undertaking of an ultimate parent undertaking;

Or. en

Justification

The definitions of parent undertakings and subsidiaries (Art. 2.1.b referring to Art. 4.2) is deficient as subsidiaries which are owned by several shareholders will not be eligible. This company structure needs to be addressed in the current proposal to guarantee well-balanced and fair regulation. Therefore, the exemption should be expanded to jointly managed undertakings as defined in Art. 32 of the Seventh Council Directive 83/349/EEC of 13 June 1983.

Amendment 467

Werner Langen

Proposal for a directive

Article 4 – paragraph 2 – point 25 a (new)

Text proposed by the Commission

Amendment

25a) "group basis" covers consolidated and not consolidated groups of companies which provide the ancillary activity for their shareholders and their affiliated companies, when they are engaged in the same commercial activity that is the main business of the group.

Or. en

Justification

The term "on a group basis" should be defined. Current definitions of parent undertaking and subsidiary are not suitable in this context as they do not pay attention especially to the characteristics of smaller companies. Trading activities have repeatedly been demerged and especially smaller utilities have established joint trading entities to survive on the market. They usually have chosen the form of a group with equal members. This company structure needs to be addressed in the current proposal to guarantee well-balanced and fair regulation. The amendment is intended to avoid discriminations towards commercial companies that cannot afford to participate directly in trading markets to manage the risks related to their main business. Mostly the concerned firms form with their trading firm a group which is not consolidated. They choose this construction in order to create a critical mass to access

traded markets. Their common aim is to manage risks related to input/outputs of the assets of the group members. Since it is the pre-condition to have a commercial main business to meet the requirements of this exemption – no matter whether or not the group is consolidated - financial institutes are excluded from the exemption.

Amendment 468

Kay Swinburne, Ashley Fox

Proposal for a directive

Article 4 – paragraph 2 – point 27

Text proposed by the Commission

27) ‘Management body’ means the ***governing*** body of ***a firm***, ***comprising*** the ***supervisory and the managerial functions***, which ***has the ultimate decision-making authority and*** is empowered to set the ***firm's*** strategy, objectives and overall direction. ***Management body*** shall include persons who effectively direct the business of the ***firm***

Amendment

27) ‘Management body’ means the body ***or bodies of an institution, appointed in accordance with*** the ***national law***, which is empowered to set the ***institution's*** strategy, objectives and overall direction, ***and which oversees and monitors management decision-making. This*** shall include persons who effectively direct the business of the ***institution***.

In particular, the references to management body shall comprise both the managerial and supervisory functions of the body or bodies referred to in the first sub-paragraph. Where, according to national law, the managerial and supervisory functions of the management body are assigned to different bodies or different members within one body, the Member State shall make the distinction between the responsible bodies or members of the management body in accordance with its national law, unless otherwise specified by the Directive. For the purpose of this Directive 'managerial function' means setting the institution's strategy, objectives and overall direction and 'supervisory function' means overseeing and monitoring management decision-making;

Or. en

Justification

Concerning corporate governance it is of the utmost importance that we introduce the same requirements in MiFID as in CRD IV. These amendments are therefore equivalent to those submitted by the ECR to the CRD IV proposals.

Amendment 469

Sharon Bowles

Proposal for a directive

Article 4 – paragraph 2 – point 27

Text proposed by the Commission

27) ‘Management body’ means the governing body of *a* firm, comprising the supervisory and the managerial functions, which has the ultimate decision-making authority and is empowered to set the firm's strategy, objectives and overall direction. ***Management body shall include*** persons who effectively direct the business of the ***firm***;

Amendment

27) ‘Management body’ means the governing body of ***an investment*** firm, ***market operator or data reporting services provider***, comprising the supervisory and the managerial functions, which has the ultimate decision-making authority and is empowered to set the ***investment*** firm's, ***the market operator's or the data services provider's*** strategy, objectives and overall direction, ***including*** persons who effectively direct the business of the ***entity***;

Or. en

Justification

The definition of management body should be consistent within both MiFIR and MiFID. The same amendment is found in MiFIR.

Amendment 470

Kay Swinburne, Ashley Fox

Proposal for a directive

Article 4 – paragraph 2 – point 28

Text proposed by the Commission

28) ‘***Management body in its supervisory function***’ means the management body acting in its supervisory function of

Amendment

deleted

***overseeing and monitoring management
decision-making;***

Or. en

Justification

Concerning corporate governance it is of the utmost importance that we introduce the same requirements in MiFID as in CRD IV. These amendments are therefore equivalent to those submitted by the ECR to the CRD IV proposals.

**Amendment 471
Sharon Bowles**

**Proposal for a directive
Article 4 – paragraph 2 – point 30**

Text proposed by the Commission

30) ‘Algorithmic trading’ means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention. This definition does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the confirmation of orders;

Amendment

30) ‘Algorithmic trading’ means trading in financial instruments where a computer algorithm automatically determines ***all or substantially all or a significant part of the*** individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention. This definition does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the confirmation of orders;

Or. en

Justification

The Commission’s definition of algorithmic trading captured any firm which uses algorithms as part of its trading strategy, including automated post-execution processing. This amendment adds clarity.

**Amendment 472
Olle Schmidt**

on behalf of the ALDE Group

Proposal for a directive
Article 4 – paragraph 2 – point 30 a (new)

Text proposed by the Commission

Amendment

30 a) 'High-frequency trading' means algorithmic trading having the following features:

1) Very high number of orders compared to the average of number of orders placed by participants active on the venue concerned;

2) Rapid order cancellation/replacement;

3) Proprietary trading;

5) No significant net position at end of day (flat position);

6) Taking positions for very short holding periods;

7) Extracting very low margins per trade;

8) Using order handling systems with speeds close to minimal latency of a trade;

9) Use of co-location/proximity services and individual data feeds;

10) Focus on highly liquid instruments;

11) Use of computer programs or algorithms for automated decision making for order initiation, generation, routing, and execution.

ESMA shall, on an annual basis, review the appropriateness of the definition above to ensure that it is consistent with market developments, appropriate for the range of securities concerned, and properly monitored by regulated markets, MTFs and OTFs and report to the European Parliament, the Council and the Commission.

Or. en

Justification

To the extent that high frequency trading is being defined, it is important to set the minimum criteria of a strategy involving HFT so as to ensure it can be identified, as well as applied in the context of Art 17.3; ESMA should review on a regular basis the appropriateness of those criteria to ensure they stand the test of time as markets evolve”.

Amendment 473 Kay Swinburne

Proposal for a directive Article 4 – paragraph 2 – point 30 a (new)

Text proposed by the Commission

Amendment

30a) 'High Frequency trading strategy' means a trading strategy in a financial instrument which involves high frequency trading and at least five of the following characteristics:

i) it uses co-location or proximity hosting facilities;

ii) it uses Direct Market Access;

iii) it relates to a daily portfolio turnover of at least 50%;

iv) the ratio of orders to trades exceeds 4:1;

v) the proportion of orders cancelled (including partial cancellations) exceeds 20%;

vi) the majority of positions taken are unwound within the same day;

vii) over 50% of the orders or transactions are made on trading venues offering discounts or rebates to orders which provide liquidity and are eligible for such rebates;

Or. en

Justification

There is a need to define high frequency trading strategies so as to ensure differentiation from other investors in the market, therefore this amendment proposes tightening some of the criteria to prevent those who operate HFT strategies from circumventing the rules.

Amendment 474

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 4 – paragraph 2 – point 30 a (new)

Text proposed by the Commission

Amendment

30a) 'High-frequency trading' means a form of algorithmic trading whose profitability depends on the use of technology to be able to transmit, cancel or modify orders at intervals approaching the minimum physical latency of the mechanism for transmitting, cancelling or modifying orders;

Or. en

Justification

it is important to distinguish HFT from algorithms that embody trading strategies that are not dependent on being faster than other market participants.

Amendment 475

Wolf Klinz

Proposal for a directive

Article 4 – paragraph 2 – point 30 a (new)

Text proposed by the Commission

Amendment

30a) 'High-frequency trading' means trading in financial instruments where a computer programme automatically determines individual parameters of orders, access to execution venues, market

data access and order routing, and having following features:

- a) very high order-to-trade ratio;*
- b) very short holding periods;*
- c) use of co-location facilities;*
- d) daily portfolio turnover of at least 50 %.*

Competent authorities shall determine individual features for each trading venue according to its characteristics and liquidity.

Or. en

Amendment 476
Markus Ferber

Proposal for a directive
Article 4 – paragraph 2 – point 30 a (new)

Text proposed by the Commission

Amendment

30a) 'High-frequency trading strategy' means a trading strategy for dealing on own-account in a financial instrument which involves high-frequency trading and has at least four of the following characteristics:

- (i) it uses co-location facilities or direct market access;***
- (ii) it relates to a daily portfolio turnover of at least 50 %;***
- (iii) the ratio of orders to trades exceeds 4:1;***
- (iv) the proportion of orders cancelled exceeds 20 %;***
- (v) the majority of positions taken are unwound within the same day;***
- (vi) over 50 % of the orders or transactions are made on trading venues offering discounts or rebates to orders***

which provide liquidity are eligible for such rebates;

Or. en

Amendment 477

Robert Goebbels

Proposal for a directive

Article 4 – paragraph 2 – point 30 a (new)

Text proposed by the Commission

Amendment

30a) "High frequency algorithmic trading strategy" means an algorithmic trading strategy characterised by taking positions for short periods, using order handling systems with speeds close to minimal latency of a trade, as well as by infrastructure intended to minimise network and other types of latencies on a continuous basis and independent of order flow submitted to the investment firm by its clients.

In particular, a high frequency algorithmic trading strategy as defined above, can contain one or more of the following elements:

(a) order initiation, generating, routing and execution are determined by the system without human intervention for each individual trade or order

(b) a short time-frame for establishing and liquidating positions;

(c) a high daily portfolio turnover;

(d) a high order-to-trade ratio intraday; and

(e) ending the trading day at or close to a flat position.

Or. en

Justification

Inspired by a non-paper of the European Commission

Amendment 478

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 4 – paragraph 2 – point 30 b (new)

Text proposed by the Commission

Amendment

30b) 'High-frequency trading strategy' means a trading strategy for dealing on own-account in a financial instrument which involves high-frequency trading and has the following characteristics:

(i) it uses co-location facilities;

(ii) it relates to a daily portfolio turnover of at least 50 %;

(iii) the ratio of orders to trades exceeds 250:1 intraday;

(iv) the proportion of orders cancelled exceeds 20 %;

(v) the majority of positions taken are unwound within the same day.

ESMA shall, on an annual basis, review the appropriateness of the criteria listed above to ensure that they are consistent with market developments, appropriate for the range of securities concerned, and properly monitored by Regulated markets, MTFs and OTFs and shall report to the European Parliament, the Council and the Commission.

Or. en

Justification

To the extent that high frequency trading is being defined, it is important to set the minimum criteria of a strategy involving HFT so as to ensure it can be identified, as well as applied in

the context of Art 17.3; ESMA should review on a regular basis the appropriateness of those criteria to ensure they stand the test of time as markets evolve”.

Amendment 479

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 4 – paragraph 2 – point 30 b (new)

Text proposed by the Commission

Amendment

30b) 'High frequency trading strategy' means an algorithmic trading strategy characterised by taking positions for short periods, using order handling systems with speeds close to minimal latency of a trade, as well as by infrastructure intended to minimise network and other types of latencies on a continuous basis and independent of order flow submitted to the investment firm by its clients.

In particular, a high frequency algorithmic trading strategy as defined above, can contain one or more of the following elements:

- order initiation, generating, routing and execution are determined by the system without human intervention for each individual trade or order;***
- a short time-frame for establishing and liquidating positions;***
- a high daily portfolio turnover;***
- a high order-to-trade ratio intraday; and***
- ending the trading day at or close to a flat position.***

Or. en

Justification

Definition suggested by Commission in non-paper.

Amendment 480
Olle Schmidt

Proposal for a directive
Article 4 – paragraph 2 – point 30 d (new)

Text proposed by the Commission

Amendment

30d) 'Sponsored access' means an arrangement through which an investment firm that is a member or participant or user of a trading platform permits clients to transmit orders electronically and directly to a specified trading platform under the investment firm's trading identification without the orders being transmitted through the investment firm's internal electronic trading systems.

Or. en

Justification

The purpose of this suggested amendment is to highlight the different methods which market participants can access a trading platform. This wording is taken from the ESMA guidelines on systems and controls that were issued on 22nd December 2011, ref: ESMA/2011/456.

Amendment 481
Olle Schmidt
on behalf of the ALDE Group

Proposal for a directive
Article 4 – paragraph 2 – point 30 e (new)

Text proposed by the Commission

Amendment

30e) 'Naked' or 'unfiltered' access to a regulated market or MTF, where a client's orders do not pass through pre-trade controls before being sent to a regulated market or MTF, is prohibited under MiFID. Therefore, an SA client should never be able to send an order to a

***trading platform without the order
passing through pre-trade controls of the
investment firm.***

Or. en

Justification

The purpose of this suggested amendment is to highlight the different methods which market participants can access a trading platform. This wording is taken from the ESMA guidelines on systems and controls that were issued on 22nd December 2011, ref: ESMA/2011/456.

Amendment 482
Markus Ferber

Proposal for a directive
Article 4 – paragraph 2 – point 31

Text proposed by the Commission

Amendment

31) ‘Direct electronic access’ in relation to a trading venue, means an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue. This definition includes such an arrangement whether or not it also involves the use by the person of the infrastructure of the member or participant, or any connecting system provided by the member or participant, to transmit the orders; ***deleted***

Or. en

Amendment 483
Olle Schmidt
on behalf of the ALDE Group

Proposal for a directive
Article 4 – paragraph 2 – point 31

Text proposed by the Commission

Amendment

31) "Direct electronic access" *in relation to a trading venue, means an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue. This definition includes such an arrangement whether or not it also involves the use by the person of the infrastructure of the member or participant, or any connecting system provided by the member or participant, to transmit the orders;*

31) "Direct Electronic Access" *means an arrangement through which an investment firm that is a member or a participant or user of a trading platform permits clients to transmit orders electronically to the investment firm's internal electronic trading systems for automatic on-ward transmission under the investment firm's trading identification to a specified trading platform;*

Or. en

Justification

The purpose of this suggested amendment is to highlight the different methods which market participants can access a trading platform. This wording is taken from the ESMA guidelines on systems and controls that were issued on 22nd December 2011, ref: ESMA/2011/456.

Amendment 484

Kay Swinburne

Proposal for a directive

Article 4 – paragraph 2 – point 31

Text proposed by the Commission

Amendment

31) 'Direct *electronic* access' in relation to a trading venue, means an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue. This definition includes such an arrangement whether or not it also involves the use by the person of the infrastructure

31) 'Direct *market* access' in relation to a trading venue, means an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue. This definition includes such an arrangement whether or not it also involves the use by the person of the infrastructure

of the member or participant, or any connecting system provided by the member or participant, to transmit the orders;

of the member or participant, or any connecting system provided by the member or participant, to transmit the orders;

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 485 **Jean-Paul Gauzès**

Proposal for a directive **Article 4 – paragraph 2 – point 31**

Text proposed by the Commission

31) ‘Direct electronic access’ in relation to a trading venue, means an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue. This definition ***includes such an arrangement whether or not it also involves the use by the person of the infrastructure of the member or participant, or any connecting system provided by the member or participant, to transmit the orders;***

Amendment

31) ‘Direct electronic access’ in relation to a trading venue, means an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue. This definition involves the use by the person of the infrastructure of the member;

Or. en

Amendment 486 **Markus Ferber**

Proposal for a directive **Article 4 – paragraph 2 – point 31 a (new)**

Text proposed by the Commission

Amendment

31a) "Direct market access" means an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can transmit orders electronically to the investment firm's internal electronic trading systems for automatic onward transmission under the investment firm's trading code to a specified trading venue;

Or. en

Amendment 487

Markus Ferber

Proposal for a directive

Article 4 – paragraph 2 – point 31 b (new)

Text proposed by the Commission

Amendment

31b) "Sponsored access" means an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can transmit orders electronically under the investment firm's trading code to a specified trading venue without the orders being routed through the investment firm's internal electronic trading systems;

Or. en

Amendment 488

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 4 – paragraph 2 – point 33 a (new)

Text proposed by the Commission

Amendment

33a) 'Matched principal trading' means a transaction composed of two or more legs, where an investment firm or market operator is interposed as a party to each leg, entered into for the purpose of facilitating one or more client orders and which does not result in the investment firm accepting market risk;

Or. en

Justification

This is a definition of matched principal trading, which is different from proprietary trading. Matched principal trading describes a transaction where the firm/operator sits in the middle of the trade and becomes the buyer to the seller and the seller to the buyer. This may occur to facilitate client trades and/or so that trades can be anonymised.

Amendment 489

Robert Goebbels, Udo Bullmann, Arlene McCarthy, Elisa Ferreira

Proposal for a directive

Article 4 – paragraph 2 – point 33 a (new)

Text proposed by the Commission

Amendment

33a) 'Market distorting positions' means positions which do not objectively reduce risks directly related to commercial activities related to the commodity and are above the level required to provide sufficient liquidity for positions which do objectively reduce risks directly related to commercial activities related to the commodity, or which otherwise disrupt the price discovery function of the market;

Or. en

Justification

Necessary definition to differentiate between speculative and hedging positions.

Amendment 490

Syed Kamall, Kay Swinburne

Proposal for a directive

Article 4 – paragraph 2 – point 33 a (new)

Text proposed by the Commission

Amendment

33a) 'Insurance-based investments' means insurance contracts where the amount payable to the client is exposed to the market value of an asset or payout from an asset or reference value, and where the client does not directly hold the asset;

Or. en

Justification

Insurance based investments should be included in the scope of MiFID.

Amendment 491

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 4 – paragraph 2 – point 33 a (new)

Text proposed by the Commission

Amendment

33a) 'Excessive speculation' for the purposes of this regulation is a trading activity in any asset under contracts of sale of such asset for future delivery made on or subject to the rules of trading venues or OTC markets with respect to a significant price discovery contract, causing or presenting a significant risk of causing volatility, distortions or

unwarranted changes in the orderly price formation of such asset or causing price formation to diverge from fundamentals.

Or. en

Justification

Speculators are necessary to commodity markets to provide liquidity for bona fide hedging when there is an imbalance between the "long" and "short" hedgers. In some commodity markets, however, the volume of hedgers is less than that of speculators, leading to the risk of price levels and volatilities no longer being driven by the fundamentals. Defining 'excessive speculation' gives supervisory authorities and markets additional justification for intervening to protect the interests of hedgers.

Amendment 492

Jürgen Klute

Proposal for a directive

Article 4 – paragraph 2 – point 33 a (new)

Text proposed by the Commission

Amendment

33a) 'Excessive speculation' means positions held by any person, including any group or class of persons, which do not objectively reduce risks directly related to that person's commercial activities related to the commodity and in which the counterparty is not reducing risks directly related to its commercial activities.

Or. en

Amendment 493

Werner Langen

Proposal for a directive

Article 4 – paragraph 2 – point 33 a (new)

Text proposed by the Commission

Amendment

33a) "Activities to reduce risks of the main business" means hedging of production-related, sales-related and other risks.

Or. en

Justification

Taken into account the importance of the definition of hedging to exemption, the intention of the Commission as announced in Recital 88 should be brought directly within the directive. Trading to hedge various risks is the key to safer wholesale markets. To enable non-financial firms to hedge as many risks as possible hedging of sales-related risks should be added to the definition.

Amendment 494

Syed Kamall, Kay Swinburne

Proposal for a directive

Article 4 – paragraph 2 – point 33 b (new)

Text proposed by the Commission

Amendment

33b) "Total provider cost" means all the costs which a client is required to pay to an investment firm when purchasing an investment service or financial instrument, which shall include, calculated on a per annum basis:

- a) the annual management charge;**
- b) custody and administration costs;**
- c) performance fees, based on the latest 12 months disclosed performance fee or average of up to 3 years if the data is available;**
- d) dealing costs, based on the latest 12 months disclosed performance fee or average of up to 3 years if the data is available;**
- e) the total costs of all underlying funds in**

terms of their ongoing charges when the fund invests in any UCITS funds, ETFs or closed ended investment funds or any other pooled vehicle;

f) any other costs not included above;

The total provider cost shall be calculated as a percentage on a per annum basis.

Or. en

Justification

This definition will ensure that all costs to the investor will be made clear, ensuring a high level of disclosure and transparency.

Amendment 495

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 4 – paragraph 2 – point 33 b (new)

Text proposed by the Commission

Amendment

33b) A 'bona fide hedging transaction' means either:

(a) a transaction or position that

(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial firm;

and

(iii) arises from the potential change in the value of'

– assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or

merchandising;

– liabilities that a person owns or anticipates incurring; or

– services that a person provides, purchases, or anticipates providing or purchasing;

or

(b) a transaction or position that reduces risks attached to a position resulting from a derivative that

(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to point (a);

(ii) or meets the requirements of point (a).

Or. en

Justification

To promote the economic benefits of commodity markets, it is important to have a definition of a hedge. Market supervision should promote the interests of those parties who have an exposure to commodity prices that is an unavoidable consequence of the business and not a bet on prices. Exemptions should be linked to this definition as they are in EMIR and under Dodd-Frank

Amendment 496

Syed Kamall, Kay Swinburne

Proposal for a directive

Article 4 – paragraph 2 – point 33 c (new)

Text proposed by the Commission

Amendment

33c) "Total cost of investment" means all the costs which a client is required to pay when purchasing an investment service or financial instrument via a sales channel, which shall include the total provider cost and, calculated on a percentage per annum basis:

a) platform fees, where not already

included in the total provider cost;

b) entry and exit costs, amortized over five years as the assumed length of the investment unless otherwise stated;

c) adviser fees less any rebates returned to clients, amortised over five years as the assumed length of the investment unless otherwise stated;

d) any other costs not included above.

The total cost of the investment shall be calculated on a percentage per annum basis.

Or. en

Justification

This definition will ensure that all costs to the investor will be made clear, ensuring a high level of disclosure and transparency.

Amendment 497 Kay Swinburne

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify some technical elements of the definitions laid down in paragraph 1 of this Article, to adjust them to market developments .

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify some technical elements of the definitions laid down in paragraph 1 of this Article, to adjust them to market developments, ***in particular in relation to point 30a of paragraph 2.***

Or. en

Justification

If the definition of HFT strategies should prove too restrictive or not restrictive enough, it should be possible to use delegated acts to improve upon it.

Amendment 498

Robert Goebbels, Arlene McCarthy, Markus Ferber, Pervenche Berès

Proposal for a directive

Article 4 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify some technical elements of the definitions laid down in paragraph 1 of this Article, to ***adjust them to market developments***.

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify some technical elements of ***or amend*** the definitions laid down in paragraph 1 of this Article, ***if appropriate, to take into account:***

(a) technical developments in financial markets;

(b) the list of abusive practices referred to in Article 34b(b) of Regulation (EU) No .../... of the European Parliament and of the Council of ... [MAR] in particular with regard to high-frequency trading and including, but not limited to, spoofing, quote stuffing and layering.

Or. en

Amendment 499

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 4 – paragraph 3

Text proposed by the Commission

3. ***The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify some*** technical elements of the definitions laid down in paragraph 1 of this Article, to adjust them to market developments.

Amendment

3. ***ESMA may develop draft regulatory technical standards*** to specify technical elements of the definitions laid down in paragraph 1 of this Article, to adjust them to market developments.

*ESMA shall submit those draft regulatory technical standards to the Commission by [...]**.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

**OJ please insert date: ...*

Or. en

Justification

The ability to specify technical elements of the definitions pursuant to MiFID is effectively a power to change the scope of the directive. If the power is purely a technical one, designed to adjust definitions in line with market developments, then it is a technical power which ESMA is more qualified to judge.

Amendment 500

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 4 – paragraph 3

Text proposed by the Commission

3. *The Commission shall be empowered to adopt delegated acts in accordance with Article 94* concerning measures to specify *some* technical elements of the definitions laid down in paragraph 1 of this Article, to adjust them to market developments.

Amendment

3. *ESMA shall submit draft regulatory technical standards to the Commission* concerning measures to specify technical elements of the definitions laid down in paragraph 1 of this Article, *inter alia* to adjust them to market developments.

ESMA shall submit drafts for those regulatory technical standards to the Commission by [31 December 2012].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Amendment 501
Jürgen Klute

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

1. Each Member State shall require that the performance of investment services or activities as a regular occupation or business on a professional basis be subject to prior authorisation in accordance with the provisions of this Chapter. Such authorisation shall be granted by the home Member State competent authority designated in accordance with Article 69.

Amendment

1. Each Member State shall require that the performance of investment services or activities as a regular occupation or business on a professional basis be subject to prior authorisation in accordance with the provisions of this Chapter **and Article 31 of the Regulation (EU) No .../... [MiFIR]**. Such authorisation shall be granted by the home Member State competent authority designated in accordance with Article 69.

Amendment 502
Sylvie Goulard

Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission

2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate an MTF **or an OTF**, subject to the prior verification of their compliance with the provisions of this Chapter.

Amendment

2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate an MTF, subject to the prior verification of their compliance with the provisions of this Chapter.

Amendment 503
Robert Goebbels, Antolín Sánchez Presedo

Proposal for a directive
Article 5 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall require that individuals providing investment advice, independent investment advice or, where appropriate, ancillary investment advice to clients, possess an appropriate level of knowledge and competences based on recognised qualifications.

Or. en

Justification

Investment advice can have an enormous impact on citizens' life. As such advisers should be required to possess an appropriate level of qualifications to advise clients on how to invest their funds.

Amendment 504
Arlene McCarthy

Proposal for a directive
Article 5 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall require that individuals providing investment advice or, where appropriate, ancillary advice to clients, possess an appropriate level of knowledge and competence based on recognised qualifications.

Member States shall also require that such individuals undergo professional training on an ongoing basis to update and validate their knowledge and competence.

Or. en

Justification

Investment advice has an enormous impact on people's lives. As such advisers should be required to possess an appropriate level of qualifications to advise clients on how to invest their funds.

Amendment 505

Jürgen Klute

Proposal for a directive

Article 6 – paragraph 1

Text proposed by the Commission

1. The home Member State shall ensure that the authorisation specifies the investment services or activities which the investment firm is authorised to provide. The authorisation may cover one or more of the ancillary services set out in Section B of Annex I. Authorisation shall in no case be granted solely for the provision of ancillary services.

Amendment

1. The home Member State shall ensure that the authorisation specifies the investment services or activities which the investment firm is authorised to provide. The authorisation may cover one or more of the ancillary services set out in Section B of Annex I. Authorisation shall in no case be granted solely for the provision of ancillary services. ***ESMA shall review the authorisation on suspicion of infringements against the provisions of this Directive and in case of a complaint by interested third parties within an appropriate period of time and may cancel the authorisation to ensure the stability of the financial market.***

Or. en

Justification

Due to the European Passport granted to financial institutions by paragraph 3 of this article, ESMA should investigate the financial institutions on a European level.

Amendment 506

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 7 – paragraph 4

Text proposed by the Commission

Amendment

4. ESMA shall develop draft regulatory technical standards to specify: *deleted*

(a) the information to be provided to the competent authorities under Article 7(2) including the programme of operations;

(b) the tasks of nomination committees required under Article 9 (2)

(c) the requirements applicable to the management of investment firms under Article 9(8) and the information for the notifications under Article 9(5);

(d) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, under Article 10(1) and (2).

ESMA shall submit those draft regulatory technical standards to the Commission by [31 December 2016].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Justification

The standard seems unnecessary.

Amendment 507

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 7 – paragraph 5 – subparagraph 1

Text proposed by the Commission

ESMA **shall** develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in Article 7(2) and Article 9(5) .

Amendment

ESMA **may** develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in Article 7(2) and Article 9(5).

Or. en

Amendment 508

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 7 – paragraph 5 – subparagraph 2

Text proposed by the Commission

ESMA shall submit those draft implementing technical standards to the Commission **by [31 December 2016]**.

Amendment

ESMA shall submit those draft implementing technical standards to the Commission.

Or. en

Amendment 509

Jürgen Klute

Proposal for a directive

Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

The competent authority may withdraw the authorisation issued to an investment firm where such an investment firm:

Amendment

The competent authority **or ESMA** may withdraw the authorisation issued to an investment firm where such an investment firm:

Or. en

Amendment 510
Kay Swinburne, Ashley Fox

Proposal for a directive
Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

1. **Member States shall require that all members** of the management body **of any investment firm** shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. Member States shall ensure that members of the management body shall, in particular, fulfil the following requirements:

Amendment

1. **Members** of the management body shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. Member States shall ensure that members of the management body shall, in particular, fulfil the following requirements:

Or. en

Justification

Concerning corporate governance it is of the utmost importance that we introduce the same requirements in MiFID as in CRD IV. These amendments are therefore equivalent to those submitted by the ECR to the CRD IV proposals.

Amendment 511
Olle Schmidt
on behalf of the ALDE Group

Proposal for a directive
Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall require that all members of the management body of any investment firm shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. **Member States shall ensure that members** of the management body shall, in particular, fulfil the following requirements:

Amendment

1. Member States shall require that all members of the management body of any investment firm shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. **Members** of the management body shall, in particular, fulfil the following requirements:

Amendment 512
Herbert Dorfmann

Proposal for a directive
Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall require that all members of the management body of any investment firm shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. Member States shall ensure that members of the management body shall, in particular, fulfil the following requirements:

Amendment

1. Member States shall require that all members of the management body of any investment firm shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. ***Considering the nature and complexity of the investment firm and its activities***, Member States shall ensure that members of the management body shall, in particular, fulfil the following requirements:

Amendment 513
Kay Swinburne, Ashley Fox

Proposal for a directive
Article 9 – paragraph 1 – point a – subparagraph 1 and subparagraph 2 – introductory part

Text proposed by the Commission

(a) ***Members*** of the management body ***shall commit sufficient time to perform their functions*** in the ***investment firm***. ***They*** shall not combine at the same time more than one of the following combinations:

Amendment

(a) ***The member*** of the management body ***of an institution, who intends to hold a position*** in the ***management body of several institutions at the same time, shall take into account individual circumstances and the nature, scale and complexity of the institution's activities***. ***Members of the management body of institutions that are significant in terms of***

their size, internal organisation and the nature, the scope and the complexity of their activities shall not combine at the same time more than one of the following combinations ***unless they can justify this to the relevant competent authority***:

Or. en

Justification

Concerning corporate governance it is of the utmost importance that we introduce the same requirements in MiFID as in CRD IV. These amendments are therefore equivalent to those submitted by the ECR to the CRD IV proposals.

Amendment 514

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 9 – paragraph 1 – point a – subparagraph 1 and subparagraph 2 – introductory part

Text proposed by the Commission

(a) Members of the management body shall commit sufficient time to perform their functions in the investment firm. They shall not combine at the same time more than one of the following combinations:

Amendment

(a) Members of the management body shall commit sufficient time to perform their functions in the investment firm. They shall not combine at the same time more than one of the following combinations ***in public interest entities***:

Or. en

Justification

The quantitative constraints will lead to serious problems of recruitment of qualified and sufficiently skilful persons. In smaller countries material problems in fulfilling the requirements of management body compositions presented in the proposal may arise as a consequence. Directorships in, for instance housing cooperatives or private limited companies, should not be counted as directorships in this article. "Public interest entities" should therefore be added in the text.

Amendment 515

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 9 – paragraph 1 – point a – point i

Text proposed by the Commission

(i) one executive directorship with **two** non-executive directorships

Amendment

(i) one executive directorship with **three** non-executive directorships

Or. en

Justification

The number of directorships a member of the management body can hold at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities. A too strict wording in this regard might cause difficulties in smaller markets, particularly for smaller institutions.

Amendment 516

Kay Swinburne, Ashley Fox

Proposal for a directive

Article 9 – paragraph 1 – point a – point ii

Text proposed by the Commission

(ii) **four** non-executive directorships.

Amendment

(ii) **five** non-executive directorships.

Or. en

Justification

Concerning corporate governance it is of the utmost importance that we introduce the same requirements in MiFID as in CRD IV. These amendments are therefore equivalent to those submitted by the ECR to the CRD IV proposals.

Amendment 517

Kay Swinburne

Proposal for a directive
Article 9 – paragraph 1 – point a – subparagraph 3

Text proposed by the Commission

Amendment

Executive or non-executive directorships held within the same group shall be considered as one single directorship.

Executive or non-executive directorships held within the same group, ***including UCITS and/or AIF operated or managed by a member of the same group***, shall be considered as one single directorship.

Or. en

Justification

Specific to MiFID as opposed to CRD IV in the area of corporate governance, it is important to recognise that certain fund structures are organised in specific legal structures as per member state requirements, as such they should receive a slightly modified approach

Amendment 518
Kay Swinburne, Ashley Fox

Proposal for a directive
Article 9 – paragraph 1 – point a – subparagraph 3

Text proposed by the Commission

Amendment

Executive or non-executive directorships held within the same group shall ***be considered*** as one single directorship.

Directorships in the management body of institutions (i) which are members of the same group, or (ii) which are members of the same institutional protection scheme, if the conditions of Article 108 paragraph 7 of Directive [CRD IV] are fulfilled, or (iii) within undertakings (including non-financial institutions) where the institution owns a qualifying holding shall count as one single directorship.

Or. en

Justification

Concerning corporate governance it is of the utmost importance that we introduce the same requirements in MiFID as in CRD IV. These amendments are therefore equivalent to those submitted by the ECR to the CRD IV proposals.

Amendment 519

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 9 – paragraph 1 – point a – subparagraph 3

Text proposed by the Commission

Executive or non-executive directorships held within the same group shall be considered as one single directorship.

Amendment

Executive or non-executive directorships held within **(i)** the same **consolidated** group **or (ii) a group of companies being subsidiaries, associated companies or participations of the same industrial holding company** shall be considered as one single directorship.

Or. en

Justification

This is a clarification that not only consolidated groups are subject to this exception but also groups of companies held by the same industrial holding companies. This is to make sure that the business model of this type of long term industrial owners is not jeopardized by the limitation on directorships. The business model of industrial holding companies is to be long term engaged owners with board representation in their long term investments.

Amendment 520

Kay Swinburne, Ashley Fox

Proposal for a directive

Article 9 – paragraph 1 – point a – subparagraph 4

Text proposed by the Commission

Competent authorities may authorise a member of the management body of an investment firm to combine more directorships than allowed under the previous sub-paragraph, taking into account individual circumstances and the nature, scale and complexity of the investment firm's activities.

Amendment

deleted

Justification

Concerning corporate governance it is of the utmost importance that we introduce the same requirements in MiFID as in CRD IV. These amendments are therefore equivalent to those submitted by the ECR to the CRD IV proposals.

Amendment 521

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 9 – paragraph 1 – point a – paragraph 2 – subparagraph 4 a (new)

Text proposed by the Commission

Amendment

Members of the management body shall not combine at the same time the executive directorship in an investment firm with the executive directorship in a regulated market, MTF or OTF, even within the same group.

Justification

Combining the two positions creates clear conflicts of interest. This situation should therefore be avoided.

Amendment 522

Kay Swinburne, Ashley Fox

Proposal for a directive

Article 9 – paragraph 1 – point c – subparagraph 2

Text proposed by the Commission

Amendment

Member States shall require investment firms to devote adequate resources to the induction and training of members of the management body.

Investment firms to devote adequate resources to the induction and training of members of the management body.

Justification

Concerning corporate governance it is of the utmost importance that we introduce the same requirements in MiFID as in CRD IV. These amendments are therefore equivalent to those submitted by the ECR to the CRD IV proposals.

Amendment 523
Sylvie Goulard

Proposal for a directive
Article 9 – paragraph 1 – point c – subparagraph 3

Text proposed by the Commission

Where the market operator that seeks authorisation to operate an MTF *or an OTF* and the persons that effectively direct the business of the MTF *or the OTF* are the same as the members of the management body of the regulated market, those persons shall be deemed to comply with the requirements laid down in the first subparagraph.

Amendment

Where the market operator that seeks authorisation to operate an MTF and the persons that effectively direct the business of the MTF are the same as the members of the management body of the regulated market, those persons shall be deemed to comply with the requirements laid down in the first subparagraph.

Amendment 524
Kay Swinburne, Ashley Fox

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

2. Member States shall require investment firms, where appropriate and proportionate in view of the nature, scale and complexity of their business, to establish a nomination committee to assess compliance with the first paragraph and to make recommendations, when needed, on the basis of their assessment. The nomination

Amendment

2. Member States shall require investment firms, where appropriate and proportionate in view of the nature, scale and complexity of their business, to establish a nomination committee *or equivalent body* to assess compliance with the first paragraph and to make recommendations, when needed, on the basis of their assessment. The

committee shall be composed of members of the management body who do not perform any executive function in the institution concerned. Where, under national law, the management body does not have any competence in the process of appointment of its members, this paragraph shall not apply.

nomination committee shall be composed of members of the management body who do not perform any executive function in the institution concerned. Where, under national law, the management body does not have any competence in the process of appointment of its members, this paragraph shall not apply.

Or. en

Justification

Concerning corporate governance it is of the utmost importance that we introduce the same requirements in MiFID as in CRD IV. These amendments are therefore equivalent to those submitted by the ECR to the CRD IV proposals.

Amendment 525

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 9 – paragraph 3

Text proposed by the Commission

3. Member States shall require investment firms to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body.

Amendment

3. Member States shall require investment firms ***and their respective nomination committees*** to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body; ***as well as take concrete steps towards a more balanced representation on boards. Such concrete measures may for example include training of nomination committees, the creation of rosters of competent candidates, and the introduction of a nomination process where at least one candidate of each sex is presented.***

Justification

Diversity in boards ensure broader competence and wider perspectives. Recruiting only men or only women means a more narrow selection and the risk of missing out on potentially excellent candidates. There are a systematic failure in the process to select women. The banks should also be encouraged o implement a middle-term plan to promote women into influential positions in order to increase the number of women in these positions.

Amendment 526
Robert Goebbels

Proposal for a directive
Article 9 – paragraph 3

Text proposed by the Commission

3. Member States shall ***require investment firms to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body.***

Amendment

3. Member States shall ***adopt adequate legislation allowing to hold accountable members of management bodies in case of severe mismanagement.***

Justification

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

Amendment 527
Antolín Sánchez Presedo

Proposal for a directive
Article 9 – paragraph 3

Text proposed by the Commission

3. Member States shall require investment firms to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body.

Amendment

3. Member States shall require investment firms to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body. ***Member States shall furthermore adopt adequate legislation allowing to hold accountable members of management bodies in case of severe mismanagement.***

Or. en

Amendment 528
Jürgen Klute

Proposal for a directive
Article 9 – paragraph 3

Text proposed by the Commission

3. Member States shall require investment firms to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body.

Amendment

3. Member States shall require investment firms to take into account diversity as one of the criteria for selection of members of the management body ***as well as to introduce a women's quota of 40 % in their management bodies by 1 January 2015 at the latest.*** In particular taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body ***and disclose this strategy at least once a year.***

Or. en

Amendment 529
Burkhard Balz

Proposal for a directive
Article 9 – paragraph 3

Text proposed by the Commission

3. Member States shall require investment firms to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body.

Amendment

3. Member States shall require investment firms, ***where appropriate and proportionate in view of the nature, scale and complexity of their business***, to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body.

Or. en

Amendment 530
Olle Ludvigsson

Proposal for a directive
Article 9 – paragraph 3

Text proposed by the Commission

3. Member States shall require investment firms to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body.

Amendment

3. Member States shall require investment firms to take into account diversity as one of the criteria for selection of members of the management body. In particular, taking into account the size of their management body, investment firms shall put in place a policy promoting gender, age, educational, professional and geographical diversity on the management body. ***Employee representation in the management body shall also, by adding a key perspective and genuine knowledge of the internal workings of the firm, be seen as a positive way of enhancing diversity.***

Amendment 531
Kerstin Westphal

Proposal for a directive
Article 9 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. That policy shall be geared to the following timetable:

– by 2013, the proportion of female members of the management body shall be increased to 30%,

– by 2015 to 40%

– by 2020 to 50%.

Or. de

Justification

In the 2008 financial crisis, financial institutions with women-dominated management bodies succeeded in particular. Surveys prove that firms with a high proportion of women on their supervisory bodies are markedly more profitable. These successes are accounted for by the absolute tendency of women to plan on a longer-term and more safety-oriented basis. To avoid future financial market crises, more women need to be in positions of leadership.

Amendment 532
Kerstin Westphal

Proposal for a directive
Article 9 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Should an investment firm not meet these general objectives and the strategic objectives specified in Article 3b, the Member State concerned shall set that firm a six-month deadline by which to meet them and, at the same time, report

the firm to EMSA. If the deadline elapses and the objectives have still not been met, the Member State concerned shall wind up the investment firm. The winding-up procedure shall take place in accordance with the relevant provisions of the Member State concerned.

Or. de

Justification

As the case in point of Norway shows, rules on increasing the proportion of women on management bodies have an impact only if failure to apply them is penalised. Voluntary self-commitment has failed.

Amendment 533

Kay Swinburne, Ashley Fox

Proposal for a directive

Article 9 – paragraph 4

Text proposed by the Commission

Amendment

4. ESMA shall develop draft regulatory standards to specify the following:

deleted

(a) the notion of sufficient time commitment of a member of the management body to perform his functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the investment firm which competent authorities must take into account when they authorise a member of the management body to combine more directorships than permitted as referred to in paragraph 1(a);

(b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 1(b),

(c) to notions of honesty, integrity and independence of mind of a member of the

management body as referred to in paragraph 1(b),

(d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body,

(e) the notion of diversity to be taken into account for the selection of members of the management body.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

ESMA shall submit those draft regulatory technical standards to the Commission by [31 December 2014].

Or. en

Justification

Concerning corporate governance it is of the utmost importance that we introduce the same requirements in MiFID as in CRD IV. These amendments are therefore equivalent to those submitted by the ECR to the CRD IV proposals.

Amendment 534
Sharon Bowles

Proposal for a directive
Article 9 – paragraph 4 – subparagraph 1 – introductory part

Text proposed by the Commission

ESMA shall develop ***draft regulatory standards*** to specify the following:

Amendment

ESMA shall develop ***guidelines*** to specify ***how the institution should take into account the*** following:

Or. en

Justification

Requiring ESMA to develop RTS on concepts such as time commitments, knowledge and

experience would result in an inflexible compliance exercise rather than genuine improvements in corporate governance. Guidelines are a more appropriate solution to ensure these requirements are met.

Amendment 535

Robert Goebbels

Proposal for a directive

Article 9 – paragraph 4 – subparagraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the cases of severe mismanagement in order for Member States to adopt appropriate legislation.

Or. en

Amendment 536

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 9 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

ESMA shall also consider the nature, scale and complexity of activities of the investment firm which competent authorities must take into account when they authorise a member of the management body to combine more directorships than permitted as referred to in paragraph 1(a).

Or. en

Justification

The principle of proportionality should be applied to allow companies at different stages of their corporate cycle to determine the most appropriate governance for their needs. Focus should be on board governance and in particular on the role of the chairman in the selection

and monitoring of directors to achieve the objectives in the MiFID Review of ensuring sound and prudent management of firms.

Amendment 537

Sharon Bowles

Proposal for a directive

Article 9 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Power is delegated to the Commission to adopt the **regulatory technical standards** referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Amendment

Power is delegated to the Commission to adopt the **guidelines** referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 538

Sharon Bowles

Proposal for a directive

Article 9 – paragraph 4 – subparagraph 3

Text proposed by the Commission

ESMA shall submit those **draft regulatory technical standards** to the Commission by [31 December 2014].

Amendment

ESMA shall submit those **guidelines** to the Commission by [31 December 2014].

Or. en

Amendment 539

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 9 – paragraph 6 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) **define**, approve and oversee the strategic objectives of the firm,

(a) approve and oversee the strategic objectives of the firm,

Or. en

Justification

The management body should not define but merely approve and oversee the strategic objectives based on defined proposals of the senior management.

Amendment 540

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 9 – paragraph 6 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) **define**, approve and oversee the organization of the firm, including the skills, knowledge and expertise required to personnel, the resources, the procedures and the arrangements for the provision of services and activities by the firm, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with,

(b) approve and oversee the organization of the firm, including the skills, knowledge and expertise required to personnel, the resources, the procedures and the arrangements for the provision of services and activities by the firm, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with,

Or. en

Justification

The management body should not define but merely approve and oversee the strategic objectives based on defined proposals of the senior management.

Amendment 541

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 9 – paragraph 6 – subparagraph 1 – point c

Text proposed by the Commission

(c) **define**, approve and oversee a policy as to services, activities, products and operations offered or provided by the firm, in accordance with the risk tolerance of the firm and the characteristics and needs of the clients to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate;

Amendment

(c) approve and oversee a policy as to services, activities, products and operations offered or provided by the firm, in accordance with the risk tolerance of the firm and the characteristics and needs of the clients to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate;

Or. en

Justification

The management body should not define but merely approve and oversee the strategic objectives based on defined proposals of the senior management.

Amendment 542

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

Proposal for a directive

Article 9 – paragraph 6 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) define, approve and oversee the firm's remuneration of sales staff which should be designed to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest. The remuneration structure should be disclosed to customers where appropriate, such as where potential conflicts of interest cannot be managed or avoided;

Or. en

Justification

The principle contained in the proposed MiFID, regarding the management body's responsibilities for the remuneration of sales staff, should be emphasised. The proposed amendment aims at fostering sound corporate governance arrangements for the remuneration policies of the institutions that do not solely carry out banking activities. The specificity of their activities and the potential harmful effects stemming from inappropriate remuneration schemes to consumers, call for common requirements in this area to apply to all investment firms with a view to responsible business conduct, fair treatment of consumers and to avoid conflict of interests, in a manner which would be coherent with the proposal for a directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and in line with the OECD principles. (ECB suggestion)

Amendment 543

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 9 – paragraph 6 – subparagraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) ensure that the remuneration policy of the sales staff, in particular as regards variable remuneration, does not incentivise risky conduct of business and avoid conflicts of interest.

Or. en

Amendment 544

Sharon Bowles

Proposal for a directive

Article 9 – paragraph 6 – subparagraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) maintain an anti-fraud strategy.

Or. en

Amendment 545
Arlene McCarthy

Proposal for a directive
Article 9 – paragraph 8 – subparagraph 2 – point ii

Text proposed by the Commission

(ii) the natural persons concerned are of sufficiently good repute, possess **sufficient** knowledge, **skills** and **experience** and **commit** sufficient time to perform their duties.

Amendment

(ii) the natural persons concerned are of sufficiently good repute, possess **an appropriate level of** knowledge and **competence based on recognised qualifications** and **are given** sufficient time to perform their duties **and update and validate their knowledge and competence**.

Or. en

Justification

Investment advice has an enormous impact on people's lives. As such advisers should be required to possess an appropriate level of qualifications to advise clients on how to invest their funds. Investment firms that are natural persons or legal persons managed a single natural person should be subject to the same rules as a larger investment firm.

Amendment 546
Robert Goebbels

Proposal for a directive
Article 9 – paragraph 8 – subparagraph 2 – point ii

Text proposed by the Commission

(ii) the natural persons concerned are of sufficiently good repute, possess **sufficient** knowledge, **skills** and **experience** and commit sufficient time to perform their duties.

Amendment

(ii) the natural persons concerned are of sufficiently good repute, possess **an appropriate level of** knowledge and **competences based on recognised qualifications**, and commit sufficient time to perform their duties.

Or. en

Justification

Investment advice has an enormous impact on citizens' lives. As such advisers should be

required to possess an appropriate level of qualifications to advise clients on how to invest their funds.

Amendment 547
Olle Ludvigsson

Proposal for a directive
Article 9 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. This Article shall be without prejudice to provisions on the representation of employees in company boards as provided for by national legislation or practice.

Or. en

Justification

It is important that national rules on employee representation are not weakened or obstructed by the provisions of this Directive.

Amendment 548
Jürgen Klute

Proposal for a directive
Article 12 – paragraph 5

Text proposed by the Commission

Amendment

5. If the competent authorities ***do not oppose*** the ***proposed acquisition within*** the assessment period ***in writing, it shall be deemed to be approved.***

5. If the competent authorities ***decide in favour of an authorisation, they shall inform*** the ***interested acquirer by notification after the expiry of the*** assessment period ***at the latest.***

Or. en

Amendment 549
Pascal Canfin
on behalf of the Verts/ALE Group

Proposal for a directive

Article 13 – paragraph 1 – subparagraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) whether the proposed acquisition increases the risk of conflicts of interest;

Or. en

Amendment 550

Olle Schmidt

on behalf of the ALDE Group

Ramon Tremosa i Balcells

Proposal for a directive

Article 16 – paragraph 2

Text proposed by the Commission

Amendment

2. An investment firm shall establish adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and tied agents with its obligations under the provisions of this Directive as well as appropriate rules governing personal transactions by such persons.

2. An investment firm shall establish adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and tied agents with its obligations under the provisions of this Directive as well as appropriate rules governing personal transactions by such persons. ***The investment firm shall have a policy and code of conduct rules in place to make an assessments of the compatibility of the product, service or operation with the characteristics and needs of the clients to whom these products would be offered.***

Or. en

Justification

Misselling should be avoided through strict internal code of conflict rules.

Amendment 551

Sven Giegold

on behalf of the Verts/ALE Group

Proposal for a directive

Article 16 – paragraph 2

Text proposed by the Commission

2. An investment firm shall establish adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and tied agents with its obligations under the provisions of this Directive as well as appropriate rules governing personal transactions by such persons.

Amendment

2. An investment firm shall establish adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and tied agents with its obligations under the provisions of this Directive, ***including an assessment of the compatibility of their sales targets and their range of products and services offered with their client structure*** as well as appropriate rules governing personal transactions by such persons. ***Those policies and rules should be published and made available to investors.***

Or. en

Amendment 552

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 16 – paragraph 3

Text proposed by the Commission

3. An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all ***reasonable*** steps designed to prevent conflicts of interest as defined in Article 23 from adversely affecting the interests of its clients.

Amendment

3. An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all ***appropriate*** steps designed to prevent conflicts of interest as defined in Article 23 from adversely affecting the interests of its clients.

Or. en

Justification

To avoid conflict of interest should be a top priority. Consumer confidence is important to handle and text needs to be stricter.

Amendment 553

Olle Schmidt

on behalf of the ALDE Group

Ramon Tremosa i Balcells

Proposal for a directive

Article 16 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Records shall include the recording of telephone conversations or electronic communications involving, *at least*, transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided.

Amendment

Records shall include the recording of telephone conversations or electronic communications involving *all investment advice services including advice of products*, transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided.

Or. en

Justification

To better protect consumers, there is a need both to extend the obligation of recording communications and increase the shelf life of records.

Amendment 554

Wolf Klinz

Proposal for a directive

Article 16 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Records shall include the recording of telephone conversations or electronic communications involving, at least, transactions concluded when dealing on

Amendment

The home Member States shall require that adequate records are kept for, at least, transactions concluded when dealing on own account and client orders when the

own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided.

services of reception and transmission of orders and execution of orders on behalf of clients are provided.

Or. en

Amendment 555
Astrid Lulling

Proposal for a directive
Article 16 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Records shall include the recording of telephone conversations or electronic communications involving, at least, transactions concluded *when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided.*

Amendment

Records shall include the recording of telephone conversations or electronic communications involving, at least, transactions concluded *between eligible counterparties.*

Member States may choose to apply equivalent requirements with professional or retail clients.

Or. en

Amendment 556
Jürgen Klute

Proposal for a directive
Article 16 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Records shall include the recording of telephone conversations or electronic communications involving, at least, transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of

Amendment

Records shall include the recording of telephone conversations or electronic communications involving, at least, transactions concluded when dealing on own account and client orders when *investment advice is given to clients or* the services of reception and transmission of

clients are provided.

orders and execution of orders on behalf of clients are provided.

Or. en

Justification

To prevent that advisors circumvent the rules of consumer protection by suggesting to clients to place an order via the website, also investment advice should be recorded.

Amendment 557

Markus Ferber

Proposal for a directive

Article 16 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Records shall include the recording of telephone conversations or electronic communications involving, at least, transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided.

Amendment

*The Member States shall require as adequate records in relation to, at least, transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided, **the recording of telephone conversations or electronic communications.***

With regard to communications between financial institutions and retail clients Member States may instead recognise the adequate documentation of the content of such telephone conversations or electronic communications, for example in the form of minutes.

Or. en

Amendment 558

Wolf Klinz

Proposal for a directive

Article 16 – paragraph 7 – subparagraph 2

Text proposed by the Commission

Records of telephone conversation or electronic communications **recorded in accordance with sub-paragraph 1 shall be provided to the clients involved upon request and shall be** kept for a period of three years.

Amendment

The home Member States may allow either:

a) records of telephone conversation or electronic communications *or*;

b) the adequate written documentation of the content of such telephone conversations or electronic communications, signed by the client and the person providing service to the client.

Member States shall require that such records are kept for a period of three years.

Or. en

Amendment 559

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 16 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Records shall include the recording of telephone conversations or electronic communications involving, at least, transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided.

Amendment

Records shall include the recording of telephone conversations or electronic communications involving, at least, transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided **and orders on behalf of clients when the service of portfolio management is provided.**

Or. en

Amendment 560
Jean-Paul Gauzès

Proposal for a directive
Article 16 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Records shall include the recording of telephone conversations or electronic communications ***involving, at least,*** transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided.

Amendment

Records shall include the recording of telephone conversations or electronic communications ***in connection with actual transmission of*** transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided.

Or. fr

Amendment 561
Robert Goebbels, Arlene McCarthy

Proposal for a directive
Article 16 – paragraph 7 – subparagraph 2

Text proposed by the Commission

Records of telephone conversation or electronic communications recorded in accordance with sub-paragraph 1 shall be provided to the clients involved upon request and shall be kept for a period of ***three years.***

Amendment

Records of telephone conversation or electronic communications recorded in accordance with sub-paragraph 1 shall be provided to the clients involved upon request and shall be kept for a period ***equal to the investment period of the client plus one year with a maximum of five years.***

Or. en

Justification

It would only be logical to keep recordings for at least the time of the investment. Also, the European Data Protection Supervisor considers a five year long conservation period as appropriate.

Amendment 562

Olle Schmidt

on behalf of the ALDE Group

Ramon Tremosa i Balcells

Proposal for a directive

Article 16 – paragraph 7 – subparagraph 2

Text proposed by the Commission

Records of telephone conversation or electronic communications recorded in accordance with sub-paragraph 1 shall be provided to the clients involved upon request and shall be kept for a period of **three years**.

Amendment

Records of telephone conversation or electronic communications recorded in accordance with sub-paragraph 1 shall be provided to the clients involved upon request and shall be kept for a period of **one year after the investment has ended**.

Or. en

Justification

The records and documents should be stored at least as long as the consumer cannot face the real consequences of the investment he has been advised.

Amendment 563

Astrid Lulling

Proposal for a directive

Article 16 – paragraph 7 – subparagraph 2

Text proposed by the Commission

Records of telephone conversation or electronic communications recorded in accordance with **sub-paragraph 1 shall be provided to the clients involved upon request and** shall be kept for a period of three years.

Amendment

Records of telephone conversation or electronic communications recorded in accordance with **subparagraphs 1 and 2** shall be kept for a period of three years.

Or. en

Justification

Recording of phone conversation is first and foremost a cultural habits and shall as a consequence be left to Member State level.

Amendment 564

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 16 – paragraph 7 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

When telephone conversations between an investment firm and a retail client are not limited to the provision of investment services, Member States may choose to allow alternative arrangements of the same effect to records of telephone conversation between investment firm and retail client for transactions not exceeding 1000 EUR.

Or. en

Amendment 565

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 16 – paragraph 7 – subparagraph 2 b (new)

Text proposed by the Commission

Amendment

Relevant persons of the investment firm shall be allowed to undertake the conversations and communications referred to in subparagraph 1 only on equipment belonging to the investment firm and of which records are kept.

Or. en

Amendment 566

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive
Article 16 – paragraph 8 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Member States shall not allow investment firms to enter into arrangements for securities financing transactions in respect of financial instruments held by them on behalf of a client, or otherwise use such financial instruments for their own account or the account of another client of the firm, unless the following conditions are met:

(a) the client must have given his prior express consent to the use of the instruments on specified terms, as evidenced, in the case of a retail client, by his signature or equivalent alternative mechanism of a specific acceptance document;

(b) the use of that client's financial instruments must be restricted to the specified terms to which the client consents and the clients shall be informed on a case-by-case basis each time its assets are used,

(c) a major part of the income made on the use of client's instruments shall be reassigned to the client.

An investment firm shall allow its clients to refuse on a case by case basis the use of their financial instruments.

Or. en

Amendment 567
Pablo Zalba Bidegain

Proposal for a directive
Article 16 – paragraph 9

Text proposed by the Commission

9. An investment firm shall, when holding funds belonging to clients, make adequate arrangements to safeguard the clients' rights and, except in the case of credit institutions, prevent the use of client funds for its own account.

Amendment

9. An investment firm shall, when holding funds belonging to clients, make adequate arrangements to safeguard the clients' rights and, except in the case of credit institutions ***accepting funds on deposit 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 (recast)***, prevent the use of client funds for its own account. ***The operational requirements in this paragraph shall apply to a credit institution where that credit institution agrees to safeguard a client's rights by placing funds with or holding that client's funds through a third party, rather than accepting such funds on deposit.***

Or. en

Justification

This amendment aims to resolve a confusing inconsistency between the Level 1 and Level 2 Directives, which has a direct impact on credit institutions in one Member State passporting into another Member State.

Amendment 568
Jean-Paul Gauzès

Proposal for a directive
Article 16 – paragraph 10

Text proposed by the Commission

10. An investment firm shall not conclude title transfer collateral arrangements with retail clients for the purpose of securing or covering clients' present or future, actual or contingent or prospective obligations.

Amendment

10. An investment firm shall not conclude title transfer collateral arrangements with retail clients for the purpose of securing or covering clients' present or future, actual or contingent or prospective obligations, ***unless it has provided prior express written consent based on a clear, full and***

accurate information of the characteristics of the arrangements.

Or. en

Amendment 569

Werner Langen

Proposal for a directive

Article 16 – paragraph 10

Text proposed by the Commission

10. An investment firm shall **not** conclude title transfer collateral arrangements with **retail** clients for the purpose of securing or covering clients' present or future, actual or contingent or prospective obligations.

Amendment

10. An investment firm shall conclude title transfer collateral arrangements with clients for the purpose of securing or covering clients' present or future, actual or contingent or prospective obligations.

Or. de

Justification

MiFID prohibits title transfer collateral arrangements with retail clients. EMIR provides for a more flexible approach. In both cases - for both retail and institutional clients - title transfer collateral arrangements should be permissible.

Amendment 570

Pablo Zalba Bidegain

Proposal for a directive

Article 16 – paragraph 10

Text proposed by the Commission

10. An investment firm shall not conclude title transfer collateral arrangements with retail clients for the purpose of securing or covering clients' present or future, actual or contingent or prospective obligations.

Amendment

10. An investment firm shall not conclude title transfer collateral arrangements with retail clients for the purpose of securing or covering clients' present or future, actual or contingent or prospective obligations, ***unless they have provided prior express written consent.***

Amendment 571

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 16 – paragraph 12

Text proposed by the Commission

Amendment

12. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify the concrete organisational requirements laid down in paragraphs 2 to 9 to be imposed on investment firms and on branches of third country firms authorised in accordance with article 43 performing different investment services and/or activities and ancillary services or combinations thereof.

deleted

Or. en

Justification

The organisational requirements imposed on third country firms should be part of the equivalence assessment undertaken by the Commission.

Amendment 572

Corien Wortmann-Kool

Proposal for a directive

Article 16 – paragraph 12 a (new)

Text proposed by the Commission

Amendment

12a. An investment firm shall have in place a product approval process and shall take all the necessary operational and procedural measures to implement this product approval process. Before investment products and financial

instruments are placed or distributed in the market, these products and instruments need approval according to the product approval process. All the relevant risks shall be carefully assessed and products and instruments shall only be placed or distributed when this is in the interests of the targeted group of clients. The product approval process shall be reviewed annually. An investment firm shall at all times be able to provide its Competent Authority an up to date and detailed description of the nature and details of its product approval process.

Or. en

Amendment 573
Robert Goebbels, Arlene McCarthy

Proposal for a directive
Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16 a

Market makers

A market maker as defined in Article 4(6) shall regularly provide buy and sell quotations that are reasonable and related to the market. It shall remain in as continuous operation as possible during the trading hours of the regulated market or MTF to which it sends orders or through the system of which it executes transactions.

Or. en

Justification

Provisions concerning the role, activities and obligations of market makers should be clearly stated in an article. Market makers must provide liquidity in any market condition.

Amendment 574
Kay Swinburne

Proposal for a directive
Article 17 – paragraph 1

Text proposed by the Commission

1. An investment firm that engages in algorithmic trading shall have in place effective systems and risk controls to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders or the system otherwise functioning in a way that may create or contribute to a disorderly market. Such a firm shall also have in place effective systems and risk controls to ensure the trading systems cannot be used for any purpose that is contrary to Regulation (EU) No [MAR] or to the rules of a trading venue to which it is connected. The firm shall have in place effective continuity business arrangements to deal with any unforeseen failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure they meet the requirements in this paragraph.

Amendment

1. An investment firm that engages in algorithmic trading ***including high frequency trading strategies*** shall have in place effective systems and risk controls ***proportionate to the business it operates to*** ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders or the system otherwise functioning in a way that may create or contribute to a disorderly market. Such a firm shall also have in place effective systems and risk controls to ensure the trading systems cannot be used for any purpose that is contrary to Regulation (EU) No [MAR] or to the rules of a trading venue to which it is connected. The firm shall have in place effective ***and proportionate*** continuity business arrangements to deal with any unforeseen failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure they meet the requirements in this paragraph.

Or. en

Justification

A level of proportionality is necessary for those small firms that do operate algorithms but only on a very simple, execution basis.

Amendment 575
Olle Schmidt
on behalf of the ALDE Group

Proposal for a directive
Article 17 – paragraph 1

Text proposed by the Commission

1. An investment firm that engages in algorithmic trading shall have in place effective systems and risk controls to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders or the system otherwise functioning in a way that may create or contribute to a disorderly market. Such a firm shall also have in place effective systems and risk controls to ensure the trading systems **cannot be used for any purpose that is contrary to** Regulation (EU) No [MAR] **or to** the rules of a trading venue to which it is connected. The firm shall have in place effective continuity business arrangements to deal with any unforeseen failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure they meet the requirements in this paragraph.

Amendment

1. An investment firm that engages in algorithmic trading shall have in place effective systems and risk controls to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and **take appropriate steps to** prevent the sending of erroneous orders or the system otherwise functioning in a way that may create or contribute to a disorderly market. Such a firm shall also have in place effective systems and risk controls to ensure the trading systems **function in accordance with** Regulation (EU) No [MAR] **and** the rules of a trading venue to which it is connected. The firm shall have in place effective continuity business arrangements to deal with any unforeseen failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure they meet the requirements in this paragraph.

Or. en

Justification

The amendment is a technical clarification regarding the sending of erroneous orders and the application of the MAR legislation (it is not possible to guarantee the prevention of the sending of erroneous orders or market abuse). The amendment clarifies that systems and controls should be designed to detect and prevent the sending of erroneous orders and market abuse, where it is possible to do so.

Amendment 576

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Investment firms shall request authorisation from a regulated market, MTF or OTF when they wish to connect new or modified automated trading systems to the systems of that market.

A new or modified system shall not be deployed for trading on a regulated market, MTF or OTF until and unless the market operator provides written approval in accordance with paragraph 3a of Article 51.

Or. en

Amendment 577
Jürgen Klute

Proposal for a directive
Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. An investment firm that engages in algorithmic trading must be subject to a separate authorisation procedure. Thereby it has to show in a clear and understandable manner, which benefits for the economy as a whole result from its activities, and that no negative effects such as increased volatility, putting the stability of the financial market at risk, or distortion of prices derives from its activities. If this is not proven in a clear and understandable manner, the authorisation of such an investment firm must be prohibited. The European Commission shall prepare a proposal for a list of possible macroeconomic positive and negative effects through algorithmic trading.

Or. en

Amendment 578

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 17 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. An investment firm that engages in algorithmic trading shall submit to its competent authority, promptly upon request by the authority, information about its algorithms, including source code, program design, as well as documentation of the systems and risk controls referred to in paragraph 1.

Such firms shall also ensure that they are able to produce, promptly upon request by a trading venue or the competent authority, a detailed record of their daily quotation and trading activities.

Or. en

Justification

Amendment based on FinaceWatch recommendations.

Amendment 579

Jürgen Klute

Proposal for a directive

Article 17 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. High-frequency trading is prohibited.

Or. en

Justification

There are serious doubts about the economic use of high frequency trading as defined by AM 43 by the rapporteur. Arbitrage trading, which often is used as a merit of high frequency trading, takes place for centuries, it just took a bit longer. On the other hand, HFT is highly receptive for market abuse and has often caused economic damage, e.g. the Flash Crash in May 2010.

Amendment 580

Corien Wortmann-Kool

Proposal for a directive

Article 17 – paragraph 2

Text proposed by the Commission

2. An investment firm that engages in algorithmic trading shall at least annually provide to its home Competent Authority **a** description of the nature of its algorithmic trading strategies, details of the trading **parameters** or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. A competent authority may at any time request further information from an investment firm about its algorithmic trading and the systems used for that trading.

Amendment

2. An investment firm that engages in algorithmic trading shall at **all times be able to, and at least annually on its own initiative**, provide to its home Competent Authority **an up to date and detailed** description of the nature of its algorithmic trading strategies, details of the trading **parametres** or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. **The investment firm shall arrange for records to be kept in relation to the matters above, and shall assure for these to be sufficient to enable the Competent Authority to monitor compliance with the requirements of this Directive, [MiFIR], and [MAR].** A competent authority may at any time request **the above and** further information from an investment firm about its algorithmic trading and the systems used for that trading.

Or. en

Amendment 581

Olle Schmidt

on behalf of the ALDE Group

**Proposal for a directive
Article 17 – paragraph 2**

Text proposed by the Commission

2. An investment firm that engages in **algorithmic** trading shall at least annually provide to its home Competent Authority a description of the nature of its **algorithmic trading** strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. A competent authority may at any time request further information from an investment firm about its algorithmic trading and the systems used for that trading.

Amendment

2. An investment firm that engages in **a high frequency trading strategy** shall at least annually **and at any time on request** provide to its home Competent Authority a description of the nature of its strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. A competent authority may at any time request further information from an investment firm about its algorithmic trading and the systems used for that trading.

Or. en

Justification

The requirement should be to annually provide a report on algorithms to its home Competent Authority and on request.

**Amendment 582
Robert Goebbels, Arlene McCarthy**

**Proposal for a directive
Article 17 – paragraph 2**

Text proposed by the Commission

2. An investment firm that engages in algorithmic trading shall at least annually provide to its home Competent Authority a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk

Amendment

2. An investment firm that engages in algorithmic trading shall at least annually provide to its home Competent Authority a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk

controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. *A* competent authority **may at any time request** further information **from an investment firm** about its algorithmic trading and the systems used for that trading.

controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. **An investment firm shall, at the request of a** competent authority, **submit** further information about its algorithmic trading and the systems used for that trading.

Or. en

Justification

Article 17(2) of the proposed MiFID should ensure that the investment firm provides the competent authority with any further information requested. (ECB suggestion)

Amendment 583 **Kay Swinburne**

Proposal for a directive **Article 17 – paragraph 2**

Text proposed by the Commission

2. An investment firm that engages in algorithmic trading shall at least annually **provide** to **its** home Competent Authority a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. A competent authority may at any time request further information from an investment firm about its algorithmic trading and the systems used for that trading.

Amendment

2. An investment firm that engages in algorithmic trading **and high frequency trading strategies** shall, **upon initial authorisation or** at least annually, **as well as when any material changes occur to the trading strategy, provide their** home Competent Authority **with** a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. A competent authority may at any time request further information from an investment firm about its algorithmic trading and the systems used for that trading.

Or. en

Justification

Certain firms change their algorithms on a constant basis, therefore sending descriptions to the competent authorities on an annual basis may not be enough to truly know what their strategies are, therefore this should be extended to all material changes in the strategy of the algorithm.

Amendment 584 **Sylvie Goulard**

Proposal for a directive **Article 17 – paragraph 2**

Text proposed by the Commission

2. An investment firm that engages in algorithmic trading shall at least annually provide to its home Competent Authority a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. *A* competent authority **may at any time request** further information **from an investment firm** about its algorithmic trading and the systems used for that trading.

Amendment

2. An investment firm that engages in algorithmic trading shall at least annually provide to its home Competent Authority a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. **An investment firm shall, at the request of a** competent authority, **submit** further information about its algorithmic trading and the systems used for that trading.

Or. en

Justification

Article 17(2) of the proposed MiFID should ensure that the investment firm provides the competent authority with any further information requested.

Amendment 585 **Gay Mitchell**

Proposal for a directive **Article 17 – paragraph 2**

Text proposed by the Commission

2. An investment firm that engages in algorithmic trading shall **at least** annually **provide** to its home Competent Authority a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. A competent authority may at any time request further information from an investment firm about its algorithmic trading and the systems used for that trading.

Amendment

2. An investment firm that engages in algorithmic trading shall **provide** annually **or on demand** to its home Competent Authority a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. A competent authority may at any time request further information from an investment firm about its algorithmic trading and the systems used for that trading.

Or. en

Amendment 586

Sari Essayah

Proposal for a directive

Article 17 – paragraph 2

Text proposed by the Commission

2. An investment firm that engages in algorithmic trading shall at least annually provide to its home Competent Authority a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. A competent authority may at any time request further information from an investment firm about its algorithmic trading and the systems used for that trading.

Amendment

2. An investment firm that engages in algorithmic trading shall at least annually provide to its home Competent Authority a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. A competent authority may at any time request further information from an investment firm about its algorithmic trading and the systems used for that trading, **including the source code of its algorithms**.

Amendment 587
Robert Goebbels, Pervenche Berès

Proposal for a directive
Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. An investment firm that engages in a high frequency trading strategy shall on a daily basis provide to its home competent authority the raw audit-trail of its quotation and trading activity performed on any regulated market or MTF.

Or. en

Justification

The exhaustive audit trail of an HFT algorithm's quotation and trading activity is an essential tool to monitor market abuse across trading venues. Cross-markets surveillance is today inexistent. This audit-trail will also allow regulators to better understand HFT trading patterns and its very high order-to-trade ratio in particular.

Amendment 588
Kay Swinburne

Proposal for a directive
Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. An investment firm that engages in a high frequency trading strategy shall store in an approved form, the raw audit trail of any quotation and trading activities performed on any trading venue and make it available to the national competent authority upon request.

Or. en

Justification

The discussion in the US since the Flash Crash has focussed on the need to rebuild a consolidated audit trail of the market in order to fully ascertain the precise sequence of events that led to the abnormal market conditions that were experienced. While collecting this data centrally would impose a huge and expensive technological burden upon public authorities, individual firms should be able to hold their own data so if there was a need for competent authorities to reconstruct the market they would be able to do so.

Amendment 589

Sari Essayah

Proposal for a directive

Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. An investment firm that engages in a high frequency trading strategy shall provide to the competent authority the raw audit-trail of its quotation and trading activity. ESMA shall develop binding technical standards to define the data to be provided and its format.

Or. en

Amendment 590

Robert Goebbels

Proposal for a directive

Article 17 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. ESMA shall draft regulatory technical standards to define the data to be provided and its format, as referred to in paragraph 2a, in order to allow consolidation of the audit trail across Member States.

ESMA shall submit those draft regulatory technical standards to the Commission by [...]*

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

** OJ please insert date: 12 months after entry into force of this Directive.*

Or. en

Justification

Efficient regulation of today's global markets requires consolidation of high frequency trading data at an international level.

Amendment 591
Kay Swinburne

Proposal for a directive
Article 17 – paragraph 3

Text proposed by the Commission

3. An algorithmic trading **strategy** shall **be** in continuous operation during the trading hours of the trading venue to which **it** sends orders or through the systems of which it executes transactions. The trading parameters or limits of **an** algorithmic trading strategy shall ensure that the strategy posts firm quotes at competitive prices with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times, **regardless of prevailing market conditions**.

Amendment

3. An **investment firm engaging in** algorithmic trading shall **ensure that each high frequency algorithmic trading strategy it operates is** in continuous operation during the trading hours of the trading venue to which **the investment firm** sends orders or through the systems of which it executes transactions. The trading parameters or limits of **a high frequency algorithmic trading** strategy shall ensure that the **high frequency algorithmic trading** strategy posts firm quotes at competitive prices **in line with its ordinary trading behaviour, with** the result of providing liquidity on a regular and ongoing basis to these trading venues at all times.

Under exceptional circumstances, where this would contravene the risk controls established in accordance with paragraph

1, investment firms may withdraw from the market. ESMA shall produce guidelines specifying the types of conditions that would warrant this withdrawal for trading venues to incorporate into their operating rules.

Should an investment firm withdraw from the market under the provisions of this paragraph, it must inform the trading venue and the national competent authority immediately.

Or. en

Justification

This follows the suggestion of the Commission's non-paper concerning HFT, suggesting that there are circumstances where the risk controls of an investment firm will require that they stop posting continuous quotes. However, the best placed entity to monitor this is the trading venue within its market making/liquidity provision rules, in coordination with the competent authority. Guidelines from ESMA should set the parameters but the trading venues are best placed to know what is truly beneficial in terms of stabilising the market when exceptional conditions occur.

Amendment 592 **Robert Goebbels**

Proposal for a directive **Article 17 – paragraph 3**

Text proposed by the Commission

3. An algorithmic trading **strategy** shall **be** in continuous operation during the trading hours of the trading venue to which **it** sends orders or through the systems of which it executes transactions. The trading parameters or limits of **an** algorithmic trading strategy shall ensure that the strategy posts firm quotes at competitive prices with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times, **regardless of prevailing market conditions**.

Amendment

3. An **investment firm engaging in** algorithmic trading shall **ensure that each high frequency algorithmic trading strategy it operates is** in continuous operation during the trading hours of the trading venue to which **the investment firm** sends orders or through the systems of which it executes transactions. The trading parameters or limits of **a high frequency** algorithmic trading strategy shall ensure that the **high frequency algorithmic trading** strategy posts firm quotes at competitive prices **in line with its ordinary**

trading behaviour, with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times, except under exceptional circumstances, specified by the Commission in delegated acts in accordance with Article 94, where this would contravene the risk controls established in accordance with paragraph 1.

The investment firm shall request its competent authority for the authorisation not to comply with the obligation established in the first subparagraph. The competent authority shall assess within 24 hours whether the exceptional circumstances specified in the delegated act established under the first subparagraph are fulfilled and take a decision. In case the decision allows the investment firm not to comply with the obligation established in the first subparagraph, the competent authority shall notify ESMA about that decision. ESMA shall immediately inform the competent authorities of the other Member States. If a competent authority disagrees with the action taken by another competent authority on an investment firm providing services in its territory, ESMA may assist those authorities in reaching an agreement in accordance with Article 19 of Regulation (EU) No 1095/2010. The conciliation shall be completed in 2 days. If the competent authorities concerned fail to reach an agreement within the conciliation phase, ESMA may take a decision in accordance with Article 19(3) of Regulation (EU) No 1095/2010. The decision shall be taken in 2 days.

Or. en

Justification

inspired by a non-paper of the European Commission

Amendment 593

Corien Wortmann-Kool

Proposal for a directive

Article 17 – paragraph 3

Text proposed by the Commission

3. An algorithmic trading strategy shall be in continuous operation during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions. The trading parameters or limits of an algorithmic trading strategy shall ensure that the strategy posts firm quotes at competitive prices with the result of providing liquidity on a regular and ongoing basis to these trading venues **at all times, regardless** of prevailing market conditions.

Amendment

3. An **investment firm that takes part in a market making scheme offered by a trading venue shall enter into a binding written agreement between the firm and the trading venue regarding the essential obligations arising from the participation in the market making scheme and shall adhere to the terms and conditions of that scheme, including, but not limited to, liquidity provision under prevailing market conditions. The investment firm shall have in place effective systems and risk controls to ensure that it can fulfill its obligations under the binding written agreement at all times. Any** algorithmic trading strategy **deployed by an investment firm in order to take part in a market making scheme** shall be in continuous operation during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions, **unless provided otherwise by the provisions of the binding written agreement.** The trading parameters or limits of an algorithmic trading strategy shall ensure that the strategy posts firm quotes at competitive prices with the result of providing liquidity on a regular and ongoing basis to these trading venues **for a minimum proportion of continuous trading hours, taking into account prevailing market conditions, rules and regulations.**

Justification

This should be read together with the Wortmann-Kool amendments on Article 51 - paragraph 1a(new) and Article 51 - paragraph 7.

Amendment 594**Olle Schmidt**

on behalf of the ALDE Group

Proposal for a directive**Article 17 – paragraph 3***Text proposed by the Commission*

3. An algorithmic trading strategy shall be in continuous operation during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions. **The trading parameters or limits of an algorithmic trading strategy shall ensure that the strategy posts firm quotes at competitive prices with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times, regardless of prevailing market conditions.**

Amendment

3. High-frequency trading strategies which meet the conditions of Article 4(30b) shall, to the extent specified by ESMA and necessary to ensure the orderly functioning of markets, have the ability to continuously operate during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions. **Firms that are using market making strategies shall comply with specific requirements determined by trading venues in consultation with competent authorities with a view to liquidity on the trading venue concerned and safeguarding investors trust in the market place.**

Justification

Only those investment firms having a market-making strategy can be asked to provide a market-making service. The ESMA guidelines on systems and controls in an automated trading environment relating to this issue should be taken into account through technical standards. This text allows ESMA/trading venues to properly calibrate the application of the requirements in article 17(3) both in terms of which HFT strategies the requirements are applied to, and the severity of such requirements.

Amendment 595

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 17 – paragraph 3

Text proposed by the Commission

3. An algorithmic trading **strategy** shall **be** in continuous operation during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions. The trading parameters or limits of **an** algorithmic trading strategy shall ensure that the strategy posts firm quotes at competitive prices with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times, regardless of prevailing market conditions.

Amendment

3. An **investment firm engaging in** algorithmic trading shall **ensure that each high frequency algorithmic trading strategy it operates is** in continuous operation during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions. The trading parameters or limits of **a high frequency** algorithmic trading strategy shall ensure that the strategy posts firm quotes at competitive prices **at all times** with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times, regardless of prevailing market conditions.

Or. en

Justification

Since many trading algorithms are not intended to make a profit regardless of the direction of price movement, it is not appropriate to require them to make a market. This obligation is appropriate for HFT however and mitigates the risk that these players will withdraw liquidity precisely when markets need it most. It is also important to ensure that HFT firms post realistic prices continuously.

Amendment 596

Sirpa Pietikäinen

Proposal for a directive

Article 17 – paragraph 3

Text proposed by the Commission

3. **An algorithmic trading strategy** shall **be**

Amendment

3. **When an investment firm meets the**

in continuous operation during the trading hours of the trading venue to which it sends orders or through the *systems* of which it executes transactions. The trading *parameters or limits of an algorithmic trading strategy* shall ensure that *the strategy* posts firm quotes at competitive prices with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times, *regardless of prevailing market conditions*.

conditions of Article 4(6) it shall remain in *as near* continuous operation *as possible* during the trading hours of the trading venue to which it sends orders or through the *system* of which it executes transactions. The trading *strategy* of *that firm* shall ensure that *it continuously* posts firm quotes at competitive prices with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times.

Or. en

Amendment 597

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 17 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. ESMA shall develop draft implementing technical standards on the requirements referred to in paragraph 3, in particular in case of market stress.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

ESMA shall submit those draft implementing technical standards to the Commission by [...]*

****OJ please insert date: ...***

Or. en

Justification

The ESMA guidelines on systems and controls in an automated trading environment relating

to article 17.3, and the extent and severity of the obligations applied to certain HFT strategies, should be taken into account through technical standards.

Amendment 598

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 17 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. An investment firm that operates a high frequency trading strategy shall ensure that any position in a financial instrument bought or sold is maintained for at least 30 seconds.

Or. en

Amendment 599

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 17 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. Trading venues shall have the ability to impose charges to its members or participants in order to keep the transaction to order ratio to a level avoiding the risk of undermining the orderly functioning of the market place.

Or. en

Justification

Additional charges have proved effective to maintain the transaction to order ratio to a level ensuring the orderly functioning of the market concerned.

Amendment 600

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 17 – paragraph 4

Text proposed by the Commission

4. An investment firm that provides direct electronic access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls **prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to** Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement **the firm retains** responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.

Amendment

4. An investment firm that provides direct electronic access **or sponsored access** to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls **are applied in accordance with** Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue **is clear. Investment firms shall not provide 'naked' or 'unfiltered' sponsored access to a trading venue.**

Or. en

Justification

This wording is suggested to ensure that there any investment firm offering DEA or sponsored access has appropriate pre-trade controls and organisational requirements to promote fair and orderly trading in an automated trading environment, including in-built and automatic rejection of orders outside of certain parameters. This is in line with the ESMA guidelines on systems and controls, issued on 22nd December 2011, ref: ESMA/2011/456.

Amendment 601

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 17 – paragraph 4

Text proposed by the Commission

4. *An investment firm that provides direct electronic access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.*

Amendment

4. *Investment firms shall not provide direct electronic access to a trading venue.*

Or. en

Amendment 602

Markus Ferber

Proposal for a directive

Article 17 – paragraph 4

Text proposed by the Commission

4. An investment firm that provides direct **electronic** access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.

Amendment

4. **Investment firms shall not provide sponsored access to a trading venue.** An investment firm that provides direct **market** access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.

Or. en

Amendment 603
Astrid Lulling

Proposal for a directive
Article 17 – paragraph 4

Text proposed by the Commission

4. An investment firm that provides direct electronic access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons

Amendment

4. An investment firm that provides direct electronic access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons

using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.

using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue **and shall monitor the ratio of orders placed to orders executed.** The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue

Or. en

Justification

Besides Regulated Markets (article 51.3) MTF and OTF operators, entities that offer DMA services shall monitoring the ratio of orders placed to cancelled. A limitative ratio shall be set in the MAD in article 8.3.C under a new indent “-cancellation of orders above a daily ratio of 30% of orders executed to orders placed, unless explained in writing to the authority”

Amendment 604 **Kay Swinburne**

Proposal for a directive **Article 17 – paragraph 4**

Text proposed by the Commission

4. An investment firm that provides direct **electronic** access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons

Amendment

4. An investment firm that provides direct **market** access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using

using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.

the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.

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 605 **Sirpa Pietikäinen**

Proposal for a directive **Article 17 – paragraph 4**

Text proposed by the Commission

4. An investment firm that provides **direct electronic** access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using the service, that persons using the

Amendment

4. An investment firm that provides access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using the service, that persons using the service are prevented

service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.

from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.

Or. en

Justification

Any investment firm offering access, whether it is direct electronic access or sponsored access, must have appropriate pre-trade controls and organisational requirements in place to ensure market integrity and efficient running of markets.

Amendment 606 **Burkhard Balz**

Proposal for a directive **Article 17 – paragraph 4**

Text proposed by the Commission

4. An investment firm that provides direct **electronic** access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit

Amendment

4. An investment firm that provides direct **market** access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that

thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.

trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No [MAR] and the rules of the trading venue.

Or. en

Amendment 607
Kay Swinburne

Proposal for a directive
Article 17 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Investment firms shall not provide their clients with unfiltered direct market access to any trading venue.

Or. en

Justification

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) stated the level of controls that should be in place for offering direct market access - unfiltered access or "naked sponsored access" was prohibited, this should be reinforced in the articles of MiFID.

Amendment 608
Gunnar Hökmark

Proposal for a directive
Article 17 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. In order to secure that no one is discriminated or hindered regarding the opportunities of high-frequency trading Member States shall also ensure that access to market places is provided at a level playing field basis.

Or. en

Amendment 609
Gunnar Hökmark

Proposal for a directive
Article 17 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. In order to fight market abuse arising from high-frequency trading, Member States shall ensure that regulated markets and other trading venues have the right instruments for surveillance, follow-up and control in place covering all sorts of transactions.

Or. en

Amendment 610
Kay Swinburne

Proposal for a directive
Article 17 – paragraph 6

Text proposed by the Commission

Amendment

6. The Commission shall be empowered to

6. ESMA shall develop draft regulatory

adopt delegated acts in accordance with Article 94 concerning measures to specify the detailed organisational requirements laid down in paragraphs 1 to 5 to be imposed on investment firms performing different ***investment services*** and/or activities and ancillary services or combinations thereof.

technical standards specifying the detailed organisational requirements laid down in paragraphs 1 to 5 to be imposed on investment firms performing different ***investment services*** and/or activities and ancillary services or combinations thereof.

ESMA shall submit those draft regulatory technical standards to the Commission by [...]*

Power is delegated to the Commission to adopt the regulatory technical standards referred to in first subparagraph in accordance with Articles 10-14 of Regulation (EU) No 1095/2010.

**** OJ please insert date: 12 months after entry into force of this Directive.***

Or. en

Justification

As ESMA has already written guidelines in this area, it has more technical expertise in this area than the Commission.

Amendment 611

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 17 – paragraph 6

Text proposed by the Commission

6. ***The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify*** the detailed organisational requirements laid down in paragraphs 1 to 5 to be imposed on investment firms performing different ***investment services*** and/or activities and ancillary services or

Amendment

6. ***ESMA shall develop draft regulatory technical standards*** to specify the detailed organisational requirements laid down in paragraphs 1 to 5 to be imposed on investment firms performing different ***investment services*** and/or activities and ancillary services or combinations thereof.

combinations thereof.

*ESMA shall submit those draft regulatory technical standards to the Commission by [...]**

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

**OJ please insert date: ...*

Or. en

Justification

This is a technical question and an area related to which ESMA has already issued guidance, therefore it is more appropriate that the power be given to ESMA.

Amendment 612

Robert Goebbels

Proposal for a directive

Article 17 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Any financial institution authorised under Directive 2009/65/EC [on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)], Directive 2009/138/EC [on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)], Directive 2003/41/EC [on the activities and supervision of institutions for occupational retirement provision] or Directive 2011/61/EU [on Alternative Investment Fund Managers], shall fulfil the obligations under paragraphs 1, 2, 2a and 3 of this Article when engaging in algorithmic trading, including high

Justification

Inspired by a non-paper of the European Commission

Amendment 613

Sylvie Goulard

Proposal for a directive

Article 18 – title

Text proposed by the Commission

Amendment

Trading process and finalisation of transactions in an MTF **and an OTF**

Trading process and finalisation of transactions in an MTF

Amendment 614

Robert Goebbels, Arlene McCarthy, Elisa Ferreira

Proposal for a directive

Article 18 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall require that investment firms or market operators operating an MTF **or an OTF**, in addition to meeting the requirements laid down in Article 16, establish transparent rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders. They shall have arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruption.

1. Member States shall require that investment firms or market operators operating an MTF, in addition to meeting the requirements laid down in Article 16, establish transparent rules and procedures for fair and orderly trading and establish objective **and non-discretionary** criteria for the efficient execution of orders. They shall have arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruption.

Justification

All trading platforms operated by market operators or investment firms are subject to proper market rules. It is clarified that the criteria of execution – and not merely the procedures surrounding the criteria – should be non-discretionary. Thus, it is clarified that non-discretionary execution is a core element of EU regulation of markets that cannot be waived. The effect of this amendment will be to ensure that all multilateral trading platforms, whether they are RM or MTF, continue to have non-discretionary execution. In the case of broker dealers' crossing networks, which have emerged in the last years exploiting a regulatory loophole of MiFID, they will have to either operate bilaterally as a SI - should they want to keep operating with non-discretionary execution - or operate as an MTF. Non-discretionary execution is one of the core principles of the original MiFID, but risks being eroded through the introduction of an OTF category which is differentiated from RMs and MTFs above all through the ability of its operators to carry out discretionary execution. Hence, an OTF category essentially makes non-discretionary execution optional in the EU market. This is a dangerous deviation from the principles underpinning a good market.

Amendment 615 **Sylvie Goulard**

Proposal for a directive **Article 18 – paragraph 1**

Text proposed by the Commission

1. Member States shall require that investment firms or market operators operating an MTF **or an OTF**, in addition to meeting the requirements laid down in Article 16, establish transparent rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders. They shall have arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruption.

Amendment

1. Member States shall require that investment firms or market operators operating an MTF, in addition to meeting the requirements laid down in Article 16, establish transparent **and non-discretionary** rules and procedures for fair and orderly trading and establish objective **and non-discretionary** criteria for the efficient execution of orders. They shall have arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruption.

Justification

The effect of this amendment will be to ensure that all multilateral trading platforms, whether they are RM or MTF, are subject to the non-discretionary execution requirements giving all investors a predictable and fair outcome. This is very important to protect investors from arbitrary prices.

Amendment 616 **Sirpa Pietikäinen**

Proposal for a directive **Article 18 – paragraph 1**

Text proposed by the Commission

1. Member States shall require that investment firms or market operators operating an MTF *or an OTF*, in addition to meeting the requirements laid down in Article 16, establish transparent rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders. They shall have arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruption.

Amendment

1. Member States shall require that investment firms or market operators operating an MTF, in addition to meeting the requirements laid down in Article 16, establish transparent rules and procedures for fair and orderly trading and establish objective *and non-discretionary* criteria for the efficient execution of orders. They shall have arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruption.

Or. en

Amendment 617 **Sylvie Goulard**

Proposal for a directive **Article 18 – paragraph 2 – subparagraph 1**

Text proposed by the Commission

2. Member States shall require that investment firms or market operators operating an MTF *or an OTF* establish transparent rules regarding the criteria for determining the financial instruments that

Amendment

2. Member States shall require that investment firms or market operators operating an MTF establish transparent rules regarding the criteria for determining the financial instruments that can be traded

can be traded under its systems.

under its systems.

Or. en

Justification

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

Amendment 618

Sylvie Goulard

Proposal for a directive

Article 18 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Member States shall require that, where applicable, investment firms or market operators operating an MTF *or an OTF* provide, or are satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instruments traded.

Amendment

Member States shall require that, where applicable, investment firms or market operators operating an MTF provide, or are satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instruments traded.

Or. en

Justification

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

Amendment 619

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive
Article 18 – paragraph 3

Text proposed by the Commission

3. Member States shall require that investment firms or market operators operating an MTF or an OTF establish, publish and maintain transparent rules, based on objective criteria, governing access to its facility.

Amendment

3. Member States shall require that investment firms or market operators operating an MTF or an OTF establish, publish and maintain transparent **and non-discriminatory** rules, based on objective criteria, governing access to its facility.

Or. en

Amendment 620
Sylvie Goulard

Proposal for a directive
Article 18 – paragraph 3

Text proposed by the Commission

3. Member States shall require that investment firms or market operators operating an MTF **or an OTF** establish, publish and maintain transparent rules, based on objective criteria, **governing access to its facility**.

Amendment

3. Member States shall require that investment firms or market operators operating an MTF establish, publish and maintain transparent rules, based on objective criteria.

Or. en

Justification

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

Amendment 621
Olle Schmidt
on behalf of the ALDE Group

Proposal for a directive
Article 18 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall require investment firms or market operators operating an MTF or an OTF to have arrangements to identify clearly and manage the potential adverse consequences, for the operation of the MTF or the OTF or its participants, of any conflict of interest between the interest of the MTF, the OTF, its owners or its operator and the sound functioning of the MTF or the OTF.

Or. en

Justification

This article gives effect to recital 12 for MTFs and OTFs, allowing investors greater choice over the sort of counterparties they will interact with.

Amendment 622
Sylvie Goulard

Proposal for a directive
Article 18 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall require that investment firms or market operators operating an MTF **or an OTF** clearly inform its users of their respective responsibilities for the settlement of the transactions executed in that facility. Member States shall require that investment firms or market operators operating an MTF **or an OTF** have put in place the necessary arrangements to facilitate the efficient settlement of the transactions concluded under the systems of the MTF **or an OTF**.

4. Member States shall require that investment firms or market operators operating an MTF clearly inform its users of their respective responsibilities for the settlement of the transactions executed in that facility. Member States shall require that investment firms or market operators operating an MTF have put in place the necessary arrangements to facilitate the efficient settlement of the transactions concluded under the systems of the MTF.

Justification

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

Amendment 623

Sylvie Goulard

Proposal for a directive

Article 18 – paragraph 5

Text proposed by the Commission

5. Where a transferable security, which has been admitted to trading on a regulated market, is also traded on an MTF *or an OTF* without the consent of the issuer, the issuer shall not be subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF *or an OTF* .

Amendment

5. Where a transferable security, which has been admitted to trading on a regulated market, is also traded on an MTF without the consent of the issuer, the issuer shall not be subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF.

Justification

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

Amendment 624

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 18 – paragraph 6

Text proposed by the Commission

6. Member States shall require that any investment firm or market operator operating an MTF or an OTF comply immediately with any instruction from its competent authority pursuant to **Article 72(1)** to suspend or remove a financial instrument from trading.

Amendment

6. Member States shall require that any investment firm or market operator operating an MTF or an OTF comply immediately with any instruction from its competent authority pursuant to **Article 72 (d) and (e)** to suspend or remove a financial instrument from trading.

Or. en

Amendment 625
Sylvie Goulard

Proposal for a directive
Article 18 – paragraph 6

Text proposed by the Commission

6. Member States shall require that any investment firm or market operator operating an MTF **or an OTF** comply immediately with any instruction from its competent authority pursuant to Article 72(1) to suspend or remove a financial instrument from trading.

Amendment

6. Member States shall require that any investment firm or market operator operating an MTF comply immediately with any instruction from its competent authority pursuant to Article 72(1) to suspend or remove a financial instrument from trading.

Or. en

Justification

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

Amendment 626
Arlene McCarthy

Proposal for a directive
Article 18 – paragraph 8

Text proposed by the Commission

8. Member States shall require investment firms and market operators operating an MTF **or an OTF** to provide the competent authority with a detailed description of the functioning of the MTF **or OTF**. Every authorisation to an investment firm or market operator as an MTF **and an OTF** shall be notified to ESMA. ESMA shall establish a list of all MTFs **and OTFs** in the Union. The list shall contain information on the services an MTF **or an OTF** provides and entail the unique code identifying the MTF **and the OTF** for use in reports in accordance with Article 23 and Articles 5 and 9 of Regulation (EU) No .../... [MiFIR]. It shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

Amendment

8. Member States shall require investment firms and market operators operating an MTF to provide the competent authority with a detailed description of the functioning of the MTF, **including any adjacent infrastructure that is part of their service offer and/ or any links to investment firms, trading firms, regulated markets, MTFs or systematic internalisers and/or order routing arrangements.** **Member States shall require investment firms and market operators operating an MTF to provide the competent authority with a detailed description of the arrangements it has in place to comply with the requirements provided in Articles 3 to 10 of Regulation (EU) No .../... [MiFIR].** Every authorisation to an investment firm or market operator as an MTF shall be notified to ESMA. ESMA shall establish a list of all MTFs in the Union. The list shall contain information on the services an MTF provides, **including all the financial instruments admitted to trading on these platforms,** and entail the unique code identifying the MTF for use in reports in accordance with Article 23 and Articles 5 and 9 of Regulation (EU) No .../... [MiFIR]. It shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

Or. en

Justification

Order routing arrangements, commonly used by investment firms and trading venues may give rise to significant risks. They should be subject to appropriate disclosure requirements . In addition, trading venues should provide regulators with a detailed description of how they comply with the pre-trade transparency requirements in MiFIR.

Amendment 627
Sylvie Goulard

Proposal for a directive
Article 18 – paragraph 8

Text proposed by the Commission

8. Member States shall require investment firms and market operators operating an MTF *or an OTF* to provide the competent authority with a detailed description of the functioning of the MTF *or OTF*. Every authorisation to an investment firm or market operator as an MTF and an OTF shall be notified to ESMA. ESMA shall establish a list of all MTFs *and OTFs* in the Union. The list shall contain information on the services an MTF *or an OTF* provides and entail the unique code identifying the MTF *and the OTF* for use in reports in accordance with Article 23 and Articles 5 and 9 of Regulation (EU) No .../... [MiFIR]. It shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

Amendment

8. Member States shall require investment firms and market operators operating an MTF to provide the competent authority with a detailed description of the functioning of the MTF. Every authorisation to an investment firm or market operator as an MTF and an OTF shall be notified to ESMA. ESMA shall establish a list of all MTFs in the Union. The list shall contain information on the services an MTF provides and entail the unique code identifying the MTF for use in reports in accordance with Article 23 and Articles 5 and 9 of Regulation (EU) No .../... [MiFIR]. It shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

Or. en

Justification

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

Amendment 628
Arlene McCarthy

Proposal for a directive
Article 18 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. Member States shall require

investment firms and market operators operating an MTF to provide the competent authority and ESMA with a list of their members and/ or users.

Or. en

Justification

The competition that MiFID 1 has successfully created has been almost exclusively driven by user-sponsored entry into the execution business: almost a third of lit equity trading occurs on user-controlled execution venues. However, conflicts of interests arising from a combination of the status of owner, operator and user of an organised trading venue which may impact on investor protection, the overall efficiency of the price formation process and market surveillance need to be addressed.

Amendment 629

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 18 – paragraph 9 a (new)

Text proposed by the Commission

Amendment

9a. ESMA shall develop draft implementing technical standards to specify the extent to which compound transaction services (as defined in Article 2 of Regulation (EU) No....[MiFIR]) shall be subject to Article 18(1)-18(3) and Article 20(3).

ESMA shall submit those draft implementing technical standards to the Commission by [...]*

Power is conferred to the Commission to adopt the implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010.

**** OJ please insert date: ...***

Or. en

Justification

Compound transaction services should also be distinguished from the provision of traditional trading execution activities and requirements on e.g. best execution, trading venue rules, access to the OTF or suspension of trading are neither relevant nor appropriate to this type of service. Imposing these rules on compound transaction services may make them impossible to deliver. Therefore should ESMA draft implementing technical standards for clarification.

Amendment 630 **Sirpa Pietikäinen**

Proposal for a directive **Article 18 a (new)**

Text proposed by the Commission

Amendment

Article 18 a

Trading process

Member States shall require that all transactions in financial instruments be executed on regulated markets, MTFs, systematic internalisers or OTC.

Or. en

Amendment 631 **Sirpa Pietikäinen**

Proposal for a directive **Article 19 – paragraph 1**

Text proposed by the Commission

Amendment

1. Member States shall require that investment firms or market operators operating an MTF, in addition to meeting the requirements laid down in Articles 16 and 18, shall establish non-discretionary rules for the execution of orders in the system.

1. Member States shall require that investment firms or market operators operating an MTF, in addition to meeting the requirements laid down in Articles 16 and 18, shall establish ***and implement*** non-discretionary rules for the execution of orders in the system.

Or. en

Justification

Fair and orderly multilateral trading venues need to execute orders of participants on a non-discretionary basis: this should be a requirement of the MTFs.

Amendment 632

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 19 – paragraph 2

Text proposed by the Commission

2. Member States shall require that the rules mentioned in **Article 18(4)** governing access to an MTF comply with the conditions established in Article 55(3).

Amendment

2. Member States shall require that the rules mentioned in **Article 18(3)** governing access to an MTF comply with the conditions established in Article 55.

Or. en

Justification

No reason to have lighter regime for MTF compared to regulated market.

Amendment 633

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 19 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall require that rules governing access ensure that the MTF remains an effective multilateral system, which brings together a significant number of multiple third-party buying and selling interests in financial instruments.

Or. en

Justification

Rules governing access shall not be designed in a way that would lead to the fact that the MTF has only one of a very limited number of participants.

Amendment 634

Olle Schmidt

on behalf of the ALDE Group

Proposal for a directive

Article 19 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall require that investment firms or market operators operating an MTF to have arrangements to identify clearly and manage the potential adverse consequences, for the operation of the MTF or for its participants, of any conflict of interest between the interest of the MTF, its owners or its operator and the sound functioning of the MTF. **deleted**

Or. en

Justification

This paragraph is appropriate for both MTFs and OTFs, and therefore should be re-inserted into Article 18.

Amendment 635

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 19 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall require that investment firms or market operators operating an MTF to have arrangements to

3. Member States shall require that investment firms or market operators operating an MTF to have arrangements to

identify clearly and manage the potential adverse consequences, for the operation of the MTF or for its participants, of any conflict of interest between the interest of the MTF, its owners or its operator and the sound functioning of the MTF.

identify clearly and manage the potential adverse consequences, for the operation of the MTF or for its participants, of any conflict of interest between the interest of the MTF, its owners or its operator and the sound functioning of the MTF ***to comply with the conditions established in Articles 48, 49, and 50.***

Or. en

Justification

No reason to have different rules for MTF and regulated markets in that respect.

Amendment 636
Markus Ferber

Proposal for a directive
Article 19 – paragraph 4

Text proposed by the Commission

4. Member States shall require a MTF to have in place effective systems, procedures and arrangements to ***comply with the conditions in Article 51.***

Amendment

4. Member States shall require a MTF to ***comply with the conditions in Articles 51 and 51a and to*** have in place effective systems, procedures and arrangements to ***do so.***

Or. en

Amendment 637
Sharon Bowles

Proposal for a directive
Article 19 – paragraph 4

Text proposed by the Commission

4. Member States shall require a MTF to have in place effective systems, procedures and arrangements to comply with the conditions in Article 51.

Amendment

4. Member States shall require a MTF to have in place effective systems, procedures and arrangements to comply with the conditions in Article 51 ***or other***

procedures and arrangements relevant to the trading model of the MTF.

Or. en

Justification

MTFs operating in fixed income and derivatives markets will not be able to meet the requirements of the Commission's proposal for Article 51 which is designed for high trading volume exchanges, as they trade far more infrequently.

Amendment 638

Robert Goebbels, Arlene McCarthy

Proposal for a directive

Article 19 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall require that the trading platform has at least four materially active members or users, each having the opportunity to interact with all the others in respect to price formation in the system.

Or. en

Justification

In order to ensure the multilateral nature of the trading venue - that is, to ensure that all participants can interact with each other - it is crucial to avoid the loophole of one single entity being counterparty to all the trades on the platform. Hence, a minimum of 4 active trading participants should be imposed.

Amendment 639

Pascal Canfin

on behalf of the Verts/ALE Group

Proposal for a directive

Article 19 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. ESMA shall develop draft regulatory technical standards to determine criteria that demonstrate the effectiveness of a multilateral system.

ESMA shall submit those draft regulatory technical standards to the Commission by [...]*

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

****OJ please insert date: ...***

Or. en

Amendment 640
Sirpa Pietikäinen

Proposal for a directive
Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19 a

Specific requirements for OTC

Member States shall require that investment firms do not execute OTC orders of clients in financial instruments in sizes below the standard market size.

Member States shall require that execution of orders of clients on a systematic basis is not carried out OTC.

Or. en

Justification

For investor protection purposes, it should be clearly stated that orders of clients in financial instruments in sizes below the standard market size or executed on a systematic basis should not be carried out OTC.