

Review of the Markets in Financial Instruments Directive

Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

The questionnaire takes as its starting point the Commission's proposals for MiFID/MiFIR 2 of 20 October 2011 (COM(2011)0652 and COM(2011)0656).

All interested stakeholders are invited to complete the questionnaire. You are invited to answer the following questions and to provide any detailed comments on specific Articles in the table below. Responses which are not provided in this format may not be reviewed.

Respondents to this questionnaire should be aware that responses may be published.

Please send your answers to econ-secretariat@europarl.europa.eu by **13 January 2012**.

Name of the person/organisation responding to the questionnaire	<p>Nordic Securities Association, Register of interest 25260792642-83, www.nsa-securities.com</p> <p>The Nordic Securities Association (NSA) represents the common interests of member firms in the Nordic securities dealers associations towards external stakeholders primarily in the Nordic market but also on European and international issues of common interest. Members of the NSA are the Danish Securities Dealers Association (www.dbmf.dk), the Finnish Federation of Financial Services (www.fkl.fi), the Norwegian Securities Dealers Association (www.nfmf.no) and the Swedish Securities Dealers Association (www.fondhandlarna.se)</p> <p>Contacts</p> <ul style="list-style-type: none">• Sweden, Kerstin Hermansson, <i>Managing director</i>, kerstin@fondhandlarna.se, +46 85 62 60 700• Norway, Per Broch Mathisen, <i>Managing director</i>, pbm@nfmf.no, +47 22 00 74 11• Finland, Markku Savikko, <i>Director</i>, markku.savikko@fkl.fi, +358 20 79 34 209
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	<ul style="list-style-type: none"> Denmark, Søren Gade, <i>Executive Director</i>, sga@dbmf.dk, +45 33 70 10 90
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Theme	Question	Answers
Scope	1) Are the exemptions proposed in Directive Articles 2 and appropriate? Are there ways in which more could be done to exempt corporate end users?	<p>We believe that article 2.1 could benefit from some clarifications as it is difficult to read “exemptions from exemptions”. We find it particularly difficult to understand article 2.1 i). However, the NSA urges that also persons/firms trading via electronic market access (via sponsored access) and persons/firms only dealing on own account (High Frequency Firms) should be "exempted from the exemptions" - meaning they should be covered by the directive and regulated as investment firms since access to a trading platform requires adequate rules and compliance within the firm in question and supervision by a competent authority. The NSA finds it necessary that all members of a trading venue should be regulated on equal terms and placed under supervision by the financial supervisory authorities giving surveillance and competition on equal conditions with exemptions for e.g. corporate treasurers and commodities firms, whose market activity are linked to their commercial activities.</p> <p>The regulation on equal terms includes HFT firms, which, due to their impact on the market and pricing, have access through sponsored access or via investment firms. NSA cannot see any reasons why these HFT firms should have lower requirements on their activities than investment firms.</p>
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an	<p>The scope of structured deposits is unclear. We support the extension of MiFID’s information requirements to structured</p>

	appropriate way?	deposits. The definition extends the scope to the great majority of bank deposits since only deposits with a "rate of return which is determined in relation to an interest rate" are to be exempted. It is worth to bear in mind that simple products (such as savings deposits and fixed-term deposits) are not structured and should therefore also be explicitly excluded from the scope of MiFID. The definition therefore needs to be amended accordingly. As the current wording is not clear enough, we would therefore ask to clarify the scope further in order to exclude all types of simple deposits (fixed-rate and simple variable-rate) from the scope of MiFID
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	The Commission's proposal that safekeeping and administration of financial instruments should be an investment service instead of an ancillary service was not subject of consultation and the proposal has not been sufficiently motivated by the Commission. We therefore have some difficulties evaluating the effects of the proposal. In our opinion the new service should not include the business of central securities depositories, CSD, considering that this will be regulated by upcoming directive on CSD as well as the Securities Law Directive. If needed, there should be a clear exemption for CSDs and the CSD should be regulated in the forthcoming Commission proposal regarding CSDs.
	4) Is it appropriate to regulate third country access to EU markets and, if so, what principles should be followed and what precedents should inform the approach and why?	Yes – and with clear rules. As a general comment, it is very important that any regulation of third country access does not restrict the possibilities of EU investment firms to perform services and activities resulting from business conducted within the EU but for which actions are required in a third country even if the counterparty is not registered in the EU (one example is execution of EU clients' order to purchase e.g. Chinese

		<p>securities, where a Chinese counterparty is required). Furthermore, it should be clarified in the proposal which country's rules apply for business conducted with an investment firm domiciled outside EU, in case this is not agreed between the parties. This is of particular importance for EMIR-related issues such as the requirement that OTC-derivatives are traded on an organised market venue.</p>
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Corporate governance	5) What changes, if any, are needed to the new requirements on corporate governance for investment firms and trading venues in Directive Articles 9 and 48 and for data service providers in Directive Article 65 to ensure that they are proportionate and effective, and why?	<p>In our opinion, the proposed rules in MiFID II relating to corporate governance are much too detailed. Although the NSA supports a harmonisation of corporate governance related issues per se, we believe that the EU rules must be kept on a principle level. To introduce detailed EU rules on corporate governance would mean far-reaching changes in applicable corporate law principles upon which national regulatory frameworks are based. In addition, it is important that the EU rules can be applied to both small and very large financial institutions. Thus, any forthcoming EU regulation should establish the principles of corporate governance but be flexible enough to adapt to both the different types of financial institutions and the different legal systems within the EU. It is also important that the rules regarding corporate governance in CRD IV and MIFID II are coordinated.</p> <p>As regards data service providers we believe that there should only be one consolidated tape for shares to be provided by one organisation appointed by the Commission after a public auction (see reply to question 24 below).</p>
Organisation of markets and trading	6) Is the Organised Trading Facility category appropriately defined and differentiated from other trading venues and from systematic internalisers in the proposal? If not, what changes are needed and why?	<p>Overall, the NSA supports the introduction of Organised Trading Facilities (OTF) if OTFs are regulated in ways which support a level playing field and reflect the nature of the trading of the instruments in question (see below). In addition, due to the complexity of these questions, we propose that firm principles are set on level 1 and more detailed regulation should be set on level 2.</p> <p>Initially, it seems as if the rules regarding access to OTFs are</p>

		<p>unclear: The Commission's texts reveals divergences as to whether the operator may be able to determine and restrict access to the facility. Recital 12 of the revised MiFID and the Impact Assessment contains this possibility. Article 18 states that firms or market operators operating an MTF or an OTF are required to establish, publish and maintain transparent rules based on objective criteria, governing access to its facility. Additionally, Article 20 does not require that the rules governing access to an OTF comply with certain conditions that are of application to access to regulated markets (article 55) and MTFs (article 19), and thus accepts that discrimination in access is accepted.</p> <p>For NSA it essential that OTFs are regulated in ways which reflect the nature of the trading of the instruments in question. It is therefore essential to differ between markets; there should be rules suitable for the liquid equities markets where the order-driven market is core and yet another set of rules suitable for e.g. bonds and derivatives markets, where market making is a necessity:</p> <p><u>Liquid equities</u></p> <p>Liquid equities are subject to a high degree of competition and fragmentation. Furthermore, the equities trading is mainly order driven, and since the introduction of MiFID 1 the average order sizes have decreased considerably overall in Europe. Thus, it is obvious that the same rules should apply to the same business model in order to ensure an adequate price discovery process, access to best execution and a level playing field.</p>
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		<p>others OTFs. Thus both OTFs would have proprietary capital in their systems, only that of another investment bank.</p> <p>Moreover, best execution can be compromised since some customers/investment firms will not be able to get access to the OTF's prices even though the prices on the OTF may be better than prices on other trading venues that are open for all (RMs and MTFs). This fact will also distort competition since the better execution will be public information to all, but the better execution opportunities will not be possible to access for all. Least but not last, there is not a level playing field since OTFs can discriminate the access.</p> <p>So, even though the Commission may be solving the transparency problem, the main problems with the BCNs (OTFs) remain.</p> <p>NSA proposes a clear way forward to remove the risk that OTFs in the present proposed format become too large in the equity markets, thereby distorting the price formation process and access to best execution:</p> <ul style="list-style-type: none">• In case a Brokers Crossing Network (~ an OTF) is accessible to flow from some other banks/investment firms it is per se an MTF and should be regulated as such implying non-discriminatory access. Alternatively, a proposal could be to maintain the OTF but demand non-discriminatory access for all banks/investment firms.• In case a BCN (~ an OTF) only supports client flow, the
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		<p>NSA supports the introduction of a threshold trigger of 5 per cent market share before the BCN is converted into a MTF implying, non-discriminatory access. Alternatively, a proposal could be to maintain the OTF but demand non-discriminatory access for all banks/investment firms when reaching the threshold trigger of 5 per cent.</p> <p>Please note that in CESR Technical Advice to the European Commission in the Context of the MiFID Review a threshold was recommended. And such a threshold was actually included in the Commission consultation on MiFID in February 2011.</p> <p>Thereby, OTC trading would remain a residual (a small part of the trading), whilst the bulk of the trading takes place on trading venues, which provide equal access to all parties, thereby ensuring efficient price formation, access to best execution, fair and orderly markets, competition and a level playing field.</p> <p><u>Bonds and derivatives</u></p> <p>Trading in both bonds and derivatives is very different from trading in liquid equities and can be characterized as wholesale markets, mainly driven by market making and large trading sizes.</p> <p>In case it is prohibited for OTF operators to use proprietary capital in bond or derivatives trading, trading will not be facilitated appropriately in the OTF, cf. above. This would therefore seriously harm the liquidity, where liquidity is the degree to which a certain amount of securities can be bought or sold in the market without affecting the security price. The</p>
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		<p>easier the security can be bought or sold without affecting the price, the more liquid the security is.</p> <p>Arguing that the market making should be facilitated by the SI regime will not help since the SI rules for equities were designed to fit the equity retail markets and cannot be exported to the bonds and derivatives markets which primarily are wholesale markets where most of the financial instruments are sporadically traded.</p> <p>Forcing the proposed SI regime on the bond market would imply that investment firms will not be able to quote prices on bonds to their customers at the large in scale they do currently. Without banks providing quotes and thus liquidity, illiquid bonds will become even less liquid, which will ultimately hurt the issuer of the bond. The end result would be higher costs for issuers (often governments and mortgage, i.e. higher cost for tax-payers and home owners) and riskier and less good investments for investors.</p> <p>The extensions of the equity-like SI obligation to the derivatives are also a matter of concern. The requirement for SIs to publish binding quotes and enter into derivatives transactions under the very same conditions with other clients will, as for the bond market, lead to a lower liquidity and higher costs for clients to handle their financial risks . SIs could be forced to take on risk positions which are not under their control. Furthermore, as counterparty credit risk is a major part of pricing non-CCP clearable derivatives, it is hardly possible for SIs to offer the very same conditions to different clients.</p>
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	<p>7) How should OTC trading be defined? Will the proposals, including the new OTF category, lead to the channelling of trades which are currently OTC onto organised venues and, if so, which type of venue?</p>	<p>Cf. recital 53 in Directive 2004/39/EC this definition is basically fine. The need to create an OTF regime to capture the Brokers Crossing Networks flow (BCN) could be interpreted as a lack of enforcement of the current rules since a BCN can be supported by own account flow, client flow and access from third parties – such as other investment firm, thereby having the same business and conducting similar activities as those undertaken by organised venues and SIs. However, BCNs are operating under the OTC umbrella, thereby compromising the OTC regime.</p> <p>It is not clear how trading will be channelled with the current, rigid OTF definition that does not distinguish between instruments and market models, where the OTF can discriminate access and the OTF has the discretion on execution and no proprietary trading.</p> <p>If the OTF definition is clarified cf. the proposal in no. 6, it would lead to a substantial channelling of OTC equities trading to both regulated markets, MTFs and OTFs depending on which are best to attract liquidity. In addition, there will be a channelling of bonds and derivatives trading to organised venues.</p>
	<p>8) How appropriately do the specific requirements related to algorithmic trading, direct electronic access and co-location in Directive Articles 17, 19, 20 and 51 address the risks</p>	<p>Article 17.3, stating that an algorithmic trading strategy shall be in continuous operation during the trading hours despite the market conditions, could actually lead to substantially increased</p>

	involved?	<p>risks. Algorithm is in its broader sense used in practically all forms of trade and by all types of market participants, including customer trading and also the customers' own activities. If the proposal is adopted in its present form, such trading would be made impossible! Therefore, the NSA believes that algorithm trade must be either more narrowly defined alternatively the requirement in article 17.3 be deleted.</p> <p>Furthermore, as noted in our response to Q1, the NSA urges that persons/firms trading via electronic market access (via sponsored access) and persons/firms only dealing on own account (High Frequency Firms) should be covered by the directive.</p>
	9) How appropriate do the requirements on resilience, contingency arrangements and business continuity arrangements in Directive Articles 18, 19, 20 and 51 address the risks involved?	See our responses to your question 6 (OTFs) and 8 (electronic trading). Besides, the requirements for trading venues' systems set out in article 51 are in our opinion important ways of hindering the possible harm caused by high frequency trading/algo trading in general.
	10) How appropriate are the requirements for investment firms to keep records of all trades on own account as well as for execution of client orders, and why?	<p>The NSA acknowledges the introduction of principles for a general regime concerning the recording of telephone conversations or electronic communications involving client orders.</p> <p>A preliminary distinction needs to be made between applicability of this regime to calls/communications between professional traders – where such common regime would be seen as an effective means to help the fight against market abuse – and calls/communications with retail clients – where any regime should be optional for Member States. Regarding the retail</p>

		<p>market, orders are subsequently confirmed in writing, and from a cost-benefit point of view the proposal would not be proportionate.</p> <p>Furthermore, the retention period of telephone recordings of three years is not necessary as orders are subsequently confirmed in writing. Therefore, a default retention period of e.g. six months would be entirely sufficient. Where supervisors believe that certain recordings should be kept for longer, this can be required case-by-case.</p>
	<p>11) What is your view of the requirement in Title V of the Regulation for specified derivatives to be traded on organised venues and are there any adjustments needed to make the requirement practical to apply?</p>	<p>The NSA supports the G20-driven objective that standardised and sufficiently liquid derivatives are traded on regulated markets, MTFs or organised trading facilities. As stated in no. 6, OTFs should not be forbidden to trade against their own capital in bonds and derivatives trading.</p> <p>However, it is crucial that the liquidity aspect is adequately calibrated in order not to harm the market and the clients' possibilities to hedge their risks. Therefore, we urge that the market is involved in ESMA's work with determination of "sufficiently liquid" derivatives.</p> <p>The NSA notes that there may be circumstances where it is not always appropriate to trade standardised and sufficiently liquid derivatives exclusively on regulated markets, MTFs or organised trading facilities. Market participants should retain a choice between executing on a trading facility or OTC, to reflect their particular needs.</p> <p>The requirements need to be coordinated with EMIR.</p>

		<p>Particularly troublesome effects could arise if the requirements were to apply to the foreign exchange derivatives market. The entire foreign exchange market would need to be restructured within the EU, while the same requirements do not apply in other regions such as the US. According to the NSA, it would therefore be unreasonable, without a very detailed analysis, to introduce such requirements for the foreign exchange market in the EU.</p>
	<p>12) Will SME gain a better access to capital market through the introduction of an MTF SME growth market as foreseen in Article 35 of the Directive?</p>	<p>No comments.</p>
	<p>13) Are the provisions on non-discriminatory access to market infrastructure and to benchmarks in Title VI sufficient to provide for effective competition between providers? If not, what else is needed and why? Do the proposals fit appropriately with EMIR?</p>	<p>The NSA clearly supports the language in the proposed Regulation Title VI calling for the removal of barriers and discriminatory practices that can be used to prevent competition in the provision of clearing services for all financial instruments. In particular, the NSA strongly supports the introduction of explicit and detailed requirements for open access by trading venues to clearing services. Furthermore, we are supporting the concept of creating the competition and level playing field between different CCPs and removing vertical silos within exchanges. Interoperability issues between exchanges and clearing houses needs to be solved.</p> <p>We are supporting the idea to be able to clear more and different kind of instruments in one CCP, even though multi-asset CCPs may become more expensive than CCPs in current equity markets. To be able to clear more instruments in one CCP would enable the members of CCP to use collateral more efficiently</p>

		and lower the costs of these future reforms. These effects are depending on the scope of EMIR.
	14) What is your view of the powers to impose position limits, alternative arrangements with equivalent effect or manage positions in relation to commodity derivatives or the underlying commodity? Are there any changes which could make the requirements easier to apply or less onerous in practice? Are there alternative approaches to protecting producers and consumers which could be considered as well or instead?	<p>Market participants are regulated entities subject to supervision that possesses expertise and qualifications which enables them to assess the risk and appropriateness of their commodity derivatives transactions. The exposure and associated risks of transactions are closely monitored, and as such powers for regulators or supervisors to impose position limits do not seem warranted. Any restrictions imposed on the individual market participant could have a severely negative impact on the liquidity of commodity derivatives markets, due to the fact that market participants prior to every transaction would need to take into account the potential risk of being forced to close out or reduce their position prematurely.</p> <p>If powers to impose position limits are introduced, they should only be applicable under certain clearly described circumstances that are well defined and based on known criteria. This will make the imposition of position limits more balanced and presumably reduce the impact on the liquidity.</p>
Investor protection	15) Are the new requirements in Directive Article 24 on independent advice and on portfolio management sufficient to protect investors from conflicts of interest in the provision of such services?	The NSA believes that investors should be able to have access to the best possible advice. It should be recalled that MiFID's suitability obligation already applies to banks in relation to the provision of advice to clients. The quality of the advice provided to a client is, therefore, not dependent on whether or not the adviser accepts or receives fees, commissions or any monetary benefits paid or provided by any third party. Rather, the NSA believes that the quality of the advice is related to the underpinning analysis to the advice.

		<p>For the above-mentioned reason, the proposed labelling of different kinds of advice raises questions. The NSA opposes the use of terms that inherently imply a value judgment. “Dependant” or not “independent” advice, for example, is likely to be perceived as being by definition of a lower quality. The NSA supports clear, neutral and less discriminatory wording to distinguish the different kinds of services. In this regard, the introduction of more disclosure around the characteristics of the advice provided is to be welcomed.</p> <p>Furthermore, the NSA considers that a portfolio manager should be able to receive fees (i.e. monetary benefits) for portfolio services (management or advice) offered to a product provider (most typical an investment fund) and still offer portfolio management or investment advice to clients that includes products issued by the product provider in question.</p>
	<p>16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?</p>	<p>The NSA is concerned of the categorisation of products to complex from non-complex products. Moreover, the NSA finds the catalogue of products that can be sold on an execution-only basis too narrow. On the one hand, complex products should be excluded. On the other hand, the NSA recalls, that complexity is often wired into the product to reduce the risks for investors. Therefore, complexity may be necessary to enhance investors' confidence in the performance of the offered product.</p> <p>The NSA believe that the determination of whether a product is complex or not must be based on objective criteria and not a client-by-client assessment (see article 25.3 ii and ii “which</p>

		<p>makes it difficult for the client to understand the risk”). Furthermore, we would like to request clarification that a product is not automatically considered as complex due to the fact that the client is using an <u>existing</u> credit line for payment.</p> <p>As a result of the above, the NSA considers that an assessment of various elements – risk, complexity and liquidity – is necessary to properly determine the selling regime for each product. The NSA considers, therefore, that the most appropriate way to properly determine the scope of the execution-only regime would be:</p> <ul style="list-style-type: none"> • In level 1, to permit execution-only business on all shares, bonds, money market instruments, shares in UCITS and other non-complex financial instruments. • To mandate ESMA to develop guidelines for the assessment of all the above financial instruments that embed a derivative, incorporate a structure (i.e. are complex) or may be considered illiquid. Products where complexity does not add risk to investors - as compared to their vanilla versions - could be sold on an execution-only basis. <p>The NSA believes that regulation should not intend to regulate the behaviour of the investors but protect those who seek the advice or assessment of appropriateness. Thus execution only-services should be allowed in the current form also in the future.</p>
	<p>17) What if any changes are needed to the scope of the best execution requirements in Directive Article 27 or to the</p>	<p>The NSA questions the new requirement in article 27 for investment firms to (for each class of financial instruments),</p>

	<p>supporting requirements on execution quality to ensure that best execution is achieved for clients without undue cost?</p>	<p>gather information on and publish the top five execution venues. First of all, it is unclear in the proposal how the venues should be prioritized. It is also difficult to evaluate the size of the administrative burden for the investment firms as ESMA will issue technical standards regarding the contents and format of the information to be disclosed by the investment firm. In our opinion, there is a substantial risk, however, that this requirement will lead to substantial costs for the investment firms and little added value for the clients. We therefore propose that this requirement is deleted.</p> <p>In addition, the NSA finds that the requirements on best execution in MiFID should be left unchanged. There is no market failure in this area and the proposed new rules do not add value for clients (as they do not generally request information on execution under current MiFID rules).</p>
	<p>18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?</p>	<p>The NSA considers that the <u>current</u> MiFID rules/protections are adequate and, consequently, that we do not see any need for strengthening the protection of eligible counterparties as proposed by the Commission.</p>
	<p>19) Are any adjustments needed to the powers in the Regulation on product intervention to ensure appropriate protection of investors and market integrity without unduly damaging financial markets?</p>	<p>The NSA considers that supervisory authorities should be sufficiently equipped to prevent a threat to financial stability or market integrity and, therefore, should be habilitated to act in the context of MiFID. The NSA, nonetheless, believes that prohibitions or restrictions should be seen as a last resort measure and should be very carefully considered.</p> <p>In terms of product interventions, the legal and compliance functions of investment firms or banks providing investment</p>

		<p>services should be sufficient to secure the proper evaluation of product or service. It is self-evident that the financial intermediaries themselves should have the responsibility to ensure that proper procedures and well-run compliance functions are in place in the product innovation process. In terms of complex products, we should remember that an appropriateness test is always required for all complex products. This will act as an extra guarantee that the products do not pose a threat to the particular investor in question.</p> <p>Taking this into account, we do not see any need for the committees to be able to ban certain products. Further, it will be practically impossible to identify the potentially dangerous products in advance.</p> <p>The NSA considers that the use of current incentives/disincentives to encourage/discourage market behaviour may be a more effective way to address any specific market concerns.</p> <p>Finally, if a product ban regime is introduced in MiFID II, it is of great importance that the basis upon which ESMA/national authorities take their decisions is clearly set out on level 1. This is of great importance in order to ensure legal certainty for investors (in particular for those who have already invested in the product in question).</p>
Transparency	20) Are any adjustments needed to the pre-trade transparency requirements for shares, depositary receipts, ETFs, certificates and similar in Regulation Articles 3, 4 and 13 to make them workable in practice? If so what changes are	See our response to Q23.

	<p>needed and why?</p>	
	<p>21) Are any changes needed to the pre-trade transparency requirements in Regulation Articles 7, 8, 17 for all organised trading venues for bonds, structured products, emission allowances and derivatives to ensure they are appropriate to the different instruments? Which instruments are the highest priority for the introduction of pre-trade transparency requirements and why?</p>	<p>The NSA finds that the Commission proposal gives insufficient guidance regarding the exact calibration of the pre- and post-trade transparency regime for non-equities.</p> <p>According to the Commission’s proposal, national regulators will be able to authorize exceptions to transparency based on certain conditions, in particular if transactions are <i>large in scale compared with the normal market size</i> for that particular instrument. The Commission will specify these conditions in delegated acts for each class of instrument, based on proposals from ESMA.</p> <p>However, it is unclear <i>if</i> and <i>how</i> these conditions for deferred publications will apply e.g. to a local bond market where almost ALL transactions are large and where other factors, beyond transaction type and size, determine the level of liquidity.</p> <p>NSA proposes to add further guidelines in MiFIR to clarify when exceptions to non-equities market transparency “shall” be granted in level II. While carving out particularly sensitive cases from the transparency rules, such guidelines could still allow flexibility for ESMA to add further exceptions when necessary. In particular, we propose the following changes:</p> <ul style="list-style-type: none"> • Add general principles of caution and proportionality. These principles should balance the need for transparency, liquidity, and financial stability. In cases where the full transparency regime would risk

		<p>undermining liquidity in a particular market, exceptions should be granted. Exceptions should also be granted if transparency e.g. on the government bill and bond market and connected markets would risk having negative impact on financial stability.</p> <ul style="list-style-type: none"> • Add legally binding criteria to guide the Commission and ESMA. Recital 14 in MiFIR stipulates that the transparency regime “should” be calibrated to different types of instruments and different types of trading (including order-book and quote-driven systems as well as hybrid and voice broking systems), and take account of issuance, transaction size and characteristics of national markets. These criteria should be made legally binding, by changing “should” to “shall” and by adding them to text of the regulation. <p>Regarding the proposal to introduce SI obligations in article 17, please see our response to your question 6 above.</p>
	<p>22) Are the pre-trade transparency requirements in Regulation Articles 7, 8 and 17 for trading venues for bonds, structured products, emission allowances and derivatives appropriate? How can there be appropriate calibration for each instrument? Will these proposals ensure the correct level of transparency?</p>	<p>See response to question 21.</p>
	<p>23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?</p>	<p>The Large-in-scale (LIS) waiver for equities is rarely used, and it is notable that the average order sizes have declined over the last years, suggesting that LIS is set too high. The NSA proposes that threshold should be regularly reviewed and amended if</p>

		<p>supported by evidence.</p> <p>Moreover, it seems as if the reference price waiver is "misused". Therefore, the NSA believes it makes sense to request a minimum order size for using the reference price waiver in order to minimize the use of small size dark orders, which should not be dark, and to minimize the (small share) testing of dark pools (which are based on reference price waiver) for larger orders. Moreover, small orders are adding extra trading costs to brokers and in the end to customers.</p>
	<p>24) What is your view on the data service provider provisions (Articles 61 - 68 in MiFID), Consolidated Tape Provider (CTPs), Approved Reporting Mechanism (ARMs), Authorised Publication Authorities (APAs)?</p>	<p>No comments on ARMs and APAs. To the CTP – we refer to the Commission MiFID Consultation, where the Commission called for the preferred option for a post-trade consolidated tape. Since NSA does not foresee any viable, purely market driven model within a near future, we prefer Option B (meaning <u>one</u> consolidated tape) and with a new tender every third year to ensure some competition in terms of price and tape quality for the future.</p> <p>However, the Commission proposes to facilitate a solution which supports several suppliers of consolidated tapes. We do not support a solution with several consolidated tapes since this will undermine the idea with ONE consolidated tape and complicates the finding of the "right" consolidated tape. We also question if true competition and price pressure will be possible to create on a real commercial basis. At present, the NSA does not consider it to be economically justifiable to introduce a consolidated tape for other financial instruments than equities.</p>
	<p>25) What changes if any are needed to the post-trade</p>	<p>Where MiFID has created a liberalised market for trading, there</p>

	<p>transparency requirements by trading venues and investment firms to ensure that market participants can access timely, reliable information at reasonable cost, and that competent authorities receive the right data?</p>	<p>is a de facto monopoly when it comes to information (market data) as per each trading venue. It is a fact that many incumbent regulated markets have increased data pricing since MiFID, despite losing market share - most likely to compensate for loss of revenue in trading. Most MTFs do not charge for data yet, but ultimately have a strong incentive to monetise it if they can (see e.g. http://iiac.ca/resources/1581/slcg-canadian-market-datajune%207.pdf.)</p> <p>As trading becomes more and more fragmented, it is increasingly important for investors and other users to have access to pre- and post-trade data in an efficient way and with reasonable costs. Adequate pre-trade information is one of the key factors in a credible price discovery process and in investment decisions. Adequate post-trade information is one of the core elements to ensure that best execution is received. Investment firms are required to provide their customers with best execution and should also offer the needed pre-trade information. These requirements create a need for investment firms to purchase a minimum of securities market data from trading venues, vendors, etc. And when trading is fragmented – information is fragmented implying increased costs when both pre- and post-trade information must be purchased from more parties.</p> <p>More certainty of the ownership of market data (intellectual property rights) would be an important contributor to a competitive market data environment. The timestamp, which can be considered as the investment firm's receipt for its order, and the information of executed trades sent to a specific investment</p>
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		<p>firm, should be owned by this investment firm in order to enable the firm to consolidate the information with other investment firms, to derive the information etc. without being charged.</p> <p>Alternatively, free raw and basicdata is another solution. Reasonable costs can be charged for derived products and data processing.</p> <p>The Commission has proposed some steps in order to reduce market data costs and to ensure consolidated information. These steps are:</p> <ul style="list-style-type: none">• Unbundling of data• Free market data after 15 minutes (both pre- and post-trade data)• Clarifying reasonable commercial basis, however still to be the basis for pricing market data• A commercial solution for consolidated tapes <p>All these measures are of course necessary – but not sufficient steps - going forward as they will not create the needed competition among the venues, vendors, etc. on market data. The reasons are that as fragmentation becomes more pronounced, investment firms are increasingly forced to buy market data from various trading venues, which itself increases costs considerably unless prices are lowered significantly.</p> <p>Furthermore, by definition there cannot be a commercial basis, reasonable or not, for setting a price if there is no competition.</p>
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Horizontal issues	26) How could better use be made of the European Supervisory Authorities, including the Joint Committee, in developing and implementing MiFID/MiFIR 2?	<p>The NSA would welcome a close coordination between ESMA, EBA and EIOPA on issues of cross-sector importance such as sanctions and corporate governance.</p> <p>However, in our opinion there is a risk that the limited resources of e.g. ESMA and unrealistic timetables will lead to regulations that are not sufficiently elaborated which may cause serious detrimental effects to the financial markets. It is therefore of utmost importance to ensure that any mandate given to ESMA is necessary and that the level 1 text provides sufficient details as regards the contents of the delegated acts or technical standards to be produced. Moreover, it is essential to set realistic timetables that enable ESMA to get sufficient input from the market. Realistic time for consultation is also essential in order to ensure future compliance with the new rules.</p>

	<p>27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?</p>	<p>The NSA fears that some of the proposals made by the Commission might raise the burden of the authorities in a way that increases the possibility that they will not be able to focus on their core tasks, mainly to prevent systemic risk.</p> <p>As an example, we believe that investment firms and their compliance functions are able to secure the proper evaluation and appropriateness of products. Thus there is no need to burden the authorities with product interventions ex-ante.</p> <p>Moreover, the extended rules on transaction reporting are not proportionate. In our opinion, the authorities do not need on-going information on the persons or algorithms responsible for the investment decision. Should the situation arise, the competent authority can request such information on an ad hoc basis under the current framework.</p>
	<p>28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?</p>	<ul style="list-style-type: none"> • Derivatives and CCP: It is essential that the requirements in EMIR are coordinated with MiFID/MiFIR • Automated Trading: It is essential that ESMA guidelines and MAD are taken into account • Sanctions and Corporate Governance: It is essential to coordinate with CRD IV. • SME: It is essential to coordinate with Transparency and Prospectus directives. • Packaged products: It is essential to coordinate with PRIP, UCITS and AIFMD (level playing field) • CSD: It is essential to consider if an exemption from MiFID is necessary regarding safekeeping and

		administration.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	Coordination with US Securities Regulation (Dodd Frank) and IOSCO/G20 rules is essential.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	Should be coordinated with similar rules in CRD IV. We believe that the proposed rules on individual liability are not proportional and may make it more difficult to find persons willing to sit in the board for investment firms in the EU. We also consider it a problem that the responsibilities of board members in terms of control are too unspecified.
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	The NSA believes that the rules are too high-level on non-equity transparency and SI obligations for non-equities. It is important that the Parliament will include further clarifications in the Level 1 text and to clearly define the scope of delegated acts and technical standards for the Commission and ESMA.
Detailed comments on specific articles of the draft Directive		
Article number	Comments	
Article 4.2 (4)	The Commission proposes that execution of orders should include primary market transactions if the relevant security is issued by the investment firm/credit institution. It should be clarified, as earlier stated by CESR, that subscription of share based on existing share holdings will not be covered by this new extended definition of execution of orders.	
Article 25 :5	“Personal characteristics” is introduced as a new, undefined term, which can cause uncertainty regarding the state of law. It is proposed to using "investment profile" instead, which is a commonly used term.	

Article 28 :2	The obligation under this paragraph should be possible to comply with, not only by transmitting an order to a regulated market or MTF, but also by transfer of the order to an OTF operated by the investment firm itself.
Article ... :	
Article ... :	
Detailed comments on specific articles of the draft Regulation	
Article number	Comments
Article 23 :3	<p><u>Transaction reporting</u></p> <p>The NSA strongly supports a standardised transaction reporting system in EU based on the principle of full harmonisation. However, the NSA believes that the benefits of the Commission's proposals on transaction reporting are disproportionate to the costs that they entail for the investment firms and also sees practical problems with parts of the Commission's proposals. The NSA considers that the requirement in article 23.3 MiFIR to report "the person and computer algorithms in the investment firm which is responsible for investment decisions and the execution of the transaction" is unclear. To our understanding the requirement only relates to situations where the investment decision taken by the investment firm (e.g. trading on own account or discretionary portfolio management) and not when investment decisions are made by the customer. In any case, the extended requirements on transaction reporting entails substantial costs for the investment firms and it is questionable how useful it is for the competent authority to get continuous information about the people and the algorithms behind an investment decision/execution of the transaction. It should also be noted that algorithms used in the execution of orders are subject to frequent changes.</p>
Article ... :	