Markets in Financial Instruments Directive: Review

Building a fair, stable and competitive Single market in the EU

London Stock Exchange Group - Briefing, 7 March 2012

Executive Summary

1. COMPETITION IN TRADING AND CLEARING (MiFIR Articles 28-30)

MiFIR is critical to developing competition in exchange-traded derivatives by allowing non-discriminatory access to indices, market infrastructure and the netting of equivalent contracts. This is important because:

- **The benefits of competition are significant**: The proposals will deliver choice, lower costs, diversify risk across venues (**instead of concentrating risk into "too-big-to-fail"** trading venues and CCPs);
- It is **consistent** with the agreed approach in **EMIR**[1] **and the Commission's** philosophy for **markets.**[2]

However, we recognise that delivering competition **should not be to the detriment and soundness** of market infrastructures. We suggest amendments to clarify this **(amendments 17 and 18 in Appendix 1).**

2. SMALL AND MEDIUM-SIZED ENTERPRISES (MiFID Article 35)

- The Commission's proposed framework for SME growth markets will foster further development of Europe's growing and innovative companies. **It deserves Parliament's and Council's full support.**
- The **quantitative criteria should not be lowered** – this would **exclude some SMEs**, leaving them with no equity market route for funding. It could also create a market that is **restrictive** or leads to companies **controlling their size** to ensure that they "**fit**" the criteria to retain access to equity capital.

3. TRANSPARENCY (MiFID article 67, MiFIR Title II)

- Transparency is key for investors and users, who want to see **reliable, high quality post-trade data** from the market place. We are convinced that an effective Consolidated Tape will develop naturally as a result of the **Commission's proposals.**
- We support the extension of transparency to **other asset classes and all venues**. Requirements must be appropriately **calibrated per asset class** as necessary.
- We suggest amendments to ensure that **appropriate criteria** are considered in calibration of transparency, waivers and deferred publication **(amendments 12 - 16).**

4. TRADING ALGORITHMS AND TECHNOLOGY (MiFID articles 17-20, 51, MiFIR Title II)

- Appropriate systems and controls will minimise the risk of a European "flash-crash" and should support markets in providing the liquidity that reduces the cost of capital to the real economy.
- **Circuit breakers** are **only one of the controls** used by venues to maintain orderly markets when there is volatility, news or other uncertainty – in general, they are **successful in maintaining orderly markets**.
- System imposed order-to-trade ratio caps would reduce liquidity and widen spreads. Tariff-based measures are more appropriate to manage message flow.
- The **use of algorithms does not of itself constitute market making**, and Article 17(3) should reflect this, with a focus on **appropriate requirements at the firm-level** to maintain the liquidity that lowers the cost of capital in the secondary market. We suggest **amendment 5** for this purpose.

5. THIRD COUNTRY ISSUES (MiFID Articles 41-46, MiFIR Articles 36-39)

- Currently, EU investors and companies are provided with vital services by third country firms. A restrictive approach to the regulation of these services will **damage the competitiveness** of the Single Market.
- Parliament and Council must be careful to maintain this access, on a reasonable equivalence basis.
- The Commission's search for reciprocity should be resisted. This is unrealistic and will cut off Europe's consumers and companies from services it needs to contribute to and maintain economic growth.

[1] EMIR underlines the importance of open access between trading venues and CCPs, and licensing of IPRs in recitals (20a),(20b)

[2] Vice President Almunia 01/02/2012: http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/52: *"the opening of markets* (in equities) *and an increase in competition has improved liquidity* (and has led to) *a drastic decrease in the cost of trading"; "Due to the "closed vertical silo … there are major barriers to entry in these* (exchange traded derivatives) *markets"*

INTRODUCTION

The London Stock Exchange Group (LSEG) supports the European Commission's objective in its MiFID review of seeking to strengthen the safety and transparency of, and ensure a more integrated, efficient and competitive, EU financial market that serves society and the real economy. We support many of the changes proposed by the Commission. However, we also highlight some areas where we believe improvements should be made to the proposed Directive and Regulation.

LSEG has significant experience of operating neutral, well regulated, fair and efficient markets. The Group operates equity, fixed income and derivatives markets in the UK and Italy. Its equity markets include Turquoise, the pan-European MTF, while non-equity markets include MTS (a pan-European fixed income market), MOT (an Italian retail fixed income market), ORB (electronic platform for private investors trading fixed income securities), IDEM (specialising in Italian equity derivatives), IDEX (offering Italian energy contracts) and Turquoise Derivatives (UK and Russian derivatives). The Group provides post trade services, including Cassa di Compensazione e Garanzia (CC&G), a clearing house and central counterparty and Monte Titoli, the Italian Central Securities Depositary. The Group is also home to FTSE International, a world leading index provider, which creates and manages over 200,000 equity, bond and alternative asset class indices.

This document is structured as follows:

- In Part A, we describe in more detail our key areas of support for the Commission proposal and areas for improvement where we suggest amendments;
- In Part B, we outline other technical amendments we suggest to the Commission text;
- In Appendix 1, we provide the full text of our suggested amendments from Parts A and B, together with summary justifications.

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PART A – LSEG KEY POINTS

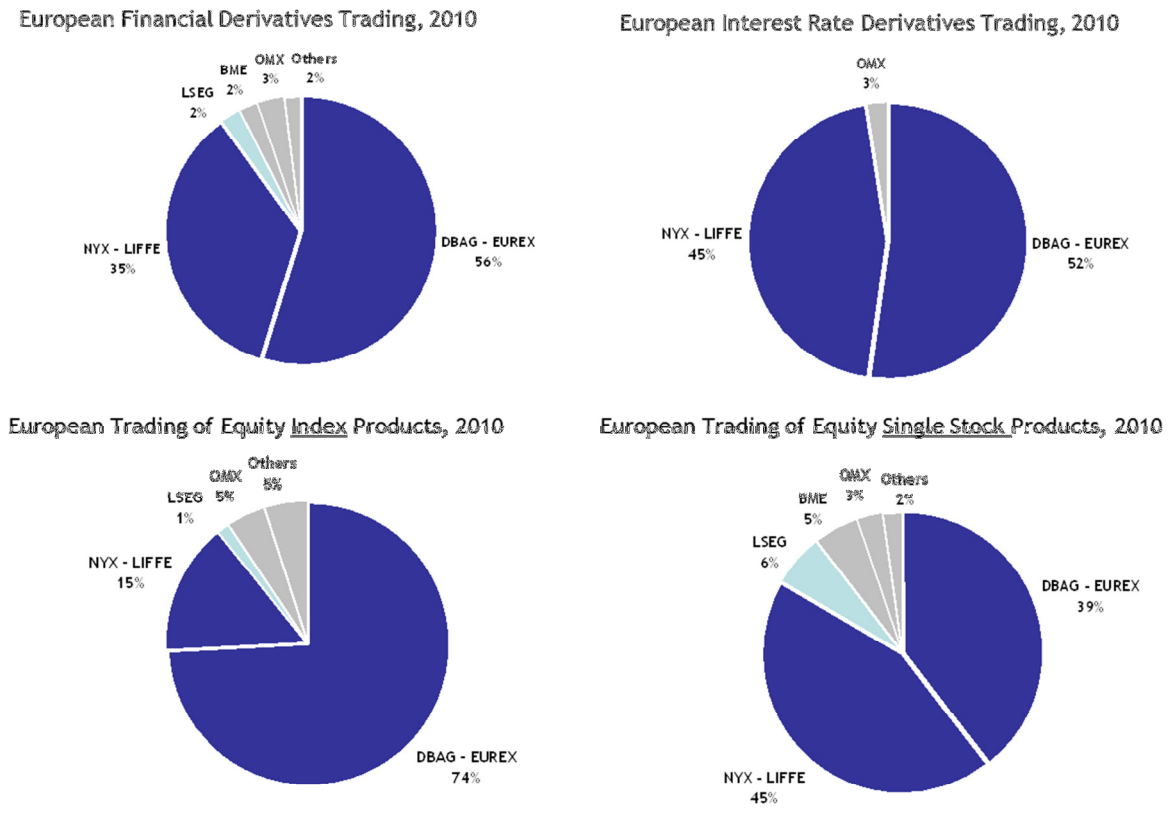
COMPETITION IN TRADING AND CLEARING (MiFIR articles 28-30)

1. MiFIR is critical to developing competition in exchange-traded derivatives; it will allow non-discriminatory access to indices, trade feeds and netting of equivalent contracts. The Commission's proposals for open access will deliver choice, lower costs, diversify risk across venues and support the integration of the Single Market.

2. These proposals are important for the Single Market in exchange traded derivatives. **Derivatives are vital for the European economy** as they help companies manage risk, make their cash flows less volatile and enable them to use capital more productively.

3. Trading and clearing of European exchange-traded derivatives is dominated by the two biggest players, Deutsche Börse and NYSE Euronext. Combined, these two entities carry out:
   - **90 per cent of trading in European equity index products** (100 per cent of on-exchange trading in Euro Stoxx 50 contracts on EUREX and 100 per cent of on-exchange trading in FTSE index products on LIFFE)
   - **82 per cent of trading in European single stock products**
   - **97 per cent of trading in European interest rate products**

Figure 1: NYSE Euronext and Deutsche Börse dominate the trading of European exchange-traded derivatives



Source: World Federation of Exchanges and LSEG statistics.
Share of trading data is based on the number of contracts traded on European exchanges in the full year 2010.

4. **As European Commissioner Almunia stated recently: "There are major barriers to entry** *in these markets…due to the 'closed vertical silo"*[3] in which clearing is not open to competing platforms, and due to the refusal to license indices. This has denied investors fundamental improvement in trading and clearing systems and cost savings through a reduction in fees or margin offsets. European venues continue to face these anti-competitive practices, both within the EU and in other jurisdictions.

Table 1: For example, **Turquoise Derivatives** has repeatedly faced competitive barriers that have frustrated its attempt to become an alternative trading venue for pan-European derivatives:

- June 2010: Refusal by Stoxx to provide license for EuroStoxx 50 index (which accounts for 99.9 per cent of all pan-European equity derivatives trading)
- April 2011: Refusal by NYSE LIFFE to allow fungibility and margin offset for derivatives based on the FTSE 100
- June 2011: Launch of FTSE 100 Futures, with identical product specifications to the contract on LIFFE, at a **66 per cent price discount**[4]**.** Current market share <0.1 per cent

5. **Index licensing is important to bring competition in exchange-traded derivatives:** Trading participants hedge their positions in underlying securities with a derivatives contract that covers those underlying securities. For this reason, derivative contracts are designed with specific underlying securities in mind. Any deviation from these underlying securities would not meet customers' hedging needs. European fund managers who are trading pan-European equities hedge their risk using Euro Stoxx 50-linked contracts. An alternative index or contract would not be attractive because whilst the structure of two indices may be identical, there will be micro-level differences in weightings and other index features, which will still introduce a risk of variation. In the context of pan-European equity option and futures derivatives the Euro Stoxx accounts for over 99% of contract volumes traded.[5]

6. **We support the provisions of non-discriminatory access to CCPs and trade feeds within MiFIR.** In particular, we welcome the clarification that non-discriminatory access to a CCP means that **identical instruments are treated as fungible for the purposes of netting** and also designed to include the provision of **margin offsetting** for related instruments, if a CCP provides this. We also welcome the intention to require owners of IPRs in any index or benchmark to grant a non-exclusive licence on commercial terms to any trading venue or CCP that wishes to trade/clear financial instruments based on that index/benchmark.

7. **The benefits of the Commission proposal are significant:** as noted by Commission Vice President Almunia, there is ample evidence that *"the opening of markets and an increase in competition has improved liquidity* (and has led to) *a drastic decrease in the cost of trading",*[6] as MiFID has shown for equities. In the equity exchange-traded derivatives space itself, we estimate that investors can make very significant cost savings of up to **$370 million** due to a reduction in trading and clearing fees if competition is opened up (see table 2 below). Choice will foster innovation in products, pricing and trading, allowing companies to hedge their business risks in a cost-efficient manner.

[3] http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/52
[4] FTSE 100 Future on LIFFE = 28p, on Turquoise = 9.5p, viz. 67 per cent reduction in fees
[5] Source: Eurex, NYSE Liffe. Includes Bclear volumes. Data for 2009
[6] See footnote 3

Table 2: Estimate of cost savings to investors in equity exchange traded derivatives due to reduction in trading and clearing fees - $370 million per year

- **Total trading and clearing fees in European equity exchange-traded derivatives in 2010:** $740m (Eurex Index $499m, Eurex Single name $58m; Liffe Index $101m, Single name $79m. Source Annual reports)
- **Potential opportunity for fee reduction:** 50 per cent
- Justification: The fee for a FTSE 100 Future on Turquoise (7.5p on 50%:50% maker/taker + 2p clearing = 9.5p) is at a 67 per cent discount to the equivalent contract on LIFFE (25p + 3p clearing = 28p). Reduction in cash equity trading and clearing fees in Europe from 2007-10 - 80 per cent. Therefore, there is the potential for investor to make very significant savings of up to 50 per cent x $740m = $370m p.a from a reduction of fees due to competition

8. The existence of competition and subsequent fragmentation in the US derivatives market has encouraged innovation and driven product and technological developments. This is considered a major factor in the growth of the US options market, see figure 2 below. Unlike in the U.S., Europe's derivative exchanges have experienced little significant competition for competing contracts. In 2010, Eurex and Liffe had a combined share of 90 per cent of all index derivatives contracts traded on exchange in Europe by notional turnover, and approximately 82 per cent of single name equity derivatives. Accordingly, Europe has not seen the diversity of market model, pricing structures and technology enhancements that have driven market growth in the US.

9. In the U.S., single stock options market competition has existed for a number of years with eight different venues currently offering trading with a single clearing house for all contracts. The volumes in this market have far exceeded Europe, as shown in figure 3.

Figure 2: Growth in US equity options

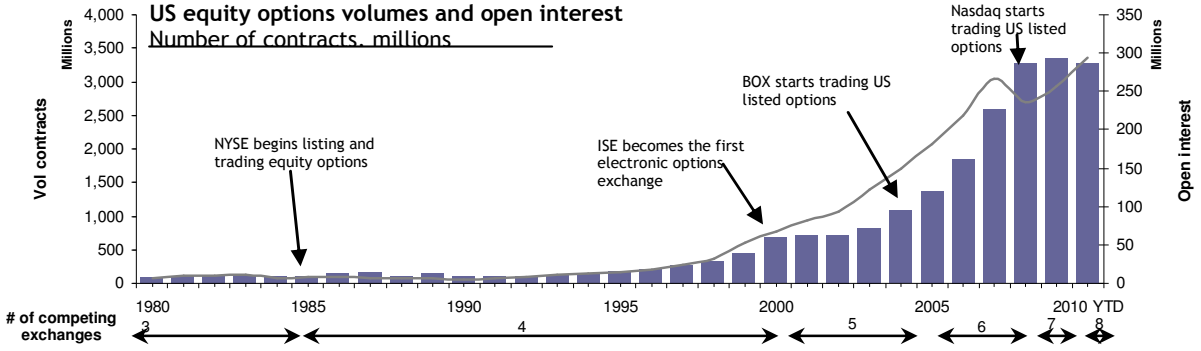
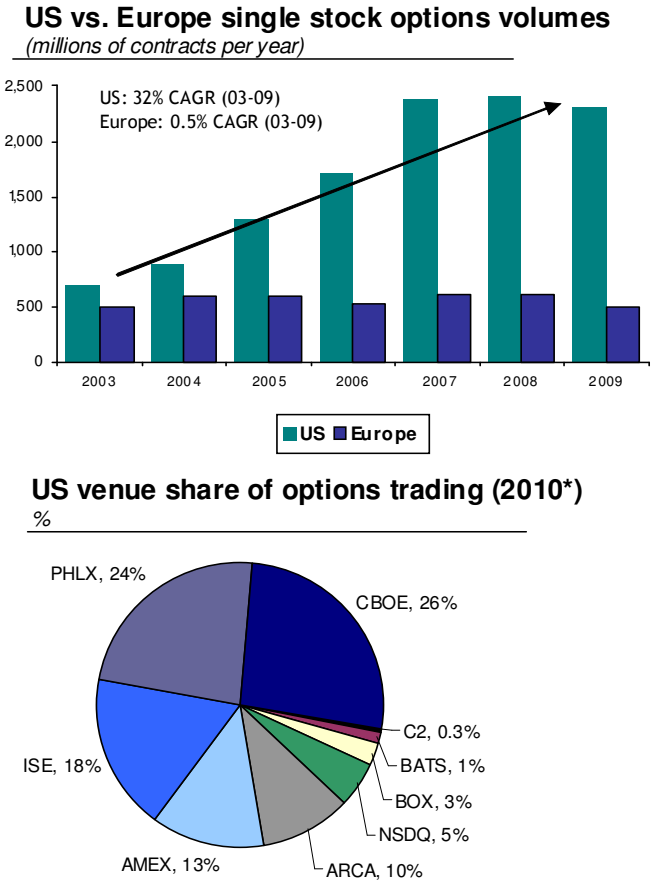


Figure 3: Competition has stimulated growth and liquidity in US markets for single stock options. Europe has lagged behind.



10. **Current restrictions on the ability to trade and clear derivatives contracts will concentrate risk into "too-big-to-fail" trading venues and CCPs. On the other hand, the Commission's proposal will diversify risk and further develop the Single Market:** the market will be safer with a number of sound, well-managed and competitive CCPs, who have been granted access on the basis of relevant **user demand and safety criteria.** This has huge potential implications on the liability of tax payers and central banks, in the event of default or insolvency of that venue or CCP.

11. **The proposal is consistent with the agreed approach in EMIR.** EMIR recognises the importance of open access between trading venues and CCPs, and licensing of IPRs in recitals (20a) and (20b). It is the objective of MiFID/R to further integrate the single market and bring competition to asset classes other than equities. These proposals help to achieve this purpose.

Suggested areas for improvement

12. The promotion and development of competition should not be detrimental to the safety and soundness of market infrastructures. It is inappropriate for CCPs to compete on risk management functions as this would compromise the safe and effective delivery of services to customers. This is enshrined in EMIR and needs to be reflected in any provisions in MIFIR concerned with access between CCPs and trading venues. Access

to trade feeds (Article 29) should only be assured where demand and safety criteria, to be developed by ESMA, are met. **Our amendment 17 relates to this point.**

13. In addition, Article 30 should be clearer as to its jurisdictional reach. **We assume that this will apply to EU CCPs**, trading venues and other related entities only. We propose revised wording for Article 30(2) that seeks to clarify points on jurisdiction and retrospective application and some potentially confusing language caused by the double negative. **See our suggested amendment 18.**

SMALL AND MEDIUM SIZED ENTERPRISES (MiFID Article 35)

14. The Commission's proposals for SME Growth Markets will help foster further development of Europe's growing and innovative companies. **SMEs are at the heart of the European economy, and growth markets are key to supporting innovation, job creation** and ensuring that venture capitalists and early-stage investors have **a venue to trade out of their investments**.

15. The Commission's proposed framework and quantitative criteria for the creation of SME Growth Markets will **raise the visibility and profile of EU SMEs** and further develop a capital-raising environment for Europe's entrepreneurs and growth companies. **It deserves the full support of Parliament and Member States.**

16. For this reason, the Commission's proposals for the **quantitative criteria** for an SME company for the purposes of the MiFID, which means a company with an average market capitalisation of less than €100 million, **should not be changed**. This definition is in alignment with the definition of a SME company in the Prospectus Directive (Art 2(1)(t)) and we welcome this consistent approach across EU directives. Furthermore, **a lower threshold would result in the exclusion of a significant number of SMEs from entry to equity markets**, which would leave them isolated and cut off from an important means of funding. It could also create a restrictive market or one that has companies controlling their size to ensure that they "fit" the Growth Market criteria in order to retain access to equity capital.

17. The Commission's proposals are in line with its **SME Action Plan to enhance access to finance**. They will allow exchanges to continue to **facilitate access to information on listed and quoted SMEs** and promote awareness of the advantages of their admission to growth markets across Europe.

18. However, these proposals are only one step in addressing the issue of granting SMEs better access to the capital market. Additional measures are needed, such as appropriately categorising business angel investors to lower their costs of investment, identifying opportunities to create SME dedicated funds (e.g. Venture Capital Regulation) and allowing more flexibility in the area of investment research for issuers on SME markets, which will reduce information asymmetries associated with such companies. These measures will help to increase investor access to SMEs and therefore improve investment flow into these companies. They would reduce the regulatory barriers to investment and provide a framework around which appropriate fiscal incentives can be developed by individual Member States.

CONSOLIDATED TAPE (MiFID Article 67)

19. Transparency is key for investors and users in a Pan-European market place. Investors want to see **reliable, high quality post-trade data from the European market place**. We believe this will develop as a result of the Commission's proposals.

20. We fully support the proposals to enhance data quality, granularity and consistency of post trade data. This should build on the work undertaken by the CESR Technical Working Group and the Market Model Typology (MMT) developed through the collaborative efforts of exchanges, MTFs, market data vendors and trade reporting venues.

21. We hope that ESMA will support the CESR Working Group's MMT proposal. This should lead to a definitive, detailed and comprehensive set of rules that prescribe all trade types, flags, formats, standards and parameters that will effectively and comprehensively define the data to be reported and consolidated. This will allow market participants and investors to better analyse and understand trading activity and will go a long way towards resolving confusion surrounding the nature of OTC equity trading.

22. We also support the establishment of the Consolidated Tape Provider (CTP) regime and the possibility for multiple CTPs to exist. Appropriately regulated consolidators can provide as authoritative a tape as a single provider, but in a more efficient and market focused way.

23. The introduction of a consolidated post-trade tape for non-equities needs to take into account the diversity and complexity of these products – it should not simply be a wholesale extension of the data regime designed for equities and should reflect any measures and conditions (e.g. omission of volume) adopted as part of the authorisation of deferred publication of these instruments (Article 10 MiFIR). Similarly, while we agree that post trade equity (and equity-like) data should be made available free of charge, after a delay of 15 minutes, we do not believe that this should automatically be extended to non-equity markets, due to the nature of the asset classes, the way in which the markets operate, the differences in data distribution and the charging models used. These characteristics must be taken into account in establishing the criteria for non-equity products. **Our suggested amendment 11 relates to these issues.**

PRE-TRADE TRANSPARENCY (MiFIR Articles 3,4,7,8)

24. We support the move to extend pre-trade transparency to share-like instruments. We believe the equity regime is appropriate for ETFs and DRs, although there should be appropriate calibration to account for the different profile and liquidity of other equity-like instruments. In addition, we believe that the current per trade transparency waivers (price reference, large in scale, negotiated trade and order management facility) are appropriate and should be preserved and considered the minimum waivers for ESMA to consider. **Our suggested amendment 12 reflects this approach**.

25. Non-equity instruments have characteristics which are fundamentally different from equities – for example, there is no equity equivalent for interest rate (bonds), durations (fixed income) and underlyings (derivatives). Consequently, their transparency requirements need to be calibrated appropriately to reflect the type of asset, their liquidity and market model. In addition, the differences between, and the impact of transparency on, retail and wholesale markets should be specifically addressed as part of the criteria used to determine pre-trade transparency requirements and any

associated waivers. **Our amendment 14 relates to this**. We believe that the design of such a regime should take account of the CESR Technical Advice to the Commission in July 2010.

26. For each product, the transparency regime should be consistent and applied across all types of trading venue (RM, MTF, OTF) and across different trading methods (order driven/quote driven).

POST-TRADE TRANSPARENCY (MiFIR Articles 5,6,9,10,12)

27. We support the extension of post-trade transparency requirements to equity-like and non-equity instruments and agree that a post-trade transparency regime based on type of instrument, transaction sizes and thresholds (as envisaged by the CESR Technical Advice of 2010), will provide the required simplicity and predictability.

28. We support measures to offer separate pre- and post-trade data services to increase choice and flexibility to, and reduce costs for, end users.

29. We agree that post-trade equity data should be made available free of charge after a delay of 15 minutes and that this could also be applied to equity-like instruments. However, we do not believe that this should automatically be extended to non-equity markets, due to the nature of the asset classes, the way in which the markets operate, the differences in data distribution and the charging models used. These must be taken into account in establishing the criteria for non-equity products. **Our suggested amendment 15 relates to this.**

30. In markets where firms commit capital to support their clients' trading needs, we consider the deferred publication regime necessary to ensure firms have adequate time to unwind certain types of position. Any review of the criteria for the deferred publication of trades must, therefore, take into account the risks that firms take on when executing very large deals and ensure that adequate time is permitted to unwind such risks.

31. This is particularly important for SME markets. Market makers are important to the liquidity and efficient trading of less liquid stocks. Moves to restrict a market participant's ability to effectively manage their risk in committing capital would have a significant impact on the liquidity of these markets. **Our suggested amendment 13 relates to this.**

32. The text on what constitutes a "reasonable commercial basis" for data made available by RMs, MTFs and other trading venues (Article 12 MiFIR) should clarify that the purpose of the delegated act is to specify appropriate criteria for charging that would inform commercial and regulatory decisions regarding price levels and structure rather than to set prices. This should include, for example, criteria around customer types, use of discounts and other fee structures, data packaging and technology solutions. **Our suggested amendment 16 relates to this.**

TRADING – ALGORITHMS AND TECHNOLOGY (MiFID articles 17-20, 51, MiFIR Title II)

33. Appropriate systems and controls are the best tools to ensure fair, efficient and orderly markets. These will minimise the risk of a European 'flash-crash,' and will support markets in providing the liquidity that reduces the cost of capital to the real economy.

34. We welcome the Commission's focus on these. Whilst we are broadly aligned with the principles proposed, governing systems and controls for venues, in our view the current text is too prescriptive. In particular:

- We do not see any rationale stated on the need for system-imposed order to trade ratio caps (Article 51(3)). Trading venues should have effective measures to manage capacity and high message volume, however order to trade ratios and/or dynamic throttling mechanisms are not effective to achieve this end. Enforcing an order to trade ratio will reduce the depth of liquidity in markets or create pricing inefficiencies between related instruments and thus increase the cost for orders seeking to remove displayed liquidity. In turn, this will have the effect of widening spreads and reducing available liquidity for investors in displayed markets, reducing their attractiveness to investors and issuers:

    - Automated trading strategies (for both agency execution and market making) that currently post bids and offers at multiple price points (providing depth of liquidity to the market) typically adjust all open orders in response to executions or market data events. A capped order-to-trade ratio will drive firms to post liquidity at fewer price points or in fewer venues, reducing overall liquidity;
    - A high order-to-trade ratio is required to ensure efficient price formation in many instruments. For example, prices in basket-based instruments (e.g. ETFs, index futures, index options) must typically be adjusted to reflect changes to any of the underlying constituents, and hence typically have higher order-to-trade ratios than ordinary stocks. Similarly, stocks that are traded in more than one venue, or which have active stock options or stock futures, also typically have higher order-to-trade ratios;
    - LSEG does not have trading system controls on order-to-trade ratios. In London, we apply a tariff that charges non-market makers for order-trade ratios above certain levels, and in Milan we recently introduced a new fee structure that applies to orders entered in excess of pre-determined order to trade ratios. This is a way of managing message flow for technical reasons and is applied across all activity, it is retrospective (i.e. does not prevent orders from executing) and is not applied on a stock-by-stock basis;
    - **Our amendment 8 relates to this.**

- Similarly the application of minimum resting periods, as a means of eliminating market abuse or levelling the playing field between participants, is also likely to widen spreads and reduce available liquidity to investors. By preventing the cancellation or amendment of an order in response to changing market conditions, minimum resting periods would result in the exploitation of investors' limit orders by more sophisticated automated trading firms. It is also inconsistent with efforts to encourage more robust risk controls by trading participants. The exploitation of "stuck" limit orders would reduce incentives to post competitively-priced limit orders in public markets, resulting in wider spreads and higher transaction costs for all investors.

- Circuit breakers are one of the controls used by venues to maintain orderly markets when there is volatility, news or other uncertainty. Studies have shown that LSEG's circuit breakers have been successful in stabilising UK markets, without influencing genuine market sentiment'[7]. Venues should operate circuit breakers under common minimum principles, but the precise mechanism and design should remain specific to venues. Volume and price parameters should not be determined at the order

[7] Linton. O, *What has happened to UK Equity Market Quality in the last decade?* September 2011

entry level but instead at the point of execution (Article 51(2)). This allows for incremental execution of orders and a more efficient price formation process. **Our amendment 7 relates to this.**

- We support a pan-European initiative to harmonise the tick regime (Article 51(7)(c)), although we believe the harmonisation regime itself should be the focus of delegated acts (level II), rather than specifications for minimum and maximum tick sizes. Our amendment 8 relates to this.

35. Whilst the proposals on systems and controls have a clear purpose, the proposals on algorithmic trading are not as clear. The definition of algorithmic trading is ambiguous and wide ranging. As proposed, it includes any automated strategy other than order routing. We believe that the text should, at the very least, clarify the purpose of this definition.

36. The proposal requiring (all) algorithmic strategies to operate during all trading hours and provide firm two-way quotes (Article 17(3)) is inappropriate because:
    - Mandatory requirements on liquidity provision regardless of market conditions will fail to meet their objectives – in fast markets, firms would rather face the risk of fines for breaching requirements than insolvency;
    - Not all strategies, e.g. client execution strategies, operate during all trading hours or involve two way quotes; the proposed requirement would all but eliminate this business;
    - Such a move would have wider implications on systemic risk as well, particularly if strategies are not allowed to be introduced to/modified/removed from markets in the case of intra-day news.

37. **The use of algorithms does not of itself constitute market making**, and Article 17(3) should reflect this, with a focus on appropriate requirements at the **firm level to maintain the liquidity that lowers the cost of capital**. Our amendment 4 relates to this.

38. There is a need to ensure a level playing field for markets and organised venues, and we agree with the Commission proposal that the same activity should be regulated in the same way.

39. We recognise that there is a need to bring more investment firms within the scope of supervision. Our understanding is that firms will either access markets directly, as authorised firms, or access markets via the Direct Electronic Access (DEA) services of an authorised firm. Such an approach is appropriate. In both scenarios access to markets is via authorised firms who will be required to have effective systems and controls if they engage in algorithmic trading and/or provide DEA services.

THIRD COUNTRY ISSUES (MiFID Articles 41-46, MiFIR Articles 36-39)

40. The proposals should ensure that European markets remain fair and open to and for third country businesses. Currently, EU investors and companies are provided with vital services by third country firms. A restrictive approach to the regulation of these services will damage the competitiveness of the Single Market, as it would prevent investors from accessing markets and services in those markets.

41. The proposed requirements for the strict equivalence tests and reciprocity that would apply to firms providing services with, or without, the establishment of a branch could lead to the implementation of a highly restrictive approach to the recognition of third country firms that provide services to EU investors/counterparties.

42. As proposed, such an approach could affect the provision of cross-border financial services between the EU and other regions in the following ways:
    - European investors/firms may not have the flexibility to access a wide range of third country firms which they require in order to operate effectively and efficiently;
    - The necessary flows of liquidity between financial markets in different regions could be severely constrained (with consequent impacts on global financial stability);
    - An inflexible EU licensing regime could be viewed as protectionist in nature and lead to the development of similarly inflexible or protectionist regimes in third countries, which would threaten access of EU firms and service providers to third country markets, products and services.

43. Parliament and Member States must be careful to maintain access to third country markets and services, on a reasonable equivalence basis, based on shared regulatory outcomes, regulatory standards and common public policy objectives. They should resist the Commission's search for reciprocity which is unrealistic and will cut off Europe's consumers and companies from third country services they need to contribute to and maintain economic growth.

    We suggest that Parliament and Member States should consider an Omnibus approach for third country issues across all relevant EU FSAP measures.

PART B – OTHER TECHNICAL AMENDMENTS PROPOSED

We also propose some technical amendments to the Commission text. These are outlined below.

1. **The exemption for market makers in commodity derivatives should be clarified.** For commodities firms, we agree with Article 2(1)(i) of MiFID which narrows the exemption and applies the meaning of ancillary service more precisely. This will tighten the scope of the exemption and help firms to provide liquidity to the markets. However, the exemption for market makers in commodity derivatives should be retained, considering the essential role that industrial companies, acting as market makers, play in supporting the liquidity in commodities derivatives markets.

   Our amendment 1 relates to this point.

2. **The application of MIFID provision to regulated markets and MTFs participants or members should be clarified by ESMA implementing technical standards.** According to Article 2(1)(d)(ii), members or participants of regulated markets or MTFs are subject to MIFID provisions. However, it is not clear what provisions under MIFID shall apply to members or participants that, under Article 55(3) are not investment firms. ESMA should develop regulatory technical standards detailing which MiFID provisions apply to these firms.

   Our amendment 2 relates to this point.

3. **There is a need to exempt the custody and safekeeping functions of Central Securities Depositories (CSDs) from MiFID.** CSDs operate securities accounts but they do not provide investment advice and are neither investment firms nor organised trading venues. They do not fall within the scope of MiFID currently and this should continue to be the case. The operation of CSDs will be covered by the forthcoming CSD Regulation.

   It is proposed that custody and safekeeping functions are considered a core service within MiFID. There is, therefore, a need to exempt CSDs from this approach – we suggest that this is achieved either by amending Annex 1 of MiFID or by adding an exemption in Article 2 of MiFID.

   Our amendment 3 relates to this point.

4. **There should be a more flexible approach to assessing time commitment for board members.** The assessment of time commitment for board members of investment firms may be useful in principle but could prove difficult to calibrate in practice, especially in respect of group companies. There should also be a more flexible approach to ensure that 'Blue Chip' firms are not treated the same as SMEs, as in our experience, it can be difficult for SMEs and mid caps to constitute boards whose members will meet the necessary criteria and with suitable experience. We would suggest that this difficulty is recognised in article 9(4) of MiFID when ESMA is developing its draft regulatory standards.

In addition, the principle of “comply or explain” provides adequate flexibility for smaller listed companies to apply corporate governance in a relevant way. We suggest that this is also reflected in the text of article 9(4).

Our amendment 4 relates to these points.

5. **Where securities are suspended/removed from trading on a MTF due to non-disclosure of information, MiFID should clarify that it is not necessarily the MTF that makes the original decision.** Some MTFs (e.g. AIM, AIM Italia, Alternext) have primary market functions and are responsible for admitting the securities to the market with the consent of the issuer and monitoring compliance with disclosure obligations. Other MTFs trade securities that are already admitted to trading on other regulated markets and therefore will not be in a position to make the original decision to suspend/remove a security from trading. This should be reflected in Article 32 of MiFID.

   Our amendment 6 relates to this point.

6. **Where securities are suspended/removed from trading on a Regulated Market (RM) due to non-disclosure of information, MiFID should clarify that it is not necessarily all RMs that make the original decision.** In some Member States it will not be the RM that makes the original decision to suspend/remove a security due to a failure to disclose information, but another authority (e.g. listing or competent authority) that has the responsibility for monitoring compliance with disclosure obligations. This should be reflected in Article 53 of MiFID.

   Our amendment 10 relates to this point.

Appendix One - Suggested amendments to the Commission text

Amendment 1

Text proposed by the Commission	*Amendment*
Article 2(1)(i) - MiFID (i) persons who: - deal on own account in financial instruments, excluding persons who deal on own account by executing client orders, or - 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 - 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, provided that in all cases this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC.	Article 2(1)(i) - MiFID (i) persons who: - deal on own account in financial instruments, excluding persons who deal on own account by executing client orders, or - 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 - provide investment services, other than dealing on own account, **or are market makers** 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, provided that in all cases this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC.

Justification

For commodities firms, Article 2(1)(i) of MiFID narrows the exemption and applies the meaning of ancillary service more precisely. This will tighten the scope of the exemption and help firms to provide liquidity to the markets. However, the exemption for market makers in commodity derivatives should be retained, considering the essential role that industrial companies, acting as market makers, play in supporting the liquidity in commodities derivatives markets.

Amendment 2

Text proposed by the Commission	*Amendment*
	Article 2(4) - MiFID Insert new point **ESMA shall develop draft implementing technical standards to determine which provisions laid down in this Directive shall apply to the persons referred to in Article 2(1)(d)(ii) that are not investment firms.** **ESMA shall submit those draft implementing technical standards to the Commission by [XXXXX]** **Power is conferred on the Commission to adopt the implementing technical standards referred to above in accordance with Article 15 of Regulation (EU) No 1095/2010.**

Justification

According to Article 2(1)(d)(ii), members or participants of regulated markets or MTFs are subject to MIFID provisions. However, it is not clear what provisions under MIFID shall apply to members or participants that, under Article 55(3) are not investment firms. ESMA should develop draft implementing technical standards detailing which MiFID provisions apply to these firms.

Amendment 3

Text proposed by the Commission	*Amendment*
	Article 2(1) – MiFID Insert new point **(o) Central Securities Depositories, as defined in Regulation (EU) No …/… [new CSDR] undertaking safekeeping and administration functions, as included in Annex 1, Section A, as part of their core and ancillary CSD operations.** Or

Annex 1 – Section A - MiFID (9) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;	Annex 1, Section A, point 9 - MiFID (9) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management, **except where those activities are undertaken by Central Securities Depositories as defined in Regulation (EU) No …/… [new CSDR] I fulfilment of core and ancillary CSD functions;**

Justification

CSDs operate securities accounts but they do not provide investment advice and are neither investment firms nor organised trading venues. They do not fall within the scope of MiFID currently and this should continue to be the case. The operation of CSDs will be covered by the forthcoming CSD Regulation. It is proposed that custody and safekeeping functions are considered a core service within MiFID. There is, therefore, a need to exempt CSDs from this approach (this is achieved either by adding an exemption in Article 2 of MiFID or by amending Annex 1 of MiFID).

Amendment 4

Text proposed by the Commission	*Amendment*
Article 9(4) - MiFID (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);	Article 9(4) - MiFID (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), **including taking into account the extent to which appropriately qualified and experienced persons are available to be members of management bodies and the adverse impact of limiting the number of non-executive directorships;**
	Article 9(4) - MiFID Insert new point **(f) the notion of "comply or explain" to**

	apply to the management body of any investment firm and the implementation of regulatory standards devised by ESMA.

Justification

The assessment of time commitment for board members of investment firms may be useful in principle but could prove difficult to calibrate in practice, especially in respect of group companies. There should also be a more flexible approach to ensure that 'Blue Chip' firms are not treated the same as SMEs, as it can be difficult for SMEs and mid caps to constitute boards whose members will meet the necessary criteria and with suitable experience. This difficulty should be recognised in article 9(4) of MiFID when ESMA is developing its draft regulatory standards.

In addition, the principle of "comply or explain" provides adequate flexibility for smaller listed companies to apply corporate governance in a relevant way. This should also be reflected in the text of article 9(4).

Amendment 5

Text proposed by the Commission	*Amendment*
Article 17(3) - MiFID 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	Article 17(3) - MiFID **Where an investment firm that engages in algorithmic trading does so as a market maker under Article 4.1(6) MiFID, then any algorithmic trading strategy that it operates for this purpose** ~~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

Justification

The term "algorithmic trading" covers a range of trading activities and is not the same thing as High Frequency Trading (HFT). HFT is not a strategy in itself and generally refers

to the high speed with which messages can be exchanged with a trading platform (low latency). Neither activity necessarily reflects the provision of liquidity to markets or of firm two way prices- algorithmic trading/HFT can be all or some of at least the following: the facilitation of client order flow/order routing, arbitrage activities, market making, liquidity provision and other proprietary trading. As a result Article 17 is confused. Article 17(3) appears to create a market making obligation (during all the trading day and with two way prices) for ALL users of algorithmic trading where only a sub-set of users may engage in these activities. If the intention is to manage liquidity during stressed markets, the text should reflect an appropriate, but not restrictive obligation for market makers and liquidity providers (at the level of the firm, rather than strategies).

Amendment 6

Text proposed by the Commission	*Amendment*
Article 32(1) - MiFID Member States shall require that an investment firm or a market operator operating an MTF that suspends or removes from trading a financial instrument makes public this decision, communicates it to regulated markets, other MTFs and OTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States. Member States shall require that other regulated markets, MTFs and OTFs trading the same financial instrument shall also suspend or remove that financial instrument from trading where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument except where this could cause significant damage to the investors' interests or the orderly functioning of the market. Member States shall require the other regulated markets, MTFs and OTFs to communicate their decision to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation if the decision was not to suspend or remove the financial instrument from trading.	Article 32(1) - MiFID Member States shall require that an investment firm or a market operator operating an MTF that suspends or removes from trading a financial instrument makes public this decision, ~~communicates it to regulated markets, other MTFs and OTFs trading the same financial instrument~~ and communicates relevant information to the competent authority. The competent authority shall inform the competent **authorities of the other Member States where other MTFs and OTFs trading the same financial instrument**. Member States shall require that **where the appropriate competent authority or the market operator operating an RM or an MTF, that has admitted to trading the security with the consent of the issuer, has suspended or removed that security due to the non-disclosure of information, that authority or market operator shall inform other trading venues** trading that security, who shall be required to suspend or **remove that financial instrument from trading** ~~other regulated markets, MTFs and OTFs trading the same financial instrument shall also suspend or remove that financial instrument from trading where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument~~ except where this could cause significant

	damage to the investors' interests or the orderly functioning of the market. Member States shall require the other regulated markets, MTFs and OTFs to communicate their decision to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation if the decision was not to suspend or remove the financial instrument from trading.

Justification

Where securities are suspended/removed from trading on a MTF due to non-disclosure of information, MiFID should clarify that it is not necessarily the MTF that makes the original decision. Some MTFs (e.g. AIM, AIM Italia, Alternext) have primary market functions and are responsible for admitting the securities to the market with the consent of the issuer and monitoring compliance with disclosure obligations. Other MTFs trade securities that are already admitted to trading on other regulated markets and therefore will not be in a position to make the original decision to suspend/remove a security from trading. Article 32(1) of MiFID should clarify this.

Amendment 7

Text proposed by the Commission	*Amendment*
Article 51(2) - MiFID Member States shall require a regulated market to have in place effective systems, procedures and arrangements to reject orders that exceed pre-determined volume and price thresholds**,** or are clearly erroneous and to be able to temporarily halt trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction.	Article 51(2) - MiFID Member States shall require a regulated market to have in place effective systems, procedures and arrangements to reject orders that **if, upon execution in their entirety, would** exceed pre-determined volume and price thresholds**,** or are clearly erroneous and to be able to temporarily halt trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction.

Justification

Volume and price parameters should not be determined at the order entry level, but instead at the point of execution. This allows for incremental execution of orders and a more efficient price formation process. Venues should operate circuit breakers under common minimum principles, but the precise mechanism and design should be specific to the venues themselves.

Amendment 8

Text proposed by the Commission	*Amendment*
Article 51(3) - MiFID Member States shall require a regulated market to have in place effective systems, procedures and arrangements to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market including systems to limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant, to be able to slow down the flow of orders if there is a risk of its system capacity being reached and to limit the minimum tick size that may be executed on the market.	Article 51(3) - MiFID Member States shall require a regulated market to have in place effective systems, procedures and arrangements to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market including systems to limit the **volume of messages** ~~ratio of unexecuted orders to transactions~~ that may be entered into the system by a member or participant, to be able to slow down the flow of orders if there is a risk of its system capacity being reached and to limit the minimum tick size that may be executed on the market.

Justification

No rationale has been stated on the need for order to trade ratio caps. Such a measure risks reducing liquidity or creating pricing inefficiencies between related instruments and thus increasing the cost of orders seeking to execute against displayed liquidity. Trading venues should have effective measures to manage capacity and high message volume. However order to trade ratios and/or dynamic throttling mechanisms are not effective in their own right.

Amendment 9

Text proposed by the Commission	*Amendment*
Article 51(7)(c) - MiFID (c) to set out the maximum and minimum tick sizes ratio of unexecuted orders to transactions that may be adopted by regulated markets and minimum tick sizes that should be adopted;	Article 51(7)(c) - MiFID (c) to set out the **approach to harmonisation of** maximum and minimum tick sizes ~~ratio of unexecuted orders to transactions~~ **that may be agreed between** ~~adopted by~~ regulated markets and **other trading venues**~~,~~ ~~minimum tick sizes that should be adopted~~;

Justification

Though the principles governing systems and controls for venues deserve broad support, the current text is too prescriptive. In particular, a pan-European initiative to harmonise the tick regime is needed and the focus of delegated acts should be the harmonisation regime itself,

rather than actual specifications for minimum and maximum tick sizes. The precise parameters of tick size harmonisation are best agreed between trading venues themselves rather than prescribed in legislation.

Amendment 10

Text proposed by the Commission	*Amendment*
Article 53(1) - MiFID Without prejudice to the right of the competent authority under Article 72(1)(d)50(2)(j) and (e)(k) to demand suspension or removal of an instrument from trading, the operator of the regulated market may suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market. Member States shall require that an operator of a regulated market that suspends or removes from trading a financial instrument makes public this decision, communicates it to other regulated markets, MTFs and OTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States of this. Member States shall require that other regulated markets, MTFs and OTFs trading the same financial instrument also suspend or remove that financial instrument from trading where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument except for cases where this could cause significant damage to the investors' interests or the orderly functioning of the market. Member States shall require the other regulated markets, MTFs and OTFs to communicate their decision to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an	Article 53(1) - MiFID Without prejudice to the right of the competent authority under Article 72(1)(d)50(2)(j) and (e)(k) to demand suspension or removal of an instrument from trading, the operator of the regulated market may suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market. Member States shall require that an operator of a regulated market that suspends or removes from trading a financial instrument makes public this decision, ~~communicates it to other regulated markets, MTFs and OTFs trading the same financial instrument~~ and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States of this. Member States shall require that **where the appropriate competent authority or the market operator that has admitted to trading the security with the consent of the issuer has suspended or removed a security due to the non-disclosure of information, that authority or market shall inform other trading venues trading that security, who shall be required to suspend or remove that financial instrument from trading** ~~other regulated markets, MTFs and OTFs trading the same financial instrument also suspend or remove that financial instrument from trading where the suspension or removal is due to the non-~~

explanation where it was decided not to suspend or remove the financial instrument from trading.	~~disclosure of information about the issuer or financial instrument~~ except for cases where this could cause significant damage to the investors' interests or the orderly functioning of the market. Member States shall require the other regulated markets, MTFs and OTFs to communicate their decision to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation where it was decided not to suspend or remove the financial instrument from trading.

Justification

Where securities are suspended/removed from trading on a Regulated Market (RM) due to non-disclosure of information, MiFID should clarify that it is not necessarily all RMs that make the original decision. In some Member States it will not be the RM that makes the original decision to suspend/remove a security due to a failure to disclose information, but another authority (e.g. listing or competent authority) that has the responsibility for monitoring compliance with disclosure obligations. This should be reflected in Article 53 of MiFID.

Amendment 11

Text proposed by the Commission	*Amendment*
Article 67(2) and 67(6) - MiFID 2. The home Member State shall require a CTP to have adequate policies and arrangements in place to collect the information made public in accordance with Articles 9 and 20 of Regulation (EU) No …/… [MiFIR], consolidate it into a continuous electronic data stream and make following information available to the public as close to real time as is technically possible, on a reasonable commercial basis, including, as is required at least, the following details: (a) the identifier or identifying features of the financial instrument; (b) the price at which the transaction was concluded;	Article 67(2) and 67(6) - MiFID 2. The home Member State shall require a CTP to have adequate policies and arrangements in place to collect the information made public in accordance with Articles 9 and 20 of Regulation (EU) No …/… [MiFIR], consolidate it into a continuous electronic data stream and make following information available to the public as close to real time as is technically possible, on a reasonable commercial basis, **taking into account any measures adopted by the Commission in accordance with Article 10(2) of Regulation (EU) No …/… [MiFIR]** ~~including, as is required at least,~~ the following details, **as required**: (a) the identifier or identifying features of the financial instrument;

(c) the volume of the transaction; (d) the time of the transaction; (e) the time the transaction was reported; (f) the price notation of the transaction; (g) the trading venue the transaction was executed on or otherwise the code "OTC"; (h) if applicable, an indicator that the transaction was subject to specific conditions. The information shall be made available free of charge 15 minutes after the publication of a transaction. The home Member State shall require the CTP to be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants. 6. In order to ensure consistent harmonisation of paragraphs 1 and 2, ESMA shall develop draft regulatory technical standards to determine data standards and formats for the information to be published in accordance with Articles 5, 9, 19 and 20 of Regulation (EU) No …/… [MiFIR], including instrument identifier, price, quantity, time, price notation, venue identifier and indicators for specific conditions the transactions was subject to as well as technical arrangements promoting an efficient and consistent dissemination of information in a way ensuring for it to be easily accessible and utilisable for market participants as referred to in paragraphs 1 and 2, including identifying additional services the CTP could perform which increase the efficiency of the market.	(b) the price at which the transaction was concluded; (c) the volume of the transaction; (d) the time of the transaction; (e) the time the transaction was reported; (f) the price notation of the transaction; (g) the trading venue the transaction was executed on or otherwise the code "OTC"; (h) if applicable, an indicator that the transaction was subject to specific conditions. ~~The information shall be made available free of charge 15 minutes after the publication of a transaction. The home Member State shall require the CTP to be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information,~~ ~~on a non-discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants.~~ 6. In order to ensure consistent harmonisation of paragraphs 1 and 2, ESMA shall develop draft regulatory technical standards to determine data standards and formats for the information to be published in accordance with Articles 5, 9, 19 and 20 of Regulation (EU) No …/… [MiFIR], including instrument identifier, price, quantity, time, price notation, venue identifier and indicators for specific conditions the transactions was subject to as well as technical arrangements promoting an efficient and consistent dissemination of information in a way ensuring for it to be easily accessible and utilisable for market participants as referred to in paragraphs 1

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by […] in respect of information published in accordance with Articles 5 and 19 of Regulation (EU) No …/… [MiFIR] and by […] in respect of information published in accordance with Articles 9 and 20 of Regulation (EU) No …/… [MiFIR].	and 2, including **the criteria to determine the period after which data referred to in paragraph 2 shall be made available free of charge and** identifying additional services the CTP could perform which increase the efficiency of the market. ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by […] in respect of information published in accordance with Articles 5 and 19 of Regulation (EU) No …/… [MiFIR] and by […] in respect of information published in accordance with Articles 9 and 20 of Regulation (EU) No …/… [MiFIR].

Justification

The introduction of a consolidated post-trade tape for non-equities needs to take into account the diversity and complexity of these products – it should not simply be a wholesale extension of the data regime designed for equities and should reflect the measures adopted by the Commission in accordance with Article 10(2) of MiFIR. Post-trade equity data should be made available free of charge after a delay of 15 minutes and this could also be applied to equity-like instruments. However, this should not automatically be extended to non-equity markets, due to the nature of the asset classes, the way in which the markets operate, the differences in data distribution and the charging models used. These must be taken into account in establishing the criteria for non- equity products.

Amendment 12

Text proposed by the Commission	*Amendment*
Article 4 - MiFIR 1. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF or an OTF to make public the information referred to in Article 3(1) based on the market model or the type and size of orders in the cases defined in accordance with paragraph 3. In particular, the competent authorities shall be able to waive the obligation in respect of orders that are large in scale compared with normal market size for the share, depositary receipt,	Article 4 - MiFIR 1. Competent authorities shall be able to waive the obligation for regulated markets and investment firms and market operators operating an MTF or an OTF to make public the information referred to in Article 3(1) based **on the four existing classes of waivers and** on the market model or the type and size of orders in the cases defined in accordance with paragraph 3. In particular, the competent authorities shall be able to waive the obligation in respect of orders that are large in scale

exchange-traded fund, certificate or other similar financial instrument or type of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument in question.	compared with normal market size for the share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument or type of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument in question.
2. Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver request and provide an explanation regarding their functioning. Notification of the intention to grant a waiver shall be made not less than 6 months before the waiver is intended to take effect. Within 3 months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of each waiver with the requirements established in paragraph 1 and specified in the delegated act adopted pursuant to paragraphs 3(b) and (c). Where that competent authority grants a waiver and a competent authority of another Member State disagrees with this, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and shall submit an annual report to the Commission on how they are applied in practice.	2. Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver request and provide an explanation regarding their functioning. Notification of the intention to grant a waiver shall be made not less than 6 months before the waiver is intended to take effect. Within 3 months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of each waiver with the requirements established in paragraph 1 and specified in the delegated act adopted pursuant to paragraphs 3(b) and (c). Where that competent authority grants a waiver and a competent authority of another Member State disagrees with this, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and shall submit an annual report to the Commission on how they are applied in practice.
3. The Commission shall adopt, by means of delegated acts in accordance with Article 41, measures specifying: (a) the range of bid and offers or designated market-maker quotes, and the depth of trading interest at those prices, to be made public for each class of financial instrument concerned;	3. The Commission shall adopt, by means of delegated acts in accordance with Article 41, measures specifying: (a) the range of bid and offers or designated market-maker quotes, and the depth of trading interest at those prices, to be made public for each class of financial instrument

(b) the size or type of orders for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned**;** (c) the market model for which pre-trade disclosure may be waived under paragraph 1, and in particular, the applicability of the obligation to trading methods operated by regulated markets which conclude transactions under their rules by reference to prices established outside the regulated market or by periodic auction for each class of financial instrument concerned. 4. Waivers granted by competent authorities in accordance with Articles 29 (2) and 44 (2) of Directive 2004/39/EC and Articles 18 to 20 of Commission Regulation (EC) No 1287/2006 before the date of application of this Regulation shall be reviewed by ESMA by [2 years following the date of application of this Regulation]. ESMA shall issue an opinion to the competent authority in question assessing the continued compatibility of each of those waivers with the requirements established in this Regulation and any delegated act based on this Regulation.	concerned; (b) ~~the size or type of orders for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned~~ **the conditions under which pre-trade disclosure may be waived for each class of financial instrument concerned in accordance with paragraph 1, based on the following:** **(i) the market model, in particular, the applicability of the obligation to trading methods operated by regulated markets, and investment firms and market operators operating a MTF or an OTF, which conclude transactions under their rules by reference to prices established outside the regulated market, MTF or OTF or by periodic auction for each class of financial instrument concerned;** **(ii) the specific characteristics of trading activity in a product;** **(iii) the liquidity profile, including the number and type of market participants and investors in a given market and any other relevant criteria for assessing liquidity;** **(iv) the size or type of orders and the size and type of an issue of a financial instrument.;** **(c) The Commission shall consider the four existing classes of waiver as being the minimum basis for determining the design and application of waivers for equity and equity like products.** ~~(c) the market model for which pre-~~

	~~trade disclosure may be waived under paragraph 1, and in particular, the applicability of the obligation to trading methods operated by regulated markets which conclude transactions under their rules by reference to prices established outside the regulated market or by periodic auction for each class of financial instrument concerned~~. 4. Waivers granted by competent authorities in accordance with Articles 29 (2) and 44 (2) of Directive 2004/39/EC and Articles 18 to 20 of Commission Regulation (EC) No 1287/2006 before the date of application of this Regulation shall be reviewed by ESMA by [2 years following the date of application of this Regulation]. ESMA shall issue an opinion to the competent authority in question assessing the continued compatibility of each of those waivers with the requirements established in this Regulation and any delegated act based on this Regulation.

Justification

The equity regime is an appropriate starting point for determining transparency for equity and equity-like instruments. The current waivers (price reference, large in scale, negotiated trade and order management facility) are appropriate and should be preserved and considered the minimum waivers for ESMA to consider. However, they cannot automatically be applied to all equity-like products – the transparency regime for these instruments should also include consideration of product class, market model, liquidity profile, nature and type of participants and investors and size and type of orders.

The reference to the market model in the Commission's proposals in Article 4(3) only covers regulated markets. This should also include MTFs and OTFs, consistent with the provisions of Article 4(1).

Amendment 13

Text proposed by the Commission	*Amendment*
Article 6(2)(b) - MiFIR (b) the conditions for authorising a regulated market, an investment firm,	Article 6(2)(b) - MiFIR (b) the conditions for authorising a regulated market, an investment firm,

including a systematic internaliser or an investment firm or market operator operating an MTF or an OTF for a deferred publication of trades and the criteria to be applied when deciding the transactions for which, due to their size or the type of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.	including a systematic internaliser or an investment firm or market operator operating an MTF or an OTF for a deferred publication of trades and the criteria to be applied when deciding the transactions for which, due to their size or the type of share, depositary receipt, exchange-traded fund, certificate or other similar financial instrument involved, **and the risks taken on by an investment firm committing capital to provide liquidity,** deferred publication is allowed for each class of financial instrument concerned.
Article 10(2)(b) - MiFIR (b)the conditions for authorising for each class of financial instrument concerned a deferred publication of trades for a regulated market, an investment firm, including a systematic internaliser or an investment firm or market operator operating an MTF or an OTF and the criteria to be applied when deciding the transactions for which, due to their size or the type of bond, structured finance product, emission allowance or derivative involved, deferred publication and/or the omission of the volume of the transaction is allowed.	Article 10(2)(b) - MiFIR (b)the conditions for authorising for each class of financial instrument concerned a deferred publication of trades for a regulated market, an investment firm, including a systematic internaliser or an investment firm or market operator operating an MTF or an OTF and the criteria to be applied when deciding the transactions for which, due to their size or the type of bond, structured finance product, emission allowance or derivative involved, **and the risks taken on by an investment firm committing capital to provide liquidity,** deferred publication and/or the omission of the volume of the transaction is allowed.

Justification

In markets where firms commit capital to support their clients' trading needs, the deferred publication regime is necessary to ensure firms have adequate time to unwind certain types of position. Any review of the criteria for the deferred publication of trades must, therefore, take into account the risks that firms take on when executing very large deals and ensure that adequate time is permitted to unwind such risk. Our amendment 12 relates to this.

Amendment 14

Text proposed by the Commission	*Amendment*
Article 8(4)(b)(iii) - MiFIR (iii) the liquidity profile, including the number and type of market participants in a given market and any other relevant	Article 8(4)(b)(iii) - MiFIR (iii) the liquidity profile, including the number and type of market participants **and investors** in a given market and any

criteria for assessing liquidity;	other relevant criteria for assessing liquidity;

Justification

The design and application of waivers for non-equity products needs to reflect the differences in asset classes. The approach proposed by the Commission to take account of the market model, trading characteristics, liquidity and size and type of orders should also include the nature and type of investor.

Amendment 15

Text proposed by the Commission	*Amendment*
Article 12(1) - MiFIR Regulated markets, MTFs and OTFs shall make the information published in accordance with Articles 3 to 10 available to the public on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the publication of a transaction.	Article 12(1) - MiFIR Regulated markets, MTFs and OTFs shall make the information published in accordance with Articles 3 to 10 available to the public on a reasonable commercial basis. The information **published in accordance with Articles 3 to 6** shall be made available free of charge 15 minutes after the publication of a transaction. **The Commission shall adopt, by means of delegated acts in accordance with Article 41, criteria to determine the period after which data published in accordance with Articles 7 to 10 shall be made available free of charge.**

Justification

Post trade equity data should be made available free of charge after a delay of 15 minutes and this could also be applied to equity-like instruments. However, this should not be automatically extended to non-equity markets, due to the nature of the asset classes, the way in which the markets operate, the differences in data distribution and the charging models used. These must be taken into account in establishing the criteria for non- equity products.

Amendment 16

Text proposed by the Commission	*Amendment*
Article 12(2) - MiFIR The Commission may adopt, by means of delegated acts in accordance with Article	Article 12(2) - MiFIR The Commission may ~~adopt~~ **review**, by means of delegated acts in accordance

41, measures clarifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1.	with Article 41, **the need to establish principles to inform pricing decisions so that price levels and structure meet market needs** ~~measures clarifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1~~. **These principles shall include those around:** **a) Different customer types and their usage of data;** **b) The use of volume discounts and other fee structures;** **c) Data packaging;** **d) The use of technology solutions to format and deliver data**

Justification

MiFID was intended to liberalise the trading marketplace and promote competition. Care is needed not to reduce the scope for competition - even as an unforeseen consequence of trying to provide more helpful guidance to firms. It is appropriate to establish a number of broad and flexible principles that would inform commercial and regulatory decisions in reaching a price level and structure that meets market participants' needs.

Amendment 17

Text proposed by the Commission	*Amendment*
Article 29(6) - MiFIR The Commission shall adopt by means of delegated acts in accordance with Article 41, measures specifying: (a) the conditions under which access could be denied by a trading venue, including conditions based on the volume of transactions, the number of users or other factors creating undue risks. (b) the conditions under which access is granted, including confidentiality of information provided regarding financial instruments during the development phase and the non-discriminatory and transparent basis as regards fees related to	Article 29(6) - MiFIR The Commission shall adopt by means of delegated acts in accordance with Article 41, measures specifying: (a) the conditions under which access could be denied by a trading venue, including **transparent, proportionate and neutral** conditions based on the volume of transactions, the number of users or other factors creating undue risks. (b) the conditions under which access is granted, including **demand and safety criteria,** confidentiality of information provided regarding financial instruments

access.	during the development phase and the non-discriminatory and transparent basis as regards fees related to access.

Justification

It is inappropriate for CCPs to compete on risk management functions as this would compromise the safe and effective delivery of services to customers. This is enshrined in EMIR and needs to be reflected in any provisions in MiFIR concerned with access between CCPs and trading venues. Access to trade feeds should only be assured where demand and safety criteria are met.

Amendment 18

Text proposed by the Commission	*Amendment*
Article 30(2) - MiFIR No CCP, trading venue or related entity may enter into an agreement with any provider of a benchmark the effect of which would be either: (a) to prevent any other CCP or trading venue from obtaining access to such information or rights as referred to in paragraph 1; or (b) to prevent any other CCP or trading venue ~~from~~ obtaining access to such information or rights on terms any less advantageous than those conferred on that CCP or trading venue.	Article 30(2) - MiFIR No CCP, trading venue or related entity **in the EU** may enter into**, or continue to be party to,** an agreement with any provider of a benchmark ~~the effect of~~ which would **have, or has, the effect** ~~be~~ **of** either: (a) ~~to prevent~~ **preventing** any other CCP or trading venue from obtaining access to such information or rights as referred to in paragraph 1; or (b) ~~to prevent~~ **resulting in** any other CCP or trading venue ~~from~~ obtaining access to such information or rights on terms any less advantageous than those conferred on that CCP or trading venue.

Justification

Article 30 should be clearer as to its jurisdictional reach. In its current drafting it can be assumed that this will apply to EU CCPs, trading venues and other related entities only. The proposed revised wording for Article 30(2) seeks to clarify some potentially confusing language caused by the double negative and to clarify points on jurisdiction and retrospective application.