



## MiFID

COM(2011)0656 (2011/0268(COD))

*part 2A (Articles 1-20)*

Document dated: **31 January 2014** - including dates

### Key

T: point for consideration by technical group

	Points provisionally agreed by trilogue, subject to agreement overall package
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		COM	Council	EP	Compromise
153.	Title I	<i>DEFINITIONS AND SCOPE</i>	<i>DEFINITIONS AND SCOPE</i>	<i>DEFINITIONS AND SCOPE</i>	<i>Agreed silence procedure 20130912</i> <i>DEFINITIONS AND SCOPE</i>
154.	Art. 1 – title	Scope	<i>SCOPE</i>	<i>Scope</i>	<i>Agreed silence procedure 20130912</i> <i>Scope</i>
155.	Art. 1 – para 1	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.	1. This Directive shall apply to investment firms, regulated markets, data reporting service providers and third country firms providing investment services <u>and/or performing investment activities though the establishment of a branch</u> in the Union.	1. This Directive shall apply to investment firms, regulated markets, data reporting service providers and <i>third-country firms</i> providing investment services or activities in the <i>European</i> Union.	<i>Agreed silence procedure 20131219</i> <i>Technical group proposal</i> [section in [] to be included or not consequential to result on 3rd country Articles] <i>Technical group 29 08</i> 1. This Directive shall apply to investment firms, market operators, data reporting service providers and <i>third-country firms</i> providing investment services or performing investment activities through the establishment of a branch in the <i>European</i>



		COM	Council	EP	Compromise
					<p>Union.</p> <p><i>Technical group 13 11</i></p> <p>See row 78 MiFIR:</p> <p>Changed "regulated markets" to "trading venues" to ensure all actors within scope are listed</p> <p><i>Technical group 2 12</i></p> <p>Definition of data reporting service provider to be added</p> <p>To be reviewed once third country regime agreed</p> <p><i>Technical meeting 17 12</i></p> <p>Revised suggestion following comment in Council: deleted above "including any trading venues they operate" (cf. definition of market operator in row 99 MiFIR)</p> <p><b><i>Technical group 20140131</i></b></p> <p><b>Square brackets removed above (around "through the establishment of a branch")</b></p>
156.	Art. 1 – para 2	2. This Directive establishes requirements in relation to the following:	2. This Directive establishes requirements in relation to the following:	2. This Directive establishes requirements in relation to the following:	<p><i>Agreed silence procedure 20130912</i></p> <p>2. This Directive establishes requirements in relation to the following:</p>
157.	Art. 1 – para 2 – point a	(a) authorisation and operating conditions for investment firms;	(a) authorisation and operating conditions for investment firms;	(a) authorisation and operating conditions for investment firms;	<p><i>Agreed silence procedure 20130912</i></p> <p>(a) authorisation and operating conditions for investment firms;</p>
158.	Art. 1	(b) provision of investment services	(b) provision of investment services	(b) provision of investment services	<p><i>Agreed silence procedure 20130912</i></p>



		COM	Council	EP	Compromise
	– para 2 – point b	or activities by third country firms with the establishment of a branch;	or activities by third country firms with the establishment of a branch;	or activities by <i>third-country firms</i> with the establishment of a branch;	(b) provision of investment services or activities by <i>third-country firms</i> with the establishment of a branch;
159.	Art. 1 – para 2 – point c	(c) authorisation and operation of regulated markets;	(c) authorisation and operation of regulated markets;	(c) authorisation and operation of regulated markets;	<i>Agreed silence procedure 20130912</i> (c) authorisation and operation of regulated markets;
160.	Art. 1 – para 2 – point d	(d) authorisation and operation of data reporting service providers; and	(d) authorisation and operation of data reporting service providers; and	(d) authorisation and operation of data reporting service providers; and	<i>Agreed silence procedure 20130912</i> (d) authorisation and operation of data reporting service providers; and
161.	Art. 1 – para 2 – point e	(e) supervision, cooperation and enforcement by competent authorities.	(e) supervision, cooperation and enforcement by competent authorities.	(e) supervision, cooperation and enforcement by competent authorities.	<i>Agreed silence procedure 20130912</i> (e) supervision, cooperation and enforcement by competent authorities
162.	Art. 1 – para 3	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:	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 [...]:	3. <b><i>This Directive</i></b> 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 <b><i>to credit institutions and investment firms</i></b> 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 ( <b><i>structured deposits</i></b> ).	<i>Agreed silence procedure 20131126</i> <i>Technical group proposal</i> T: where/how best to include structured deposits within scope (included in all three texts in different places, see rows 168ff, 286, 289) <i>Technical group 28 08</i> issue of structured deposits to be dealt with in row 168ff. Decisions on first part of text (scope of application to credit institutions to be taken at political level.  Trilogue 20131009: agreed that intention is to ensure all substantive provisions apply to credit institutions carrying out investment



		COM	Council	EP	Compromise
					business without duplicating CRDIV.  <i>Technical meeting 23 10</i>  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 [...]:
163.	Art. 1 – para 3 – indent 1	– Articles 2(2), 9(6), 14, 16, 17 and 18,	– Articles 2(2), 9(4), 14, 16, 17, 18, <u>19 and 20</u> ,	■	<i>Agreed silence procedure 20131126</i>  T: alignment to political decision on 162 (whether to apply whole directive or only certain Articles) once taken  <i>Technical meeting 23 10</i>  Provisional list to be checked once Articles are stable. Aim is to include all substantive provisions without duplicating CRDIV.  – Articles 2(2), 9(3), 14, 16, 17, 18, <u>19 and 20</u> ,  <i>Technical group 2 12</i>  Reference to 9(3) instead 9(4) (row 369)
164.	Art. 1 – para 3 – indent 2	– Chapter II of Title II excluding second subparagraph of Article 29(2),	– Chapter II of Title II excluding second subparagraph of Article 29(2),	■	<i>Agreed silence procedure 20131126</i>  T: alignment to political decision on 162 (whether to apply whole directive or only certain Articles) once taken  <i>Technical meeting 23 10</i>  Provisional list to be checked once Articles are stable Aim is to include all substantive provisions without duplicating CRDIV.



		COM	Council	EP	Compromise
					– Chapter II of Title II excluding second subparagraph of Article 29(2),
165.	Art. 1 – para 3 – indent 3	– Chapter III of Title II excluding Articles 36(2), (3) and (4) and 37(2), (3), (4), (5), (6), (9) and (10)	– Chapter III of Title II excluding Articles 36(2), (3) and (4) and 37(2), (3), (4), (5), (6), (9) and (10),	■	<p><i>Agreed silence procedure 20131219</i></p> <p>T: alignment to political decision on 162 (whether to apply whole directive or only certain Articles) once taken</p> <p><i>Technical meeting 23 10</i></p> <p>Provisional list to be checked once Articles are stable Aim is to include all substantive provisions without duplicating CRDIV.</p> <p>– Chapter III of Title II excluding Articles 36(2) and (3) and 37(2), (3), (4), (5), (6), and (9),</p> <p><i>Technical group 2 12</i></p> <p>References to 36(4) and 37(10) to be checked</p> <p><i>Technical group telecon 20131211</i></p> <p><u>EP technical team can agree to removing 36(4) and 37(10) from the list of exemptions. Removed above</u></p>
166.	Art. 1 – para 3 – indent 4	– Articles 69 to 80 and Articles 84, 89 and 90	– Articles 69 to 80 and Articles 84, 89 and 90.	■	<p><i>Agreed silence procedure 20131126</i></p> <p>T: alignment to political decision on 162 (whether to apply whole directive or only certain Articles) once taken</p> <p><i>Technical meeting 23 10</i></p> <p>Provisional list to be checked once Articles are stable Aim is to include all substantive</p>



		COM	Council	EP	Compromise
					provisions without duplicating CRDIV. – Articles 69 to 80 and Articles 84, 89 and 90.
167.	Art. 1 – para 3 a (new)			<p><b>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 of the European Parliament and of the Council of 5 November 2002 concerning life assurance<sup>1</sup>, Directive 2002/92/EC or Directive 2009/138/EC, when selling or advising clients in relation to insurance-based investments:</b></p> <p>- Article 16(3);</p> <p>- Articles 23 to 26; and</p> <p>- Articles 69 to 80 and 83 to 91, where necessary, for the purpose of allowing competent authorities to give effect to the articles referred to in the first and second indents in relation to insurance-based investments.</p>	<p>T: mechanism for including insurance based investment products if political decision taken to do so. Check consistency rows 179, 285, 286</p> <p>Trilogue 20130904: Commission to prepare proposal for transitional inclusion of insurance pending entry into force of IMD2</p> <p>Trilogue 20131009: Commission to prepare revised non-paper including direct sales and product intervention/product governance.</p> <p>Trilogue 20131113: Commission to refine its non-paper, where appropriate aligning with PRIPS proposal and clarifying the scope of the inclusion of insurance-related investments</p> <p>Revised Commission non-paper circulated on 14 11</p> <p>Technical group telecon 20121211</p> <p>Without prejudice to political decision on inclusion of insurance which is yet to be taken it is clear that this is not now the means that would be used to apply certain MiFID II provisions to insurance. Technical group therefore propose deletion.</p> <p>[...]</p>

<sup>1</sup> OJ L 345, 19.12.2002, p. 1.



		COM	Council	EP	Compromise
					<p><i>Trilogue 20131212: Pres. is still working on insurance and will present non-paper for the 18 December trilogue</i></p> <p><i>Trilogue 20131218: issue left open</i></p> <p><i>Trilogue 20140114: agreed to include insurance non-paper [which does not include any text here]</i></p> <p>[...]</p>
168.	Art 1 para 3b - new		<p><u>4. The following provisions shall also apply to credit institutions authorised under Directive 2006/48/EC and investment firms, when selling or advising clients in relation to structured deposits:</u></p>		<p><i>Agreed silence procedure 20131008</i></p> <p>T: where/how best to include structured deposits within scope (see rows 162, 286, 289)</p> <p><i>Technical group 28 08</i></p> <p><u>[All cross-references to be checked once text stable. Consider alongside need for specific references to structured deposits in Articles mentioned once political decisions taken on inclusion or not of insurance-related investments.]</u></p> <p><u>4. The following provisions shall also apply to credit institutions authorised under Directive 2006/48/EC and investment firms, when selling or advising clients in relation to structured deposits:</u></p>
169.	Art 1 para 3b – new-1st		<p><u>- Articles 9(4), 14 and 16 (2), (3) and (6).</u></p>		<p><i>Agreed silence procedure 20131008</i></p> <p>T: where/how best to include structured deposits within scope</p> <p><i>Technical group 28 08</i></p>



		COM	Council	EP	Compromise
	indent				<p>- Articles 9(3), 14 and 16 (2), (3) and (6),  <i>Technical group telecon 20131211</i>  <i>Reference corrected (9(3) instead of 9(4), cf. rows 163 and 369)</i></p>
170.	Art 1 para 3b – new- 2nd indent		- Articles 23, 24(1) to (8), 25(1) to (6), 26, 28, 29 excluding second subparagraph of paragraph (2), 30, and		<p><i>Agreed silence procedure 20131008</i>            T: where/how best to include structured deposits within scope  <i>Technical group 28 08</i>            - Articles 23, 24, 25, 26, 28, 29 excluding second subparagraph of paragraph (2), 30, and</p>
171.	Art 1 para 3b – new- 3rd indent		- Articles 69 to 80.		<p><i>Agreed silence procedure 20131008</i>            T: where/how best to include structured deposits within scope  <i>Technical group 28 08</i>            - Articles 69 to 80.</p>
172.	Art 1 para 3c new		5. The provisions under Articles 17(1) to 17(5) shall also apply to members or participants of regulated markets and MTFs who are not required to be authorised under this Directive by virtue of the exemptions in Articles 2(1)(a), (d), (h) and (i).		<p><i>Agreed silence procedure 20131219</i>            T: check cross-references to Art 17 if political decision taken to include            [Note: refers to trading controls]  <i>Technical group 13 11</i>            Check consistency with exemptions once they are decided            5. The provisions under Articles 17(1) to 17(5) shall also apply to members or</p>





		COM	Council	EP	Compromise
					<p>participants of regulated markets and MTFs who are not required to be authorised under this Directive by virtue of the exemptions in Articles 2(1)(a), <del>(d)</del>, <b>(da)</b>, (h) and (i).</p> <p><i>Technical group telecon 20131211</i></p> <p><i>Exemptions are for insurers, own account, collective investment schemes and ancillary activity relating to commodity derivatives. All will be maintained in compromise and Art. 17(1)-(5) also stable. Confirm proposal.</i></p> <p><i>Technical group 17 12</i></p> <p><i>Revised suggestion above following new suggestion in row 184: deletion of reference to point (d)</i></p> <p><i>Technical group 20140122</i></p> <p>Point (da) inserted above, following Commission comment</p>
173.	Art 1 para 3d - new		<p><u>5a. The provisions under Articles 59 and 60 shall also apply to persons exempt under this Directive by virtue of Article 2.</u></p>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Technical group telecon 20131211</i></p> <p>Include, subject to political agreement on commodities</p> <p>5a. The provisions under Articles 59 and 60 shall also apply to persons exempt under this Directive by virtue of Article 2.</p>



		COM	Council	EP	Compromise
174.	Art 1- para 3e new		<u>6. All multilateral systems in financial instruments shall operate either according to the provisions of Title II for MTFs or for OTFs or of Title III for regulated markets.</u>		<p><i>Agreed silence procedure 20131219</i></p> <p>[Note: refers to market structure]</p> <p><i>Trilogue 20131121: package on market structure agreed</i></p> <p><i>Technical group Telecon 20131211</i></p> <p><i>Confirms that all multilateral systems have to operate as either RMs, MTFs or (for non-equity) OTFs.</i></p> <p><u>6. All multilateral systems in financial instruments shall operate either according to the provisions of Title II for MTFs or for OTFs or of Title III for regulated markets.</u></p>
175.	Art 1- para 3e new- 1st subpar a		<u>Any investment firms which, on an organised, frequent, systematic and substantial basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF shall operate according to the provisions of Title III of [MiFIR].</u>		<p><i>Agreed silence procedure 20131219</i></p> <p>[Note: refers to market structure]</p> <p><i>Trilogue 20131121: package on market structure agreed</i></p> <p><i>Technical group Telecon 20131211</i></p> <p><i>This needs to be aligned to SI definition in MiFIR row 98.</i></p> <p><u>Any investment firms which, on an organised, frequent, systematic and substantial basis, deal on own account by executing client orders outside a regulated</u></p>



		COM	Council	EP	Compromise
					market, an MTF or an OTF shall operate according to the provisions of Title III of [MiFIR].
176.	Art 1- para 3e new- 2nd subpar a		<u>Without prejudice to the provisions of Article 20c of [MiFIR] and to the provisions of Article 24 of [MiFIR], all transactions in financial instruments mentioned in the previous subparagraphs which are not concluded on multilateral systems or systematic internalisers should be in compliance with the relevant provisions of Title III of [MiFIR].</u>		<p><i>Agreed silence procedure 20131219</i></p> <p>[Note: refers to market structure]</p> <p><i>Trilogue 20131121: package on market structure agreed</i></p> <p><i>Technical group Telecon 20131211</i></p> <p><u>Without prejudice to the provisions of Article 20c of [MiFIR] and to the provisions of Article 24 of [MiFIR], all transactions in financial instruments mentioned in the previous subparagraphs which are not concluded on multilateral systems or systematic internalisers should be in compliance with the relevant provisions of Title III of [MiFIR].</u></p>
177.	Art. 2 – title	<i>Exemptions</i>	<i>Exemptions</i>	<i>Exemptions</i>	<p><i>Agreed silence procedure 20130912</i></p> <p><i>Exemptions</i></p>
178.	Art. 2 – para 1	1. This Directive shall not apply to:	1. This Directive shall not apply to:	1. This Directive shall not apply to:	<p><i>Agreed silence procedure 20130912</i></p> <p>1. This Directive shall not apply to:</p>
179.	Art. 2 – para 1 – point a	(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	(a) insurance undertakings or undertakings carrying on the reinsurance and retrocession activities referred to in Directive	<p><i>Agreed silence procedure 20131219</i></p> <p>T: alignment to outcome on row 167 once political decision taken</p>



		COM	Council	EP	Compromise
			when carrying on the activities referred to in Directive 2009/138/EC;	2009/138/EC, <i>without prejudice to Article 1(3a)</i> ;	<p>Trilogue 20130904: Commission to prepare proposal for transitional inclusion of insurance pending entry into force of IMD2</p> <p>Trilogue 20131009: Commission to prepare revised non-paper including direct sales and product intervention/product governance.</p> <p>Technical group Telecon 20131211</p> <p>Without prejudice to political decisions on insurance yet to be taken, it is clear from discussion at trilogue that Art 1(3a) would not be the mechanism for applying certain MiFID 2 provisions to insurance. Technical group therefore propose not to include it here.</p> <p>(a) insurance undertakings or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 2009/138/EC when carrying on the activities referred to in Directive 2009/138/EC;</p>
180.	Art. 2 – para 1 – point b	(b) persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;	(b) persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;	(b) persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;	<p>Agreed silence procedure 20130912</p> <p>(b) persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;</p>
181.	Art. 2 – para 1 – point c	(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	(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	(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 ■ ;	<p>Agreed silence procedure 20131219</p> <p>Trilogue 20101009: left open</p> <p>Technical group Telecon 20131211</p> <p>(c) persons providing an investment service</p>



		COM	Council	EP	Compromise
		ethics governing the profession which do not exclude the provision of that service;	ethics governing the profession which do not exclude the provision of that 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 I ;  <i>Technical group 17 12</i>  <i>Revised suggestion following objection in Council (note that this is also the current text in MiFID I)</i>  (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;
182.	Art. 2 – para 1 – point d	(d) persons who do not provide any investment services or activities other than dealing on own account unless they:	(d) persons who deal on own account <u>in financial instruments other than commodity derivatives, emission allowances or derivatives thereof, and</u> who do not provide any other investment services <u>and/or perform any other investment activities in financial instruments other than commodity derivatives, emission allowances or derivatives thereof.</u> <u>This exemption does not apply to persons who:</u>	(d) persons who do not provide any investment services or activities other than dealing on own account unless they:	<i>Agreed silence procedure 20131219</i>  T: check consistency with row 188 and fit with exemptions (i) (rows 193-198) once political decisions taken  <i>Trilogue 20101009: left open</i>  <i>Trilogue 20131204: possible package based on Council approach in row 185 and EP approach in row 188</i>  <i>Technical group telecon 20131211</i>  <i>Discussed whether to include substance of row 188 here (possible drafting below), or include separate provision in row 188 (see proposal below)</i>



		COM	Council	EP	Compromise
					<p><i>Commission technical team preference for separate provision in row 188. Presidency testing both.</i></p> <p>(d) persons <u>who deal on own account in financial instruments other than commodity derivatives, emission allowances or derivatives thereof</u> who do not provide any other investment services and/or perform any other investment activities in financial instruments other than commodity derivatives, emission allowances or derivatives thereof <b>and persons who deal on own account in emission allowances and own and directly operate installations subject to Directive 2003/87/EC and do not provide any other investment services and/or perform any other investment activities.</b> This exemption does not apply to persons who:</p> <p><i>Trilogue 20131212: Agreed to include text on persons dealing in emission allowances in row 188 rather than in row 182. Therefore text in row 182:</i></p> <p>(d) persons <u>who deal on own account in financial instruments other than commodity derivatives, emission allowances or derivatives thereof</u> who do not provide any other investment services and/or perform any other investment activities in financial instruments other than commodity derivatives, emission allowances or derivatives thereof. This exemption does not apply to persons who:</p>



		COM	Council	EP	Compromise
183.	Art. 2 – para 1 – point d – subpoi nt i	(i) are market makers	(i) are market makers; <u>or</u>	(i) are market makers;	<i>Agreed silence procedure 20130912</i>  [Note to lawyer linguists: please add “or” before final item in list]  (i) are market makers;
184.	Art. 2 – para 1 – point d – subpoi nt ii	(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 <i>multilateral trading facility</i> (MTF) <b>or have direct market access to a trading venue;</b>	<i>Trilogue 20101009: left open</i>  <i>Trilogue 20131204: possible package based on Council approach in row 185 and EP approach in row 188</i>  <i>Trilogue 20131212: Commission to prepare a non-paper explaining whether relevant exemption covered elsewhere and rules applicable to those exempted in Commission /EP text (cf. rows 172, 173). Commission input sent on 13 December.</i>  <i>Technical group 17 12</i>  (ii) are a member of or a participant in a regulated market or <i>multilateral trading facility</i> (MTF) <b>or have direct electronic access to a trading venue; <u>or</u></b>  <i>Trilogue 20131218: agreed</i>  <i>Technical group 201401 22</i>  “Direct market access” changed to “direct electronic access”, to align to terminology elsewhere
185.	Art. 2 – para 1 –		(ii) <u>apply a high frequency algorithmic trading technique; or</u>	<b>(iia) engage in algorithmic trading;</b>	<i>Trilogue 20101009: left open</i>  <i>Trilogue 20131204: possible package based</i>



		COM	Council	EP	Compromise
	point d – subpoi nt ii a (new)				on Council approach in row 185 and EP approach in row 188  Technical group telecon 20131211  (ii) <u>apply a high frequency algorithmic trading technique; or</u>  Trilogue 20131218: agreed
186.	Art. 2 – para 1 – point d – subpoi nt ii b (new)			<b>(iib) given the scale of their trading activities are deemed to have a significant market presence by the competent authority; or</b>	Trilogue 20101009: left open  Trilogue 20131204: possible package based on Council approach in row 185 and EP approach in row 188  Technical group 17 12  Suggest to delete  [...]  Trilogue 20131218: agreed
187.	Art. 2 – para 1 – point d – subpoi nt iii	(iii) deal on own account by executing client orders ;	(iii) deal on own account by executing client orders;	(iii) deal on own account <b>when</b> executing client orders.	Agreed silence procedure 20130912  [Note: technical group see no difference of scope. This is a question of linguistic clarity.]  (iii) deal on own account <b>when</b> executing client orders.
187a.					Technical group 17 12  <b><u>Persons who are exempt under points (a), (i) or (h) of paragraph 1 of this Article are not required to meet the conditions laid down in this point in order to be exempt.</u></b>  Trilogue 20131218: agreed





		COM	Council	EP	Compromise
188.	Art. 2 – para 1 – subpar a 2	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;	[...]	<p><b><i>Persons who are exempt under point (i) do not also need to meet the conditions laid down in this point in order to be exempt.</i></b></p> <p><b><i>This exemption shall apply to persons who, when dealing emission allowances, do not provide any investment services or activities other than dealing on own account and do not execute client orders, and which own or directly operate installations subject to Directive 2003/87/EC;</i></b></p>	<p>T: check consistency row 182 and other exemptions once political decisions taken</p> <p><i>Trilogue 20101009: left open</i></p> <p><i>Trilogue 20131204: possible package based on Council approach in row 185 and EP approach in row 188</i></p> <p><i>Technical group Telecon 20131211</i></p> <p>Council drafting separates scope of this exemption (dealing on own account in instruments other than commodity derivatives) and exemption (i) (ancillary activity in commodity derivatives) in line with intention of EP text so first part not needed.</p> <p>Second part to be incorporated either in row 182 or here.</p> <p><b><i>(da) persons who, when dealing emission allowances, do not execute client orders and who do not provide any investment services or perform any investment activities other than dealing on own account, and which own or directly operate installations subject to Directive 2003/87/EC.</i></b></p> <p><i>Trilogue 20131212: Agreed to include text on persons dealing in emission allowances in row 188 rather than in row 182. Include (da) as above</i></p> <p><i>COM does not share this understanding of the outcome of the trilogue and argues that</i></p>



		COM	Council	EP	Compromise
					<p>text should not be included in row 188, claiming that this exemption is covered under paragraph 2(1)(i). EP technical team note that different conditions apply to qualify for the exemption under 2(1)(i).</p> <p>Technical group 17 12</p> <p>In light of comment in Council, check against wording of Directive 2003/87/EC and consider drafting change</p> <p>Trilogue 20131218: agreed</p> <p>Technical meeting 20140116</p> <p>(da) <b><u>operators with compliance obligations under Directive 2003/87/EC who, when dealing in emission allowances, do not execute client orders and who do not provide any investment services or perform any investment activities other than dealing on own account, provided these persons do not apply a high frequency algorithmic trading technique.</u></b></p> <p>Technical group 20140122</p> <p>Addition of “<b><i>provided these persons do not apply a high frequency algorithmic trading technique</i></b>” above, following Commission comment</p>
189.	Art. 2 – para 1 – point c	(e) persons which provide investment services consisting exclusively in the administration of employee-participation schemes;	(e) persons which provide investment services consisting exclusively in the administration of employee-participation schemes;	(e) persons which provide investment services consisting exclusively in the administration of employee-participation schemes;	<p>Agreed silence procedure 20130912</p> <p>(e) persons which provide investment services consisting exclusively in the administration of employee-participation</p>



		COM	Council	EP	Compromise
					schemes;
190.	Art. 2 – para 1 – point f	(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 both <u>the</u> 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 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;	<i>Agreed silence procedure 20130912</i>  (f) persons which provide investment services which only involve both <u>the</u> 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;
191.	Art. 2 – para 1 – point g	(g) the members of the European System of Central Banks and other national bodies performing similar functions in the Union, other public bodies charged with or intervening in the management of the public debt in the Union and international bodies of which one or more Member States are members;	(g) the members of the European System of Central Banks and other national bodies performing similar functions in the Union, other public bodies charged with or intervening in the management of the public debt in the Union and international bodies of which one or more Member States are members;	(g) the members of the <i>ESCB</i> and other national bodies performing similar functions in the <i>European</i> Union, other public bodies charged with or intervening in the <b>management of the public debt in the European Union and international bodies of which <i>three or more</i> Member States are members and which are charged with or intervening in the management of the public debt;</b>	<i>Agreed silence procedure 20131008</i>  T: initial discussion of scope of "international bodies"  <i>Technical group 28 08</i>  [Objective: ESM to be covered without creating overly-broad provision which could provide unintended loophole. COM to check whether this is the case in EP wording; if so, Pres is ok with EP text]  (g) the members of the <i>ESCB</i> and other national bodies performing similar functions in the <i>European</i> Union, other public bodies charged with or intervening in the <b>management of the public debt in the European Union and international bodies of which <i>three or more</i> Member States are members and which are charged with or intervening in the management of the public debt;</b>



		COM	Council	EP	Compromise
					<p><i>Technical meeting 05 09</i></p> <p>Note: last part redrafted in accordance with Article 2(1)(d)(v) of Regulation (EU) Non 236/2012 (Short-selling) which covers the ESM</p> <p>(g) the members of the <i>ESCB</i> and other national bodies performing similar functions in the <b>European</b> Union, other public bodies charged with or intervening in the <b>management of the public debt in the European Union and international financial institutions established by two or more Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experience or threatened by severe financing problems;</b></p>
192.	Art. 2 – para 1 – point h	(h) collective investment undertakings and pension funds whether coordinated at Union level or not and the depositaries and managers of such undertakings;	(h) collective investment undertakings and pension funds whether coordinated at Union level or not and the depositaries and managers of such undertakings;	(h) collective investment undertakings and pension funds whether coordinated at <b>European</b> Union level or not and the depositaries and managers of such undertakings;	<p><i>Agreed silence procedure 20130912</i></p> <p>(h) collective investment undertakings and pension funds whether coordinated at <b>European</b> Union level or not and the depositaries and managers of such undertakings;</p>
193.	Art. 2 – para 1 – point i	(i) persons who:	(i) persons [...]:	(i) persons who:	<p><i>Agreed silence procedure 20130912</i></p> <p>[Subject to lawyer linguist review]</p> <p>(i) persons who:</p>
194.	Art. 2 – para 1 –	- deal on own account in financial instruments, excluding persons who deal on own account by executing	<u>(i) who deal on own account, including market makers, in commodity derivatives, emission</u>	<b>(i)</b> deal on own account in financial instruments, excluding persons who deal on own account <b>when</b> executing	<p><i>T: check drafting of articulation with other exemptions (eg rows 182, 188) once political decisions taken</i></p>



		COM	Council	EP	Compromise
	point i – indent 1	client orders, or	<u>allowances or derivatives thereof</u> , excluding persons who deal on own account by executing client orders; or	client orders <b>■</b> ,	<p><i>Trilogue 20130904: Commission to prepare proposal for when dealing is deemed to be 'ancillary' (row 212)</i></p> <p><i>Trilogue 20101009: left open</i></p> <p><i>Trilogue 20131204: activities not to be judged 'ancillary' on basis of capital employed alone.</i></p> <p><i>Technical group telecon 20131211</i></p> <p><i>Inclusion or not of market makers to be reviewed once clarity about the interaction with Annex I C6.</i></p> <p><i>(i) who deal on own account, [including market makers,] in commodity derivatives, <u>emission allowances or derivatives thereof</u>, excluding persons who deal on own account by executing client orders; or</i></p> <p><i>Technical meeting 20140116</i></p> <p>Row to get back to on 17 01</p> <p>Meanwhile consider the issue</p> <p><i>Technical group 20140122</i></p> <p>Comment on rows 194, 197, 212: Text clarified to ensure that where market making is only an ancillary activity and not the main business, those carrying on such market making can benefit from the exemption. The calculation of ancillary activity would exclude any liquidity provision which is required by regulatory authorities.</p> <p><i>(i) who deal on own account, <b>including</b></i></p>



		COM	Council	EP	Compromise
					<u>market makers, in commodity derivatives, emission allowances or derivatives thereof, excluding persons who deal on own account by executing client orders; or</u>
195.	Art. 2 – para 1 – point i – indent 2	- provide investment services, other than dealing on own account, exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings, or	[...]	(ii) provide investment services, other than dealing on own account, exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings, or	Agreed silence procedure 20131219 Trilogue 20101009: left open Trilogue 20131204: activities not to be judged ‘ancillary’ on basis of capital employed alone. Technical group telecon 20131211 Deleted because scope of exemption narrowed to commodity derivatives and emission allowances/derivatives, which are covered in row 196. [...]
196.	Art. 2 – para 1 – point i – indent 3	- 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,	(ii) <u>providing</u> investment services, other than dealing on own account, in commodity derivatives or [...] emission allowances or derivatives thereof to the <u>customers or suppliers</u> of their main business;	(iii) provide investment services, other than dealing on own account, in commodity derivatives or derivative contracts included in <i>point (10) of Section C of Annex I</i> or emission allowances or derivatives thereof to the clients of their main business,	Agreed silence procedure 20131219 Trilogue 20101009: left open Trilogue 20131204: activities not to be judged ‘ancillary’ on basis of capital employed alone. Technical group telecon 20131211 (ii) <u>providing</u> investment services, other than dealing on own account, in commodity derivatives or [...] emission allowances or derivatives thereof to the <u>customers or suppliers</u> of their main business;
197.	Art. 2 – para	- provided that in all cases this is an ancillary activity to their main	provided that <u>for each of the above cases individually and on an</u>	provided that in all cases: – this is an ancillary activity to their	Trilogue 20101009: left open Trilogue 20131204: activities not to be



		COM	Council	EP	Compromise
	1 – point i – indent 4	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;	<u>aggregate basis</u> 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, <u>and the persons do not apply a high frequency algorithmic trading technique</u> ;	main business, when considered on a <b>consolidated or non-consolidated</b> 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 <b>or acting as a market-maker in relation to commodity derivatives</b> ,	<i>judged ‘ancillary’ on basis of capital employed alone.</i>  <i>Technical group telecon 20131211</i>  <i>Bracketed part linked to the consideration of row 194 and the question of whether market making should be included or not</i>  provided that <u>for each of the above cases individually and on an aggregate basis</u> 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, <b>for acting as a market-maker in relation to commodity derivatives,</b> <u>and the persons do not apply a high frequency algorithmic trading technique</u> ;  <i>Technical group 20140116</i>  Row to get back to on 17 01  Meanwhile consider the issue  <i>Technical group 20140122</i>  See comment in row 194  provided that <u>for each of the above cases individually and on an aggregate basis</u> 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



		COM	Council	EP	Compromise
					Directive 2006/48/EC, <b>or acting as a market-maker in relation to commodity derivatives, and the persons do not apply a high frequency algorithmic trading technique;</b>
198.				– <b>they report annually to the relevant competent authority the basis on which they consider that their activity under points (i), (ii) and (iii) is ancillary to their main business;</b>	<p>Agreed silence procedure 20131219</p> <p>Trilogue 20101009: left open</p> <p>Trilogue 20131204: activities not to be judged ‘ancillary’ on basis of capital employed alone.</p> <p>Technical group Telecon 20131211</p> <p>– <b>they report annually to the relevant competent authority the basis on which they consider that their activity under points (i), (ii) and (iii) is ancillary to their main business;</b></p> <p>Technical group 17 12</p> <p>Reason for inclusion: Requirement is necessary to ensure that the boundary of this exemption is respected.</p> <p>Revised suggestion to clarify:</p> <p>– <b>they notify annually the relevant competent authority that they make use of this exemption and upon request report to the competent authority the basis on which they consider that their activity under points (i), (ii) and (iii) is ancillary to their main business</b></p>
199.	Art. 2	(j) persons providing investment	(j) persons providing investment	(j) persons providing investment	Agreed silence procedure 20130912





		COM	Council	EP	Compromise
	– para 1 – point j	advice in the course of providing another professional activity not covered by this Directive provided that the provision of such advice is not specifically remunerated;	advice in the course of providing another professional activity not covered by this Directive provided that the provision of such advice is not specifically remunerated;	advice in the course of providing another professional activity not covered by this Directive provided that the provision of such advice is not specifically remunerated;	(j) persons providing investment advice in the course of providing another professional activity not covered by this Directive provided that the provision of such advice is not specifically remunerated;
200.	Art. 2 – para 1 – point k	(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;	[...]	█	<i>Agreed silence procedure 20130912</i>  █
201.	Art. 2 – para 1 – point l	(l) associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;	(l) associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;	(l) associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;	<i>Agreed silence procedure 20130912</i> (l) associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;
202.	Art. 2 – para 1 – point m	(m) ‘agenti di cambio’ whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998.	(m) ‘agenti di cambio’ whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998.	(m) ‘agenti di cambio’ whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998;	<i>Agreed silence procedure 20130912</i> (m) ‘agenti di cambio’ whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998;



		COM	Council	EP	Compromise
203.	Art. 2 – para 1 – point n	(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.	<p>(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 <u>to those Regulations, any persons acting as service providers on their behalf to carry out their task under the afore mentioned Directives and Regulations or network codes or guidelines adopted pursuant to those Regulations, and any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks.</u></p> <p><u>This exemption will only apply to persons engaged in the activities set out above where they perform investment activities or provide investment services related to commodity derivatives in order to carry out those activities. This exemption shall not apply with regard to the operation of a secondary market, including a platform for secondary trading in financial transmission rights.</u></p>	<p>(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.</p>	<p>Trilogue 20130904: issue left open</p> <p><i>Trilogue 20101009: left open</i></p> <p><i>Trilogue 20131204: Council text agreed provided exemption does not extend to operation of secondary market.</i></p> <p>(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 <u>to those Regulations, any persons acting as service providers on their behalf to carry out their task under the afore mentioned Directives and Regulations or network codes or guidelines adopted pursuant to those Regulations, and any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks.</u></p> <p><u>This exemption will only apply to persons engaged in the activities set out above where they perform investment activities or provide investment services related to commodity derivatives in order to carry out those activities. This exemption shall not apply with regard to the operation of a secondary market, including a platform for secondary trading in financial transmission rights.</u></p>



		COM	Council	EP	Compromise
204.			<p><u>(o) persons providing investment services exclusively in commodities, emission allowances and/or derivatives thereof for the sole purpose of hedging the commercial risks of their clients, where these clients are exclusively local electricity undertakings falling within Article 2(35) of Directive 2009/72/EC and/or natural gas undertakings falling within Article 2(1) of Directive 2009/73/EC, and provided that these clients jointly hold 100% of the capital or of the voting rights of these persons, exercise joint control and are exempt under Article 2(1)(i) should they carry out these investment services themselves. These persons should comply with the following organisational requirements:</u></p> <p><u>(i) the set-up of a supervisory committee overseeing the trading activity of these persons;</u></p> <p><u>(ii) trading rules and a risk management handbook that govern the trading activity pursued by these persons in order to act in the best interest of the clients and to ensure the orderly functioning and integrity of financial markets;</u></p> <p><u>(iii) the existence of a profit and loss transfer agreement between these</u></p>		<p>Trilogue 20130904: Commission to provide egs of who would be exempted. Presidency to provide further explanation of rationale for proposed exemption</p> <p><i>Trilogue 20131009: left open</i></p> <p><i>Trilogue 20131111: Pres. agreed to deletion of rows 204 and 205 as part of an overall compromise</i></p> <p>[...]</p> <p><i>Trilogue 20131204: Council not prepared to delete. Agreed to consider narrower, optional exemption in Art 3 with those exempted subject to national regulation.Pres. to prepare non-paper.</i></p> <p><i>Technical group telecon 20131211</i></p> <p>Without prejudice to political decisions delete text here: any new proposal to be located in Art. 3.</p> <p>[...]</p> <p><i>Trilogue 20131212: NP4 generally agreed, subject to confirmation at 18 December trilogue</i></p> <p>(see text in row 224a)</p>



		COM	Council	EP	Compromise
			persons and the abovementioned clients.		
205.			<p>(p) persons providing investment services exclusively in emission allowances and/or derivatives thereof for the sole purpose of hedging the commercial risks of their clients, where these clients are exclusively operators falling within Article 3(f) of Directive 2003/87/EC, and provided that these clients jointly hold 100% of the capital or voting rights of these persons, exercise joint control and are exempt under Article 2(1)(i) should they carry out these investment services themselves. These persons should comply with the following organisational requirements:</p> <p>(i) the set-up of a supervisory committee overseeing the trading activity of these persons;</p> <p>(ii) trading rules and a risk management handbook that govern the trading activity pursued by these persons in order to act in the best interest of the clients and to ensure the orderly functioning and integrity of financial markets;</p> <p>(iii) the existence of a profit and loss transfer agreement between the joint venture and the abovementioned</p>		<p>Trilogue 20130904: Commission to provide egs of who would be exempted. Presidency to provide further explanation of rationale for proposed exemption</p> <p>Trilogue 20101009: left open</p> <p>Trilogue 20131111: Pres. agreed to deletion of rows 204 and 205 as part of an overall compromise</p> <p>[...]</p> <p>Trilogue 20131204: Council not prepared to delete. Agreed to consider narrower, optional exemption in Art 3 with those exempted subject to national regulation.Pres. to prepare non-paper.</p> <p>Technical group telecon 20131211</p> <p>Without prejudice to political decisions delete text here: any new proposal to be located in Art. 3.</p> <p>[...]</p> <p>Trilogue 20131212: NP4 generally agreed, subject to confirmation at 18 December trilogue</p>



		COM	Council	EP	Compromise
			<u>clients.</u>		(see text in row 224a)
206.			(q) <u>Central Securities Depositories that are regulated under Union legislation.</u>		<p>[Technical note: if included would need to be adapted to read as follows, because some CSDs are regulated as credit institutions:</p> <p>(q) <u>Central Securities Depositories that are regulated "as such" under Union legislation. See also row 290]</u></p> <p><i>Trilogue 20130904: return to issue once situation with CSD Regulation is clearer</i></p> <p><i>Trilogue 20131204: agreed that CSDs should be authorised under CSDR but subject to MiFID/MiFIR for MiFID business.</i></p> <p><i>Commission suggest drafting:</i></p> <p>(q) <u>Central Securities Depositories <b>providing the services explicitly listed in the Union legislation on CSDs</b> [/explicitly listed in Sections A and B of the Annex of CSDR] and regulated "as such" under Union legislation.</u></p> <p>EP technical team comment: The difficulty with this drafting is that if this text is adopted alongside CSDR which does specifically apply MiFID rules to authorised CSDs it will be unclear which takes precedence. EP technical team therefore suggest that CSDs should be treated like credit institutions in Article 1: ie rather than being exempted the specific provisions which apply to them in relation to investment services/activities which are not</p>



		COM	Council	EP	Compromise
					<p><u>services specifically listed in Sections A and B of the Annex of CSDR. Description of “safekeeping” in Annex to be modified in line with Council text to exclude CSD-specific activity.</u></p> <p><u>ie</u></p> <p>3.The following provisions shall also apply to CSDs authorised in accordance with Regulation EU No. Xxxx [CSDR], when providing one or more investment services and/or performing investment activities [...] <u>not explicitly listed in Sections A or B of the Annex of that Regulation:</u></p> <ul style="list-style-type: none"> <li>– Articles 2(2), 9(3), 14, 16, 17, 18, <u>19 and 20,</u></li> <li>– Chapter II of Title II excluding second subparagraph of Article 29(2),</li> <li>– Chapter III of Title II</li> <li>– Articles 69 to 80 and Articles 84, 89 and 90.</li> </ul> <p><i>Technical group telecon 20131211</i></p> <p>Objective clear but question is about the best legal technique for drafting. EP suggested drafting above could lead to duplication while Commission drafting could lead to lack of clarity about whether exemption in MiFID took precedence. Suggested technique is for wording to cross-refer to Art 68b CSDR, so as to specify in one of the texts only which MiFID Articles apply.</p>



		COM	Council	EP	Compromise
					<p>CSDR list of Articles to be updated to reflect latest MiFID text. Commission to check list.</p> <p>Drafting to be suggested</p> <p><i>Technical group 20140116</i></p> <p>[CSDR now agreed. Intention is to clarify that the conditions under which CSDs operate and the ways in which they are subject to MiFID rules is specified in CSDR. The conditions intended to apply are that CSDs should be authorised under CSDR, not MiFID, but subject to MiFID rules where they carry out MiFID services/activities which are not explicitly listed in the Annex to CSDR]</p> <p>(q) CSDs within the meaning of Regulation (EU) No xxxx/xxxx except as provided for in [Article 68b] of that Regulation;</p> <p>Note: proposed drafting of Art 68b of CSD Regulation:</p> <p>[NB strikethrough shows changes which would need to be made to text as currently included in CSDR 4-column table so as to align to renumbering of Art 9 in final MiFID text.]</p> <p><u>Article 68b</u>  <u>Application of Directive xxxx/xxxx/EU</u>  <u>[new MiFID] and Regulation EU No. Xxxx</u>  <u>[MiFIR]</u>  <b>CSDs authorised in accordance with</b></p>



		COM	Council	EP	Compromise
					<p><b>Article 14 of this Regulation shall not require authorisation under Directive xxxx/xxxx/EU [new MiFID] in order to provide the services explicitly listed in Sections A and B of the Annex to this Regulation.</b></p> <p><b>Where a CSD authorised in accordance with Article 14 provides one or more investment services or carries out one or more investment activities in addition to providing the services explicitly listed in sections A and B of the Annex to this Regulation, Directive xxxx/xxxx/EU [new MiFID] <u>with the exception of Articles 5 to 8, Article 9(1), 9(2), 9(4) to 9(6) <del>to (5), (7) and (8)</del> and Articles 10 to 13 and Regulation EU No. Xxxxx [MiFIR] shall apply.</u></b></p>
207.	Art. 2 – para 2	2. The rights conferred by this Directive shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the European System of Central Banks performing their tasks as provided for by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank or performing equivalent functions under national provisions.	2. The rights conferred by this Directive shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the European System of Central Banks performing their tasks as provided for by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank or performing equivalent functions under national provisions.	2. The rights conferred by this Directive shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the <i>ESCB</i> performing their tasks as provided for by the <i>TFEU</i> and the Statute of the <i>ESCB</i> and of the European Central Bank ( <i>ECB</i> ) or performing equivalent functions under national parliaments.	<p><i>Technical group proposal</i></p> <p>[Subject to lawyer linguist review.]</p> <p><i>Technical group 17 09</i></p> <p>2. The rights conferred by this Directive shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the <i>ESCB</i> performing their tasks as provided for by the <i>TFEU</i> and the Statute of the <i>ESCB</i> and of the European Central Bank (<i>ECB</i>) or performing equivalent functions under national provisions.</p>





		COM	Council	EP	Compromise
208.	Art. 2 – para 3	3. 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.	3. The Commission shall adopt delegated acts in accordance with Article 94 concerning measures <u>in respect of exemption (c) determining when an activity is provided in an incidental manner.</u>	3. The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of <i>the exemption laid down in paragraph 1(c) to clarify when</i> an activity is provided in an incidental manner.	<i>Agreed silence procedure 20130912</i> [Substance identical. Subject to lawyer linguist revision.] 3. The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of <i>the exemption laid down in paragraph 1(c) to clarify when</i> an activity is provided in an incidental manner.
209.	Art. 2 – para 3 – subpara 2	The criteria for determining whether an activity is ancillary to the main business shall take into account at least the following elements:	[...]	█	<i>Agreed silence procedure 20130912</i> █
210.	Art. 2 – para 3 – subpara 2 – indent 1	- the extent to which the activity is objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity,	[...]	█	<i>Agreed silence procedure 20130912</i> █
211.	Art. 2 – para 3 – subpara 2 – indent 2	- the capital employed for carrying out the activity.	[...]	█	<i>Agreed silence procedure 20130912</i> █
212.	Art. 2 – para 3a				<i>Agreed silence procedure 20131219</i> Trilogue 20130904: Commission to prepare proposal for when dealing is deemed to be



		COM	Council	EP	Compromise
	(new)		<p><u>4. ESMA shall develop draft regulatory technical standards in respect of exemption 2(1)(i) to specify the criteria for establishing when an activity is to be considered as ancillary to the main business on a group level [...].</u></p> <p>The criteria [...] shall take into account at least the following elements:</p> <p><u>(a) the capital employed for carrying out the ancillary activity in absolute terms;</u></p> <p><u>(b) the capital employed for carrying</u></p>	<p><b>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:</b></p> <p><b>(a) the extent to which the activity is objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity;</b></p> <p><b>(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;</b></p>	<p>'ancillary' (row 212)</p> <p><i>Trilogue 20131009: left open</i></p> <p><i>Trilogue 20131111: Pres. to submit drafting suggestion for consideration by Technical group</i></p> <p><i>COM noted that implications of rows 194 and 197 for row 212 should be checked</i></p> <p><b>Trilogue 20131111: General remark on all provisions concerning level-2-measures and guidelines in MiFID and MiFIR:</b></p> <p><b>Technical group to suggest wording regarding the scope of the relevant empowerment, the type of act, the relevant deadlines etc.</b></p> <p><b>Council proposal for 20131204 trilogue:</b></p> <p>[4. ESMA shall develop draft regulatory technical standards in respect of exemption 2(1)(i) to specify the criteria for establishing when an activity is to be considered as ancillary to the main business on a group level.</p> <p>The criteria shall take into account at least the following elements:</p> <p>(a) the capital employed for carrying out the ancillary activity relative to the capital employed for carrying out the main business;</p> <p>(b) the size of their trading activity</p>



		COM	Council	EP	Compromise
			<p><u>out the ancillary activity relative to the capital employed for carrying out the main business;</u></p> <p><u>(c) the size of their trading activity in financial instruments in absolute terms;</u></p> <p><u>(d) the size of their trading activity compared to the overall market trading activity in that asset class.</u></p> <p><u>The trading activity referred to in subparagraphs (c) and (d) above shall be calculated on a group level.</u></p> <p><u>The abovementioned elements shall exclude:</u></p> <p><u>(a) intra-group transactions as referred to in Article 3 of Regulation (EU) No 648/2012 that serve group-wide liquidity and/or risk management purposes;</u></p> <p><u>(b) transactions in derivatives which are objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity;</u></p> <p><u>(c) transactions in commodity derivatives and emission allowances</u></p>	<p><i>(c) the size of the activity relative to the main activities and the significance of the activity in the relevant markets;</i></p> <p><i>(d) the desirability of limiting net credit risk exposures to non-systemically significant levels;</i></p> <p><i>(e) the scale of market risk associated with the activity relative to the market risk arising from the main business;</i></p> <p><i>(f) systemic relevance of the sum of net positions and exposures of a non-financial counterparty as referred to in Article 10 of Regulation (EU) No 648/2021 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup>.</i></p>	<p>compared to the overall market trading activity in that asset class;</p> <p>(c) the need for ancillary activities to constitute a minority of activities at group level;</p> <p>The activity referred to above shall be considered on a group level.</p> <p>The abovementioned elements shall exclude:</p> <p>(a) intra-group transactions as referred to in Article 3 of Regulation (EU) No 648/2012 that serve group-wide liquidity and/or risk management purposes;</p> <p>(b) transactions in derivatives which are objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity;</p> <p>(c) transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a trading venue.]</p> <p><i>Trilogue 20131204: agreed that Pres proposal could be acceptable provided (a) clearly subordinate to (c) and capital employed not sufficient by itself to provide for exemption. TG to prepare drafting proposal.</i></p>

<sup>1</sup> OJ L 201, 27.7.2012, p. 1.



		COM	Council	EP	Compromise
			entered into to fulfil obligations to provide liquidity on a trading venue.		<p><i>Technical group Telecon 20131211</i></p> <p>COM sees decision on point c as linked to the decision on whether or not to exempt market making in relation to commodities</p> <p>4. ESMA shall develop draft regulatory technical standards in respect of exemption 2(1)(i) to specify the criteria for establishing when an activity is to be considered as ancillary to the main business on a group level.</p> <p>The criteria shall take into account at least the following elements:</p> <p><i>(a) the need for ancillary activities to constitute a minority of activities at group level;</i></p> <p><i>(b) the size of their trading activity compared to the overall market trading activity in that asset class;</i></p> <p><i>In determining the extent to which ancillary activities constitute a minority of activities at group level ESMA may determine that the capital employed for carrying out the ancillary activity relative to the capital employed for carrying out the main business should be considered. However, this factor shall in no case be sufficient to demonstrate that the activity is ancillary to the main business of the group.</i></p> <p>The activity referred to above shall be</p>



		COM	Council	EP	Compromise
					<p>considered on a group level.</p> <p>The abovementioned elements shall exclude:</p> <p>(a) intra-group transactions as referred to in Article 3 of Regulation (EU) No 648/2012 that serve group-wide liquidity and/or risk management purposes;</p> <p>(b) transactions in derivatives which are objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity;</p> <p>(c) transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a trading venue, <b><u>where such obligations are required by regulatory authorities in accordance with Union or national laws, regulations and administrative provisions or by trading venues.</u></b></p> <p><i>Technical group 17 12</i></p> <p><i>Comment following comment in Council: Lawyer-linguists to check whether "and" is needed between points a and b in the first subparagraph</i></p> <p><i>Technical group 20140122</i></p> <p>See comment in row 194. Addition made in in point c above.</p> <p>Pres. asks for either deleting the addition</p>



		COM	Council	EP	Compromise
					made above in point c, or including at the end of point c “or trading venues”  Issue left open  <i>Technical group 20140131</i>  Following consultation of EP Negotiating Team, addition made to point (c) above (addition of "or by trading venues"), and square brackets removed)
213.			<u>ESMA shall submit those draft regulatory technical standards to the Commission by [insert date].</u>	<b><i>ESMA shall submit those draft regulatory technical standards to the Commission by [...]*</i></b>	<i>Agreed silence procedure 20131219</i>  : date to be added following political decision  <b><i>ESMA shall submit those draft regulatory technical standards to the Commission by [...]*</i></b>  <b><i>OJ please insert date: 12 months after the date of entry into force of this Directive</i></b>
214.			<u>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.</u>	<b><i>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.</i></b>	<i>Agreed silence procedure 20130912</i>  <b><i>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.</i></b>
215.	Art. 3 – title	<i>Optional exemptions</i>	<i>Optional exemptions</i>	<i>Optional exemptions</i>	<i>Agreed silence procedure 20130912</i>  <i>Optional exemptions</i>

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



		COM	Council	EP	Compromise
216.	Art. 3 – para 1	1. Member States may choose not to apply this Directive to any persons for which they are the home Member State that:	1. Member States may choose not to apply this Directive to any persons for which they are the <u>Home Member State and which</u> :	1. Member States may choose not to apply this Directive to any persons for which they are the home Member State, <i>provided that the activities of those persons are authorised and regulated at national level, where those persons</i> :	<i>Agreed silence procedure 20131008</i>  T: articulation of need for regulation at national level (rows EP 216 and Council 225)  <i>Technical group 28 08</i>  EP text agreed (equivalent in Council row 225)  1. Member States may choose not to apply this Directive to any persons for which they are the home Member State, <i>provided that the activities of those persons are authorised and regulated at national level, where those persons</i> :
217.	Art. 3 – para 1 – indent 1	– are not allowed to hold clients' funds or securities and which for that reason are not allowed at any time to place themselves in debit with their clients, and	– are not allowed to hold clients' funds or securities and which for that reason are not allowed at any time to place themselves in debit with their clients, and	(a) are not allowed to hold clients' funds or securities and which for that reason are not allowed at any time to place themselves in debit with their clients;	<i>Agreed silence procedure 20130912</i>  (a) are not allowed to hold clients' funds or securities and which for that reason are not allowed at any time to place themselves in debit with their clients; and
218.	Art. 3 – para 1 – indent 2	– 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	– are not allowed to provide any investment service except the [...] reception and transmission of orders in transferable securities and units in collective investment undertakings and/or <u>the provision of investment advice in relation to such financial instruments, and</u>	(b) 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 <b><i>the reception and transmission of orders in transferable securities and units in collective investment undertakings at the initiative of the client; and</i></b>	<i>Agreed silence procedure 20131024</i>  Trilogue 20130904: solution to be found at technical level  <i>Technical meeting 26 09</i>  [Note for Lawyer-Linguists: please keep "and/or" here. Intention is to clearly cover situations whether one or other of the two investment services is provided and also situations where both are provided.]



		COM	Council	EP	Compromise
					– are not allowed to provide any investment service except the [...] reception and transmission of orders in transferable securities and units in collective investment undertakings and/or the provision of <u>investment advice in relation to such financial instruments, and</u>
219.	Art. 3 – para 1 – indent 3	– in the course of providing that service, are allowed to transmit orders only to:	– in the course of providing that service, are allowed to transmit orders only to:	(c) in the course of providing that service, are allowed to transmit orders only to:	<i>Agreed silence procedure 20130912</i>  (c) in the course of providing that service, are allowed to transmit orders only to:
220.	Art. 3 – para 1 – indent 3 – point i	(i) investment firms authorised in accordance with this Directive;	(i) investment firms authorised in accordance with this Directive;	(i) investment firms authorised in accordance with this Directive;	<i>Agreed silence procedure 20130912</i>  (i) investment firms authorised in accordance with this Directive;
221.	Art. 3 – para 1 – indent 3 – point ii	(ii) credit institutions authorised in accordance with Directive 2006/48/EC;	(ii) credit institutions authorised in accordance with Directive 2006/48/EC;	(ii) credit institutions authorised in accordance with Directive 2006/48/EC;	<i>Agreed silence procedure 20130912</i>  (ii) credit institutions authorised in accordance with Directive 2006/48/EC;
222.	Art. 3 – para 1 – indent 3 – point iii	(iii) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities to be at least as stringent as those laid down in this Directive, in Directive 2006/48/EC or in Directive 2006/49/EC;	(iii) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities to be at least as stringent as those laid down in this Directive, in Directive 2006/48/EC or in Directive 2006/49/EC;	(iii) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities to be at least as stringent as those laid down in this Directive, in Directive 2006/48/EC or in Directive 2006/49/EC;	<i>Agreed silence procedure 20130912</i>  (iii) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities to be at least as stringent as those laid down in this Directive, in Directive 2006/48/EC or in





		COM	Council	EP	Compromise
					Directive 2006/49/EC;
223.	Art. 3 – para 1 – indent 3 – point iv	(iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of such undertakings;	(iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of such undertakings;	(iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of such undertakings;	<i>Agreed silence procedure 20130912</i>  (iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of such undertakings;
224.	Art. 3 – para 1 – indent 3 – point v	(v) investment companies with fixed capital, as defined in Article 15(4) of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent <sup>1</sup> , the securities of which are listed or dealt in on a regulated market in a Member State;	(v) investment companies with fixed capital, as defined in Article 15(4) of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent <sup>2 21</sup> , the securities of which are listed or dealt in on a regulated market in a Member State;	(v) investment companies with fixed capital, as defined in Article 15(4) of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent the securities of which are listed or dealt in on a regulated market in a Member State;	<i>Agreed silence procedure 20130912</i>  (v) investment companies with fixed capital, as defined in Article 15(4) of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent <sup>2</sup> the securities of which are listed or dealt in on a regulated market in a Member State;
224a.					<i>Trilogue 20131212: NP4 generally agreed, subject to confirmation at 18 December trilogue</i>

<sup>1</sup> OJ L 26, 31.1.1977, p. 1. Directive as last amended by the 1994 Act of Accession.

<sup>232</sup> OJ L 26, 31.1.1977, p. 1. Directive as last amended by the 1994 Act of Accession.

<sup>2</sup> OJ L 26, 31.1.1977, p. 1. Directive as last amended by the 1994 Act of Accession



		COM	Council	EP	Compromise
					<p>(covers previous rows 204, 205)</p> <p><b><u>1a. Member States may choose not to apply this Directive to any persons for which they are the home Member State, provided that the activities of those persons are authorised and regulated at national level were those persons:</u></b></p> <p><b><u>d) provide investment services exclusively in commodities, emission allowances and/or derivatives thereof for the sole purpose of hedging the commercial risks of their clients, where these clients are exclusively local electricity undertakings falling within Article 2(35) of Directive 2009/72/EC and/or natural gas undertakings falling within Article 2(1) of Directive 2009/73/EC, and provided that these clients jointly hold 100% of the capital or of the voting rights of these persons, exercise joint control and are exempt under Article 2(1)(i) should they carry out these investment services themselves.</u></b></p> <p><b><u>e) provide investment services exclusively in emission allowances and/or derivatives thereof for the sole purpose of hedging the commercial risks of their clients, where these clients are exclusively operators falling within Article 3(f) of Directive 2003/87/EC, and provided that these clients jointly hold 100% of the capital or voting rights of these persons, exercise joint control and are exempt under Article 2(1)(i) should they carry out these</u></b></p>



		COM	Council	EP	Compromise
					<p><b>investment services themselves.</b></p> <p><i>Technical group 20140116</i></p> <p>Revised suggestion above, following Commission comment. The joint-venture exemptions should not be put in a new paragraph 1a but as letters (d) and (e) in paragraph 1 in order for all the Article safeguards to apply.</p>
225.	Art. 3 – para 1 – indent 3 – point v – subpara 2	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:	<p>provided that the activities of those persons are authorised and regulated at national level.</p> <p>National regimes <u>shall</u> submit those persons to requirements which are at least analogous to the following requirements under <u>this Directive</u>:</p>	<p><b>1a. // Member States'</b> regimes shall submit the persons referred to in paragraph 1 to requirements which are at least analogous to the following requirements under this Directive, <b>taking into account their size, risk profile and legal form:</b></p>	<p><i>Agreed silence procedure 20131024</i></p> <p>T: articulation of need for regulation at national level (rows EP 216 and Council 225)</p> <p><i>Technical group 28 08</i></p> <p>1. part "provided ... national level" from Council text covered in row 216</p> <p>2. test deletion of EP addition on basis that specific Articles referred to in the following list already include provisions on proportionality in the authorisation conditions/process</p> <p><b>1a. Member States'</b> regimes shall submit the persons referred to in paragraph 1 to requirements which are at least analogous to the following requirements under this Directive:</p>
226.	Art. 3 – para 1 – indent 3 –	(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;	(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;	<b>(a)</b> conditions and procedures for authorisation and on-going supervision as established in Article 5 (1) and (3), Articles 7, 8, 9, 10, 21, 22 <b>and 23 and the respective</b>	<p><i>Agreed silence procedure 20131219</i></p> <p>T: inclusion of implementing measures</p> <p><i>Technical group 28 08</i></p>



		COM	Council	EP	Compromise
	point v – subpar a 2 – subpoi nt i			<i>implementing measures adopted by the Commission by means of delegated acts in accordance with Article 94;</i>	Lawyers to check whether reference to implementing measures is necessary, or not because covered by the reference to the relevant Articles  <i>(a) 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;</i>
227.	Art. 3 – para 1 – indent 3 – point v – subpar a 2 – subpoi nt ii	(ii) conduct of business obligations as established in Article 24 (1), (2), (3), (5), Article 25(1), (4) and (5) and the respective implementing measures in Directive 2006/73/EC.	(ii) conduct of business obligations as established in Article 24 (1), (2), (3), (5) <u>and (6A)</u> , Article 25(1), (4) and (5), <u>and, where the national regime allows those persons to appoint tied agents, Article 29,</u> and the respective implementing measures in Directive 2006/73/EC.	<i>(b) conduct of business obligations as established in Article 24 (1), (2), (3), (5) and Article 25(1), (4) and (5) and the respective implementing measures in Directive 2006/73/EC;</i>	<i>Agreed silence procedure 20131219</i>  T: align references to content of Arts 24 and 25 once political decisions taken on those Articles. Align to decision row 229a  <i>Technical group 13 11</i>  (b) conduct of business obligations as established in Article 24 (1), (2), (3), (5) <u>and (6A)</u> , Article 25(1), (4) and (5), <u>and, where the national regime allows those persons to appoint tied agents, Article 29,</u> and the respective implementing measures in Directive 2006/73/EC.
228.				<i>(c) organisational requirements as established in Article 16(3) and the delegated acts adopted by the Commission in accordance with Article 94.</i>	<i>Agreed silence procedure 20131219</i>  Trilogue 20130904: solution to be found at technical level  <i>Technical meeting 26 09</i>  T: check reference to 16(3) to ensure it only covers principles on conflicts of interests not specific provisions on product governance



		COM	Council	EP	Compromise
					<p>which are not relevant for firms benefitting from this exemption.</p> <p>[16(6) and 16(7) added in response to row 229a]</p> <p><i>(c) organisational requirements as established in the first, sixth and seventh sub-paragraph of Article 16(3), Articles 16(6) and 16(7) and the corresponding delegated acts adopted by the Commission in accordance with Article 94.</i></p> <p><i>Technical meeting 2 12</i></p> <p>Reference to sixth and seventh subparagraph of Article 16(3) added, following comment in Council.</p>
229.	Art. 3 – para 1 – subpar a 2 – first part	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 <u>this</u> paragraph [...] to be covered <u>by</u> an investor-compensation scheme recognized in accordance with Directive 97/9/EC, or a <u>professional indemnity insurance</u> ensuring equivalent protection to their clients.	<b>1b.</b> Member States shall require persons excluded from the scope of this Directive under paragraph 1 to be covered under an investor-compensation scheme recognised in accordance with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes <sup>1</sup> or under a system ensuring equivalent protection to their clients. <b>Member States may allow professional indemnity insurances as an alternative coverage, where this would be</b>	<p><i>Agreed silence procedure 20131024</i></p> <p>Trilogue 20130904: solution to be found at technical level</p> <p><i>Technical meeting 26 09</i></p> <p>Member States shall require persons excluded from the scope of this Directive under <u>this</u> paragraph [...] to be covered <u>by</u> an investor-compensation scheme recognized in accordance with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes<sup>2</sup>. <b>Member States</b></p>

<sup>1</sup> OJ L 84, 26.3.1997, p. 22.

<sup>2</sup> OJ L 84, 26.3.1997, p. 22.



		COM	Council	EP	Compromise
				<i>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.</i>	<b>may allow investment firms not to be covered by such a scheme provided they hold <u>professional indemnity insurance where, taking into account the size, risk profile and legal nature of the persons excluded in accordance with paragraph 1, equivalent protection to their clients is ensured.</u></b>
229a	Art. 3 – para 1 – subpara 2 – second part			<i>Member States shall ensure that persons who are excluded from the scope of this Directive under paragraph 1 and who are selling financial instruments to retail clients or providing investment advice or portfolio management to retail clients, have to obey rules for investor protection which are equivalent to the provisions of Article 16(6) and (7) and Articles 24 and 25.</i>	<p><i>Agreed silence procedure 20131024</i></p> <p>Trilogue 20130904: solution to be found at technical level</p> <p><i>Technical meeting 26 09</i></p> <p>see row 228: added reference to 16(6) and (7). Articles 24 and 25 already covered in row 227.</p> <p>[...]</p>
230.			By way of derogation from the <u>previous subparagraph, Member States may require that where the aforementioned persons provide the investment services of the reception and transmission of orders and/or of the provision of investment advice in units in collective investment undertakings and act as an intermediary with a management company as defined in [UCITS Directive} to be jointly and severally liable with the management company for any damages incurred by the</u>		<p>Trilogue 20130904: solution to be found at technical level</p> <p><i>Technical meeting 26 09</i></p> <p>Pres. to explain why needed. COM to check whether this raises concerns</p> <p><i>Trilogue 20131204: agreed that Council's derogation should be granted only to those MS that already have it. EP proposes time limit of 5 years for derogation. Council to consider.</i></p> <p><i>Technical group telecon 20131211</i></p>



		COM	Council	EP	Compromise
			<u>client in relation to these services.</u>		<p><i>Highlighted part to be included or not depending on political decision.</i></p> <p><u>By way of derogation from the previous subparagraph, Member States <b>that already have such laws, regulations or administrative provisions before the entry into force of this Directive</b> may until [OJ please insert date 5 years after entry into force] require that where the aforementioned persons provide the investment services of the reception and transmission of orders and/or of the provision of investment advice in units in collective investment undertakings and act as an intermediary with a management company as defined in [UCITS Directive] to be jointly and severally liable with the management company for any damages incurred by the client in relation to these services.</u></p> <p><i>Trilogue 20131212: Wording above agreed, including grandfathering period 5 years</i></p>
231.	Art. 3 – para 2	2. Persons excluded from the scope of this Directive according to paragraph 1 cannot benefit from the freedom to provide services and/or activities or to establish branches as provided for in Articles 36 and 37 respectively.	2. Persons excluded from the scope of this Directive according to paragraph 1 <u>shall not</u> benefit from the freedom to provide services and/or <u>to perform</u> activities or to establish branches as provided for in Articles 36 and 37 respectively.	2. Persons excluded from the scope of this Directive according to paragraph 1 <i>shall not</i> benefit from the freedom to provide services and/or activities or to establish branches as provided for in Articles 36 and 37 respectively.	<p><i>Agreed silence procedure 20130912</i></p> <p>2. Persons excluded from the scope of this Directive according to paragraph 1 <i>shall not</i> benefit from the freedom to provide services and/or <u>to perform</u> activities or to establish branches as provided for in Articles 36 and 37 respectively.</p>
232.	Art. 3 – para 3	3. Member States shall communicate to the European Commission and to ESMA whether they exercise the option under this Article and shall	3. Member States shall communicate to the European Commission and to ESMA whether they exercise the option under this Article and shall	3. Member States shall <i>notify</i> the Commission and ESMA <i>of</i> the exercise <i>of</i> the option under this Article and shall ensure that each	<p><i>Agreed silence procedure 20130912</i></p> <p>Subject to lawyer linguist review</p> <p>3. Member States shall <i>notify</i> the</p>





		COM	Council	EP	Compromise
		ensure that each authorisation granted in accordance with paragraph 1 mentions that it is granted according to this Article.	ensure that each authorisation granted in accordance with paragraph 1 mentions that it is granted according to this Article.	authorisation granted in accordance with paragraph 1 mentions that it is granted according to this Article.	Commission and ESMA <i>of</i> the exercise of the option under this Article and shall ensure that each authorisation granted in accordance with paragraph 1 mentions that it is granted according to this Article.
233.	Art. 3 – para 4	4. Member States shall communicate to ESMA the provisions of national law analogous to the requirements of the present directive listed in paragraph 1.	4. Member States shall communicate to ESMA the provisions of national law analogous to the requirements of <u>this Directive</u> listed in paragraph 1.	4. Member States shall communicate to ESMA the provisions of national law analogous to the requirements of <i>this Directive</i> listed in paragraph 1.	<i>Agreed silence procedure 20130912</i>  4. Member States shall communicate to ESMA the provisions of national law analogous to the requirements of <i>this Directive</i> listed in paragraph 1.
234.	Art. 4 – title	<i>Definitions</i>	<i>Definitions</i>	<i>Definitions</i>	<i>Agreed silence procedure 20130912</i>  <i>Definitions</i>  <i>Technical meeting 29 08</i>  Note for all definitions:  Place of each definition (MiFID or MiFIR) and mechanism of cross-referencing between definitions in both texts to be reviewed once texts stable
235.	Art. 4 – para 1	1. For the purposes of this Directive, the definitions provided in Article 2 of Regulation (EU) No .../... [MiFIR] shall apply to this Directive.	1. For the purposes of this Directive, the definitions provided in Article 2 of Regulation (EU) No .../... [MiFIR] shall apply to this Directive.	1. For the purposes of this Directive, the definitions provided in Article 2 of Regulation (EU) No .../... [MiFIR] shall apply to this Directive.	<i>Agreed silence procedure 20130912</i>  1. For the purposes of this Directive, the definitions provided in Article 2 of Regulation (EU) No .../... [MiFIR] shall apply to this Directive.
236.	Art. 4 – para 2	2. The following definitions shall also apply:	2. The following definitions shall also apply:	2. The following definitions shall also apply:	<i>Agreed silence procedure 20130912</i>  2. The following definitions shall also apply:
237.	Art. 4 – para	1) ‘Investment services and activities’ means any of the services and	1) ‘Investment services and activities’ means any of the services and	(1) ‘ <i>investment</i> services and activities’ means any of the services	<i>Agreed silence procedure 20130912</i>  (1) ‘ <i>investment</i> services and activities’





		COM	Council	EP	Compromise
	2 – point 1	activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I;	activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I;	and activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I;	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;
238.	Art. 4 – para 2 – point 1 – subpara 2	The Commission shall adopt by means of delegated acts in accordance with Article 94 measures specifying:	The Commission shall adopt by means of delegated acts in accordance with Article 94 measures specifying:	The Commission shall adopt delegated acts in accordance with Article 94 measures specifying:	<i>Agreed silence procedure 20130912</i>  The Commission shall adopt delegated acts in accordance with Article 94 measures specifying:
238a.					<i>Trilogue 20140114: Agreed to include Pres. non-paper on Annex IC6 with additions/modifications</i>  <b><u>- the derivatives contracts referred to in Section C.6 of Annex 1 that have the characteristics of wholesale energy products as defined in Article 2 paragraph 4 of REMIT that must be physically settled and the “C.6 energy derivatives contracts” defined in Article 4 paragraph 2 point (2a) of this Directive;</u></b>
239.	Art. 4 – para 2 – point 1 – subpara 2 – indent 1	– the derivative contracts mentioned in Section C 7 of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;	– the derivative contracts mentioned in Section C 7 of Annex I that have the characteristics of other derivative financial instruments [...];	- the derivative contracts <i>referred to in point 7 of</i> Section C of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;	T: description of SC7 derivatives having characteristics of financial instruments  <i>Technical group 28 08</i>  Pres: via the deletion Irish Presidency aimed at avoiding circular definition as EMIR refers to MiFID. COM to provide explanation of potential circularity.  <i>Technical meeting 05 09</i>  COM to cover this in non-paper on



		COM	Council	EP	Compromise
					<p>commodities requested in second trilogue</p> <p>meanwhile further consideration at technical level to examine how EMIR works precisely, also in the light of technical comments from ESMA</p> <p><i>Trilogue 20101009: Commission to clarify non-paper</i></p> <p><i>Trilogue 20131111: Pres. to come back with written feedback on Commission non-paper; afterwards Technical group to suggest solution</i></p> <p><i>Technical group 26 11</i></p> <p>Check whether deletion was agreed</p> <p><i>Trilogue 20131106: Agreed to delete last part</i></p> <p>– the derivative contracts <i>referred to</i> in Section C 7 of Annex I that have the characteristics of other derivative financial instruments [...];</p>
240.	<p>Art. 4</p> <p>– para 2 –</p> <p>point 1</p> <p>– subpar a 2 –</p> <p>indent 2</p>	<p>– the derivative contracts mentioned in Section C 10 of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls;</p>	<p>– the derivative contracts mentioned in Section C 10 of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, <u>OTF</u>, or an MTF, are cleared and settled through <u>CCPs</u> or are subject to regular margin calls;</p>	<p>- the derivative contracts <i>referred to</i> in <i>point (10)</i> of Section C of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls;</p>	<p><i>Agreed silence procedure 20131008</i></p> <p><i>Technical group proposal</i></p> <p>- the derivative contracts <i>referred to</i> in <i>point (10)</i> of Section C of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, <u>OTF</u>, or an MTF, are cleared and settled through <u>CCPs</u> or are subject to regular margin calls;</p>



		COM	Council	EP	Compromise
					<p><i>Trilogue 20131106: Agreed to delete last part</i></p> <p>- the derivative contracts <i>referred to in point (10) of Section C of Annex I</i> that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, <u>OTF</u>, or an MTF;</p>
241.	Art. 4 – para 2 – point 2	2) ‘Ancillary service’ means any of the services listed in Section B of Annex I;	2) ‘Ancillary service’ means any of the services listed in Section B of Annex I;	(2) ‘ <i>ancillary service</i> ’ means any of the services listed in Section B of Annex I;	<p><i>Agreed silence procedure 20130912</i></p> <p>(2) ‘<i>ancillary service</i>’ means any of the services listed in Section B of Annex I;</p>
241a.					<p><i>Trilogue 20140114: Agreed to include Pres. non-paper on Annex IC6 with additions/modifications</i></p> <p><b><u>(2a) “C6 energy derivatives contracts” means options, futures, swaps, and any other derivative contracts mentioned in Section C 6 of Annex 1 relating to coal or oil that are traded on an OTF and must be physically settled;</u></b></p>
242.	Art. 4 – para 2 – point 3	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 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) ‘ <i>investment advice</i> ’ 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;	<p><i>Agreed silence procedure 20130912</i></p> <p>(3) ‘<i>investment advice</i>’ 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;</p>



		COM	Council	EP	Compromise
243.	Art. 4 – para 2 – point 4	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;	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;	(4) ‘ <i>execution</i> 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;	<i>Agreed silence procedure 20130912</i>  (4) ‘ <i>execution</i> 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;
244.	Art. 4 – para 2 – point 5	5) ‘Dealing on own account’ means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;	5) ‘Dealing on own account’ means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;	(5) ‘ <i>dealing</i> on own account’ means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;	<i>Agreed silence procedure 20130912</i>  (5) ‘ <i>dealing</i> on own account’ means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;
245.	Art. 4 – para 2 – point 6	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;	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;	(6) ‘ <i>market</i> 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 ■ ;	<i>Agreed silence procedure 20131219</i>  <i>Trilogue 20131016: technical group to prepare proposal</i>  <i>Technical group 13 11</i>  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;
246.	Art. 4 – para 2 – point 7	7) ‘Portfolio management’ means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;	7) ‘Portfolio management’ means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;	(7) ‘ <i>portfolio</i> management’ means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;	<i>Agreed silence procedure 20130912</i>  (7) ‘ <i>portfolio</i> management’ means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include



		COM	Council	EP	Compromise
					one or more financial instruments;
247.	Art. 4 – para 2 – point 8	8) ‘Client’ means any natural or legal person to whom an investment firm provides investment or ancillary services;	8) ‘Client’ means any natural or legal person to whom an investment firm provides investment or ancillary services;	(8) ‘ <i>client</i> ’ means any natural or legal person to whom an investment firm provides investment or ancillary services;	<i>Agreed silence procedure 20130912</i>  (8) ‘ <i>client</i> ’ means any natural or legal person to whom an investment firm provides investment or ancillary services;
248.	Art. 4 – para 2 – point 9	9) ‘Professional client’ means a client meeting the criteria laid down in Annex II;	9) ‘Professional client’ means a client meeting the criteria laid down in Annex II;	(9) ‘ <i>professional client</i> ’ means a client meeting the criteria laid down in Annex II;	<i>Agreed silence procedure 20130912</i>  (9) ‘ <i>professional client</i> ’ means a client meeting the criteria laid down in Annex II;
249.	Art. 4 – para 2 – point 10	10) ‘Retail client’ means a client who is not a professional client;	10) ‘Retail client’ means a client who is not a professional client;	(10) ‘ <i>retail client</i> ’ means a client who is not a professional client;	<i>Agreed silence procedure 20130912</i>  (10) ‘ <i>retail client</i> ’ means a client who is not a professional client;
250.	Art. 4 – para 2 – point 11	11) "SME growth market" means a MTF that is registered as an SME growth market in accordance with Article 35;	11) ‘SME growth market’ means a MTF that is registered as an SME growth market in accordance with Article 35;	(11) 'SME growth market' means a MTF that is registered as an SME growth market in accordance with Article 35;	<i>20130704 trilogue: agreed in principle</i>  (11) 'SME growth market' means a MTF that is registered as an SME growth market in accordance with Article 35;
251.	Art. 4 – para 2 – point 12	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;	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;	(12) ‘ <i>small and medium-sized enterprise</i> ’ // means a company that <b>has</b> an average market capitalisation of less than <b>EUR 200 000 000</b> ;	<i>20130704 trilogue: agreed to consider whether any barrier to using 200 000 000 threshold arising from interaction with other legislation. Commission subsequently advised there is no such barrier.</i>  <i>20131009 trilogue: agreed subject to agreement of overall market structure package</i>  12) ‘Small and medium-sized enterprise’ for the purposes of this Directive, means a company that had an average market capitalisation of less than <b>EUR 200 000 000</b>



		COM	Council	EP	Compromise
					on the basis of end-year quotes for the previous three calendar years;
252.	Art. 4 – para 2 – point 13	13) ‘Limit order’ means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size;	13) ‘Limit order’ means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size;	(13) ‘ <i>limit</i> order’ means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size;	<i>Agreed silence procedure 20130912</i>  (13) ‘ <i>limit</i> order’ means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size;
253.	Art. 4 – para 2 – point 14	14) ‘Financial instrument’ means those instruments specified in Section C of Annex I;	14) ‘Financial instrument’ means those instruments specified in Section C of Annex I;	(14) ‘ <i>financial</i> instrument’ means those instruments specified in Section C of Annex I;	<i>Agreed silence procedure 20130912</i>  (14) ‘ <i>financial instrument</i> ’ means those instruments specified in Section C of Annex I;
254.	Art. 4 – para 2 – point 15	15) ‘Money-market instruments’ means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;	15) ‘Money-market instruments’ means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;	(15) ‘ <i>money</i> -market instruments’ means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;	<i>Agreed silence procedure 20130912</i>  (15) ‘ <i>money</i> -market instruments’ means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;
255.	Art. 4 – para 2 – point 16	16) ‘Home Member State’ means:	[...] [Moved to MiFIR row 136 with addition of point (c) on data service providers. Otherwise content identical]	(16) ‘ <i>home</i> Member State’ means:	<i>Agreed silence procedure 20131008</i>  T: inclusion or not of APA/ARM/CTP  T: inclusion of definition in MiFID or MiFIR  <i>Technical group 29 08</i>  See identical text in MiFIR row 136; plus APA/ARM/CTP included (new point c)
256.	Art. 4 – para	(a) in the case of investment firms:	[...] [Moved to MiFIR row 136 with addition of point (c) on data service	(a) in the case of investment firms:	<i>Agreed silence procedure 20131008</i>



		COM	Council	EP	Compromise
	2 – point 16 – subpoint a		providers. Otherwise content identical]		T: inclusion in MiFID or MiFIR  <i>Technical group 29 08</i> See identical text in MiFIR row 136
257.	Art. 4 – para 2 – point 16 – subpoint a – subpoint i	(i) if the investment firm is a natural person, the Member State in which its head office is situated;	[...] [Moved to MiFIR row 136 with addition of point (c) on data service providers. Otherwise content identical]	(i) if the investment firm is a natural person, the Member State in which its head office is situated;	<i>Agreed silence procedure 20131008</i> T: inclusion in MiFID or MiFIR  <i>Technical group 29 08</i> See identical text in MiFIR row 136
258.	Art. 4 – para 2 – point 16 – subpoint a – subpoint ii	(ii) if the investment firm is a legal person, the Member State in which its registered office is situated;	[...]	(ii) if the investment firm is a legal person, the Member State in which its registered office is situated;	<i>Agreed silence procedure 20131008</i> T: inclusion in MiFID or MiFIR  <i>Technical group 29 08</i> See identical text in MiFIR row 136
259.	Art. 4 – para 2 – point 16 – subpoint a – subpoint iii	(iii) if the investment firm has, under its national law, no registered office, the Member State in which its head office is situated;	[...]	(iii) if the investment firm has, under its national law, no registered office, the Member State in which its head office is situated;	<i>Agreed silence procedure 20131008</i> T: inclusion in MiFID or MiFIR  <i>Technical group 29 08</i> See identical text in MiFIR row 136





		COM	Council	EP	Compromise
260.	Art. 4 – para 2 – point 16 – subpoi nt b	(b) in the case of a regulated market, the Member State in which the regulated market is registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the regulated market is situated;	[...]	(b) in the case of a regulated market, the Member State in which the regulated market is registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the regulated market is situated;	<i>Agreed silence procedure 20131008</i>  T: inclusion in MiFID or MiFIR  <i>Technical group 29 08</i>  See identical text in MiFIR row 136
261.	Art. 4 – para 2 – point 17	17) ‘Host Member State’ means the Member State, other than the home Member State, in which an investment firm has a branch or performs services and/or activities or the Member State in which a regulated market provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same Member State;	[...] <u>[Moved to MiFIR row 137. Substance identical.]</u>	(17) ‘ <i>host</i> Member State’ means the Member State, other than the home Member State, in which an investment firm has a branch or performs services and/or activities or the Member State in which a regulated market provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same Member State;	<i>Agreed silence procedure 20131008</i>  T: inclusion in MiFID or MiFIR  <i>Technical group 29 08</i>  See identical text in MiFIR row 137
262.	Art. 4 – para 2 – point 18	18) ‘Competent authority’ means the authority, designated by each Member State in accordance with Article 48, unless otherwise specified in this Directive;	18) ‘Competent authority’ means the authority, designated by each Member State in accordance with <u>Article 69</u> , unless otherwise specified in this Directive;	(18) ‘ <i>competent</i> authority’ means the authority, designated by each Member State in accordance with <b>Article 69</b> , unless otherwise specified in this Directive;	<i>Agreed silence procedure 20130912</i>  (18) ‘ <i>competent</i> authority’ means the authority, designated by each Member State in accordance with <b>Article 69</b> , unless otherwise specified in this Directive;
263.	Art. 4 – para 2 – point 19	19) ‘Credit institutions’ means credit institutions as defined under Directive 2006/48/EC ;	19) ‘Credit institutions’ means credit institutions as defined under Directive 2006/48/EC;	(19) ‘ <i>credit</i> institution’ means a credit institution as defined under Directive 2006/48/EC;	<i>Agreed silence procedure 20131008</i>  T: update reference with CRDIV  <i>Technical group 29 08</i>  (19) ‘ <i>credit</i> institution’ means a credit institution as defined <b>in point (1) of Article 4(1) of Regulation (EU) No 575/2013</b> ;





		COM	Council	EP	Compromise
264.	Art. 4 – para 2 – point 20	20) ‘UCITS management company’ means a management company as defined in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) <sup>1</sup> ;	20) ‘UCITS management company’ means a management company as defined in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) <sup>2422</sup> ;	(20) ‘UCITS management company’ means a management company as defined in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) <sup>2</sup> ;	<i>Agreed silence procedure 20130912</i>  (20) ‘UCITS management company’ means a management company as defined in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) <sup>3</sup> ;
265.	Art. 4 – para 2 – point 21	21) ‘Tied agent’ means a natural or legal person who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts, promotes investment and/or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;	21) ‘Tied agent’ means a natural or legal person who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts, promotes investment and/or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;	(21) ‘ <i>tied agent</i> ’ means a natural or legal person who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts, promotes investment and/or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;	<i>Agreed silence procedure 20130912</i>  (21) ‘ <i>tied agent</i> ’ means a natural or legal person who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts, promotes investment and/or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;
266.	Art. 4 – para 2 –	22) ‘Branch’ means a place of business other than the head office which is a part of an investment firm,	22) ‘Branch’ means a place of business other than the head office which is a part of an investment firm,	(22) ‘ <i>branch</i> ’ means a place of business other than the head office which is a part of an investment firm,	<i>Agreed silence procedure 20130912</i>  (22) ‘ <i>branch</i> ’ means a place of business other than the head office which is a part of

<sup>1</sup> OJ L 375, 31.12.1985, p. 3 Ö 302, 17.11.2009, p. 32 Ö . Directive as last amended by Directive 2001/108/EC of the European Parliament and of the Council (OJ L 41, 13.2.2002, p. 35).

<sup>22</sup> OJ L 302, 17.11.2009, p. 32.

<sup>2</sup> OJ L 302, 17.11.2009, p. 32.

<sup>3</sup> OJ L 302, 17.11.2009, p. 32.



		COM	Council	EP	Compromise
	point 22	which has no legal personality and which provides investment services and/or activities and which may also perform ancillary services for which the investment firm has been authorised; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;	which has no legal personality and which provides investment services and/or activities and which may also <u>provide</u> ancillary services for which the investment firm has been authorised; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;	which has no legal personality and which provides investment services and/or activities and which may also perform ancillary services for which the investment firm has been authorised; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;	an investment firm, which has no legal personality and which provides investment services and/or activities and which may also perform ancillary services for which the investment firm has been authorised; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;
267.	Art. 4 – para 2 – point 23	23) ‘Qualifying holding’ means any direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC, taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;	23) ‘Qualifying holding’ means any direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC, taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;	(23) ‘ <i>qualifying</i> holding’ means a direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC <i>of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market</i> <sup>1</sup> , taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;	<i>Agreed silence procedure 20130912</i>  (23) ‘ <i>qualifying</i> holding’ means a direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC <i>of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market</i> <sup>2</sup> , taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;

<sup>1</sup> OJ L 390, 31.12.2004, p. 38.

<sup>2</sup> OJ L 390, 31.12.2004, p. 38.



		COM	Council	EP	Compromise
268.	Art. 4 – para 2 – point 24	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 <sup>1</sup> ;	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 <sup>2,3</sup> ;	(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 <sup>2</sup> ;	<i>Agreed silence procedure 20130912</i>  (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 <sup>3</sup> ;
269.	Art. 4 – para 2 – point 25	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 an ultimate parent undertaking;	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 an ultimate parent undertaking;	(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 an ultimate parent undertaking;	<i>Agreed silence procedure 20130912</i>  (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 an ultimate parent undertaking;
270.	Art. 4 – para 2 – point 26	26)‘Close links’ means a situation in which two or more natural or legal persons are linked by:	[...] [Moved to MiFIR row 138. Content identical.]	(26) ‘close links’ means a situation in which two or more natural or legal persons are linked by:	<i>Agreed silence procedure 20131008</i>  T: inclusion in MiFID or MiFIR  Technical group 29 08  See identical text in MiFIR row 138
271.	Art. 4 – para 2 – point 26 – indent 1	– ‘participation’ which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;	[...]	(a) ‘participation’ which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;	<i>Agreed silence procedure 20131008</i>  T: inclusion in MiFID or MiFIR  Technical group 29 08  See identical text in MiFIR row 138

<sup>1</sup> OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).  
<sup>23</sup> OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).  
<sup>2</sup> OJ L 193, 18.7.1983, p. 1.  
<sup>3</sup> OJ L 193, 18.7.1983, p. 1.



		COM	Council	EP	Compromise
272.	Art. 4 – para 2 – point 26 – indent 2	– 'control' which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings;	[...]	(b) 'control' which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings;	<i>Agreed silence procedure 20131008</i> T: inclusion in MiFID or MiFIR Technical group 29 08 See identical text in MiFIR row 138
273.	Art. 4 – para 2 – point 26 – indent 3	– a situation in which they are permanently linked to one and the same person by a control relationship;	[...]	(c) a situation in which they are permanently linked to one and the same person by a control relationship;	<i>Agreed silence procedure 20131008</i> T: inclusion in MiFID or MiFIR <i>Technical group 29 08</i> See identical text in MiFIR row 138
274.	Art. 4 – para 2 – point 27	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	27) 'Management body' means the [...] body <u>or bodies of an investment firm or of a market operator or of a data reporting services provider, appointed in accordance with the national law, which</u> is empowered to set the <u>entity's</u> strategy, objectives and overall direction, <u>and which oversees and monitors management decision-making. This</u> shall include persons who effectively direct the business of	(27) ' <i>management</i> body' means the governing body of a firm <b>or data services provider</b> , comprising the supervisory and the managerial functions, which has the ultimate decision-making authority and is empowered to set the firm's <b>or data services provider's</b> strategy, objectives and overall direction. Management body shall include persons who effectively direct the business of the firm;	<i>Agreed silence procedure 20131126</i> T: align to CRDIV and check consistency with definitions in MiFIR <i>Technical group 29 08</i> Definitions relating to corporate governance to be reviewed in light of the COM non-paper on the corporate governance Articles 27) 'Management body' means the [...] body <u>or bodies of an investment firm</u> ,



		COM	Council	EP	Compromise
			the <u>entity</u> .		<p><u>market operator or data reporting services provider, appointed in accordance with national law, which are empowered to set the entity's strategy, objectives and overall direction, and which oversee and monitor management decision-making and include persons who effectively direct the business of the entity.</u></p> <p><i>Trilogue 20131009: agreed in principle subject to finalisation of detailed drafting by technical group</i></p> <p><i>Technical group 22 10</i></p> <p><i>Confirmed that drafting consistent with COM non-paper proposals</i></p>
274a.			<p><u>Where, according to national law, management body comprises different bodies with specific functions, the requirements of this Directive shall apply only to those members of the management body to whom the applicable national law assigns the respective responsibility;</u></p>		<p><i>Agreed silence procedure 20131126</i></p> <p>T: align to CRDIV and check consistency with definitions in MiFIR</p> <p><i>Technical group 29 08</i></p> <p>Delete</p> <p>Not included in CRDIV</p> <p><i>Trilogue 20131009: agreed in principle subject to finalisation of detailed drafting by technical group</i></p> <p><i>Technical group 22 10</i></p> <p><i>No change to proposal</i></p> <p>[...]</p> <p><i>Technical group 2 12</i></p>



		COM	Council	EP	Compromise
					<p>Consider including recital 55 from CRDIV</p> <p><i>Technical group 17 12</i></p> <p>Revised suggestion following objection in Council (CRDIV contains the same clause)</p> <p><u>Where, according to national law, management body comprises different bodies with specific functions, the requirements of this Directive shall apply only to those members of the management body to whom the applicable national law assigns the respective responsibility;</u></p> <p><i>Technical meeting 20140114</i></p> <p>Revised suggestion following Commission comment. Drafting aligned to Article 3(2) CRDIV.</p> <p>Where this Directive refers to the management body and, pursuant 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 identify the bodies or members of the management body responsible in accordance with its national law, unless otherwise specified by this Directive.</p>
275.	Art. 4 – para 2 – point 28	28) "Management body in its supervisory function" means the management body acting in its supervisory function of overseeing and monitoring management decision-making;	[...]	(28) 'management body in its supervisory function' means the management body acting in its supervisory function of overseeing and monitoring management decision-making;	<p><i>Agreed silence procedure 20131126</i></p> <p>T: align to CRDIV and check consistency with definitions in MiFIR</p> <p><i>Technical group 29 08</i></p>



		COM	Council	EP	Compromise
					<p>Definitions relating to corporate governance to be reviewed in light of the COM non-paper on the corporate governance Articles</p> <p>(28) 'management body in its supervisory function' means the management body acting in its <b>role</b> of overseeing and monitoring management decision-making;</p> <p><i>Trilogue 20131009: agreed in principle subject to finalisation of detailed drafting by technical group</i></p> <p><i>Technical group 22 10</i></p> <p><i>Confirmed that drafting consistent with COM non-paper proposals</i></p> <p><i>Technical meeting 2 12</i></p> <p>"Supervisory function" changed to "role" above, in line with CRDIV</p>
276.	Art. 4 – para 2 – point 29	29) "Senior management" means those individuals who exercise executive functions with a firm and who are responsible and accountable for the day-to-day management of the firm, including the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;	29) 'Senior management' means those individuals who exercise executive functions <u>within an investment firm or a market operator or a data reporting services provider</u> and who are responsible and accountable <u>to the management body</u> for the day-to-day management of the <u>entity</u> ;	(29) 'senior management' means individuals who exercise executive functions with a firm and who are responsible and accountable for the day-to-day management of the firm, including the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;	<p><i>Agreed silence procedure 20131126</i></p> <p>T: align to CRDIV and check consistency with definitions in MiFIR</p> <p><i>Technical group 29 08</i></p> <p>Definitions relating to corporate governance to be reviewed in light of the COM non-paper on the corporate governance Articles</p> <p>29) 'Senior management' means those <b>natural persons</b> who exercise executive functions <u>within an investment firm or a market operator or a data reporting services provider</u> and who are responsible and</p>





		COM	Council	EP	Compromise
					<p>accountable to the management body for the day-to-day management of the <u>entity</u>, <b>including the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;</b></p> <p><i>Trilogue 20131009: agreed in principle subject to finalisation of detailed drafting by technical group</i></p> <p><i>Technical group 22 10</i></p> <p><i>Confirmed that drafting consistent with COM non-paper proposals</i></p>
277.	Art. 4 – para 2 – point 30	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;	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;	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 <b><i>or to execute client orders or to fulfil any legal obligation through the determination of a parameter of the order; or to the processing of executed transactions;</i></b>	<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20131009: agreement in principle on trading controls. Technical group to prepare drafting.</i></p> <p><i>Technical group 13 11</i></p> <p>COM concerned that EP addition creates loophole.</p> <p>Possibly replace by a clarifying recital. COM to suggest wording</p> <p><i>Technical group 26 11</i></p> <p>To be discussed at technical group, following input sent by Commission</p> <p><i>Technical group 3 12</i></p> <p>Commission services technical drafting suggestion</p> <p>30) ‘Algorithmic trading’ means trading in</p>





		COM	Council	EP	Compromise
					<p>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 <b>or for the processing of orders involving no determination of any trading parameters</b> or for the confirmation of orders <b>or</b> the <b>post-trade processing of executed transactions</b>;</p> <p><i>Technical group telecon 20131211</i></p> <p><i>Changed "for" to "or" above</i></p>
278.	Art. 4 – para 2 – point 30a (new)			<p><i>(30a) 'high-frequency trading' means algorithmic trading in financial instruments at speeds where the physical latency of the mechanism for transmitting, cancelling or modifying orders becomes the determining factor in the time taken to communicate the instruction to a trading venue or to execute a transaction;</i></p>	<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20131009: agreement in principle on trading controls. Technical group to prepare drafting.</i></p> <p><i>Technical group 13 11</i></p> <p><i>[...]</i></p>
279.	Art. 4 – para 2 – point 30b (new)		<p><u>30a) 'High frequency algorithmic trading technique means any algorithmic trading technique characterised by:</u></p> <p><u>(a) infrastructure intended to minimise network and other types of latencies, including at least one of the</u></p>	<p><i>(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 at least two of the following characteristics:</i></p>	<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20131009: agreement in principle on trading controls. Technical group to prepare drafting.</i></p> <p><i>Technical group 13 11</i></p>



		COM	Council	EP	Compromise
			<p><u>following facilities for algorithmic order entry: co- location, proximity hosting or high speed direct electronic access;</u></p> <p><u>(b) system determination of order initiation, generating, routing or execution without human intervention for individual trades or orders; and</u></p> <p><u>(c) high message intraday rates which constitute orders, quotes or cancellations.</u></p>	<p><i>(i) it uses co-location facilities, direct market access or proximity hosting;</i></p> <p><i>(ii) it relates to a daily portfolio turnover of at least 50 %;</i></p> <p><i>(iii) the proportion of orders cancelled (including partial cancellations) exceeds 20 %;</i></p> <p><i>(iv) the majority of positions taken are unwound within the same day;</i></p> <p><i>(v) over 50 % of the orders or transactions made on trading venues offering discounts or rebates to orders which provide liquidity are eligible for such rebates;</i></p>	<p>Council term: Used in rows 185 and 197</p> <p>EP term: used in row 477. Adapt 477 and use Council text here</p> <p><u>30a) ‘High frequency algorithmic trading technique means any algorithmic trading technique characterised by:</u></p> <p><u>(a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high speed direct electronic access;</u></p> <p><u>(b) system determination of order initiation, generating, routing or execution without human intervention for individual trades or orders; and</u></p> <p><u>(c) high message intraday rates which constitute orders, quotes or cancellations.</u></p>
280.	Art. 4 – para 2 – point 31	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	31) <sup>1</sup> ‘Direct electronic access’ means, in relation to a trading venue [...] 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	<p><b>■ (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;</b></p>	<p><i>Agreed silence procedure 20131126</i></p> <p>[See also EP row 282]</p> <p><i>Trilogue 20131009: technical group to prepare drafting based on COM non-paper with reinforced controls for sponsored access.</i></p> <p><i>Technical meeting 23 10</i></p> <p>Agreed to take definition from COM non-paper</p> <p>"Direct electronic access" means, <u>in relation</u></p>



		COM	Council	EP	Compromise
		participant, to transmit the orders;	participant, to transmit the orders;		<p><del>to a trading venue, means</del>—an arrangement where a member or participant <u>or client</u> 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 <del>such—</del><u>an</u> arrangements <del>whether or not it also</del> which involves the use by the person of the infrastructure of the member or participant <u>or client</u>, or any connecting system provided by the member or participant <u>or client</u>, to transmit the orders <u>(direct market access) and those arrangements where this infrastructure is not used by that person (sponsored access).</u></p> <p><i>Technical meeting 2 10</i></p> <p>"or" changed to "and" above, following comment in Council</p>
281.	Art. 4 – para 2 – point 31a (new)			<i>[Moved to row 280]</i>	
282.	Art. 4 – para 2 – point 31b (new)			<p><i>(31b) 'sponsored and naked 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 under the investment firm's trading code to a specified trading venue</i></p>	<p><i>Agreed silence procedure 20131126</i></p> <p>[See Council row 280 2nd para]</p> <p>Trilogue 20130911: agreed to include explicit ban on naked market access. Treatment of sponsored market access to be considered in light of Commission proposals for allowing this with tight controls, taking</p>



		COM	Council	EP	Compromise
				<i>without the orders being routed through the investment firm's internal electronic trading systems;</i>	account of ESMA guidelines and Commission text.  <i>Trilogue 20131009: technical group to prepare drafting based on COM non-paper with reinforced controls for sponsored access.</i>  <i>Technical meeting 23 10</i>  [...]  Covered elsewhere. Row 280 includes definition of sponsored access. Direct electronic access without risk controls (ie naked access) prohibited in row 482 so separate definition no longer needed.
283.	Art. 4 – para 2 – point 32	32) "Market Abuse Regulation" means Regulation (EC) No .../... of the European Parliament and of the Council on insider dealing and market manipulation (market abuse);	32) 'Market Abuse Regulation' means Regulation (EC) No .../... of the European Parliament and of the Council on insider dealing and market manipulation (market abuse);	■ [Deleted by lawyer linguists]	<i>Agreed silence procedure 20131008</i>  ■ [Deleted by lawyer linguists]
284.	Art. 4 – para 2 – point 33	33) "Cross-selling practice" means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.	33) 'Cross-selling practice' means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package;	(33) 'cross-selling practice' means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.	<i>Agreed silence procedure 20130912</i>  (33) 'cross-selling practice' means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.
285.	Art. 4 – para 2 – point 33a (new)			<i>(33a) 'insurance-based investment' means an insurance contract 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</i>	<i>Agreed silence procedure 20131219</i>  T: mechanism for including insurance-based investments, structured deposits and PRIPs in light of political decisions on row 167. Check consistency with decisions on 162, 168-171, 286.



		COM	Council	EP	Compromise
				<i>does not directly hold the asset;</i>	<p>Trilogue 20130904: Commission to prepare proposal for transitional inclusion of insurance pending adoption of IMD2</p> <p>Trilogue 20131009: Commission to prepare revised non-paper including direct sales of insurance and product intervention/product governance.</p> <p><i>Trilogue 20131204: consideration to be given to amendment of certain provisions of IMD1 rather than inclusion here.</i></p> <p><i>Technical group telecon 20131211</i></p> <p><i>Political decision clear that if insurance to be included it will be through a different mechanism. Technical group therefore proposes deletion of this definition.</i></p> <p>[...]</p>
286.	Art. 4 – para 2 – point 33b (new)			<i>(33b) ‘investment product’ means an product where the amount payable to the client is determined with reference to the value of financial instruments or the product is a structured deposit or the product is an insurance-based investment or the product is a packaged retail investment product as defined in Article ... of Directive ....//.../EU [PRIPS];</i>	<p><i>Agreed silence procedure 20131219</i></p> <p>T: mechanism for including insurance-based investments, structured deposits and PRIPs in light of political decisions on row 167. Check consistency with decisions on 162, 168-171, 285.</p> <p><i>Technical group 28 08</i></p> <p>linked to rows 162 and 168ff</p> <p>Issue to be reverted to once political decision on insurance products has been taken. If insurance included, include structured deposit in definition; if not may be sufficient to add specific references to</p>



		COM	Council	EP	Compromise
					<p>structured deposits where needed.</p> <p>Trilogue 20130904: Commission to prepare proposal for transitional inclusion of insurance pending adoption of IMD2</p> <p>Trilogue 20131009: Commission to prepare revised non-paper including direct sales of insurance and product intervention/product governance.</p> <p><i>Technical group telecon 20131211</i></p> <p><i>Political decision clear that if insurance to be included it will be through a different mechanism. Technical group therefore proposes deletion of this definition. Structured deposits are already included via row 168.</i></p> <p>[...]</p>
287.	Art. 4 – para 2 – point 33c (new)			<i>(33c) ‘discretionary portfolio management’ means portfolio management where the mandate from the client allows the portfolio manager discretion to select the investment products or financial instruments in which the client's funds are invested;</i>	<p><i>Agreed silence procedure 20130912</i></p> <p>[...]</p> <p>[Deleted on basis that row 246 already defines discretionary portfolio management]</p>
288.	Art. 4 – para 2 – point 33d (new)			<i>(33d) 'Third-country firm' means a firm that would be an investment firm or market operator if its head office were located within the Union.</i>	<p><i>Agreed silence procedure 20131008</i></p> <p>T: inclusion or not of definition and alignment to Articles. Consider whether reference needs to be made to credit institutions.</p> <p><i>Technical group 29 08</i></p>



		COM	Council	EP	Compromise
					See revised text in MiFIR row 131
289.			<p>34) ‘Structured deposit’ means a deposit in accordance with Article 1 (1) of Directive 94/19/EC that is fully repayable at maturity on terms under which any interest or premium will be paid (or is at risk) according to a formula involving factors such as: (i) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as EURIBOR or LIBOR; (ii) a MiFID financial instrument or combination of such financial instruments; (iii) a commodity or combination of commodities; or (iv) a foreign exchange rate or combination of foreign exchange rates;</p>		<p><i>Agreed silence procedure 20131008</i></p> <p>T: where/how best to include structured deposits within scope. Check consistency between rows 162, 168-171, 286, 289</p> <p><i>Technical group 28 08</i></p> <p>Include definition. Commission to propose for consideration additional wording on inclusion of accounts linked to physical non-fungible assets (eg fine wine, art)</p> <p>34) ‘Structured deposit’ means a deposit in accordance with Article 1 (1) of Directive 94/19/EC that is fully repayable at maturity on terms under which any interest or premium will be paid (or is at risk) according to a formula involving factors such as: (i) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as EURIBOR or LIBOR; (ii) a MiFID financial instrument or combination of such financial instruments; (iii) a commodity or combination of commodities; or (iv) a foreign exchange rate or combination of foreign exchange rates;</p> <p><i>Technical group 05 09</i></p> <p>Bracketed part added to cover deposits linked eg to art or fine wine which would</p>



		COM	Council	EP	Compromise
					<p>not be covered by the commodity definition as they are not fungible. "Non-physical" added to cover eg intellectual property rights which are a non-physical asset.</p> <p>34) ‘Structured deposit’ means a deposit in accordance with Article 1 (1) of Directive 94/19/EC that is fully repayable at maturity on terms under which any interest or premium will be paid (or is at risk) according to a formula involving factors such as: (i) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as EURIBOR or LIBOR; (ii) a MiFID financial instrument or combination of such financial instruments; (iii) a commodity or combination of commodities <b>or other [physical or non-physical] non-fungible assets</b>"; or (iv) a foreign exchange rate or combination of foreign exchange rates;</p>
290.			<p>35) ‘Central Securities Depositories (CSDs)’ means Central Securities Depositories as defined in Regulation [1](CSDR).</p>		<p><i>Agreed silence procedure 20131219</i></p> <p>T: definition of CSD. (Political decisions on inclusion/exclusion taken elsewhere)</p> <p><i>Technical group 29 08</i></p> <p>Assuming definition is needed in light of political decisions, if CSD finalised in time, refer to relevant Article (draft below); otherwise review row 206.</p> <p>35) ‘Central Securities Depositories (CSDs)’ means Central Securities Depositories as defined in point (1) of Article 2(1) of</p>





		COM	Council	EP	Compromise
					<u>Regulation [ ] (CSDR).</u>
291.			<p><u>37) “durable medium” means any instrument which</u></p> <p><u>(a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information, and</u></p> <p><u>(b) allows the unchanged reproduction of the information stored;</u></p>		<p><i>Agreed silence procedure 20131008</i></p> <p>T: inclusion or not of durable medium definition. Content identical to definition in existing MiFID implementing directive.</p> <p><i>Technical group 29 08</i></p> <p><u>37) “durable medium” means any instrument which</u></p> <p><u>(a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information, and</u></p> <p><u>(b) allows the unchanged reproduction of the information stored;</u></p>
292.	Art. 4 – para 3	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 .	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 2 [...], to adjust them to market developments <u>and ensure the uniform application of this Directive.</u>	3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify some technical elements of <b><i>or amend</i></b> the definitions laid down in <b><i>points (3), (11), (12), and (27) to (33d) of</i></b> paragraph 2 of this Article, <b><i>if appropriate, to take into account:</i></b>	<p><i>Agreed silence procedure 20131219</i></p> <p><i>Agreed silence procedure 20131219</i></p> <p><i>Technical group telecon 20131211</i></p> <p>COM to check link with MAR.</p> <p>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 2 [...], to adjust them to market developments, <b>technological developments and experience of abusive practices within the meaning of Regulation EU No. .../... [MAR] and ensure the uniform application of this</b></p>



		COM	Council	EP	Compromise
					<u>Directive.</u>
293.				<i>(a)technical developments in financial markets;</i>	<p>Agreed silence procedure 20131219</p> <p>Technical group Telecon 20131211</p> <p>Depends on row 292</p> <p>[...]</p>
294.				<i>(b) the list of abusive practices referred to in Article 34b(b) of Regulation (EU) No .../... [MAR] in particular with regard to high-frequency trading and including, but not limited to, spoofing, quote stuffing and layering.</i>	<p>Agreed silence procedure 20131219</p> <p>Technical meeting 23 10</p> <p>Check whether there is an alternative reference to empowerment / MAR</p> <p>Technical group Telecon 20131211</p> <p>Depends on row 292</p> <p>[...]</p>
295.	Title II - title	<i>AUTHORISATION AND OPERATING CONDITIONS FOR INVESTMENT FIRMS</i>	<i>AUTHORISATION AND OPERATING CONDITIONS FOR INVESTMENT FIRMS</i>	<i>AUTHORISATION AND OPERATING CONDITIONS FOR INVESTMENT FIRMS</i>	<p>Agreed silence procedure 20130912</p> <p><i>AUTHORISATION AND OPERATING CONDITIONS FOR INVESTMENT FIRMS</i></p>
296.	Title II – Chapter I – title	<i>CONDITIONS AND PROCEDURES FOR AUTHORISATION</i>	<i>CONDITIONS AND PROCEDURES FOR AUTHORISATION</i>	<i>CONDITIONS AND PROCEDURES FOR AUTHORISATION</i>	<p>Agreed silence procedure 20130912</p> <p><i>CONDITIONS AND PROCEDURES FOR AUTHORISATION</i></p>
297.	Art. 5 – title	<i>Requirement for authorisation</i>	<i>Requirement for authorisation</i>	<i>Requirement for authorisation</i>	<p>Agreed silence procedure 20130912</p> <p><i>Requirement for authorisation</i></p>
298.	Art. 5 – para 1	1. Each Member State shall require that the performance of investment services or activities as a regular occupation or business on a	1. Each Member State shall require that the <u>provision of investment services and/or the</u> performance of investment [...] activities as a regular	1. Each Member State shall require that the performance of investment services or activities as a regular occupation or business on a	<p>Agreed silence procedure 20130912</p> <p>[Lawyer linguists to review consistency of references to "provision of investment</p>



		COM	Council	EP	Compromise
		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.	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 <u>Home</u> Member State competent authority designated in accordance with Article 69.	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.	services" vs "performance of investment activities" throughout.]  1. Each Member State shall require that the <u>provision of investment services and/or the performance of investment [...]</u> 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.
299.	Art. 5 – para 2	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 .	2. By way of derogation from paragraph 1, Member States shall <u>authorise</u> any market operator to operate an MTF or an OTF, subject to the prior verification of their compliance with the provisions of this Chapter.	2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate an MTF or an <i>organised trading facility</i> (OTF), subject to the prior verification of their compliance with the provisions of this Chapter.	<i>Agreed silence procedure 20130912</i>  2. By way of derogation from paragraph 1, Member States shall <u>authorise</u> any market operator to operate an MTF or an <i>organised trading facility</i> OTF, subject to the prior verification of their compliance with the provisions of this Chapter.
300.	Art. 5 – para 3	3. Member States shall register all investment firms. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to the ESMA.	3. Member States shall register all investment firms. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to the ESMA.	3. Member States shall register all investment firms. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to // ESMA.	<i>Agreed silence procedure 20130912</i>  3. Member States shall register all investment firms. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to // ESMA.
301.	Art. 5 – para 3 – subpar	ESMA shall establish a list of all investment firms in the Union. The list shall contain information on the services or activities for which each investment firm is authorised and it	ESMA shall establish a list of all investment firms in the Union. The list shall contain information on the services or activities for which each investment firm is authorised and it	ESMA shall establish a list of all investment firms in the <b>European</b> Union. The list shall contain information on the services or activities for which each investment	<i>Agreed silence procedure 20130912</i>  ESMA shall establish a list of all investment firms in the <b>European</b> Union. The list shall contain information on the services or



		COM	Council	EP	Compromise
	a 2	shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.	shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.	firm is authorised and it shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.	activities for which each investment firm is authorised and it shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.
302.	Art. 5 – para 3 – subpar a 3	Where a competent authority has withdrawn an authorisation in accordance with Article 8(b) to (d), that withdrawal shall be published on the list for a period of 5 years.	Where a competent authority has withdrawn an authorisation in accordance with Article 8(b) to (d), that withdrawal shall be published on the list for a period of <u>five</u> years.	Where a competent authority has withdrawn an authorisation in accordance with Article 8(b) to (d), that withdrawal shall be published on the list for a period of <i>five</i> years.	<i>Agreed silence procedure 20130912</i> Where a competent authority has withdrawn an authorisation in accordance with Article 8(b) to (d), that withdrawal shall be published on the list for a period of <i>five</i> years.
303.	Art. 5 – para 4	4. Each Member State shall require that:	4. Each Member State shall require that:	4. Each Member State shall require that:	<i>Agreed silence procedure 20130912</i> 4. Each Member State shall require that:
304.	Art. 5 – para 4 – indent 1	– any investment firm which is a legal person have its head office in the same Member State as its registered office,	– any investment firm which is a legal person have its head office in the same Member State as its registered office,	- any investment firm which is a legal person have its head office in the same Member State as its registered office,	<i>Agreed silence procedure 20130912</i> - any investment firm which is a legal person have its head office in the same Member State as its registered office,
305.	Art. 5 – para 4 – indent 2	– any investment firm which is not a legal person or any investment firm which is a legal person but under its national law has no registered office have its head office in the Member State in which it actually carries on its business.	– any investment firm which is not a legal person or any investment firm which is a legal person but under its national law has no registered office have its head office in the Member State in which it actually carries on its business.	- any investment firm which is not a legal person or any investment firm which is a legal person but under its national law has no registered office, have its head office in the Member State in which it actually carries on its business.	<i>Agreed silence procedure 20130912</i> - any investment firm which is not a legal person or any investment firm which is a legal person but under its national law has no registered office, have its head office in the Member State in which it actually carries on its business.
306.	Art. 6 – title	<i>Scope of authorisation</i>	<i>Scope of authorisation</i>	<i>Scope of authorisation</i>	<i>Agreed silence procedure 20130912</i> <i>Scope of authorisation</i>
307.	Art. 6 – para 1	1. The home Member State shall ensure that the authorisation specifies the investment services or activities	1. The <u>Home</u> Member State shall ensure that the authorisation specifies the investment services or activities	1. The home Member State shall ensure that the authorisation specifies the investment services or activities	<i>Agreed silence procedure 20130912</i> 1. The home Member State shall ensure that



		COM	Council	EP	Compromise
		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.	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.	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.	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.
308.	Art. 6 – para 2	2. An investment firm seeking authorisation to extend its business to additional investment services or activities or ancillary services not foreseen at the time of initial authorisation shall submit a request for extension of its authorisation.	2. An investment firm seeking authorisation to extend its business to additional investment services or activities or ancillary services not foreseen at the time of initial authorisation shall submit a request for extension of its authorisation.	2. An investment firm seeking authorisation to extend its business to additional investment services or activities or ancillary services not foreseen at the time of initial authorisation shall submit a request for extension of its authorisation.	<i>Agreed silence procedure 20130912</i> 2. An investment firm seeking authorisation to extend its business to additional investment services or activities or ancillary services not foreseen at the time of initial authorisation shall submit a request for extension of its authorisation.
309.	Art. 6 – para 3	3. The authorisation shall be valid for the entire Union and shall allow an investment firm to provide the services or perform the activities, for which it has been authorised, throughout the Union, either through the establishment of a branch or the free provision of services.	3. The authorisation shall be valid for the entire Union and shall allow an investment firm to provide the services or perform the activities, for which it has been authorised, throughout the Union, either through the <u>right of</u> establishment of a branch or the free provision of services.	3. The authorisation shall be valid for the entire <b>European</b> Union and shall allow an investment firm to provide the services or perform the activities, for which it has been authorised, throughout the <b>European</b> Union, either through the establishment of a branch or the free provision of services.	<i>Agreed silence procedure 20131008</i> <i>Technical group proposal</i> 3. The authorisation shall be valid for the entire <b>European</b> Union and shall allow an investment firm to provide the services or perform the activities, for which it has been authorised, throughout the <b>European</b> Union, either through the establishment of a branch or the free provision of services.  <i>Technical group 17 09</i> [Aligned to row 743]  3. The authorisation shall be valid for the entire <b>European</b> Union and shall allow an investment firm to provide the services or perform the activities, for which it has been authorised, throughout the <b>European</b> Union,



		COM	Council	EP	Compromise
					either through the <u>right of</u> establishment, <u>including through</u> a branch, or the free provision of services.
310.	Art. 7 – title	<i>Procedures for granting and refusing requests for authorisation</i>	<i>Procedures for granting and refusing requests for authorisation</i>	<i>Procedures for granting and refusing requests for authorisation</i>	<i>Agreed silence procedure 20130912</i> <i>Procedures for granting and refusing requests for authorisation</i>
311.	Art. 7 – para 1	1. The competent authority shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to this Directive.	1. The competent authority shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to this Directive.	1. The competent authority shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to this Directive.	<i>Agreed silence procedure 20130912</i> 1. The competent authority shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to this Directive.
312.	Art. 7 – para 2	2. The investment firm shall provide all information, including a programme of operations setting out inter alia the types of business envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Chapter.	2. The investment firm shall provide all information, including a programme of operations setting out inter alia the types of business envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Chapter.	2. The investment firm shall provide all information, including a programme of operations setting out inter alia the types of business envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Chapter.	<i>Agreed silence procedure 20130912</i> 2. The investment firm shall provide all information, including a programme of operations setting out inter alia the types of business envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Chapter.
313.	Art. 7 – para 3	3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted.	3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted.	3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted.	<i>Agreed silence procedure 20130912</i> 3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted.
314.	Art. 7	4. ESMA shall develop draft	4. ESMA shall develop draft	4. ESMA shall develop draft	<i>Agreed silence procedure 20130912</i>





		COM	Council	EP	Compromise
	– para 4	regulatory technical standards to specify:	regulatory technical standards to specify:	regulatory technical standards to specify:	4. ESMA shall develop draft regulatory technical standards to specify:
315.	Art. 7 – para 4 – point a	(a) the information to be provided to the competent authorities under Article 7(2) including the programme of operations;	(a) the information to be provided to the competent authorities under Article 7(2) including the programme of operations;	(a) the information to be provided to the competent authorities under Article 7(2) including the programme of operations;	<i>Agreed silence procedure 20130912</i> (a) the information to be provided to the competent authorities under Article 7(2) including the programme of operations;
316.	Art. 7 – para 4 – point b	(b) the tasks of nomination committees required under Article 9 (2)	(b) the tasks of nomination committees required under Article 9 (2);	(b) the tasks of nomination committees required under Article 9(2);	<i>Agreed silence procedure 20130912</i> (b) the tasks of nomination committees required under Article 9(2);  <i>Technical group 2 12</i> [...] Empowerment no longer needed as nomination committee is covered under CRDIV which is now cross-referred to from Article 9 (row 334)
317.	Art. 7 – para 4 – point c	(c) the requirements applicable to the management of investment firms under Article 9(8) and the information for the notifications under Article 9(5);	(c) the requirements applicable to the management of investment firms under Article 9(6) and the information for the notifications under <u>Article 9(3)</u> ;	(c) the requirements applicable to the management of investment firms under Article 9(8) and the information for the notifications under Article 9(5);	<i>Agreed silence procedure 20131126</i> T: correct references to be inserted once text of Article 9 is stable.  Technical group 17 09 [all texts refer to the same substance-wise; numbering to be checked once text stable] (c) the requirements applicable to the management of investment firms under Article 9(x) and the information for the notifications under Article 9(x);
318.	Art. 7 – para 4 –	(d) the requirements applicable to shareholders and members with qualifying holdings, as well as	(d) the requirements applicable to shareholders and members with qualifying holdings, as well as	(d) the requirements applicable to shareholders and members with qualifying holdings, as well as	<i>Agreed silence procedure 20130912</i> (d) the requirements applicable to



		COM	Council	EP	Compromise
	point d	obstacles which may prevent effective exercise of the supervisory functions of the competent authority, under Article 10(1) and (2).	obstacles which may prevent effective exercise of the supervisory functions of the competent authority, under Article 10(1) and (2).	obstacles which may prevent effective exercise of the supervisory functions of the competent authority, under Article 10(1) and (2).	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).
319.	Art. 7 – para 4 – subpara 2	ESMA shall submit those draft regulatory technical standards to the Commission by [31 December 2016].	ESMA shall submit those draft regulatory technical standards to the Commission by [31 December 2016].	ESMA shall submit those draft regulatory technical standards to the Commission by [...]*.  <b>* OJ please insert date: 18 months after the date of entry into force of this Directive.</b>	<i>Agreed silence procedure 20131126</i> <i>Technical group proposal</i> [Date to be inserted]  ESMA shall submit those draft regulatory technical standards to the Commission by [...]*.  <b>* OJ please insert date: 12 months after the date of entry into force of this Directive.</b>
320.	Art. 7 – para 4 – subpara 3	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.	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.	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.	<i>Agreed silence procedure 20130912</i>  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.
321.	Art. 7 – para 5	5. 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).	5. 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).	5. 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 in Article 9(5).	<i>Agreed silence procedure 20131008</i> <i>Technical group 17 09</i> [cross-reference to Article 9 checked once Article 9 stable]  5. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information





		COM	Council	EP	Compromise
					provided for in Article 7(2) and in Article 9(5).
322.	Art. 7 – para 5 – subpara 2	ESMA shall submit those draft implementing technical standards to the Commission by [31 December 2016].	ESMA shall submit those draft implementing technical standards to the Commission by [31 December 2016].	ESMA shall submit those draft implementing technical standards to the Commission by [...] <sup>1</sup>	<p><i>Agreed silence procedure 20131126</i></p> <p>[Date to be inserted]</p> <p>ESMA shall submit those draft implementing technical standards to the Commission by [...]</p> <p><b><i>OJ please insert date: 18 months after the date of entry into force of this Directive.</i></b></p>
323.	Art. 7 – para 5 – subpara 3	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.	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.	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.	<p><i>Agreed silence procedure 20130912</i></p> <p>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.</p>
324.	Art. 8 – title	<i>Withdrawal of authorisations</i>	<i>Withdrawal of authorisations</i>	<i>Withdrawal of authorisations</i>	<p><i>Agreed silence procedure 20130912</i></p> <p><i>Withdrawal of authorisations</i></p>
325.	Art. 8 – para 1	The competent authority may withdraw the authorisation issued to an investment firm where such an investment firm:	The competent authority <u>shall</u> withdraw the authorisation issued to an investment firm where such an investment firm:	The competent authority may withdraw the authorisation issued to an investment firm where such an investment firm:	<p><i>Agreed silence procedure 20131126</i></p> <p>T: assess whether paragraph works technically with "shall" or "may" and formulate possible alternatives</p> <p><i>Technical group 29 08</i></p> <p>Pres: "shall" used in EMIR 20(1)</p> <p>EP: "May" used in CRD. MiFID covers broader and more diverse scope of entities</p>

<sup>1</sup> ***OJ please insert date: 18 months after the date of entry into force of this Directive.***



		COM	Council	EP	Compromise
					<p>than EMIR; often there are other ways to fix a problem before withdrawing authorisation but this would not be allowed under Council drafting.</p> <p>Further options to be explored, including</p> <p>a. consider “shall withdraw unless other appropriate measures are available to remedy the situation”</p> <p>b. consider option to divide into a shall and a may list</p> <p>c. go back to may as in current MiFID</p> <p><i>Technical group 05 09</i></p> <p>Linked to rows 845a, 856, 1077</p> <p>The competent authority <u>shall</u> withdraw the authorisation issued to an investment firm, <b><u>unless other appropriate measures are available to remedy the situation,</u></b> where such an investment firm:</p> <p><i>Technical group 23 10</i></p> <p><i>Revised proposal following EP objection:</i></p> <p>The competent authority may withdraw the authorisation issued to an investment firm where such an investment firm:</p>
326.	Art. 8 – para 1 – point a	(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no investment services or performed no investment activity for the preceding six months,	(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no investment services or performed no investment activity for the preceding six months,	(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no investment services or performed no investment activity for the preceding six months,	<p><i>Agreed silence procedure 20131008</i></p> <p>(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no investment services or performed no investment activity</p>



		COM	Council	EP	Compromise
		unless the Member State concerned has provided for authorisation to lapse in such cases;	unless the Member State concerned has provided for authorisation to lapse in such cases;	unless the Member State concerned has provided for authorisation to lapse in such cases;	for the preceding six months, unless the Member State concerned has provided for authorisation to lapse in such cases;
327.	Art. 8 – para 1 – point b	(b) has obtained the authorisation by making false statements or by any other irregular means;	(b) has obtained the authorisation by making false statements or by any other irregular means;	(b) has obtained the authorisation by making false statements or by any other irregular means;	<i>Agreed silence procedure 20131008</i>  (b) has obtained the authorisation by making false statements or by any other irregular means;
328.	Art. 8 – para 1 – point c	(c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in Directive 2006/49/EC;	(c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in Directive 2006/49/EC;	(c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in Directive 2006/49/EC;	<i>Agreed silence procedure 20131008</i>  (c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in Directive 2006/49/EC;
329.	Art. 8 – para 1 – point d	(d) has seriously and systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for investment firms;	(d) has seriously and systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for investment firms;	(d) has seriously and systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for investment firms;	<i>Agreed silence procedure 20131008</i>  (d) has seriously and systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for investment firms;
330.	Art. 8 – para 1 – point e	(e) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.	(e) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.	(e) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.	<i>Agreed silence procedure 20131008</i>  (e) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.
331.	Art. 8 – para 2	Every withdrawal of authorisation shall be notified to ESMA.	Every withdrawal of authorisation shall be notified to ESMA.	Every withdrawal of authorisation shall be notified to ESMA.	<i>Agreed silence procedure 20130912</i>  Every withdrawal of authorisation shall be notified to ESMA.
332.	Art. 9 – title	<i>Management body</i>	<i>Management body</i>	<i>Management body</i>	<i>Agreed silence procedure 20130912</i>  <i>Management body</i>



		COM	Council	EP	Compromise
333.	Art. 9 – para -1 (new)			<p><b><i>-1. For the purposes of this Directive, a non-executive director is defined as follows:</i></b></p> <p><i>A non-executive director or outside director is a member of the board of directors of a company who does not form part of the executive management team. He or she is not an employee of the company or affiliated with it in any other way. They are differentiated from inside directors, who are members of the board who also serve or previously served as executive managers of the company.</i></p> <p><i>Non-executive directors shall have responsibilities in the following areas:</i></p> <ul style="list-style-type: none"> <li><i>- Non-executive directors shall constructively challenge and contribute to the development of strategy;</i></li> <li><i>- Non-executive directors shall scrutinise the performance of management in meeting agreed goals and objectives and monitoring, and where necessary removing, senior management and in succession planning;</i></li> <li><i>- Non-executive directors shall satisfy themselves that financial information is accurate and that</i></li> </ul>	<p>20130704 trilogue: Commission to prepare proposed text for Art 9 aligning where applicable to CRDIV</p> <p><i>Commission non-paper 20131009</i></p> <p>[...]</p> <p>20131009 trilogue: agreed subject to any detailed drafting adaptations to be done by technical group.</p> <p><i>Technical group 22 10</i></p> <p>Confirmed no modification needed to Article 9 other than rows 368 and 378.</p> <p>Recitals on Corporate governance to be reviewed in light of CRD; eg Rec 57 CRDIV and possibly Recital 54 (to be checked)</p>

		COM	Council	EP	Compromise
				<p><i>financial controls and systems of risk management are robust and defensible;</i></p> <p><i>- Non-executive directors shall be responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, senior management and in succession planning.</i></p> <p><i>Non-executive directors shall also provide independent views on:</i></p> <p><i>- resources;</i></p> <p><i>- appointments;</i></p> <p><i>- standards of conduct.</i></p> <p><i>Non-executive directors shall be the custodians of the governance process. They shall not be involved in the day-to-day running of business but shall monitor the executive activity and contribute to the development of strategy.</i></p>	
334.	Art. 9 – para 1	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	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 [...]. <u>Members</u> of the management body shall, in particular, fulfil the following requirements:	1. <b><i>Members</i></b> 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, <b><i>and allowing for a broad range of experience to be acknowledged so as</i></b>	20131009 trilogue: agreed  <b>1.</b> Competent authorities granting the authorisation in accordance with Article 5 shall ensure that investment firms and their management bodies comply with Article 88 and Article 91 of Directive 2013/36/EU [CRD IV].



		COM	Council	EP	Compromise
		the management body shall, in particular, fulfil the following requirements:		<i>not to discriminate against women.</i>	ESMA and EBA shall adopt jointly the guidelines on the elements listed in Article 91(12) of Directive 2013/36/EU.
335.	Art. 9 – para 1 – subpara 1a (new)			<i>Members</i> of the management body shall, in particular, fulfil the following requirements:	20131009 trilogue: agreed [...]
336.	Art. 9 – para 1 – point a – subpara 1	(a) Members of the management body shall commit sufficient time to perform their functions in the investment firm.	(a) <u>All members</u> of the management body shall commit sufficient time to perform their functions in the investment firm. <u>The number of directorships a member of the management body can hold, in any legal entity, at the same time, shall take into account individual circumstances and the nature, scale and complexity of the investment firm's activities.</u> <i>[Second part moved to row 337]</i>	<i>(a) All members</i> of the management body shall commit sufficient time to perform <i>their</i> functions in the investment firm. <i>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.</i>	20131009 trilogue: agreed [...]
337.	Art. 9 – para 1 – point a – subpara 2	They shall not combine at the same time more than one of the following combinations:	<u>Unless representing the Member State, members of the management body of investment firms that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall not at the same time hold positions exceeding more than one of the following combinations unless otherwise authorised by the competent authority:</u>	<i>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</i> shall not combine at the same time more than one of the following combinations:	20131009 trilogue: agreed 2. When granting the authorisation in accordance with Article 5, competent authorities may authorise members of the management body to hold one additional non-executive directorship than allowed in accordance with Article 91(3) of Directive 2013/36/EU [CRD IV]. Competent Authorities shall regularly inform ESMA of such authorisations.  EBA and ESMA shall coordinate the collection of information provided for under



		COM	Council	EP	Compromise
					the first subparagraph and under Article 91 (6) of Directive 2013/36/EU in relation to investment firms.
338.	Art. 9 – para 1 – point a – subpara 2 – subpoint i	(i) one executive directorship with two non-executive directorships	(i) one executive directorship with <u>three</u> non-executive directorships;	(i) one executive directorship with two non-executive directorships	20131009 trilogue: agreed [...]
339.	Art. 9 – para 1 – point a – subpara 2 – subpoint ii	(ii) four non-executive directorships.	(ii) <u>five</u> non-executive directorships.	(ii) four non-executive directorships.	20131009 trilogue: agreed [...]
340.	Art. 9 – para 1 – point a – subpara 3	Executive or non-executive directorships held within the same group shall be considered as one single directorship.	Executive or non-executive directorships held within (i) the same group or (ii) undertakings where the <u>institution owns a qualifying holding</u> shall be considered as one single directorship.	Executive or non-executive directorships held:  The following shall count as one single directorship:	COM and Council text related to EP text rows 341 – 345. 20131009 trilogue: agreed [...]
341.	Art. 9 – para 1 – point a –			<u>(i) within the same group;</u>	20131009 trilogue: agreed [...]



		COM	Council	EP	Compromise
	subpara 3 – point i (new)				
342.	Art. 9 – para 1 – point a – subpara 3 – point ii (new)			<i>(ii) within institutions which:</i>	20131009 trilogue: agreed [...]
343.	Art. 9 – para 1 – point a – subpara 3 – point ii – indent 1 (new)			<i>– are members of the same institutional protection scheme if the conditions of Article 108(7) of Regulation (EU) No .../2012 of the European Parliament and of the Council of ... [CRDIV] are fulfilled;</i>	20131009 trilogue: agreed [...]
344.	Art. 9 – para 1 – point a – subpara 3 – point ii –			<i>– have established links according to Article 108(6) of Regulation (EU) No .../2012 of the European Parliament and of the Council of ... [CRDIV]; or</i>	20131009 trilogue: agreed [...]





		COM	Council	EP	Compromise
	indent 2 (new)				
345.	Art. 9 – para 1 – point a – subpara 3 – point iii (new)			<i>(iii) within undertakings (including non-financial institutions) where the institutions owns a qualifying holding.</i>	20131009 trilogue: agreed [...]
346.	Art. 9 – para 1 – point a – subpara 3 a (new)			shall be considered as one single directorship.	20131009 trilogue: agreed [...]
347.	Art. 9 – para 1 – point a – subpara 4	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.	<u>Directorships in organisations which do not pursue predominantly commercial objectives shall be exempt from the limitation on the number of directorships a member of a management body can hold.</u>	<i>Members of the management body shall not combine at the same time an executive directorship in an investment firm with an executive directorship in a regulated market, an MTF or an OTF even within the same group.</i>	20131009 trilogue: agreed [...]
348.				<i>Point (a) shall include:</i>  <i>(i) undertakings and non-financial entities:</i>	20131009 trilogue: agreed [...]



		COM	Council	EP	Compromise
				<p>– <i>in which there is a qualified holding within the meaning of Article 4(21) of Regulation (EU) No .../2012 of the European Parliament and of the Council of ... [CRDIV];</i></p> <p>– <i>in which there is participation within the meaning of Article 4(49) of Regulation (EU) No .../2012 of the European Parliament and of the Council of ... [CRDIV];</i>  <i>or</i></p> <p>– <i>which have close links within the meaning of Article 4(72) of Regulation (EU) No .../2012 of the European Parliament and of the Council of ... [CRDIV] with certain non-financial institutions.</i></p> <p><i>(ii) parent financial holding companies within the meaning of Article 4(65), (66) and (67) of Regulation(EU) No .../2012 of the European Parliament and of the Council of ... [CRDIV] controlling a central or regional credit institution adhering to an IPS scheme</i></p>	
349.	Art. 9 – para 1 – point b	(b) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the investment firm's activities, and in particular the main risk involved in those activities.	(b) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the investment firm's activities, <u>including</u> the main <u>risks</u> .	(b) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the investment firm's activities, and in particular the main risk involved in those activities.	20131009 trilogue: agreed [...]
350.	Art. 9	(c) Each member of the management	(c) Each member of the management	(c) Each member of the management	20131009 trilogue: agreed



		COM	Council	EP	Compromise
	– para 1 – point c – subpara 1	body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management.	body shall act with honesty, integrity and independence of mind to effectively [...] challenge the decisions of the senior management <u>where necessary and to effectively oversee and monitor management decision-making.</u>	body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management <i>and to effectively oversee and monitor management decision-making.</i>	[...]
351.	Art. 9 – para 1 – point c – subpara 2	Member States shall require investment firms to devote adequate resources to the induction and training of members of the management body.	<u>Investment</u> firms <u>shall</u> devote adequate <u>human and financial</u> resources to the induction and training of members of the management body.	<i>Investment</i> firms <i>shall</i> devote adequate resources to the induction and training of members of the management body.	20131009 trilogue: agreed [...]
352.	Art. 9 – para 1 – point c – subpara 3	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.	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.	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.	20131009 trilogue: agreed [...]
353.	Art. 9 – para 2	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	2. Member States shall <u>ensure that</u> investment firms <u>which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities,</u> establish a nomination committee [...] composed of members of the management body [...].	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	20131009 trilogue: agreed [...]



		COM	Council	EP	Compromise
		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.		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.	
354.	Art. 9 – para 3	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.	[Council para 3 moved to 368]  <u>The nomination committee shall carry out the following:</u>	3. Member States shall require investment firms <i>and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to its management bodies. In particular:</i>	20131009 trilogue: agreed [...]
355.	Art. 9 – 3 point a (new)		<u>(a) identify and recommend, for the approval of the management body or for approval of the general meeting candidates to fill management body vacancies. In doing so, the nomination committee shall evaluate the balance of knowledge, skills, diversity and experience of the management body. Further, the committee shall prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected;</u>	<i>(a) Investment firms shall put in place a policy promoting professionalism responsibility and commitment as the guiding criteria for senior recruitment, safeguarding that those appointed are unquestionably loyal to the interests of the institution.</i>	20131009 trilogue: agreed [...]



		COM	Council	EP	Compromise
356.	Art. 9 – para 3 – point b (new)		<u>(b) periodically assess the structure, size, composition and performance of the management body, and make recommendations to the management body with regard to any changes;</u>	<i>(b) Investment firms shall also take concrete steps towards a more balanced representation on boards, such as 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.</i>	20131009 trilogue: agreed [...]
357.	Art. 9 – para 3 – point c (new)		<u>(c) periodically assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report this to the management body;</u>	<i>(c) Where practiced, employee representation in the management body shall also, by adding a key perspective and genuine knowledge of the internal workings of the institution, be seen as a positive way of enhancing diversity.</i>	20131009 trilogue: agreed [...]
358.	Art. 9 – para 3 – subpar a 1a (new)		<u>(d) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.</u>	<i>Competent authorities shall require investment firms to implement a 1/3 gender quota by ...*.</i>	20131009 trilogue: agreed [...]
358a.			<u>In performing its duties, the nomination committee shall be able to use any forms of resources it deems appropriate, including external advice.</u>		20131009 trilogue: agreed [...]
358b.			<u>Where, under national law, the management body does not have any competence in the process of selection and appointment of any of</u>		20131009 trilogue: agreed [...]

\* *OJ: please insert date: two years after the the date of entry into force of this Directive.*



		COM	Council	EP	Compromise
			<u>its members, this paragraph shall not apply.</u>		
359.	Art. 9 – para 4	4. ESMA shall develop draft regulatory standards to specify the following:		4. ESMA shall develop draft regulatory standards to specify <b>how the institution should take into account</b> the following:	[Note: ESMA RTS on tasks of the nomination committee included in row 316, on tasks of management body and notifications in row 317] 20131009 trilogue: agreed [...]
360.	Art. 9 – para 4 – point a	(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);		(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);	20131009 trilogue: agreed [...]
361.	Art. 9 – para 4 – point b	(b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 1(b),		(b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 1(b),	20131009 trilogue: agreed [...]
362.	Art. 9 – para 4 – point c	(c) to notions of honesty, integrity and independence of mind of a member 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),	20131009 trilogue: agreed [...]
363.	Art. 9 – para 4 –	(d) the notion of adequate human and financial resources devoted to the induction and training of members of		(d) the notion of adequate human and financial resources devoted to the induction and training of members of	20131009 trilogue: agreed [...]



		COM	Council	EP	Compromise
	point d	the management body,		the management body,	
364.	Art. 9 – para 4 – point e	(e) the notion of diversity to be taken into account for the selection 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.	20131009 trilogue: agreed [...]
365.	Art. 9 – para 4 – subpar a 1 a (new)			<b>ESMA shall submit those draft regulatory technical standards to the Commission by [...]**.</b>	20131009 trilogue: agreed [...]
366.	Art. 9 – para 4 – subpar a 2	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.		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.	20131009 trilogue: agreed [...]
367.	Art. 9 – para 4 – subpar a 3	ESMA shall submit those draft regulatory technical standards to the Commission by [31 December 2014].		<b>I</b>	20131009 trilogue: agreed [...]
368.	Art. 9 – para 5	5. Member States shall require the investment firm to notify the competent authority of all members of its management body and of any changes to its membership, along with all information needed to assess whether the firm complies with paragraphs 1, 2 and 3 of this Article .	<b>[Moved from row 354]</b> 3. Member States shall require the investment <u>firm to notify the competent authority of all members of its management body and of any changes to its membership, along with all information needed to assess</u>	5. Member States shall require the investment firm to notify the competent authority of all members of its management body and of any changes to its membership, with all information needed to assess whether the firm complies with paragraphs 1, 2 and 3.	<i>Agreed silence procedure 20131126 Commission non-paper 20131009</i> <b>5.</b> Member States shall require the investment firm to notify the competent authority of all members of its management body and of any changes to its membership, along with all information needed to assess whether the firm complies with paragraphs 1

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



		COM	Council	EP	Compromise
			<u>whether the firm complies with paragraphs 1 and 2 of this Article.</u>		of this Article.  <i>Technical group 22 10</i>  <b>5.</b> Member States shall require the investment firm to notify the competent authority of all members of its management body and of any changes to its membership, along with all information needed to assess whether the firm complies with paragraphs <b>1, 2 and 3</b> of this Article.
369.	Art. 9 – para 6 – subpar a 1	6. Member States shall require the management body of an investment firm to ensure that the firm is managed in a sound and prudent way and in a manner that promotes the integrity of the market and the interest of the its clients. To this end, the management body shall:	<u>4. Member States shall ensure that the management body of an investment firm defines and oversees the implementation of the governance arrangements that ensure effective and prudent management of an organisation including the segregation of duties in the organisation and the prevention of conflicts of interest.</u>	6. Member States shall require the management body of an investment firm to ensure that the firm is managed in a sound and prudent way and in a manner that promotes the integrity of the market and the interest of the its clients. To this end, the management body shall:	<i>20131009 trilogue: agreed</i>  <b>3.</b> Member States shall ensure that the management body of an investment firm defines, oversees and is accountable for the implementation of the governance arrangements that ensure effective and prudent management of an organisation including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of clients.
370.			<u>Those arrangements shall comply with the following principles:</u>		<i>20131009 trilogue: agreed</i> Without prejudice to the requirements established in Article 88 (1) of Directive 2013/36/EU, those arrangements shall also comply with the following principles:
371.	Art. 9 – para 6 – subpar a 1–	(a) define, approve and oversee the strategic objectives of the firm,	<u>(a) the management body shall approve and oversee the implementation of the investment firm’s strategic objectives, risk strategy and internal governance;</u>	(a) define, approve and oversee the strategic objectives of the firm;	<i>20131009 trilogue: agreed</i> [...]





		COM	Council	EP	Compromise
	point a				
372.	Art. 9 – para 6 – subpar a 1 – point b	(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,	<u>(b) the management body shall</u> 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) define, approve and oversee the <i>organisation</i> 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 <i>with which</i> the firm <i>must</i> comply;	<i>20131009 trilogue: agreed</i> (a) the management body shall define, approve and oversee the organisation of the firm for the provision of investment services and activities and ancillary services, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with;
373.	Art. 9 – para 6 – subpar a 1 – point c	(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;	<u>(c) the management body shall</u> 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;	(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;	<i>20131009 trilogue: agreed</i> (b) the management body shall define, approve and oversee a policy as to services, activities, products and operations offered or provided, in accordance with the risk tolerance of the firm and the characteristics and needs of the clients of the firm to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate;
374.	Art. 9 – para 6 – subpar a 1 – point c a		<u>(d) the management body shall</u> define, approve and oversee a remuneration policy aimed at encouraging fair treatment of clients as well as avoiding conflict of interest in the relationships with clients;	<i>(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, and disclose the</i>	<i>20131009 trilogue: agreed</i> (c) the management body shall define, approve and oversee a remuneration policy of persons involved in the provision of services to clients aimed at encouraging responsible business conduct, fair treatment of clients as well as avoiding conflict of interest in the relationships with clients.



		COM	Council	EP	Compromise
	(new)			<i>remuneration structure to customers, where appropriate, such as where potential conflicts of interest cannot be managed or avoided, without prejudice to Article 24;</i>	
375.	Art. 9 – para 6 – subpara 1 – point d	(d) provide effective oversight of senior management.	<u>(e) the management body shall carry out effective oversight of senior management;</u>	(d) provide effective oversight of senior management;	20131009 trilogue: agreed [...]
376.	Art. 9 – para 6 – subpara 1 – point d a (new)			<i>(da) maintain an anti-fraud strategy.</i>	20131009 trilogue: agreed [...]
376a.			<u>(f) the chairman of the management body which is responsible for the supervisory function of an investment firm shall not exercise simultaneously the functions of a chief executive officer within the same investment firm, unless justified by the investment firm and authorised by competent authorities.</u>		20131009 trilogue: agreed [...]
377.	Art. 9 – para 6 – subpara	The management body shall monitor and periodically assess the effectiveness of the investment firm's organization and the adequacy of the	The management body shall monitor and periodically assess the effectiveness of the investment firm's <u>governance arrangements</u> and the	The management body shall monitor and periodically assess the effectiveness of the investment firm's organisation and the adequacy of the	20131009 trilogue: agreed The management body shall monitor and periodically assess the adequacy and the implementation of the firm's strategic



		COM	Council	EP	Compromise
	a 2	policies relating to the provision of services to clients and take appropriate steps to address any deficiencies.	adequacy of the policies relating to the provision of services to clients and take appropriate steps to address any deficiencies.	policies relating to the provision of services to clients and take appropriate steps to address any deficiencies.	objectives in the provision of investment services and activities and ancillary services, the effectiveness of the investment firm's governance arrangements and the adequacy of the policies relating to the provision of services to clients and take appropriate steps to address any deficiencies.
378.	Art. 9 – para 6 – subpara a 3	Members of the management body in its supervisory function shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.	Members of the management body [...] shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.	Members of the management body in its supervisory function shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.	<p><i>Agreed silence procedure 20131126</i></p> <p><i>Commission non-paper 20131009</i></p> <p>[...]</p> <p>Technical group 22 10</p> <p>Move this to the end of Article 9(3)</p> <p>Members of the management body shall have adequate access to information and documents which are needed to oversee and monitor management decision-making</p>
379.	Art. 9 – para 7	7. The competent authority shall refuse authorisation if it is not satisfied that the persons who will effectively direct the business of the investment firm are of sufficiently good repute or sufficiently experienced, or if there are objective and demonstrable grounds for believing that the management body of the firm may pose a threat to its effective, sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.	<u>5.</u> The competent authority shall refuse authorisation if it is not satisfied that the persons who will effectively direct the business of the investment firm are of sufficiently good repute <u>posses sufficient knowledge, skills and experience</u> , or if there are objective and demonstrable grounds for believing that the management body of the firm may pose a threat to its effective, sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.	7. The competent authority shall refuse authorisation if it is not satisfied that the persons who will effectively direct the business of the investment firm are of sufficiently good repute or sufficiently experienced, or if there are objective and demonstrable grounds for believing that the management body of the firm may pose a threat to its effective, sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.	<p><i>20131009 trilogue: agreed</i></p> <p><b>4.</b> The competent authority shall refuse authorisation if it is not satisfied that the members of the management body of the investment firm are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their functions in the investment firm, or if there are objective and demonstrable grounds for believing that the management body of the firm may pose a threat to its effective, sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market</p>



		COM	Council	EP	Compromise
380.	Art. 9 – para 8 – subpar a 1	8. Member States shall require that the management of investment firms is undertaken by at least two persons meeting the requirements laid down in paragraph 1.	<u>6.</u> Member States shall require that the management of investment firms is undertaken by at least two persons meeting the requirements laid down in paragraph 1.	8. Member States shall require that the management of investment firms is undertaken by at least two persons meeting the requirements laid down in paragraph 1.	<i>20131009 trilogue: agreed</i> <b>6.</b> Member States shall require that at least two persons meeting the requirements laid down in paragraph 1 effectively direct the business of the applicant investment firm.
381.	Art. 9 – para 8 – subpar a 2	By way of derogation from the first subparagraph, Member States may grant authorisation to investment firms that are natural persons or to investment firms that are legal persons managed by a single natural person in accordance with their constitutive rules and national laws. Member States shall nevertheless require that:	By way of derogation from the first subparagraph, Member States may grant authorisation to investment firms that are natural persons or to investment firms that are legal persons managed by a single natural person in accordance with their constitutive rules and national laws. Member States shall nevertheless require that:	By way of derogation from the first subparagraph, Member States may grant authorisation to investment firms that are natural persons or to investment firms that are legal persons managed by a single natural person in accordance with their constitutive rules and national laws. Member States shall nevertheless require that:	<i>20131009 trilogue: agreed</i> By way of derogation from the first subparagraph, Member States may grant authorisation to investment firms that are natural persons or to investment firms that are legal persons managed by a single natural person in accordance with their constitutive rules and national laws. Member States shall nevertheless require that:
382.	Art. 9 – para 8 – subpar a 2 – point i	(i) alternative arrangements be in place which ensure the sound and prudent management of such investment firms and the adequate consideration of the interest of clients and the integrity of the market;	(i) alternative arrangements be in place which ensure the sound and prudent management of such investment firms and the adequate consideration of the interest of clients and the integrity of the market;	(a) alternative arrangements be in place which ensure the sound and prudent management of such investment firms and the adequate consideration of the interest of clients and the integrity of the market;	<i>20131009 trilogue: agreed</i> (i) alternative arrangements be in place which ensure the sound and prudent management of such investment firms and the adequate consideration of the interest of clients and the integrity of the market;
383.	Art. 9 – para 8 – subpar a 2 – point ii	(ii) the natural persons concerned are of sufficiently good reputation, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.	(ii) the natural persons concerned are of sufficiently good reputation, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.	(b) the natural persons concerned are of sufficiently good reputation, possess <b><i>an appropriate level of</i></b> knowledge <b><i>and competence</i></b> and <b><i>are given</i></b> sufficient time to perform their duties <b><i>and update and validate their knowledge and competence.</i></b>	<i>20131009 trilogue: agreed</i> (ii) the natural persons concerned are of sufficiently good reputation, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.
384.	Art. 9 – para 8a (new)			<b><i>8a. Without prejudice to the legal systems of the Member States, Member States shall ensure that where it is alleged that a member of</i></b>	<i>20131009 trilogue: agreed</i> [...]



		COM	Council	EP	Compromise
				<i>the management board has breached the provisions of or has committed an offence in relation to matters falling within the scope of this Directive or of Regulation (EU) No .../... [MiFIR], he may be personally subject to criminal and civil proceedings.</i>	
385.	Art. 9 – para 8b (new)			<b>8b. This Article shall be without prejudice to provisions on the representation of employees in company boards as provided for by national law or practice.</b>	20131009 trilogue: agreed [...]
386.	Art. 10 – title	<i>Shareholders and members with qualifying holdings</i>	<i>Shareholders and members with qualifying holdings</i>	<i>Shareholders and members with qualifying holdings</i>	Agreed silence procedure 20130912 <i>Shareholders and members with qualifying holdings</i>
387.	Art. 10 – para 1 – subpara 1	1. The competent authorities shall not authorise the performance of investment services or activities by an investment firm until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings.	1. The competent authorities shall not authorise the <u>provision</u> of investment services or activities by an investment firm until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings.	1. The competent authorities shall not authorise the performance of investment services or activities by an investment firm until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings.	Agreed silence procedure 20130912 1. The competent authorities shall not authorise the <u>provision</u> of investment services or <u>performance</u> of investment activities by an investment firm until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings.
388.	Art. 10 – para 1 – subpara 2	The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an investment firm, they are not satisfied as to the suitability of the	The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an investment firm, they are not satisfied as to the suitability of the shareholders or	The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an investment firm, they are not satisfied as to the suitability of the	Agreed silence procedure 20130912 The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an investment firm, they are



		COM	Council	EP	Compromise
		shareholders or members that have qualifying holdings.	members that have qualifying holdings.	shareholders or members that have qualifying holdings.	not satisfied as to the suitability of the shareholders or members that have qualifying holdings.
389.	Art. 10 – para 1 – subpara 3	Where close links exist between the investment firm and other natural or legal persons, the competent authority shall grant authorisation only if those links do not prevent the effective exercise of the supervisory functions of the competent authority.	Where close links exist between the investment firm and other natural or legal persons, the competent authority shall grant authorisation only if those links do not prevent the effective exercise of the supervisory functions of the competent authority.	Where close links exist between the investment firm and other natural or legal persons, the competent authority shall grant authorisation only if those links do not prevent the effective exercise of the supervisory functions of the competent authority.	<i>Agreed silence procedure 20130912</i>  Where close links exist between the investment firm and other natural or legal persons, the competent authority shall grant authorisation only if those links do not prevent the effective exercise of the supervisory functions of the competent authority.
390.	Art. 10 – para 2	2. The competent authority shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.	2. The competent authority shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.	2. The competent authority shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.	<i>Agreed silence procedure 20130912</i>  2. The competent authority shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.
391.	Art. 10 – para 3 – subpara 1	3. Member States shall require that, where the influence exercised by the persons referred to in the first subparagraph of paragraph 1 is likely to be prejudicial to the sound and prudent management of an investment firm, the competent authority take appropriate measures to put an end to that situation.	3. Member States shall require that, where the influence exercised by the persons referred to in the first subparagraph of paragraph 1 is likely to be prejudicial to the sound and prudent management of an investment firm, the competent authority take appropriate measures to put an end to that situation.	3. Member States shall require that, where the influence exercised by the persons referred to in the first subparagraph of paragraph 1 is likely to be prejudicial to the sound and prudent management of an investment firm, the competent authority take appropriate measures to put an end to that situation.	<i>Agreed silence procedure 20130912</i>  3. Member States shall require that, where the influence exercised by the persons referred to in the first subparagraph of paragraph 1 is likely to be prejudicial to the sound and prudent management of an investment firm, the competent authority take appropriate measures to put an end to that situation.
392.	Art. 10 – para	Such measures may consist in applications for judicial orders or the	Such measures may <u>include</u> applications for judicial orders or the	Such measures may consist in applications for judicial orders or the	<i>Agreed silence procedure 20130912</i>





		COM	Council	EP	Compromise
	3 – subpar a 2	imposition of sanctions against directors and those responsible for management, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.	imposition of sanctions against directors and those responsible for management, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.	imposition of sanctions against directors and those responsible for management, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.	Such measures may <u>include</u> applications for judicial orders or the imposition of sanctions against directors and those responsible for management, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.
393.	Art. 11 – title	<i>Notification of proposed acquisitions</i>	<i>Notification of proposed acquisitions</i>	<i>Notification of proposed acquisitions</i>	<i>Agreed silence procedure 20130912</i> <i>Notification of proposed acquisitions</i>
394.	Art. 11 – para 1 – subpar a 1	1. Member States shall require any natural or legal person or such persons acting in concert (hereinafter referred to as the proposed acquirer), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an investment firm or to further increase, directly or indirectly, such a qualifying holding in an investment firm as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the investment firm would become its subsidiary (hereinafter referred to as the proposed acquisition), first to notify in writing the competent authorities of the investment firm in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 13(4).	1. Member States shall require any natural or legal person or such persons acting in concert (hereinafter referred to as the proposed acquirer), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an investment firm or to further increase, directly or indirectly, such a qualifying holding in an investment firm as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the investment firm would become its subsidiary (hereinafter referred to as the proposed acquisition), first to notify in writing the competent authorities of the investment firm in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 13(4).	1. Member States shall require any natural or legal person or such persons acting in concert (/ the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an investment firm or to further increase, directly or indirectly, such a qualifying holding in an investment firm as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the investment firm would become its subsidiary (/ the 'proposed acquisition'), first to notify in writing the competent authorities of the investment firm in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 13(4).	<i>Agreed silence procedure 20130912</i> 1. Member States shall require any natural or legal person or such persons acting in concert (/ the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an investment firm or to further increase, directly or indirectly, such a qualifying holding in an investment firm as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the investment firm would become its subsidiary (/ the 'proposed acquisition'), first to notify in writing the competent authorities of the investment firm in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 13(4).



		COM	Council	EP	Compromise
395.	Art. 11 – para 1 – subpar a 2	Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an investment firm first to notify in writing the competent authorities, indicating the size of the intended holding. Such a person shall likewise notify the competent authorities if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the investment firm would cease to be his subsidiary.	Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an investment firm first to notify in writing the competent authorities, indicating the size of the intended holding. Such a person shall likewise notify the competent authorities if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the investment firm would cease to be his subsidiary.	Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an investment firm first to notify in writing the competent authorities, indicating the size of the intended holding. Such a person shall likewise notify the competent authorities if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the investment firm would cease to be his subsidiary.	<i>Agreed silence procedure 20130912</i>  Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an investment firm first to notify in writing the competent authorities, indicating the size of the intended holding. Such a person shall likewise notify the competent authorities if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the investment firm would cease to be his subsidiary.
396.	Art. 11 – para 1 – subpar a 3	Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.	Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.	Member States need not apply the 30% threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.	<i>Agreed silence procedure 20130912</i>  Member States need not apply the 30% threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.
397.	Art. 11 – para 1 – subpar a 4	In determining whether the criteria for a qualifying holding referred to in Article 10 and in this Article are fulfilled, Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I,	In determining whether the criteria for a qualifying holding referred to in Article 10 and in this Article are fulfilled, Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I,	In determining whether the criteria for a qualifying holding referred to in Article 10 and in this Article are fulfilled, Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I,	<i>Agreed silence procedure 20130912</i>  In determining whether the criteria for a qualifying holding referred to in Article 10 and in this Article are fulfilled, Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I, provided that those rights are, on





		COM	Council	EP	Compromise
		provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.	provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.	provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.	the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.
398.	Art. 11 – para 2 – subpar a 1	2. The relevant competent authorities shall work in full consultation with each other when carrying out the assessment provided for in Article 13(1) (hereinafter referred to as the assessment) if the proposed acquirer is one of the following:	2. The relevant competent authorities shall work in full consultation with each other when carrying out the assessment provided for in Article 13(1) (hereinafter referred to as the assessment) if the proposed acquirer is one of the following:	2. The relevant competent authorities shall work in full consultation with each other when carrying out the assessment provided for in Article 13(1) (// the 'assessment') if the proposed acquirer is one of the following:	<i>Agreed silence procedure 20130912</i>  2. The relevant competent authorities shall work in full consultation with each other when carrying out the assessment provided for in Article 13(1) (// the 'assessment') if the proposed acquirer is one of the following:
399.	Art. 11 – para 2 – subpar a 1 – point a	(a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;	(a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;	(a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;	<i>Agreed silence procedure 20130912</i>  (a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;
400.	Art. 11 – para 2 – subpar a 1 – point b	(b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or	(b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or	(b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or	<i>Agreed silence procedure 20130912</i>  (b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or
401.	Art. 11 – para 2 –	(c) a natural or legal person controlling a credit institution, assurance undertaking, insurance	(c) a natural or legal person controlling a credit institution, assurance undertaking, insurance	(c) a natural or legal person controlling a credit institution, assurance undertaking, insurance	<i>Agreed silence procedure 20130912</i>  (c) a natural or legal person controlling a



		COM	Council	EP	Compromise
	subpar a 1 – point c	undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.	undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.	undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.	credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.
402.	Art. 11 – para 2 – subpar a 2	The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority that has authorised the investment firm in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.	The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority that has authorised the investment firm in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.	The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority that has authorised the investment firm in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.	<i>Agreed silence procedure 20130912</i>  The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority that has authorised the investment firm in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.
403.	Art. 11 – para 3 – subpar a 1	3. Member States shall require that, if an investment firm becomes aware of any acquisitions or disposals of holdings in its capital that cause holdings to exceed or fall below any of the thresholds referred to in the first subparagraph of paragraph 1, that investment firm is to inform the competent authority without delay.	3. Member States shall require that, if an investment firm becomes aware of any acquisitions or disposals of holdings in its capital that cause holdings to exceed or fall below any of the thresholds referred to in the first subparagraph of paragraph 1, that investment firm is to inform the competent authority without <u>undue</u> delay.	3. Member States shall require that, if an investment firm becomes aware of any acquisitions or disposals of holdings in its capital that cause holdings to exceed or fall below any of the thresholds referred to in the first subparagraph of paragraph 1, that investment firm is to inform the competent authority without delay.	<i>Agreed silence procedure 20130912</i>  3. Member States shall require that, if an investment firm becomes aware of any acquisitions or disposals of holdings in its capital that cause holdings to exceed or fall below any of the thresholds referred to in the first subparagraph of paragraph 1, that investment firm is to inform the competent authority without delay.
404.	Art. 11	At least once a year, investment firms	At least once a year, investment firms	At least once a year, investment firms	<i>Agreed silence procedure 20130912</i>



		COM	Council	EP	Compromise
	– para 3 – subpar a 2	shall also inform the competent authority of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders and members or as a result of compliance with the regulations applicable to companies whose transferable securities are admitted to trading on a regulated market.	shall also inform the competent authority of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders and members or as a result of compliance with the regulations applicable to companies whose transferable securities are admitted to trading on a regulated market.	shall also inform the competent authority of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders and members or as a result of compliance with the regulations applicable to companies whose transferable securities are admitted to trading on a regulated market.	At least once a year, investment firms shall also inform the competent authority of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders and members or as a result of compliance with the regulations applicable to companies whose transferable securities are admitted to trading on a regulated market.
405.	Art. 11 – para 4	4. Member States shall require that competent authorities take measures similar to those referred to in paragraph 3 of Article 10 in respect of persons who fail to comply with the obligation to provide prior information in relation to the acquisition or increase of a qualifying holding. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.	4. Member States shall require that competent authorities take measures similar to those referred to in paragraph 3 of Article 10 in respect of persons who fail to comply with the obligation to provide prior information in relation to the acquisition or increase of a qualifying holding. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.	4. Member States shall require that competent authorities take measures similar to those referred to in paragraph 3 of Article 10 in respect of persons who fail to comply with the obligation to provide prior information in relation to the acquisition or increase of a qualifying holding. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.	<i>Agreed silence procedure 20130912</i>  4. Member States shall require that competent authorities take measures similar to those referred to in paragraph 3 of Article 10 in respect of persons who fail to comply with the obligation to provide prior information in relation to the acquisition or increase of a qualifying holding. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.
406.	Art. 12 – title	<i>Assessment period</i>	<i>Assessment period</i>	<i>Assessment period</i>	<i>Agreed silence procedure 20130912</i>  <i>Assessment period</i>
407.	Art. 12	1. The competent authorities shall,	1. The competent authorities shall,	1. The competent authorities shall,	<i>Agreed silence procedure 20130912</i>



		COM	Council	EP	Compromise
	– para 1 – subpar a 1	promptly and in any event within two working days following receipt of the notification required under the first subparagraph of Article 11(1), as well as following the possible subsequent receipt of the information referred to in paragraph 2 of this Article, acknowledge receipt thereof in writing to the proposed acquirer.	promptly and in any event within two working days following receipt of the notification required under the first subparagraph of Article 11(1), as well as following the possible subsequent receipt of the information referred to in paragraph 2 of this Article, acknowledge receipt thereof in writing to the proposed acquirer.	promptly and in any event within two working days following receipt of the notification required under the first subparagraph of Article 11(1), as well as following the possible subsequent receipt of the information referred to in paragraph 2 of this Article, acknowledge receipt thereof in writing to the proposed acquirer.	1. The competent authorities shall, promptly and in any event within two working days following receipt of the notification required under the first subparagraph of Article 11(1), as well as following the possible subsequent receipt of the information referred to in paragraph 2 of this Article, acknowledge receipt thereof in writing to the proposed acquirer.
408.	Art. 12 – para 1 – subpar a 2	The competent authorities shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 13(4) (hereinafter referred to as the assessment period), to carry out the assessment.	The competent authorities shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 13(4) (hereinafter referred to as the assessment period), to carry out the assessment.	The competent authorities shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 13(4) (// the 'assessment period'), to carry out the assessment.	<i>Agreed silence procedure 20130912</i>  The competent authorities shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 13(4) (// the 'assessment period'), to carry out the assessment.
409.	Art. 12 – para 1 – subpar a 3	The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.	The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.	The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.	<i>Agreed silence procedure 20130912</i>  The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.
410.	Art. 12 – para 2 – subpar a 1	2. The competent authorities may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and	2. The competent authorities may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and	2. The competent authorities may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and	<i>Agreed silence procedure 20130912</i>  2. The competent authorities may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in



		COM	Council	EP	Compromise
		shall specify the additional information needed.	shall specify the additional information needed.	shall specify the additional information needed.	writing and shall specify the additional information needed.
411.	Art. 12 – para 2 – subpar a 2	For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.	For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.	For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.	<i>Agreed silence procedure 20130912</i>  For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.
412.	Art. 12 – para 3	3. The competent authorities may extend the interruption referred to in the second subparagraph of paragraph 2 up to 30 working days if the proposed acquirer is one of the following:	3. The competent authorities may extend the interruption referred to in the second subparagraph of paragraph 2 up to 30 working days if the proposed acquirer is one of the following:	3. The competent authorities may extend the interruption referred to in the second subparagraph of paragraph 2 up to 30 working days if the proposed acquirer is one of the following:	<i>Agreed silence procedure 20130912</i>  3. The competent authorities may extend the interruption referred to in the second subparagraph of paragraph 2 up to 30 working days if the proposed acquirer is one of the following:
413.	Art. 12 – para 3 – point d	(a) a natural or legal person situated or regulated outside the Union; a natural or legal person not subject to supervision under this Directive or Directives 2009/65/EC, 2009/138/EC or 2006/48/EC <sup>1</sup> .	(a) a natural or legal person situated or regulated outside the Union;	(a) a natural or legal person situated or regulated outside the <b>European</b> Union;	<i>Agreed silence procedure 20130912</i>  (a) a natural or legal person situated or regulated outside the <b>European</b> Union;
414.			(b) a natural or legal person not subject to supervision under this	(b) a natural or legal person not subject to supervision under this	<i>Agreed silence procedure 20130912</i>  (b) a natural or legal person not subject to

<sup>1</sup> 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) (OJ L 177, 30.6.2006, p. 1). Directive as last amended by Directive 2007/44/EC.





		COM	Council	EP	Compromise
			Directive or Directives 2009/65/EC, 2009/138/EC or 2006/48/EC <sup>24</sup> .	Directive or Directives 2009/65/EC, 2009/138/EC or 2006/48/EC.	supervision under this Directive or Directives 2009/65/EC, 2009/138/EC or 2006/48/EC.
415.	Art. 12 – para 4	4. If the competent authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the competent authority to make such disclosure in the absence of a request by the proposed acquirer.	4. If the competent authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the competent authority to make such disclosure in the absence of a request by the proposed acquirer.	4. If the competent authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the competent authority to make such disclosure in the absence of a request by the proposed acquirer.	<i>Agreed silence procedure 20130912</i>  4. If the competent authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the competent authority to make such disclosure in the absence of a request by the proposed acquirer.
416.	Art. 12 – para 5	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 do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.	5. If the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.	<i>Agreed silence procedure 20130912</i>  5. If the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.
417.	Art. 12 – para 6	6. The competent authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.	6. The competent authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.	6. The competent authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.	<i>Agreed silence procedure 20130912</i>  6. The competent authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

<sup>24</sup> 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) (OJ L 177, 30.6.2006, p. 1) as last amended by Directive 2007/44/EC.



		COM	Council	EP	Compromise
418.	Art. 12 – para 7	7. Member States may not impose requirements for the notification to and approval by the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.	7. Member States may not impose requirements for the notification to and approval by the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.	7. Member States may not impose requirements for the notification to and approval by the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.	<i>Agreed silence procedure 20130912</i>  7. Member States may not impose requirements for the notification to and approval by the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.
419.	Art. 12 – para 8 – subpara 1	8. ESMA shall develop draft regulatory technical standards to establish an exhaustive list of information, referred to in paragraph 4 to be included by proposed acquirers in their notification, without prejudice to paragraph 2.	8. ESMA shall develop draft regulatory technical standards to establish an exhaustive list of information, referred to in <u>Article 13(4)</u> to be included by proposed acquirers in their notification, without prejudice to paragraph 2.	8. ESMA shall develop draft regulatory technical standards to establish an exhaustive list of information, referred to in paragraph 4 to be included by proposed acquirers in their notification, without prejudice to paragraph 2.	<i>Agreed silence procedure 20130912</i>  [Identical apart from reference. Art 13(4) is correct.]  8. ESMA shall develop draft regulatory technical standards to establish an exhaustive list of information, referred to in <u>Article 13(4)</u> to be included by proposed acquirers in their notification, without prejudice to paragraph 2.
420.	Art. 12 – para 8 – subpara 2	ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.	ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.	ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.	<i>Agreed silence procedure 20130912</i>  ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.
421.	Art. 12 – para 8 – subpara 3	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.	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.	Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with <b>■</b> Articles 10 to 14 of Regulation (EU) No 1095/2010.	<i>Agreed silence procedure 20130912</i>  Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with <b>■</b> Articles 10 to 14 of Regulation (EU) No 1095/2010.
422.	Art. 12 – para	ESMA shall develop draft implementing technical standards to	<u>ESMA shall develop draft implementing technical standards to</u>	<b>8a.</b> ESMA shall develop draft implementing technical standards to	<i>Agreed silence procedure 20130912</i>  <b>8a.</b> ESMA shall develop draft implementing



		COM	Council	EP	Compromise
	8 – subpar a 4	determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in Article 11(2).	<u>determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in Article 11(2).</u>	determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in Article 11(2).	technical standards to determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in Article 11(2).
423.	Art. 12 – para 8 – subpar a 5	ESMA shall submit those draft implementing technical standards to the Commission by 1 January 2014.	ESMA shall submit those draft implementing technical standards to the Commission by 1 January 2014.	ESMA shall submit those draft implementing technical standards to the Commission by 1 January 2014.	<i>Agreed silence procedure 20130912</i>  ESMA shall submit those draft implementing technical standards to the Commission by 1 January 2014.
424.	Art. 12 – para 8 – subpar a 6	Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	Power is conferred on the Commission to adopt the implementing technical standards referred to in the <i>first</i> subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	<i>Agreed silence procedure 20130912</i>  Power is conferred on the Commission to adopt the implementing technical standards referred to in the <i>first</i> subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.
425.	Art. 13 – title	<i>Assessment</i>	<i>Assessment</i>	<i>Assessment</i>	<i>Agreed silence procedure 20130912</i>  <i>Assessment</i>
426.	Art. 13 – para 1 – subpar a 1	1. In assessing the notification provided for in Article 11(1) and the information referred to in Article 12(2), the competent authorities shall, in order to ensure the sound and prudent management of the investment firm in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the investment firm, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:	1. In assessing the notification provided for in Article 11(1) and the information referred to in Article 12(2), the competent authorities shall, in order to ensure the sound and prudent management of the investment firm in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the investment firm, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:	1. In assessing the notification provided for in Article 11(1) and the information referred to in Article 12(2), the competent authorities shall, in order to ensure the sound and prudent management of the investment firm in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the investment firm, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:	<i>Agreed silence procedure 20130912</i>  1. In assessing the notification provided for in Article 11(1) and the information referred to in Article 12(2), the competent authorities shall, in order to ensure the sound and prudent management of the investment firm in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the investment firm, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:





		COM	Council	EP	Compromise
427.	Art. 13 – para 1 – subpar a 1 – point a	(a) the reputation of the proposed acquirer;	(a) the reputation of the proposed acquirer;	(a) the reputation of the proposed acquirer;	<i>Agreed silence procedure 20130912</i>  (a) the reputation of the proposed acquirer;
428.	Art. 13 – para 1 – subpar a 1 – point b	(b) the reputation and experience of any person who will direct the business of the investment firm as a result of the proposed acquisition;	(b) the reputation and experience of any person who will direct the business of the investment firm as a result of the proposed acquisition;	(b) the reputation and experience of any person who will direct the business of the investment firm as a result of the proposed acquisition;	<i>Agreed silence procedure 20130912</i>  (b) the reputation and experience of any person who will direct the business of the investment firm as a result of the proposed acquisition;
429.	Art. 13 – para 1 – subpar a 1 – point c	(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the investment firm in which the acquisition is proposed;	(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the investment firm in which the acquisition is proposed;	(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the investment firm in which the acquisition is proposed;	<i>Agreed silence procedure 20130912</i>  (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the investment firm in which the acquisition is proposed;
430.	Art. 13 – para 1 – subpar a 1 – point d	(d) whether the investment firm will be able to comply and continue to comply with the prudential requirements based on this Directive and, where applicable, other Directives, notably, Directives 2002/87/EC and 2006/49/EC, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent	(d) whether the investment firm will be able to comply and continue to comply with the prudential requirements based on this Directive and, where applicable, other Directives, notably, Directives 2002/87/EC and 2006/49/EC, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent	(d) whether the investment firm will be able to comply and continue to comply with the prudential requirements based on this Directive and, where applicable, other Directives, <i>in particular</i> Directives 2002/87/EC and 2006/49/EC, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent	<i>Agreed silence procedure 20131126</i>  <i>Technical group proposal</i>  ["notably/in particular" subject to review by lawyer-linguists. Note that "notably" used in existing Directive 2007/44/EC Art 15b(1)(d)]  (d) whether the investment firm will be able to comply and continue to comply with the prudential requirements based on this Directive and, where applicable, other Directives, <i>in particular</i> Directives 2002/87/EC and 2006/49/EC, in particular, whether the group of which it will become a



		COM	Council	EP	Compromise
		authorities;	authorities;	authorities;	part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;  <i>Technical meeting 2 12</i>  Lawyer-linguists to review "in particular" versus "notably"; reference to CRD to be replaced by references to CRDIV
431.	Art. 13 – para 1 – subpara 1 – point d a (new)			<i>(da) whether the proposed acquisition increases the risk of conflicts of interest;</i>	<i>Trilogue 20131204: deletion agreed to maintain consistency of requirements across sectors</i>  [...]
432.	Art. 13 – para 1 – subpara 1 – point e	(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.	(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.	(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.	<i>Agreed silence procedure 20130912</i>  (e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.
433.			<u>In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards which adjust the</u>		<i>Trilogue 20140114: Technical group to consider comments by COM (CRDIV has delegated acts on this matter, hence delegated acts should be provided here for</i>



		COM	Council	EP	Compromise
			criteria set out in subparagraphs (a) to (d) of this paragraph.		<p>consistency reasons; COM also questions split of empowerment into RTS here and DA in row 435) and Pres. (consistency is not a strong argument if legislator prefers RTS)</p> <p>Technical group telecon 20131209</p> <p>Consider change to delegated act to align with 2007/44 and CRD. Alternatively empowerment could be narrowed to further specify, rather than adjust, Level 1 as below:</p> <p><u>In order to ensure consistent application of this Article, ESMA may develop draft regulatory technical standards which further specify the application of criteria set out in subparagraphs (a) to (d) of this paragraph.</u></p> <p>Technical meeting 20140114</p> <p>Suggest delegated act</p> <p>[...]</p>
434.			<u>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.</u>		<p>Trilogue 20140114: see row 433</p> <p>Technical group telecon 20131209</p> <p>Align to 433</p> <p>[...]</p>
435.	Art. 13 – para 1 – subpar a 2	The Commission shall be empowered to adopt by means of delegated acts in accordance with Article 94 measures which adjust the criteria set out in the first subparagraph of this paragraph.	The Commission shall be empowered to adopt by means of delegated acts in accordance with Article 94 measures which adjust the criteria set out in [...] subparagraph (e) of this paragraph.	The Commission shall be empowered to adopt // delegated acts in accordance with Article 94 which adjust the criteria set out in the first subparagraph of this paragraph.	<p>Agreed silence procedure 20131219</p> <p>Technical group telecon 20131211</p> <p>The Commission shall be empowered to adopt by means of delegated acts in accordance with Article 94 measures which</p>



		COM	Council	EP	Compromise
					<p>adjust <del>or further specify</del> the criteria set out in <del>the first</del> subparagraph <del>(e)</del> of this paragraph.</p> <p><i>Technical group 20140116</i></p> <p>See rows 433, 434: Suggest delegated act for all of first subparagraph. Hence suggestion above amended.</p>
436.	Art. 13 – para 2	2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.	2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.	2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.	<p><i>Agreed silence procedure 20130912</i></p> <p>2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.</p>
437.	Art. 13 – para 3	3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.	3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.	3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.	<p><i>Agreed silence procedure 20130912</i></p> <p>3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.</p>
438.	Art. 13 – para 4	4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 11(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition.	4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 11(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition.	4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 11(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed	<p><i>Agreed silence procedure 20130912</i></p> <p>4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 11(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall</p>



		COM	Council	EP	Compromise
		Member States shall not require information that is not relevant for a prudential assessment.	Member States shall not require information that is not relevant for a prudential assessment.	acquisition. Member States shall not require information that is not relevant for a prudential assessment.	not require information that is not relevant for a prudential assessment.
439.	Art. 13 – para 5	5. Notwithstanding Article 12(1), (2) and (3), where two or more proposals to acquire or increase qualifying holdings in the same investment firm have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.	5. Notwithstanding Article 12(1), (2) and (3), where two or more proposals to acquire or increase qualifying holdings in the same investment firm have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.	5. Notwithstanding Article 12(1), (2) and (3), where two or more proposals to acquire or increase qualifying holdings in the same investment firm have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.	<i>Agreed silence procedure 20130912</i>  5. Notwithstanding Article 12(1), (2) and (3), where two or more proposals to acquire or increase qualifying holdings in the same investment firm have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.
440.	Art. 14 – title	<i>Membership of an authorised Investor Compensation Scheme</i>	<i>Membership of an authorised Investor Compensation Scheme</i>	<i>Membership of an authorised investor compensation scheme</i>	<i>Agreed silence procedure 20130912</i>  <i>Membership of an authorised investor compensation scheme</i>
441.	Art. 14 – para 1	The competent authority shall verify that any entity seeking authorisation as an investment firm meets its obligations under Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes <sup>1</sup> at the time of authorisation.	The competent authority shall verify that any entity seeking authorisation as an investment firm meets its obligations under Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes <sup>25</sup> at the time of authorisation.	The competent authority shall verify that any entity seeking authorisation as an investment firm meets its obligations under Directive 97/9/EC // at the time of authorisation.	<i>Agreed silence procedure 20130912</i>  The competent authority shall verify that any entity seeking authorisation as an investment firm meets its obligations under Directive 97/9/EC // at the time of authorisation.
442.	Art. 14 – para 1 a (new)		<u>In relation to structured deposits, the above obligation will be met provided they are issued by credit institutions which are members of a deposit guarantee scheme recognised under Directive 94/19/EC of the European Parliament and of the Council of 30</u>	<b><i>This Article shall not apply to structured deposits issued by credit institutions which are members of a deposit guarantee scheme recognised under Directive 94/19/EC of the European Parliament and of the Council of 30</i></b>	<i>Agreed silence procedure 20130912</i>  <b><i><u>The obligation in the first paragraph shall be met in relation to structured deposits where the structured deposit is issued by a credit institution which is a member of a deposit guarantee scheme recognised under</u></i></b>

<sup>1</sup> OJ L 84, 26.3.1997, p. 22.

<sup>25</sup> OJ L 84, 26.3.1997, p. 22.



		COM	Council	EP	Compromise
			<u>May 1994 on deposit-guarantee schemes<sup>26</sup>.</u>	<u>May 1994 on deposit-guarantee schemes<sup>1</sup>.</u>	<u>Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes<sup>2</sup>.</u>
443.	Art. 15 – title	<i>Initial capital endowment</i>	<i>Initial capital endowment</i>	<i>Initial capital endowment</i>	<i>Agreed silence procedure 20130912</i> <i>Initial capital endowment</i>
444.	Art. 15 – para 1	Member States shall ensure that the competent authorities do not grant authorisation unless the investment firm has sufficient initial capital in accordance with the requirements of Directive 2006/49/EC having regard to the nature of the investment service or activity in question.	Member States shall ensure that the competent authorities do not grant authorisation unless the investment firm has sufficient initial capital in accordance with the requirements of Directive 2006/49/EC having regard to the nature of the investment service or activity in question.	Member States shall ensure that the competent authorities do not grant authorisation unless the investment firm has sufficient initial capital in accordance with the requirements of Directive 2006/49/EC having regard to the nature of the investment service or activity in question.	<i>Agreed silence procedure 20130912</i> Member States shall ensure that the competent authorities do not grant authorisation unless the investment firm has sufficient initial capital in accordance with the requirements of Directive 2006/49/EC having regard to the nature of the investment service or activity in question.
445.	Art. 16 – title	<i>Organisational requirements</i>	<i>Organisational requirements</i>	<i>Organisational requirements</i>	<i>Agreed silence procedure 20130912</i> <i>Organisational requirements</i>
446.	Art. 16 – para 1	1. The home Member State shall require that investment firms comply with the organisational requirements set out in paragraphs 2 to 8 and in Article 17 .	1. The <u>Home</u> Member State shall require that investment firms comply with the organisational requirements set out in paragraphs 2 to <u>10</u> and in Article 17.	1. The home Member State shall require that investment firms comply with the organisational requirements set out in paragraphs 2 to 8 <i>of this Article</i> and in Article 17.	<i>Agreed silence procedure 20130912</i> 1. The home Member State shall require that investment firms comply with the organisational requirements set out in paragraphs 2 to <u>10</u> <i>of this Article</i> and in Article 17.
447.	Art. 16 – para 2	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	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	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	<i>Agreed silence procedure 20130912</i> 2. An investment firm shall establish adequate policies and procedures sufficient to ensure compliance of the firm including

<sup>26</sup> **OJL135, 31.5.1994, p.5**

<sup>1</sup> **OJ L 135, 31.5.1994, p. 5.**

<sup>2</sup> **OJ L 135, 31.5.1994, p. 5.**





		COM	Council	EP	Compromise
		obligations under the provisions of this Directive as well as appropriate rules governing personal transactions by such persons.	obligations under the provisions of this Directive as well as appropriate rules governing personal transactions by such persons.	obligations under the provisions of this Directive as well as appropriate rules governing personal transactions by such persons.	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.
448.	Art. 16 – para 3	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.	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.	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. <b><i>These arrangements shall include a policy and other necessary arrangements to assess the compatibility of the investment product with the needs of the clients to whom it would be offered, and to ensure that investment products or structured deposits designed by the firm for sale to professional or retail clients meet the needs of an identified target market and that an investment firm marketing investment products ensures that the investment product is marketed to clients within the target group. Sales targets and internal inducement schemes shall not incentivise the sale of products outside the targeted group. In particular, an investment firm which designs investment products, structured deposits or financial instruments shall have in place a product approval process</i></b>	<p><i>Agreed silence procedure 20131219</i></p> <p>T: ensuring consistency between rows 448 and 556 once political decisions taken</p> <p>Trilogue 20130904: technical group to prepare revised drafting of this and row 556 covering product governance and target market and including sufficient detail in L1.</p> <p><i>Technical meeting 26 09 and teleconference 30 09</i></p> <p>See also row 556</p> <p><i>Trilogue 20131009: agreed in principle subject to revised drafting to deal with Council concerns in relation to post-sale obligations</i></p> <p>Technical meeting 23 10 Take out part in strikethrough and incorporate recital.</p> <p>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</p>



		COM	Council	EP	Compromise
				<p><i>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 ensure that existing products are regularly reviewed in order to ensure that the product is continuing to meet the needs of the identified target market. The product approval process shall be reviewed annually. An investment firm shall at all times be able to provide the relevant competent authority an up to date and detailed description of the nature and details of its product approval process.</i></p>	<p>interests of its clients.</p> <p><i>An investment firm which designs [investment products] for sale to clients shall maintain, operate and review a process for the approval of each [investment product] or significant adaptations of existing products before it is distributed to clients.</i></p> <p><i>The product approval process shall specify an identified target market of end clients within the relevant category of clients for each product and ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market.</i></p> <p><i>The investment firm shall also regularly review products offered or marketed by the firm, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the product remains consistent with the needs of the identified target market, whether the intended distribution strategy remains appropriate, <del>and whether the actual distribution is consistent with firm's obligation under Article 24 to take reasonable steps to ensure that the investment is distributed to the identified target market.</del></i></p> <p><i>An investment firm which designs [investment products] shall make available</i></p>





		COM	Council	EP	Compromise
					<p>to any distributor all appropriate information on the product and the product approval process, including the identified target market of the product.</p> <p>An investment firm which does not design the [investment products] it offers or recommend to clients shall have appropriate arrangements in place to obtain and understand in sufficient detail the relevant information concerning the product approval process operated by the investment firm which designs the product and the characteristics of each product. This shall include obtaining and assessing the information referred to in the previous subparagraph.</p> <p>These policies, processes and arrangements shall be without prejudice to all other requirements under this Directive [and MiFIR], including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and inducements.</p> <p><u>New recital proposed by Presidency to be added:</u></p> <p>(51a) Member States should ensure that investment firms act in accordance with the best interests of their clients and are able to comply with their obligations under this Directive. Investment firms should accordingly understand the features of the [investment products] offered or</p>



		COM	Council	EP	Compromise
					<p><i>recommended and establish and review effective policies and arrangements to identify the category of clients to whom products and services are to be provided. Member States should ensure that the investment firms which design investment products ensure that those products are designed to meet the needs of an identified target market of end clients within the relevant category of clients, take reasonable steps to ensure that the investment product is distributed to the identified target market and periodically review the identification of the target market of and the performance of the products they offer. Investment firms offering or recommending to clients [an investment product] not designed by them should also have appropriate arrangements in place to obtain and understand the relevant information concerning the product approval process, including the identified target market and the characteristics of the product they offer or recommend. This obligation should apply without prejudice to any assessment of appropriateness or suitability to be subsequently carried out by the investment firm in the provision of investment services to each client, on the basis of their personal needs, characteristics and objectives.</i></p> <p><u>Trilogue 20131106: agreed subject to final adjustment of drafting by technical group.</u></p> <p><u>Technical group telecon 20131209/20131211</u></p>



		COM	Council	EP	Compromise
					<p>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.</p> <p><i>An investment firm which manufactures financial instruments for sale to clients shall maintain, operate and review a process for the approval of each financial instrument or significant adaptations of existing financial instruments before it is marketed or distributed to clients.</i></p> <p><i>The product approval process shall specify an identified target market of end clients within the relevant category of clients for each product and ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market.</i></p> <p><i>The investment firm shall also regularly review financial instruments offered or marketed by the firm, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate, and whether the actual distribution is consistent with firm's obligation under Article 24 to take reasonable steps to ensure that the</i></p>



		COM	Council	EP	Compromise
					<p><del>investment is distributed to the identified target market.</del></p> <p>An investment firm which manufactures shall make available to any distributor all appropriate information on the financial instrument and the product approval process, including the identified target market of the product.</p> <p>Where an investment firm offers or recommends financial instruments which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in the previous subparagraph and to understand the characteristics and intended target market of each financial instrument.</p> <p>These policies, processes and arrangements shall be without prejudice to all other requirements under this Directive [and MiFIR], including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and inducements.</p>
449.	Art. 16 – para 4	4. An investment firm shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To this end the investment firm shall employ appropriate and proportionate systems, resources and procedures.	4. An investment firm shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To this end the investment firm shall employ appropriate and proportionate systems, resources and procedures.	4. An investment firm shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To this end the investment firm shall employ appropriate and proportionate systems, resources and procedures.	<p><i>Agreed silence procedure 20130912</i></p> <p>4. An investment firm shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To this end the investment firm shall employ appropriate and proportionate systems, resources and procedures.</p>
450.	Art. 16	5. An investment firm shall ensure,	5. An investment firm shall ensure,	5. An investment firm shall ensure,	<i>Agreed silence procedure 20130912</i>



		COM	Council	EP	Compromise
	– para 5 – subpar a 1	when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the supervisor to monitor the firm's compliance with all obligations.	when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the supervisor to monitor the firm's compliance with all obligations.	when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the supervisor to monitor the firm's compliance with all obligations.	5. An investment firm shall ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the supervisor to monitor the firm's compliance with all obligations.
451.	Art. 16 – para 5 – subpar a 2	An investment firm shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.	An investment firm shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.	An investment firm shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.	<i>Agreed silence procedure 20130912</i>  An investment firm shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.
452.			<u>The Home Member State shall require the investment firm to have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times.</u>		<i>Agreed silence procedure 20131126</i>  T: security and integrity of data  <i>Technical group 05 09</i>  <u>An investment firm shall have sound security mechanisms in place to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage</u>



		COM	Council	EP	Compromise
					<u>maintaining the confidentiality of the data at all times. This requirement shall be without prejudice to the ability of competent authorities to require access to communications in accordance with this Directive and Regulation EU No. [new MiFIR]</u>
453.	Art. 16 – para 6	6. An investment firm shall arrange for records to be kept of all services and transactions undertaken by it which shall be sufficient to enable the competent authority to monitor compliance with the requirements under this Directive, and in particular to ascertain that the investment firm has complied with all obligations with respect to clients or potential clients.	6. An investment firm shall arrange for records to be kept of all services, <u>activities</u> and transactions undertaken by it which shall be sufficient to enable the competent authority to <u>fulfil its supervisory tasks and to perform the enforcement actions</u> under this Directive, <u>Regulation [ ] (MiFIR), Directive [ ] (MAD) and Regulation [ ] (MAR),</u> and in particular to ascertain that the investment firm has complied with all obligations <u>including those</u> with respect to clients or potential clients <u>and to the integrity of the market.</u>	6. An investment firm shall arrange for records to be kept of all services and transactions undertaken by it which shall be sufficient to enable the competent authority to monitor compliance with the requirements under this Directive, and in particular to ascertain that the investment firm has complied with all obligations with respect to clients or potential clients.	<i>Agreed silence procedure 20130912</i>  6. An investment firm shall arrange for records to be kept of all services, <u>activities</u> and transactions undertaken by it which shall be sufficient to enable the competent authority to <u>fulfil its supervisory tasks and to perform the enforcement actions</u> under this Directive, <u>Regulation [ ] (MiFIR), Directive [ ] (MAD) and Regulation [ ] (MAR),</u> and in particular to ascertain that the investment firm has complied with all obligations <u>including those</u> with respect to clients or potential clients <u>and to the integrity of the market.</u>
454.	Art. 16 – para 7 – subpar a 1	7. 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.	7. Records shall include the recording of telephone conversations or electronic communications <u>relating to</u> , at least, transactions concluded when dealing on own account and <u>the provision of client order services that relate to the reception, transmission and execution of client orders.</u>	7. 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.	<i>Agreed silence procedure 20131219</i>  <i>Trilogue 20130904: issue left open</i>  <i>Trilogue 20131009: Presidency to prepare non-paper taking account of row 462</i>  <b><i>Trilogue 20131106: referred to technical group to find drafting clarifying situation regarding minutes for face to face meetings</i></b>  <i>Technical group 13 11</i>  7. Records shall include the recording of



		COM	Council	EP	Compromise
					telephone conversations or electronic communications <u>relating to</u> , at least, transactions concluded when dealing on own account and <u>the provision of client order services that relate to the reception, transmission and execution of client orders.</u>
455.	Art. 16 – para 7 – subpar a 1 a (new)		<u>Relevant conversations shall also include conversations and communications which are intended to result in transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not lead to the conclusion of such transactions or to the provision of client order services.</u>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20130904: issue left open</i></p> <p><i>Trilogue 20131009: Presidency to prepare non-paper taking account of row 462</i></p> <p><b><i>Trilogue 20131106: referred to technical group to find drafting clarifying situation regarding minutes for face to face meetings</i></b></p> <p><i>Technical group 13 11</i></p> <p><u>Relevant conversations shall also include conversations and communications which are intended to result in transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not lead to the conclusion of such transactions or to the provision of client order services.</u></p>
456.	Art. 16 – para 7 – subpar a 1 b (new)		<u>For these purposes, an investment firm shall take all reasonable steps to record relevant conversations and communications, made with, sent from or received by equipment provided by the investment firm to an employee or contractor or the use of</u>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20131009: Presidency to prepare non-paper taking account of row 462</i></p> <p><b><i>Trilogue 20131106: referred to technical group to find drafting clarifying situation regarding minutes for face to face meetings</i></b></p>





		COM	Council	EP	Compromise
			<u>which by an employee or contractor has been sanctioned or permitted by the investment firm.</u>		<i>Technical group 13 11</i>  <u>For these purposes, an investment firm shall take all reasonable steps to record relevant conversations and communications, made with, sent from or received by equipment provided by the investment firm to an employee or contractor or the use of which by an employee or contractor has been sanctioned or permitted by the investment firm.</u>
457.				<b>Member States may waive the obligation to record telephone conversations when the investment firm does not as its main business receive and transmit orders and execute orders on behalf of clients.</b>	<i>Agreed silence procedure 20131219</i>  <i>Trilogue 20130904: issue left open</i>  <i>Trilogue 20131009: Presidency to prepare non-paper taking account of row 462</i>  <b>Trilogue 20131106: referred to technical group to find drafting clarifying situation regarding minutes for face to face meetings</b>  <i>Technical group 13 11</i>  [...]
458.				<b>With regard to communications between financial institutions and retail clients Member States may instead of the records referred to in the first subparagraph recognise the adequate documentation of the content of such telephone conversations in the form of minutes where such minutes are signed by the client.</b>	<i>Agreed silence procedure 20131219</i>  <i>Trilogue 20130904: issue left open</i>  <i>Trilogue 20131009: Presidency to prepare non-paper taking account of row 462</i>  <b>Trilogue 20131106: referred to technical group to find drafting clarifying situation regarding minutes for face to face meetings</b>  <i>Technical group 13 11</i>





		COM	Council	EP	Compromise
					[...]
459.			<u>Investment firms shall notify new and existing clients that telephone communications or conversations between the investment firms and clients that result or may result in transactions, will be recorded.</u>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20130904: issue left open</i></p> <p><i>Trilogue 20131009: Presidency to prepare non-paper taking account of row 462</i></p> <p><b><i>Trilogue 20131106: referred to technical group to find drafting clarifying situation regarding minutes for face to face meetings</i></b></p> <p><i>Technical group 13 11</i></p> <p><u>Investment firms shall notify new and existing clients that telephone communications or conversations between the investment firms and clients that result or may result in transactions, will be recorded.</u></p>
460.			<u>This notification can be provided once, before the provision of investment services to new and existing clients.</u>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20130904: issue left open</i></p> <p><i>Trilogue 20131009: Presidency to prepare non-paper taking account of row 462</i></p> <p><b><i>Trilogue 20131106: referred to technical group to find drafting clarifying situation regarding minutes for face to face meetings</i></b></p> <p><i>Technical group 13 11</i></p> <p><u>This notification can be provided once, before the provision of investment services to new and existing clients.</u></p>
461.			<u>Investment firms shall not provide, by phone, investment services and</u>		<i>Agreed silence procedure 20131219</i>



		COM	Council	EP	Compromise
			<p><u>activities to clients who have not been notified in advance about the recording of their telephone communications or conversations, where such investment services and activities relate to the reception, transmission and execution of client orders.</u></p>		<p><i>Trilogue 20130904: issue left open</i></p> <p><i>Trilogue 20131009: Presidency to prepare non-paper taking account of row 462</i></p> <p><b><i>Trilogue 20131106: referred to technical group to find drafting clarifying situation regarding minutes for face to face meetings</i></b></p> <p><i>Technical group 13 11</i></p> <p><u>Investment firms shall not provide, by phone, investment services and activities to clients who have not been notified in advance about the recording of their telephone communications or conversations, where such investment services and activities relate to the reception, transmission and execution of client orders.</u></p>
462.			<p><u>Orders can be placed by clients through other channels, however such communications must be made in a durable medium such as mails, faxes, emails, documentation of client orders made at meetings. Such orders will be considered equivalent to orders received by telephone.</u></p>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20130904: issue left open</i></p> <p><i>Trilogue 20131009: Presidency to prepare non-paper taking account of row 462</i></p> <p><b><i>Trilogue 20131106: referred to technical group to find drafting clarifying situation regarding minutes for face to face meetings</i></b></p> <p><i>Technical group 13 11</i></p> <p><u>Orders can be placed by clients through other channels, however such communications must be made in a durable medium such as mails, faxes, emails, documentation of client orders made at meetings. <b>For example, the content of</b></u></p>



		COM	Council	EP	Compromise
					<p><b><u>relevant face-to-face conversations with a client could be recorded by using written minutes or notes.</u></b> Such orders will be considered equivalent to orders received by telephone.</p> <p><u>EP to make drafting suggestion for recital clarifying safeguards should be in place, such as signing of minutes, to ensure that the minutes are recognised by both sides but that that such signing of minutes by client does not imply client taking on any liability</u></p> <p>Addition made to recital 42 (inclusion of "For example, the content of relevant face-to-face conversations with a client could be recorded by using written minutes or notes.")</p> <p><i>Technical group telecon 20131211</i></p> <p><i>New recital:</i></p> <p>Where minutes are taken of face-to-face conversations with clients Member States should ensure that appropriate safeguards are in place, <del>such as requiring the minutes to be signed by both parties,</del> to ensure that the client does not lose out as a result of the minutes inaccurately recording the <b>communication between the</b> parties. Such safeguards should not imply any assumption of liability by the client.</p> <p><i>Technical group 17 12</i></p> <p>Revised suggestion above: Reason for deletion is the concern that the signing by</p>



		COM	Council	EP	Compromise
					the client could reduce rather than increase the consumer protection.
462a.			<u>An investment firm shall take all reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the investment firm is unable to record or copy.</u>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20130904: issue left open</i></p> <p><i>Trilogue 20131009: Presidency to prepare non-paper taking account of row 462</i></p> <p><b><i>Trilogue 20131106: referred to technical group to find drafting clarifying situation regarding minutes for face to face meetings</i></b></p> <p><i>Technical group 13 11</i></p> <p><u>An investment firm shall take all reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the investment firm is unable to record or copy.</u></p>
463.	Art. 16 – para 7 – subpar a 2	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.	<p>Records of telephone conversation or electronic communications recorded in accordance with <u>the previous subparagraph</u> shall be provided to the clients involved upon request and shall be kept for a period of <u>five</u> years.</p> <p><u>An investment firm shall retain the records for more than five years up to a maximum of seven years, when asked to do so by its competent authority in pursuit of its duties.</u></p>	Records of telephone conversation or electronic communications recorded in accordance with <b><i>the first subparagraph or the minutes prepared in accordance with the second subparagraph</i></b> shall be provided to the client involved upon request. <b><i>Member States shall require that such records are kept until one year after the investment has ended.</i></b>	<p><i>Agreed silence procedure 20131126</i></p> <p><i>Trilogue 20130904: recordings to be kept for at least 5 years. Technical group to prepare drafting without prejudice to political decision on taping obligation</i></p> <p><i>Technical group 26 09</i></p> <p>cross-reference to be checked once political decision taken. see Council recital 42 [row 64]</p> <p>"at least" unnecessary, if maximum period included</p>



		COM	Council	EP	Compromise
					<p>Pres.: maximum period necessary with respect to data protection requirements</p> <p>EP to check whether maximum period of 7 years in case of request by competent authority is an acceptable interpretation of "at least"</p> <p>The records kept in accordance with [rows 454 to 462a once decided] shall be provided to the client involved upon request and shall be kept for a period of five years <b>and, where this is requested by the competent authority, for a period of up to seven years.</b></p> <p><i>Technical group telecon 20131211</i></p> <p>Square brackets taken out above</p>
464.	Art. 16 – para 7 – subparagraph 2 a (new)		<u><b>[Text moved to row 463]</b></u>	<b><i>Relevant persons of the investment firm may undertake the conversations and communications referred to in subparagraph 1 only on equipment provided by the investment firm and of which records are kept.</i></b>	<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20130904: issue left open</i></p> <p><i>Trilogue 20131009: Presidency to prepare non-paper taking account of row 462</i></p> <p><b><i>Trilogue 20131106: referred to technical group to find drafting clarifying situation regarding minutes for face to face meetings</i></b></p> <p><i>Technical group 13 11</i></p> <p>[...]</p>
465.	Art. 16 – para 8	8. An investment firm shall, when holding financial instruments belonging to clients, make adequate	8. An investment firm shall, when holding financial instruments belonging to clients, make adequate	8. An investment firm shall, when holding financial instruments belonging to clients, make adequate	<p><i>Agreed silence procedure 20130912</i></p> <p>8. An investment firm shall, when holding</p>



		COM	Council	EP	Compromise
		arrangements so as to safeguard clients' ownership rights, especially in the event of the investment firm's insolvency, and to prevent the use of a client's instruments on own account except with the client's express consent.	arrangements so as to safeguard clients' ownership rights, especially in the event of the investment firm's insolvency, and to prevent the use of a client's instruments on own account except with the client's express consent.	arrangements so as to safeguard clients' ownership rights, especially in the event of the investment firm's insolvency, and to prevent the use of a client's instruments on own account except with the client's express consent.	financial instruments belonging to clients, make adequate arrangements so as to safeguard clients' ownership rights, especially in the event of the investment firm's insolvency, and to prevent the use of a client's instruments on own account except with the client's express consent.
466.	Art. 16 – para 9	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.	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.	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.	<i>Agreed silence procedure 20130912</i> 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.
467.	Art. 16 – para 10	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.	10. An investment firm shall not conclude title transfer collateral arrangements with retail clients for the purpose of securing or covering <u>these</u> clients' present or future, actual or contingent or prospective obligations.	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.	<i>Agreed silence procedure 20130912</i> 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.
468.	Art. 16 – para 11	11. In the case of branches of investment firms, the competent authority of the Member State in which the branch is located shall, without prejudice to the possibility of the competent authority of the home Member State of the investment firm to have direct access to those records, enforce the obligation laid down in paragraph 6 and 7 with regard to transactions undertaken by the	11. In the case of branches of investment firms, the competent authority of the Member State in which the branch is located shall, without prejudice to the possibility of the competent authority of the <u>Home</u> Member State of the investment firm to have direct access to those records, enforce the obligation laid down in paragraph 6 and 7 with regard to transactions undertaken by the	11. In the case of branches of investment firms, the competent authority of the Member State in which the branch is located shall, without prejudice to the possibility of the competent authority of the home Member State of the investment firm to have direct access to those records, enforce the obligation laid down in paragraph 6 and 7 with regard to transactions undertaken by the	<i>Agreed silence procedure 20130912</i> 11. In the case of branches of investment firms, the competent authority of the Member State in which the branch is located shall, without prejudice to the possibility of the competent authority of the home Member State of the investment firm to have direct access to those records, enforce the obligation laid down in paragraph 6 and 7 with regard to transactions undertaken by the



		COM	Council	EP	Compromise
		branch.	branch.	branch.	branch.
469.			<p>11A Member States may, in exceptional circumstances, impose requirements on investment firms additional to those mentioned in paragraphs 8, 9 and 10, in delegated acts under paragraph 12 and in delegated acts under Article 24(9) relating to the safeguarding of client assets. Such requirements must be objectively justified and proportionate so as to address specific risks to investor protection or to market integrity where investment firms safeguard client assets and client funds.</p>		<p><i>Trilogue 20130904: Commission to prepare proposal on scope of MS discretion under Art 24 and include consideration of safeguarding of client assets.</i></p> <p><i>[not included in Commission non-paper for 20131009 trilogue]</i></p> <p><i>Commission non-paper for 20131106 trilogue:</i></p> <p>Member States may, in exceptional circumstances, impose requirements on investment firms <b>concerning the safeguarding of client assets</b> additional to <b>the provisions set out</b> those mentioned in paragraphs 8, 9 and 10 <b>and the respective delegated acts under paragraph 12 of this Article</b> and in <del>delegated acts under Article 24(9)<sup>1</sup></del><sup>1</sup>. Such requirements must be objectively justified and proportionate so as to address, <b>where investment firms safeguard client assets and client funds</b>, specific risks to investor protection or to market integrity <del>where investment firms safeguard client assets and client funds</del> <b>which are of particular importance in the circumstances of the market structure of that Member State.</b></p> <p><i>Trilogue 20131106: agreed</i></p>

<sup>1</sup> Article 24(9) contains the empowerment to adopt delegated acts with respect to content and format of information to clients to be provided by investment firms in relation to, among others, safeguarding of client assets but does not deal with safeguarding of client assets (and should not, as safeguarding of client asset rules these rules are part of the organisational aspects).





		COM	Council	EP	Compromise
470.			<p>Member States shall notify, without undue delay, the Commission of any requirement which they intend to impose in accordance with this paragraph at least one month before the date appointed for that requirement to come into force. The notification shall include a justification for that requirement.</p>		<p><i>Trilogue 20130904: Commission to prepare proposal on scope of MS discretion under Art 24 and include consideration of safeguarding of client assets.</i></p> <p><i>[not included in Commission non-paper for 20131009 trilogue]</i></p> <p><i>Commission non-paper for 20131106 trilogue:</i></p> <p>Member States shall notify, without undue delay, the Commission of any requirement which they intend to impose in accordance with this paragraph <b>and</b> at least <b>two one</b> months before the date appointed for that requirement to come into force. The notification shall include a justification for that requirement. <b>Any such additional requirements shall not restrict or otherwise affect the rights of investment firms under Articles 36 and 37 of this Directive.</b></p> <p><b><i>Trilogue 20131106: agreed</i></b></p>
471.			<p>The Commission shall within one month from the notification referred to in the previous subparagraph provide its opinion on the proportionality of and justification for the additional requirements.</p>		<p><i>Trilogue 20130904: Commission to prepare proposal on scope of MS discretion under Art 24 and include consideration of safeguarding of client assets.</i></p> <p><i>[not included in Commission non-paper for 20131009 trilogue]</i></p> <p><i>Commission non-paper for 20131106 trilogue:</i></p> <p>The Commission shall within <b>two one</b> months from the notification referred to in</p>



		COM	Council	EP	Compromise
					<p>the previous subparagraph provide its opinion on the proportionality of and justification for the additional requirements.</p> <p><b><u>Member States may retain additional requirements that were notified to the Commission in accordance with Article 4 of Commission Directive 2006/73/EC before the entry into force of this Directive provided that the conditions laid down in that provision are met.</u></b></p> <p><b><u>Trilogue 20131106: agreed</u></b></p>
472.			<p><u>The Commission shall communicate to Member States and make public on its website the additional requirements imposed in accordance with this paragraph.</u></p>		<p><u>Trilogue 20130904: Commission to prepare proposal on scope of MS discretion under Art 24 and include consideration of safeguarding of client assets.</u></p> <p><u>[not included in Commission non-paper for 20131009 trilogue]</u></p> <p><u>Commission non-paper for 20131106 trilogue:</u></p> <p>The Commission shall communicate to Member States and make public on its website the additional requirements imposed in accordance with this paragraph.</p> <p><b><u>Trilogue 20131106: agreed</u></b></p>
473.	Art. 16 – para 12	12. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify the concrete organisational requirements	12. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify the	12. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to ■ specify the concrete organisational requirements	<p><u>Agreed silence procedure 20130912</u></p> <p>12. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to ■ specify</p>



		COM	Council	EP	Compromise
		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.	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.	laid down in paragraphs 2 to 9 of <i>this Article</i> to be imposed on investment firms and on branches of <i>third-country firms</i> authorised in accordance with <i>Article</i> 43 performing different investment services and/or activities and ancillary services or combinations thereof.	the concrete organisational requirements laid down in paragraphs 2 to 10 of <i>this Article</i> to be imposed on investment firms and on branches of <i>third-country firms</i> authorised in accordance with <i>Article</i> 43 performing different investment services and/or activities and ancillary services or combinations thereof.  <i>Technical group telecon 20131211</i>  On suggestion by Commission reference changed above to include paragraph 10, which had been omitted in Commission proposal. There are existing level 2 measures in the area concerned (Article 19 of the current implementing Directive)
474.	Art. 17 – title	<i>Algorithmic trading</i>	<i>Algorithmic trading, <u>market making and direct electronic access</u></i>	<i>Algorithmic and high-frequency trading</i>	<i>Agreed silence procedure 20131219</i>  T: align title to content of article once political decisions taken  <i>Technical group 26 11</i>  <i>Algorithmic trading</i>
475.	Art. 17 – para 1	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	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	1. An investment firm that engages in algorithmic trading shall have in place effective systems and risk controls <i>suitable to the business it operates</i> 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	<i>Agreed silence procedure 20130912</i>  1. An investment firm that engages in algorithmic trading shall have in place effective systems and risk controls <i>suitable to the business it operates</i> 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.



		COM	Council	EP	Compromise
		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.	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 <b>business</b> continuity [...] arrangements to deal with any [...] 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.	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 <i>investment</i> firm shall have in place effective <b>business</b> continuity 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.	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 <i>investment</i> firm shall have in place effective <b>business</b> continuity [...] arrangements to deal with any [...] 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.
476.	Art. 17 – para 2	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.	2. An investment firm that engages in algorithmic trading <u>in a Member State</u> shall <u>notify this to the competent authorities of its Home Member State and of the trading venue at which the investment firm as a member or participant of the trading venue is engaged in algorithmic trading.</u>	2. An investment firm that engages in algorithmic trading shall at least annually <b><i>on its own initiative and at any other time on request</i></b> provide to its home <i>competent authority</i> a <b><i>detailed</i></b> 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. <b><i>An investment firm shall, at the request of a</i></b> competent authority, <b><i>submit</i></b> further information about its algorithmic trading and the systems used for that trading.	<i>Agreed silence procedure 20131219</i> [See also Council text rows 476a- 476c]  T: formulation of competent authorities' ability to request/require additional information  <i>Technical group 26 11</i>  2. An investment firm that engages in algorithmic trading <u>in a Member State</u> shall <u>notify this to the competent authorities of its Home Member State and of the trading venue at which the investment firm as a member or participant of the trading venue is engaged in algorithmic trading.</u>



		COM	Council	EP	Compromise
476a.			<p><u>The competent authority of the Home Member State of the investment firm may require the investment firm to provide, on a regular or ad-hoc basis, 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. The competent authority may of the Home Member State of the investment firm may, at any time, request further information from anthe investment firm about its algorithmic trading and the systems used for that trading.</u></p>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Technical group 26 11</i></p> <p><u>The competent authority of the Home Member State of the investment firm may require the investment firm to provide, on a regular or ad-hoc basis, 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. The competent authority of the Home Member State of the investment firm may, at any time, request further information from an investment firm about its algorithmic trading and the systems used for that trading.</u></p>
476b.			<p><u>The competent authority of the Home Member State of the investment firm shall, on the request of a competent authority of a trading venue at which the investment firm as a member of the venue is engaged in algorithmic trading and without undue delay, communicate the information referred to in the previous subparagraph that it receives from the investment firm that engages in algorithmic trading.</u></p>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Technical group 26 11</i></p> <p><u>The competent authority of the Home Member State of the investment firm shall, on the request of a competent authority of a trading venue at which the investment firm as a member of the venue is engaged in algorithmic trading and without undue delay, communicate the information referred to in the previous subparagraph that it receives from the investment firm that engages in algorithmic trading.</u></p>
476c.			<p><u>The investment firm shall arrange for records to be kept in relation to the</u></p>		<p><i>Agreed silence procedure 20131219</i></p>



		COM	Council	EP	Compromise
			<u>matters above and shall ensure that these records be sufficient to enable its competent authority to monitor compliance with the requirements of this Directive.</u>		<i>Technical group 26 11</i>  <u>The investment firm shall arrange for records to be kept in relation to the matters above and shall ensure that these records be sufficient to enable its competent authority to monitor compliance with the requirements of this Directive.</u>
477.	Art. 17 – para 2 a (new)			<b>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.</b>	<i>Agreed silence procedure 20131126</i>  <i>Trilogue 20130911: Commission to prepare revised drafting for consideration by Presidency as part of overall compromise</i>  <i>Technical meeting 23 10</i>  <b>An investment firm that engages in a high frequency algorithmic trading technique shall store in an approved form accurate and time sequenced records of all its placed orders, including cancellations of orders, executed orders and quotations on trading venues and shall make them available to the competent authority upon request.</b>  <b>New row 492a (part of L2 empowerment)</b>  <b><u>(ca) the content and format of the approved form referred to in paragraph 2a and the length of time for which such records must be kept by the investment firm;</u></b>  <i>Technical group 13 11</i>  <u>Change made above to use definition in row 279</u>



		COM	Council	EP	Compromise
					<p><u>Technical meeting 2 12</u></p> <p>Choice of instrument to be used in level 2 to be made later on row 489</p>
478.	Art. 17 – para 3	<p>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.</p>	<p>3. An <u>investment firm that engages in algorithmic trading pursuing a market making strategy as defined in paragraph 4, shall carry out this market making continuously during a specified proportion of the trading venue’s trading hours, except under exceptional circumstances</u>, with the result of providing liquidity on a regular and <u>predictable</u> basis to the trading <u>venue</u>.</p>	<p><i>3. An investment firm that engages in market making including through participation 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 market making and shall adhere to the terms and conditions of the agreement, including liquidity provision.</i></p> <p><i>The investment firm shall have in place effective systems and controls to ensure that it fulfils its obligations under the agreement at all times.</i></p> <p><i>Where any investment firm deploys an algorithmic trading strategy in order to fulfil its obligations as a market maker it shall ensure that the algorithm 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 and that the trading parameters or limits of the algorithm shall ensure that the investment firm posts firm quotes at competitive prices with the result of providing liquidity on a regular and</i></p>	<p><i>Agreed silence procedure 20131219</i></p> <p>[See also Council text row 479-481]</p> <p><i>Trilogue 20130911: Technical group to prepare drafting on market making obligations based on EP and Council texts, taking account of need to avoid creating loopholes, as highlighted by the Commission.</i></p> <p><b>Extended Technical meeting 02 10</b></p> <p>COM: to check whether there are any technical difficulties in enlarging the scope to any market maker, not only those engaging in algo trading, including in energy markets</p> <p>Pres. to check whether extension of scope could be acceptable</p> <p>In the light of the outcome of that examination this row and related rows will have to be reviewed</p> <p>3. An <u>investment firm that engages in algorithmic trading to pursue a market making strategy shall</u></p> <p>a) <u>carry out this market making continuously during a specified proportion of the trading venue’s trading hours, except under exceptional circumstances, with the</u></p>





		COM	Council	EP	Compromise
				ongoing basis to these trading venues at all times regardless of prevailing market conditions <i><b>unless the written agreement provides otherwise.</b></i>	<p>result of providing liquidity on a regular and <u>predictable</u> basis to <u>the trading venue</u>,</p> <p><b><u>b) enter into a binding written agreement between the investment firm and the trading venue which shall at least specify the obligations of the investment firm in accordance with point a, and</u></b></p> <p><b><u>c) have in place effective systems and controls to ensure that it fulfils its obligations under the agreement referred to in point b at all times,</u></b></p> <p>taking into account the liquidity, scale and nature of the specific market and the characteristics of the instrument traded.</p> <p><i>Trilogue 20130916: agreed in principle subject to limitation of scope to market making including algorithmic trading and detailed comments through silence procedure to be resolved by technical group.</i></p> <p><i>Technical meeting 13 11</i></p> <p>Addition made in introductory wording</p>
479.			<u>When engaging in algorithmic trading pursuing a market making strategy, the investment firm shall take into account sound operational, commercial and risk management practices, as well as the liquidity, scale and nature of the specific market and the characteristics of the instruments traded.</u>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20130911: Technical group to prepare drafting on market making obligations based on EP and Council texts, taking account of need to avoid creating loopholes, as highlighted by the Commission.</i></p> <p><i>Technical group 02 10</i></p>



		COM	Council	EP	Compromise
					<p>Moved second part into row 478.</p> <p>First part to be moved into a recital</p> <p><i>Trilogue 20130916: agreed in principle subject to limitation of scope to market making including algorithmic trading and detailed comments through silence procedure to be resolved by technical group.</i></p>
480.			<p>4. An investment firm that <u>engages in algorithmic trading is pursuing a market making strategy when, as a member or participant of one or more trading venues, its strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.</u></p>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20130911: Technical group to prepare drafting on market making obligations based on EP and Council texts, taking account of need to avoid creating loopholes, as highlighted by the Commission.</i></p> <p><i>Extended Technical group 02 10</i></p> <p>Include concept. Check with LL whether this could/should be moved to the definitions. Review relationship to market maker definition in row 245</p> <p><b>4. <u>For the purposes of Articles 17 and 51 of this Directive</u>, an investment firm that engages in algorithmic trading is pursuing a market making strategy when, as a member or participant of one or more trading venues, its strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a</b></p>



		COM	Council	EP	Compromise
					<p><u>regular and frequent basis to the overall market.</u></p> <p><i>Trilogue 20130916: agreed in principle subject to limitation of scope to market making including algorithmic trading and detailed comments through silence procedure to be resolved by technical group.</i></p> <p><i>Technical group 13 11</i></p> <p>Addition made above</p> <p><i>Technical group telecon 20131211</i></p> <p>Following EP comment, "of this Directive" added above, to clarify that the definition in this paragraph applies only for the purposes of the Articles of this Directive that are referred to, as opposed to any other legislation.</p>
481.			<p>5. An investment firm that <u>engages in algorithmic trading to pursue a market making strategy, as defined in paragraph 4, shall have in place effective systems and risk controls to ensure that it can at all times fulfil its obligations under the market making scheme, as referred to in Article 51(1a).</u></p>		<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20130911: Technical group to prepare drafting on market making obligations based on EP and Council texts, taking account of need to avoid creating loopholes, as highlighted by the Commission.</i></p> <p><i>Extended Technical group 02 10</i></p> <p>covered in row 478</p> <p>[...]</p> <p><i>Trilogue 20130916: agreed in principle subject to limitation of scope to market making including algorithmic trading and</i></p>



		COM	Council	EP	Compromise
					<p><i>detailed comments through silence procedure to be resolved by technical group.</i></p> <p><i>Technical group 13 11</i></p> <p>No change to suggestion</p>
482.	Art. 17 – para 4	<p>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.</p>	<p><u>6. 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 clients using the service, that clients using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by clients 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.</u></p>	<p><b>4. <i>Investment firms shall not provide sponsored and naked market access to a trading venue.</i></b> An investment firm that provides direct <b>market</b> 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.</p>	<p><i>Agreed silence procedure 20131126</i></p> <p><i>Trilogue 20130911: agreed to include explicit prohibition on naked market access. Commission to prepare drafting on possible controls for sponsored market access, taking account of Council text and ESMA work.</i></p> <p><i>Trilogue 20131009: technical group to prepare drafting based on COM non-paper with reinforced controls for sponsored access.</i></p> <p><i>Technical meeting 23 10</i></p> <p>Add recital to explain the requirements and what is forbidden</p> <p><u>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 clients using the service, that clients using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by clients 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</u></p>



		COM	Council	EP	Compromise
					<p>the rules of the trading venue. <b>Direct electronic access without such systems and controls is prohibited.</b></p> <p><i>Technical group 2 12</i></p> <p>Redrafting considered in light of EP objection, but wording proposed is in all three texts</p> <p><i>Technical group 17 12</i></p> <p>Revised suggestion above following comment in Council.</p>
483.		<p>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.</p>	<p><u>The investment firm shall be responsible for ensuring that clients using that service comply with the requirements of this Directive and the rules of the trading venue. The investment firm shall monitor the transactions in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse and that should be reported to the competent authority. The investment firm shall ensure that there is a binding written agreement between the firm and the client regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility under this Directive.</u></p>	<p>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.</p>	<p><i>Agreed silence procedure 20131126</i></p> <p><i>Trilogue 20130911: Commission to prepare drafting on possible controls for sponsored market access, taking account of Council text and ESMA work.</i></p> <p><i>Trilogue 20131009: technical group to prepare drafting based on COM non-paper with reinforced controls for sponsored access.</i></p> <p><i>Technical meeting 23 10</i></p> <p><u>The investment firm shall be responsible for ensuring that clients using that service comply with the requirements of this Directive and the rules of the trading venue. The investment firm shall monitor the transactions in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse and that should be reported to the competent authority. The investment firm shall ensure</u></p>



		COM	Council	EP	Compromise
					that there is a binding written agreement between the firm and the client regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility under this Directive.
484.			<u>An investment firm that provides direct electronic access to a trading venue shall notify this to the competent authorities of its Home Member State and of the trading venue at which the investment firm provides direct electronic access.</u>		<p>Agreed silence procedure 20131126</p> <p>Trilogue 20130911: Commission to prepare drafting on possible controls for sponsored market access, taking account of Council text and ESMA work.</p> <p>Trilogue 20131009: technical group to prepare drafting based on COM non-paper with reinforced controls for sponsored access.</p> <p>Technical meeting 23 10</p> <p><u>An investment firm that provides direct electronic access to a trading venue shall notify this to the competent authorities of its Home Member State and of the trading venue at which the investment firm provides direct electronic access.</u></p>
485.			<u>The competent authority of the Home Member State of the investment firm may require the investment firm to provide, on a regular or ad-hoc basis, a description of the systems and controls referred to in first subparagraph.</u>		<p>Agreed silence procedure 20131126</p> <p>Trilogue 20130911: Commission to prepare drafting on possible controls for sponsored market access, taking account of Council text and ESMA work.</p> <p>Trilogue 20131009: technical group to prepare drafting based on COM non-paper</p>



		COM	Council	EP	Compromise
					<p><i>with reinforced controls for sponsored access.</i></p> <p><i>Technical meeting 23 10</i></p> <p><u>The competent authority of the Home Member State of the investment firm may require the investment firm to provide, on a regular or ad-hoc basis, a description of the systems and controls referred to in first subparagraph. and evidence that these have been applied.</u></p>
486.			<p><u>The competent authority of the Home Member State of the investment firm shall, on the request of a competent authority of a trading venue that the investment firm provides direct electronic access and without undue delay, communicate the information referred to in the previous subparagraph that it receives from the investment firm.</u></p>		<p><i>Agreed silence procedure 20131126</i></p> <p><i>Trilogue 20130911: Commission to prepare drafting on possible controls for sponsored market access, taking account of Council text and ESMA work.</i></p> <p><i>Trilogue 20131009: technical group to prepare drafting based on COM non-paper with reinforced controls for sponsored access.</i></p> <p><i>Technical meeting 23 10</i></p> <p><u>The competent authority of the Home Member State of the investment firm shall, on the request of a competent authority of a trading venue that the investment firm provides direct electronic access and without undue delay, communicate the information referred to in the previous subparagraph that it receives from the investment firm.</u></p>
487.			<p><u>The investment firm shall arrange for records to be kept in relation to the matters above and shall ensure that</u></p>		<p><i>Agreed silence procedure 20131126</i></p> <p><i>Trilogue 20130911: Commission to prepare</i></p>





		COM	Council	EP	Compromise
			these records be sufficient to enable its competent authority to monitor compliance with the requirements of this Directive.		<p><i>drafting on possible controls for sponsored market access, taking account of Council text and ESMA work.</i></p> <p><i>Trilogue 20131009: technical group to prepare drafting based on COM non-paper with reinforced controls for sponsored access.</i></p> <p><i>Technical meeting 23 10</i></p> <p><u>The investment firm shall arrange for records to be kept in relation to the matters above and shall ensure that these records be sufficient to enable its competent authority to monitor compliance with the requirements of this Directive.</u></p>
488.	Art. 17 – para 5	5. An investment firm that acts as a general clearing member for other persons shall have in place effective systems and controls to ensure clearing services are only applied to persons who are suitable and meet clear criteria and that appropriate requirements are imposed on those persons to reduce risks to the firm and to the market. 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 that service.	<u>7. An investment firm that acts as a general clearing member for other persons shall have in place effective systems and controls to ensure clearing services are only applied to persons who are suitable and meet clear criteria and that appropriate requirements are imposed on those persons to reduce risks to the firm and to the market. 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 that service.</u>	5. An investment firm that acts as a general clearing member for other persons shall have in place effective systems and controls to ensure clearing services are only applied to persons who are suitable and meet clear criteria and that appropriate requirements are imposed on those persons to reduce risks to the firm and to the market. 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 that service.	<p><i>Agreed silence procedure 20131008</i></p> <p>5. An investment firm that acts as a general clearing member for other persons shall have in place effective systems and controls to ensure clearing services are only applied to persons who are suitable and meet clear criteria and that appropriate requirements are imposed on those persons to reduce risks to the firm and to the market. 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 that service.</p>
489.	Art. 17 – para	6. The Commission shall be empowered to adopt delegated acts in	<u>8. ESMA shall develop draft regulatory technical standards to</u>	6. The Commission shall be empowered to adopt delegated acts in	<p><i>Agreed silence procedure 20131219</i></p> <p><i>Technical group telecon 20131209</i></p>



		COM	Council	EP	Compromise
	6	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 investmentservices and/or activities and ancillary services or combinations thereof.	<u>specify the following:</u>	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.	<u>8. ESMA shall develop draft regulatory technical standards to specify the following:</u>
490.			<u>(a) detailed organisational requirements laid down in paragraphs 1 to 7 to be imposed on investment firms providing different investment services and/or activities and ancillary services or combinations thereof;</u>		<p><i>Agreed silence procedure 20131126</i></p> <p><i>Extended Technical group 02 10</i></p> <p>490 to 492 needed; add in element from EP row 920</p> <p>Note: all drafting to be reviewed once decision RTS / DA taken</p> <p><u>(a) detailed organisational requirements laid down in paragraphs 1 to 7 to be imposed on investment firms providing different investment services and/or activities and ancillary services or combinations thereof;</u></p> <p><i>Trilogue 20131009: technical group to prepare drafting based on COM non-paper with reinforced controls for sponsored access.</i></p> <p><i>Technical meeting 23 10</i></p> <p><u>(a) detailed organisational requirements laid down in paragraphs 1 to 7 to be imposed on investment firms providing different investment services and/or activities and ancillary services or combinations thereof;</u></p>



		COM	Council	EP	Compromise
					<p><i>The specifications in relation to the organisational requirements laid down in paragraph 4 shall set out specific requirements for direct market access and for sponsored access in such a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access.</i></p> <p><i>Technical group telecon 20131209</i></p> <p><b><u>(a) to further specify the details of organisational requirements laid down in paragraphs 1 to 7 to be imposed on investment firms providing different investment services and/or activities and ancillary services or combinations thereof;</u></b></p>
491.			<p><u>(b) the proportion of the trading venue's trading hours laid down in paragraph 3;</u></p>		<p><i>Agreed silence procedure 20131126</i></p> <p><b><u>[from EP row 920]</u></b></p> <p><i>Extended Technical group 02 10</i></p> <p><b><u>(b) the circumstances in which an investment firm would be obliged to enter into the market making agreement referred to in [row 478] and the content of such agreements, including the proportion of the trading venue's trading hours laid down in paragraph 3;</u></b></p>
492.			<p><u>(c) the situations constituting exceptional circumstances referred to in paragraph 3, including circumstances of extreme volatility,</u></p>		<p><i>Agreed silence procedure 20131126</i></p> <p><i>Extended Technical group 02 10</i></p> <p><b><u>(c) the situations constituting exceptional</u></b></p>



		COM	Council	EP	Compromise
			<u>political and macroeconomic issues, system and operational matters, and circumstances which contradict the investment firm's ability to maintain prudent risk management practices as laid down in Article 17(1).</u>		<u>circumstances referred to in paragraph 3, including circumstances of extreme volatility, political and macroeconomic issues, system and operational matters, and circumstances which contradict the investment firm's ability to maintain prudent risk management practices as laid down in Article 17(1)</u>
493.			<u>ESMA shall submit those draft regulatory technical standards to the Commission by [xxx].</u>		<i>Agreed silence procedure 20131219</i> <i>Technical group telecon 20131209</i> <i>Align to choice of instrument 489</i>  ESMA shall submit those draft regulatory technical standards to the Commission by <b>[12 months after the date of entry into force of this Directive]</b> .
494.			<u>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.</u>		<i>Agreed silence procedure 20131219</i> <i>Technical group telecon 20131209</i> <i>Align to choice of instrument 489</i>  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.
495.	Art. 18 – title	<i>Trading process and finalisation of transactions in an MTF and an OTF</i>	<i>Trading process and finalisation of transactions in an MTF and an OTF</i>	<i>Trading process and finalisation of transactions in an MTF and an OTF</i>	<i>Agreed silence procedure 20130912</i>  <i>Trading process and finalisation of transactions in an MTF and an OTF</i>
496.	Art. 18 – para	1. Member States shall require that investment firms or market operators	1. Member States shall require that investment firms or market operators	1. Member States shall require that investment firms or market operators	<i>Agreed silence procedure 20131219</i>



		COM	Council	EP	Compromise
	1	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.	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.	operating an MTF or an OTF, in addition to meeting the <i>organisational</i> 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.	<i>Agreed silence procedure 20130912</i> <i>Technical group 26 09</i> <i>Revised suggestion following objection in Council</i>  Rows 496, 511, 914, 977 to be aligned linguistically  1. Member States shall require that investment firms or market operators operating an MTF or an OTF, in addition to meeting the <i>organisational</i> 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.
497.	Art. 18 – para 2 – subpar a 1	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 can be traded under its systems.	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 can be traded under its systems.	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 can be traded under its systems.	<i>Agreed silence procedure 20130912</i>  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 can be traded under its systems.
498.	Art. 18 – para 2 – subpar a 2	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	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	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	<i>Agreed silence procedure 20130912</i>  Member States shall require that, where applicable, investment firms or market operators operating an MTF or an OTF



		COM	Council	EP	Compromise
		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.	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.	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.	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.
499.	Art. 18 – para 3	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.	3. Member States shall require that investment firms or market operators operating an MTF or an OTF establish, publish and maintain transparent <u>and non-discriminatory</u> rules, based on objective criteria, governing access to its facility.	3. Member States shall require that investment firms or market operators operating an MTF or an OTF establish, publish and maintain transparent <b>and non-discriminatory</b> rules, based on objective criteria, governing access to its facility.	<i>Agreed silence procedure 20131126</i>  3. Member States shall require that investment firms or market operators operating an MTF or an OTF establish, publish and maintain transparent <b>and non-discriminatory</b> rules, based on objective criteria, governing access to its facility.  <i>Technical group 22 10</i>  Revised suggestion following objection in Council on row 977  3. Member States shall require that investment firms or market operators operating an MTF or an OTF establish, publish and maintain <b>and implement</b> transparent <b>and non-discriminatory</b> rules, based on objective criteria, governing access to its facility.
500.	Art. 18 – para 3 a (new)		<u>3a. Member States shall require that investment firms or market operators operating an MTF or an OTF have arrangements to identify clearly and manage the potential adverse consequences for the operation of the MTF or OTF, or for the members or participants and users, of any conflict of interest between the interest of the</u>	<b>3a. Member States shall require investment firms or market operators operating an MTF or an OTF to have arrangements in place to identify clearly any conflict of interest between the interest of the MTF or OTF, its owners or its operator and the sound operation of the MTF or OTF, and to manage the</b>	<i>Agreed silence procedure 20130912</i>  [Subject to lawyer linguist review eg of use of "operator" and "participant/member/user" terminology. Substance identical. Note alignment to relevant parts of row 911]  <u>3a. Member States shall require that investment firms or market operators operating an MTF or an OTF have</u>



		COM	Council	EP	Compromise
			<u>MTF, the OTF, their owners or the investment firm or market operator operating the MTF or OTF and the sound functioning of the MTF or OTF.</u>	<i>potential adverse consequences for the operation of the MTF or OTF or its participants arising from any such conflicts of interest.</i>	<u>arrangements to identify clearly and manage the potential adverse consequences for the operation of the MTF or OTF, or for the members or participants and users, of any conflict of interest between the interest of the MTF, the OTF, their owners or the investment firm or market operator operating the MTF or OTF and the sound functioning of the MTF or OTF.</u>
501.			<u>3b. Member States shall require that investment firms or market operators operating an MTF or OTF to have in place all the necessary effective systems, procedures and arrangements to fully comply with all the conditions in Article 51.</u>	[See EP Art 19(4) for MTFs in row 518 and Art 20(4) in row 535 for OTFs:  4. Member States shall require a MTF to <b>comply with Articles 51 and 51a and to</b> have in place effective systems, procedures and arrangements to <b>do so</b> .  4. Member States shall require <b>OTFs to comply with Article 51 and 51a and to</b> have in place effective systems, procedures and arrangements to <b>do so</b> .]	<i>Agreed silence procedure 20131126</i>  <i>Technical group proposal</i>  T: references to Article 51a to be included or not once political decisions taken.  <i>Trilogue 20130911: agreed to include Article 51a</i>  3b. Member States shall require investment firms and market operators operating an MTF or OTF to comply with Articles 51 and 51a and to have in place all the necessary effective systems, procedures and arrangements to do so.
502.	Art. 18 – para 4	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	4. Member States shall require that investment firms or market operators operating an MTF or an OTF clearly inform its <u>members or participants</u> or 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	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	<i>Agreed silence procedure 20130912</i>  [Lawyer linguists to review terminology on members/users/participants. Otherwise identical.]  4. Member States shall require that investment firms or market operators operating an MTF or an OTF clearly inform its participants of their respective responsibilities for the settlement of the transactions executed in that facility.





		COM	Council	EP	Compromise
		settlement of the transactions concluded under the systems of the MTF or an OTF .	arrangements to facilitate the efficient settlement of the transactions concluded under the systems of <u>that</u> MTF or [...] OTF.	settlement of the transactions concluded under the systems of the MTF or an OTF.	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 that MTF or OTF.
503.	Art. 18 – para 4a (new)			<b>4a. Member States shall require that an MTF or OTF has at least three materially active members or users, each having the opportunity to interact with all the others in respect to price formation.</b>	<p><i>Agreed silence procedure 20131219</i></p> <p>[Note: market structure]</p> <p><i>Trilogue 20131121: package on market structure agreed</i></p> <p><i>Technical group 26 11</i></p> <p>Drafting revised because an MTF or OTF might not have three materially active members or users when it is authorised</p> <p><b>4a. Member States shall require that an MTF or OTF <u>which does not have at least three materially active members, participants or clients, each having the opportunity to interact with all the others in respect to price formation, reports regularly to the competent authority on how it satisfies the requirement of being a multilateral system.</u></b></p> <p><i>Technical group telecon 20131209</i></p> <p><i>Revised suggestion following comment by the Commission</i></p> <p><b>4a. Member States shall require that an MTF or OTF has at least three materially active members or users, each having the</b></p>



		COM	Council	EP	Compromise
					<i>opportunity to interact with all the others in respect to price formation.</i>
504.	Art. 18 – para 5	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.	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.	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.	<i>Agreed silence procedure 20130912</i>  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.
505.	Art. 18 – para 6	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.	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 <u>Article 71(1)</u> to suspend or remove a financial instrument from trading.	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.	<i>Agreed silence procedure 20131126</i>  <i>Technical group proposal</i>  [T: Article reference to be aligned to final numbering of Articles. Otherwise identical.]  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 [71(1) or 72(1)] to suspend or remove a financial instrument from trading.
506.	Art. 18 – para 8	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	<u>7.</u> 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 <u>to operate</u> an MTF <u>or</u> an OTF shall be	7. Member States shall require investment firms and market operators operating an MTF or an OTF to provide the competent authority <b>and ESMA</b> with a detailed description of the functioning of the MTF or OTF, <b>including any links to or participation by a regulated market, an MTF, an OTF or a</b>	<i>Agreed silence procedure 20131219</i>  [Note: market structure]  <i>Trilogue 20131121: package on market structure agreed</i>  <i>Technical group 26 11</i>  7. Member States shall require investment firms and market operators operating an



		COM	Council	EP	Compromise
		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.	notified to ESMA. ESMA shall establish a list of all MTFs and OTFs in the Union. The list shall contain [...] 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.	<b><i>systematic internaliser owned by the same investment firm or market operator, and a list of their members and/or users.</i></b> 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 <b><i>European</i></b> 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.	MTF or an OTF to provide the competent authority with a detailed description of the functioning of the MTF or OTF, <b><i>including, without prejudice to paragraphs 1, 1b and 1c of Article 20, any links to or participation by a regulated market, an MTF, an OTF or a systematic internaliser owned by the same investment firm or market operator, and a list of their members and/or users. Competent authorities shall make this information available to ESMA on request.</i></b> 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 <b><i>European</i></b> 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.
507.	Art. 18 – para 9 – subpara 1	9. ESMA shall develop draft implementing technical standards to determine the content and format of the description and notification referred to in paragraph 8.	8. ESMA shall develop draft implementing technical standards to determine the content and format of the description and notification referred to in <u>paragraph 7.</u>	8. ESMA shall develop draft implementing technical standards to determine the content and format of the description and notification referred to in paragraph 8.	<i>Agreed silence procedure 20130912</i> 8. ESMA shall develop draft implementing technical standards to determine the content and format of the description and notification referred to in <u>paragraph 7.</u>



		COM	Council	EP	Compromise
508.	Art. 18 – para 9 – subpar a 2	ESMA shall submit those draft implementing technical standards to the Commission by [31 December 2016].	ESMA shall submit those draft implementing technical standards to the Commission by [31 December 2016].	ESMA shall submit those draft implementing technical standards to the Commission by [...] *.	<i>Agreed silence procedure 20131126</i> <i>Technical group proposal</i> [Date to be inserted] ESMA shall submit those draft implementing technical standards to the Commission by [...] *.  * <b><i>OJ please insert date: 18 months after the date of entry into force of this Directive.</i></b>
509.	Art. 18 – para 9 – subpar a 3	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.	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.	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.	<i>Agreed silence procedure 20130912</i> 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.
510.	Art. 19 – title	<i>Specific requirements for MTFs</i>	<i>Specific requirements for MTFs</i>	<i>Specific requirements for MTFs</i>	<i>Agreed silence procedure 20130912</i> <i>Specific requirements for MTFs</i>
511.	Art. 19 – para 1	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 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 <b>and implement</b> non-discretionary rules for the execution of orders in the system.	<i>Agreed silence procedure 20130912</i> 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 <b>and implement</b> non-discretionary rules for the execution of orders in the system.

\* ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

\* ***OJ please insert date: 18 months after the date of entry into force of this Directive.***



		COM	Council	EP	Compromise
512.	Art. 19 – para 2	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).	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).	2. Member States shall require that the rules referred to in Article 18(4) governing access to an MTF comply with the conditions established in Article 55(3).	<i>Agreed silence procedure 20131126</i> [T: align reference to final numbering of Article 18. Substance identical] 2. Member States shall require that the rules referred to in Article 18 [(3) or (4)] governing access to an MTF comply with the conditions established in Article 55(3).
513.	Art. 19 – para 3	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.	[...]	3. Member States shall require that investment firms or market operators operating an MTF to have arrangements:	<i>Agreed silence procedure 20131219</i> <i>Trilogue 20131121: package on market structure agreed</i> <i>Technical group 26 11</i> 3. Member States shall require that investment firms or market operators operating an MTF to have arrangements:
514.	Art. 19 – para 3 – point a (new)			<i>(a) to be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks;</i>	<i>Agreed silence procedure 20131219</i> <i>Trilogue 20131121: package on market structure agreed</i> <i>Technical group 26 11</i> Linked to Article 50 (row 912) <i>(a) to be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks;</i>



		COM	Council	EP	Compromise
515.	Art. 19 – para 3 – point b (new)			<i>(b)</i> 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;	<p><i>Agreed silence procedure 20130912</i></p> <p>[Content included in row 500 and applied to OTFs as well as MTFs]</p> <p>[...]</p>
516.				<i>(c) to have effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems; and</i>	<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20131121: package on market structure agreed</i></p> <p><i>Technical group 26 11</i></p> <p>Linked to Article 50 (row 915)</p> <p><i>(c) to have effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems; and</i></p>
517.				<i>(d) to have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed.</i>	<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20131121: package on market structure agreed</i></p> <p><i>Technical group 26 11</i></p> <p>Linked to Article 50 (row 916)</p> <p><i>(d) to have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed.</i></p>





		COM	Council	EP	Compromise
518.	Art. 19 – para 4	4. Member States shall require a MTF to have in place effective systems, procedures and arrangements to comply with the conditions in Article 51.	[...] [See Council Art 18(3)b row 501]	4. Member States shall require a MTF to <b>comply with Articles 51 and 51a</b> and to have in place effective systems, procedures and arrangements to <b>do so</b> .	<i>Agreed silence procedure 20130912</i> [See proposal in row 501]
519.	Art. 19 – para 5	5. Member States shall ensure that Articles 24, 25, 27 and 28 are not applicable to the transactions concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF. However, the members of or participants in the MTF shall comply with the obligations provided for in Articles 24, 25, 27 and 28 with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an MTF.	5. Member States shall ensure that Articles 24, 25, 27 and 28 are not applicable to the transactions concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF. However, the members of or participants in the MTF shall comply with the obligations provided for in Articles 24, 25, 27 and 28 with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an MTF.	5. Member States shall ensure that Articles 24, 25, 27 and 28 are not applicable to the transactions concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF. However, the members of or participants in the MTF shall comply with the obligations provided for in Articles 24, 25, 27 and 28 with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an MTF.	<i>Agreed silence procedure 20130912</i> 5. Member States shall ensure that Articles 24, 25, 27 and 28 are not applicable to the transactions concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF. However, the members of or participants in the MTF shall comply with the obligations provided for in Articles 24, 25, 27 and 28 with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an MTF.
520.			<u>6. Member States shall not allow investment firms or market operators operating an MTF to execute client orders against proprietary capital, or to engage in matched principal trading.</u>		<i>Agreed silence procedure 20131219</i> <i>Trilogue 20131121: package on market structure agreed</i> <i>Technical group 26 11</i> <u>6. Member States shall not allow investment firms or market operators operating an MTF to execute client orders against proprietary capital, or to engage in matched principal trading.</u>
521.	Art. 20	<i>Specific requirements for OTFs</i>	<i>Specific requirements for OTFs</i>	<i>Specific requirements for OTFs</i>	<i>Agreed silence procedure 20130912</i>





		COM	Council	EP	Compromise
	– title				<i>Specific requirements for OTFs</i>
522.	Art. 20 – para 1	1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF. The investment firm shall not act as a systematic internaliser in an OTF operated by itself. [Last part moved to row 527]	1. Member States shall require that <u>an investment firm or a market operator</u> operating an <u>OTF</u> establishes arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF. [...]	1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF <b>or from any entity that is part of the same corporate group and/or legal person as the investment firm and/or market operator.</b>	<i>Agreed silence procedure 20131219</i>  <i>Trilogue 20131121: package on market structure agreed</i>  <i>Technical group 26 11</i>  Linked to rows 527 and 528.  1. Member States shall require that <u>an investment firm or a market operator</u> operating an <u>OTF</u> establishes arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF <b>or from any entity that is part of the same corporate group and/or legal person as the investment firm and/or market operator.</b>
523.			<u>1a. Member States shall only permit an investment firm or market operator operating an OTF to engage in matched principal trading in bonds, structured finance products, emission allowances and certain derivatives, and only in cases where the client has been informed of the process.</u>		<i>Agreed silence procedure 20131219</i>  <i>Trilogue 20131121: package on market structure agreed</i>  <i>Technical group 26 11</i>  <u>1a. Member States shall only permit an investment firm or market operator operating an OTF to engage in matched principal trading in bonds, structured finance products, emission allowances and certain derivatives, and only in cases where the client has <b>consented to</b> the process.</u>
524.			<u>An investment firm or market operator operating the OTF shall not</u>		<i>Agreed silence procedure 20131219</i>



		COM	Council	EP	Compromise
			<u>use matched principal trading to execute client orders in an OTF in derivatives pertaining to a class of derivatives that has been declared subject to the clearing obligation in accordance with Article 5 of Regulation (EU) No 648/2012.</u>		<i>Trilogue 20131121: package on market structure agreed</i>  <i>Technical group 26 11</i>  <u>An investment firm or market operator operating the OTF shall not use matched principal trading to execute client orders in an OTF in derivatives pertaining to a class of derivatives that has been declared subject to the clearing obligation in accordance with Article 5 of Regulation (EU) No 648/2012.</u>
525.			<u>An investment firm or market operator operating an OTF shall establish arrangements ensuring adherence to the definition of ‘matched principal’ trading in [MiFIR].</u>		<i>Agreed silence procedure 20131219</i>  <i>Trilogue 20131121: package on market structure agreed</i>  <i>Technical group 26 11</i>  <u>An investment firm or market operator operating an OTF shall establish arrangements ensuring adherence to the definition of ‘matched principal’ trading in [MiFIR].</u>
526.			<u>1aa. Member States shall permit an investment firm or market operator operating an OTF to engage in dealing on own account other than matched principal trading only with regard to sovereign debt instruments for which there is not a liquid market</u>		<i>Agreed silence procedure 20131219</i>  <i>Trilogue 20131121: package on market structure agreed</i>  <i>Technical group 26 11</i>  To be considered how to clarify when there is not a liquid market. Consider cross-reference to relevant row in MiFIR  <u>1aa. Member States shall permit an investment firm or market operator</u>



		COM	Council	EP	Compromise
					<u>operating an OTF to engage in dealing on own account other than matched principal trading only with regard to sovereign debt instruments for which there is not a liquid market.</u>
527.	Art. 20 – para 1 – subpar a 1a (new)	An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.	<u>1b. Member States shall not allow the operation of an OTF and systematic internalization to take place within the same legal entity.</u>	<b><i>The investment firm or market operator or an entity that is part of the same corporate group and/or legal person as the investment firm and/or market operator shall not act as a systematic internaliser in an OTF operated by itself and an OTF shall not connect with a systematic internaliser in a way which enables orders in an OTF and orders or quotes in a systematic internaliser to interact.</i></b> An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.	<i>Agreed silence procedure 20131219</i>  <i>Trilogue 20131121: package on market structure agreed</i>  <i>Technical group 26 11</i>  <u>1b. Member States shall not allow the operation of an OTF and systematic internalization to take place within the same legal entity. An OTF shall not connect with a systematic internaliser in a way which enables orders in an OTF and orders or quotes in a systematic internaliser to interact.</u> An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.
528.			<u>1c. Member States shall not prevent an investment firms or market operator operating an OTF from engaging another investment firm to carry out market making on an OTF on an independent basis.</u>  <u>For the purposes of this Article, an investment firm shall not be deemed to carry out market making on an OTF on an independent basis if it has close links with the investment firm or market operator operating the OTF.</u>		<i>Agreed silence procedure 20131219</i>  <i>Trilogue 20131121: package on market structure agreed</i>  <i>Technical group 26 11</i>  <u>1c. Member States shall not prevent an investment firms or market operator operating an OTF from engaging another investment firm to carry out market making on an OTF on an independent basis.</u>



		COM	Council	EP	Compromise
					For the purposes of this Article, an investment firm shall not be deemed to carry out market making on an OTF on an independent basis if it has close links with the investment firm or market operator operating the OTF.
529.	Art. 20 – para 1a (new)			<b>1a. Member States shall require that where a bond, structured finance product or emission allowance is admitted to trading on a regulated market or traded on an MTF, investment firms and market operators operating an OTF only allow orders which are large in scale to be executed on the OTF.</b>	Agreed silence procedure 20131219 Trilogue 20131121: package on market structure agreed Technical group 26 11 [...]
530.	Art. 20 – para 1b (new)		<p><u>2. Member States shall require that the execution of orders on an OTF is carried out on a discretionary basis.</u></p> <p><u>An investment firm or market operator operating an OTF can only exercise discretion in the following circumstances:</u></p> <p><u>(a) when deciding to place or retract an order on the OTF they operate;</u></p> <p><u>(b) when deciding not to match a specific client order with other orders available in the systems at a given time, provided it is in compliance with specific instructions received from a client and with its obligations in accordance with Article 27.</u></p>	<p><b>1b. Investment firms or market operators operating an OTF shall have discretion in operating the OTF only in relation to:</b></p> <p><b>(a) how a transaction is to be executed; and</b></p> <p><b>(b) how clients interact.</b></p>	Agreed silence procedure 20131219 T: description of OTF's discretion Technical group 05 09 Further consideration to be given to alternative drafting to align EP and Council position Technical meeting 23 10  <u>2. Member States shall require that the execution of orders on an OTF is carried out on a discretionary basis.</u>  <u>An investment firm or market operator operating an OTF can only exercise discretion in the following circumstances:</u>



		COM	Council	EP	Compromise
			<p><u>For the system that crosses clients' orders the operator may decide if, when and how much of two or more orders it wants to match within the system. In accordance with paragraph 1, 1a, 1b and 1c of this article and without prejudice to paragraph 1aa of this article, for a system that arranges transactions in non-equities, the firm may facilitate negotiation between clients as to bring together two or more potentially compatible trading interest in a transaction.</u></p> <p><u>This obligation shall be without prejudice to the provisions of Articles 18 and 27.</u></p>		<p><u>(a) when deciding to place or retract an order on the OTF they operate;</u></p> <p><u>(b) when deciding not to match a specific client order with other orders available in the systems at a given time, provided it is in compliance with specific instructions received from a client and with its obligations in accordance with Article 27.</u></p> <p><u>For the system that crosses clients' orders the operator may decide if, when and how much of two or more orders it wants to match within the system. In accordance with paragraph 1, 1a, 1b and 1c of this article and without prejudice to paragraph 1aa of this article, for a system that arranges transactions in non-equities, the firm may facilitate negotiation between clients as to bring together two or more potentially compatible trading interest in a transaction.</u></p> <p><u>This obligation shall be without prejudice to the provisions of Articles 18 and 27.</u></p>
531.	Art. 20 – para 2	2. A request for authorisation as an OTF shall include a detailed explanation why the system does not correspond to and cannot operate as either a regulated market, MTF, or systematic internaliser.	[...]	2. A request for authorisation as an OTF shall include a detailed explanation why the system does not correspond to and cannot operate as a // regulated market, MTF, or systematic internaliser. <b><i>Once authorised, an operator of an OTF shall report annually to the competent authority providing an updated explanation.</i></b>	<p><i>Agreed silence procedure 20131219</i></p> <p><i>Trilogue 20131121: package on market structure agreed</i></p> <p><i>Technical group 26 11</i></p> <p>Covered in row 533</p> <p>[...]</p>



		COM	Council	EP	Compromise
532.	Art. 20 – para 2a (new)			<b>2a. Member States shall require investment firms and market operators operating an OTF take appropriate steps to identify and manage any conflict of interest arising in connection with the oversight and operation of the OTF which could adversely affect the members or participants of the OTF.</b>	<p>Agreed silence procedure 20131219</p> <p>Trilogue 20131121: package on market structure agreed</p> <p>Technical group 26 11</p> <p>Covered in row 500</p> <p>[...]</p>
533.			<p>3. The competent authority may require, either when an investment firm or market operator requests to be authorised for the operation of an OTF or on ad-hoc basis, detailed description as to how discretion will be exercised, in particular when an order to the OTF may be retracted and when and how two or more client orders will be matched within the OTF. In addition, the investment firm or market operator of an OTF shall provide the competent authority with information explaining its use of matched principal trading.</p>		<p>Agreed silence procedure 20131219</p> <p>Trilogue 20131121: package on market structure agreed</p> <p>Technical group 26 11</p> <p>3. The competent authority may require, either when an investment firm or market operator requests to be authorised for the operation of an OTF or on ad-hoc basis, <b>a detailed explanation why the system does not correspond to and cannot operate as a // regulated market, MTF, or systematic internaliser</b>, a detailed description as to how discretion will be exercised, in particular when an order to the OTF may be retracted and when and how two or more client orders will be matched within the OTF. In addition, the investment firm or market operator of an OTF shall provide the competent authority with information explaining its use of matched principal trading. The competent authority shall</p>



		COM	Council	EP	Compromise
					<u>monitor an investment firm's or market operator's engagement in matched principle trading to ensure that it complies with the definition in point (7aa) of Article 2 of Regulation EU No. [MiFIR] and to ensure that its engagement in matched principle trading does not give rise to conflicts of interest between the investment firm or market operator and its clients.</u>
534.	Art. 20 – para 3	3. Member States shall ensure that Articles 24, 25, 27 and 28 are applied to the transactions concluded on an OTF.	<u>4.</u> Member States shall ensure that Articles 24, 25, 27 and 28 are applied to the transactions concluded on an OTF.	3. Member States shall ensure that Articles 24, 25, 27 and 28 are applied to the transactions concluded on an OTF.	<i>Agreed silence procedure 20130912</i> 3. Member States shall ensure that Articles 24, 25, 27 and 28 are applied to the transactions concluded on an OTF.
535.	Art. 20 – para 4	4. Member States shall require that, where OTFs allow for or enable algorithmic trading to take place through their systems, they have in place effective systems, procedures and arrangements to comply with the conditions of Article 51.	[...] [See Council text in row 501]	4. Member States shall require <b>OTFs to comply with Article 51 and 51a and to</b> have in place effective systems, procedures and arrangements to <b>do so</b> .	<i>Agreed silence procedure 20130912</i> [See proposal in row 501]