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13 January 2012

Review of the Markets in Financial Instruments Directive

Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

FRENCH BANKING FEDERATION'S RESPONSE

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

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

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

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

The **French Banking Federation (FBF)** represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorized as banks and doing business in France, i.e. more than 500 commercial, cooperative and mutual banks. FBF member banks have more than 25,500 permanent branches in France. They employ 500,000 people in France and around the world, and service 48 million customers.

As universal banks, French credit institutions are directly and highly impacted by the enforcement of the MiFID on their main business lines: corporate and investment banking, intermediation, distribution.

Theme	Question	Answers
Scope	1) Are the exemptions proposed in Directive Articles 2 and 3 appropriate? Are there ways in which more could be done to exempt corporate end users?	The FBF supports the European Commission's objective to narrow the scope of the exemptions for commodity firms since a level playing field for all market players providing liquidity to the market should be ensured. The possibility for firms not regulated as investment firms to provide services on the market notably using the "Group" exemption of Art. 2.1.(i) is not satisfactory. The MiFID review should be the opportunity to avoid any situation where firms contributing to the systemic risk and/or providing services to clients are exempted to apply a high level of requirements. Furthermore, the following comments should be made with regard to the exemptions proposed in Article 2 of the draft MiFID review: - <u>the proposed regime is too complex and allow too many market participants - including corporates - to be exempted from the MiFID requirements</u>, - Even if we agree with the general approach proposed by the European Commission (deletion of the exemption in Article 2(1)(k), narrow the scope of the exemptions for trading members), <u>the European Parliament should propose a more efficient solution which would be based on the systemic risk</u> that some market players could pose.

		In that context, we think that <u>the regime should focus on a quantitative threshold to be monitored by ESMA which would be used to establish whether a firm would become subject to the MiFID</u>. In practice, if the total notional amount of transactions traded by a firm exceeds that threshold, then it would become subject to MiFID for all its transactions. Furthermore, this threshold should be calculated taking into account the sum of <u>gross</u> positions based on the nominal value of each of these positions in order (1) to avoid any arbitrage and (2) to manage the systemic importance of these firms. in this context, the European authorities, including especially ESMA, should be appointed to provide regulatory standards aimed to determine the way this quantitative threshold is designed. At last, with regard to the exemptions proposed in Article 3 of the draft MiFID, we believe this article should be removed as it could create significant differences among the EU. The above-mentioned regime focusing on a quantitative threshold is sufficient.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	French banks are agnostic on this topic and believe that a qualification as financial instrument could aim at simplify the supervision of the emission allowance market by giving it an already given legal framework (MIFID, MAD, etc.) Regarding structured deposits, the Commission's proposal is

		satisfactory.
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	Account providers are an essential pillar for investor protection due to the nature of their functions: safekeeping and administration of the financial instruments. The European Commission proposal considers the safekeeping and administration of financial instruments as a core investment service but does neither specify how this concept should be understood nor propose specific provisions to address the rights and obligations of intermediaries regarding protection of clients financial instruments and the entire holding chain of securities. As long as these points are not clarified, the requalification of "safekeeping and administration of financial instruments" as investment service would lead to considerable legal uncertainties. Such reclassification is proposed without addressing the question of what kind of MIFID obligation is applicable to the custodians and their clients. In this respect, it should be stressed that account holding and custody services differ significantly from the trading and distribution of financial instruments targeted by MiFID. In general, these services are loosely associated with the investment decisions of clients. Consequently, this classification could potentially lead to uncertainties and additional costs also for the investors. The FBF recommends that before envisaging any obligation for

		the account providers to comply with any provisions of the MiFID, the European Commission shall submit an impact assessment for concrete legislative proposals aiming at : - Specifying the scope of financial instruments that can be subject to safekeeping and administration (ie the list of financial instruments that can be held in custody) ; - Specifying the type of entities that can be authorised to license safekeeping/custodian services through the MIFID ; - Clarifying and harmonising the obligations and rights of the account providers.
	4) Is it appropriate to regulate third country access to EU markets and, if so, what principles should be followed and what precedents should inform the approach and why?	The Commission's directive and the regulation proposals organizing access to the EU for financial services providers based in third countries should be based on clear and mutual recognition and reciprocity rules. Such mutual recognition should be implemented under ESMA and Commission's control. In this respect, the Commission proposal should precise and clarified how this mutual recognition will be assessed. For consistency purposes, EEA Investment Services Providers (ISP) should benefit as much as possible from the exact same level playing field. That being said, the FBF cautions against strict equivalence requirements.

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Corporate governance	5) What changes, if any, are needed to the new requirements on corporate governance for investment firms and trading venues in Directive Articles 9 and 48 and for data service providers in Directive Article 65 to ensure that they are proportionate and effective, and why?	"Corporate governance is a matter of general concern that impacts all types of companies and not only financial institutions. Accordingly, we think that all provisions related to corporate governance - on which you will nonetheless see our comments (see below) - should be deleted. That being said, the governance rules incorporated into this draft should be absolutely identical to those found in CRD IV, or should refer to the relevant provisions contained in this directive. However, the draft should be amended in several areas: – In Article 9 1.(a), the wording "*They shall not combine at the same time more than one of the following combinations:* *i) one executive directorship with two non-executive directorships;* *ii) four non-executive directorships.* *Executive or non-executive directorships held within the same group shall be considered as one single directorship.* *Competent authorities may authorise a member of the management body of an investment firm to combine more directorships than allowed under the previous subparagraph"* should be deleted.

		The French banking industry believes that the subject should not be addressed from the standpoint of accumulation of mandates. First, rules already exist in the different Member States (laws and, in particular, codes of conduct). Secondly and above all, the main objective is to ensure the appropriate level of involvement by members of the Board of Directors and general management in the exercise of their duties and in the business of the firm. In particular, these individuals must have the requisite knowledge and skills to get a proper picture of the risks and challenges facing the firm, the right to express their opinion and commit sufficient time to the exercise of the duties of their office. If they are unable to satisfy these conditions, it would naturally be expected to step down from their functions. Furthermore, it is up to the Board of Directors to ensure, especially when making assessments, that all members of the Board and managing directors fully exercise their functions. It is in the firm's best interests. **It is our opinion that a strict limitation on the number of mandates will not guarantee the necessary level of security that control exercised by the Board of Directors or the integrity of administrators and managing directors would provide.**

		- The creation of a nomination committee should remain an option, as Article 9.2 currently provides. To this effect, the Board of Directors has the most complete picture of the company and enjoys the best vantage point for assessing any need to create a separate nomination committee. - Although we fully recognise that the principle of diversity should be a key element in selecting the members of the Board of Directors, we believe that the criteria for doing so should not be laid out in prescriptive rules in the directive. In fact, the enforcement of this principle requires a certain amount of flexibility to permit tailoring to the specific nature of the firm. Accordingly, the wording: "*In particular, taking into account of 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.*" should be deleted. - More generally, matters related to corporate governance should not be addressed by technical standards drawn up by the ESMA. Member States are in the best position to determine the appropriate means to achieve the aims of the directive when European law is transposed, factoring in the specific character of each firm and tailoring the rules applicable to current corporate governance practices. In any event, the Commission should not be the sole party authorised to adopt the rules on topics that are so critical and

		that carry so heavy a burden for investment firms. Accordingly, the wording: "*4. The ESMA shall develop draft regulatory technical standards to specify the following:* *(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;* *(b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 1(b);* (*c) to notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 1(b);* *(d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body;* *(e) the notion of diversity to be taken into account for the selection of members of the management body.*

		Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No. 1095/2010. *The ESMA shall submit those draft regulatory technical standards to the Commission by [31 December 2014]*" should be deleted. - Finally, there should be no provision in the directive that would lead to an outright ban on the accumulation of mandates by the Chairman of the Board of Directors and the Chief Executive Officer, as Article 9.8 of the draft directive suggests. Such a ban should be imposed only if the Chief Executive Officer is not the only managing director sitting on the Board of Directors. Furthermore, the competent national authority should be able to authorise this accumulation. - Article 9, subparagraph 5, specifies that *"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"*. Providing notification of the names of the members of the Board of Directors and reporting changes in its membership do not pose any particular difficulty for us. On the other hand, an assessment by the competent authority of the criteria relating to

		the membership of the Board of Directors appears, in our option, to go too far as this is a prerogative of the Board of Directors. The same comments apply to Article 48."
Organisation of markets and trading	6) Is the Organised Trading Facility category appropriately defined and differentiated from other trading venues and from systematic internalisers in the proposal? If not, what changes are needed and why?	The FBF support the introduction of OTFs as new trading venues with the aim to strengthen transparency for transactions currently traded over the counter or through crossing networks or Broker Crossing Networks ("BCNs"). However, as a general comment, we think that its definition should not prevent the OTF operator to trade against it own proprietary capital. In that way, it should be taken into account how far an investment firms should be able operate both an OTF and a systematic internaliser. Furthermore, It should be made clear how this definition take into account existing differences between equity and non equity markets. It is difficult to see how the purpose of strengthening transparency can be achieved by adopting a totally uniform definition of OTFs for markets which are highly different. The difficulty here is that the Commission wants to cover both crossing networks (operated by brokers, which solely consists of matching clients' orders) operated in the equity world and dealers' platforms (where the investment service provider acts as market maker), which are quite different systems operated in the non-equity world.

		Given the vital role of these markets for financing the economy, hedging risks and allocating savings, it is clear that - if used - this concept of OTF should be appropriately defined. That is why we think that: **<u>1 - regarding the equity markets</u>**, the definition of OTF appears to capture broker crossing networks. One must bear in mind that they have already reached (and cannot structurally go beyond) a marginal market share (less than 5%). <u>We are of the opinion that OTF operators should be allowed to deploy their own capital for the purpose of facilitating client trading</u>. Within broker crossing networks and other internal matching engines, the operators of those engines frequently deploy capital to facilitate the business of their clients. Strict prohibition on interaction with a firm's proprietary capital would make execution difficult, more costly and generally less efficient. French banks agree that to avoid any material impact on the price discovery mechanism, BCNs could be capped in terms of market share over which an OTF should become an MTF. However, we draw the European Parliament's attention to the fact that such a cap should be properly defined on the basis of an appropriate study of both the European Commission and ESMA and, above all, should apply consistently and in the same

		manner across all Member States. **<u>2 - regarding the non-equity and illiquid markets</u>**, the definition of OTF appears to capture interdealer broking activities, single dealer platforms and RFQ platforms that are not MTFs or RMs. The main concern comes from the proposed prohibition for investment firms that operate an OTF to use their proprietary capital. <u>Such a prohibition will have the impact of restricting the range of available venues</u> for trading in OTC derivatives subject to the trading obligation and fixed income products, notably limiting the vital role played by the above mentioned platforms. The regulatory objective of the ban on proprietary capital appears to be to ensure the operator's neutrality in relation to any transaction taking place on the OTF and that the duties owed to clients are not compromised. We think that this objective can be achieved by other relevant means, such as the implementation of appropriate conflict of interests' rules. -
	7) How should OTC trading be defined? Will the proposals, including the new OTF category, lead to the channelling of trades which are currently OTC onto organised venues and, if so, which type of venue?	OTC definition given in recital 18 of the draft regulation is too restrictive. For the FBF, the current OTC trading can be divided into three main categories:

		- The main part in volume is what is called the "non addressable liquidity", that is to say liquidity which by nature would never be displayed to the market participants by the investment firm which processes this kind of transaction. This activity is mainly related to the derivative activity of the intermediary ((exchange of collateral, exchange of securities basket with ETFs, exchange of equity swaps deltas, hedging of options.). This activity was carried out long before the implementation of MIFID in the same condition than today, is well known by regulators, monitored in house and raises no issue. - The transactions process through systems not submitted to a pre-trade transparency obligation (for large in scale transactions or not - reference price waivers). These systems are those defined as organised trading facilities in the Commission proposal. We do not have precise figures on these activities but according to our members that have put in place this type of systems, it represent today about 10%[1] of the overall liquidity. It should be underlined that in most cases, these transactions are processed accordingly following an express query of the end client. - The "pure" OTC trading defined as bilateral trades carried out on an *ad hoc* basis between counterparties and not under any organised facility or system.

[1] see **CESR Technical Advice to theEuropean Commission in the** Context of the MiFID Review -Equity Markets (CESR/10-802)

		The introduction of a new venue and particularly the choice of the commission to propose the « Organised Trading Facility » can be argued for « stock » market since the dealing rules applicable on OTFs and regulated markets already provide warranties for investor especially in terms of pre and post trade transparency when their orders are executed. The unique amendment which could contribute to the transparency shall be done on the process which governs the « waivers » allowed by the regulation 1287/2006 implementing directive 2004/39/EC and particularly on the reference price system. Regarding the equity markets, the proposal will convert broker crossing networks from classified as OTC to being classified as OTF business. This will meet the objective of regulating all organised trading in a consistent manner. Regarding the non-equity markets, we believe that a more inclusive OTF regime, without the prohibition for investment firms that operate an OTF to use their proprietary capital would help encourage the channelling of OTC derivatives onto organised venues. Furthermore, and due to the prohibition of own account dealing in the Commission proposals, OTFs definition can not be considered as the solution for « bonds » market and derivatives, That prohibition is a weakness for financial instruments such as bonds and most of futures and forwards which are initially

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		illiquid.
	8) How appropriately do the specific requirements related to algorithmic trading, direct electronic access and co-location in Directive Articles 17, 19, 20 and 51 address the risks involved?	The FBF welcomes and supports introduction of organisational safeguards and risk controls for high frequency trading. Even if the evidence that HFT is detrimental to the market should be discussed, French banking industry considers that concerns have been legitimately raised with respect, for example to the large number of cancelled orders. In this light, any rules should be designed with the objective of preventing market abuse, whilst not however hindering technological progress or unduly restricting competition. FBF supports the proposal which consists to better regulate high frequency trading and its stakeholders. A fair competition among market participants is essential and the FBF considers by the way that discriminatory fees and remuneration shall be regulated. That regulation may be extended to « tick sizes » in order to avoid further flash trading. The FBF does not exclude also to further study any additional technical measure as far as it appears relevant. However, French banks are opposed to the provision which impose each entity to provide "*liquidity on a regular and ongoing basis to theses trading venues at all time, regardless of prevailing market conditions*". Indeed algorithmic trading comprises a large scale of activities and in particular it is carried out by investment firms in order to execute orders for their clients. Algorithmic trading strategies with the purpose of order

		facilitation should not be mandated to act as market maker. But even algorithmic traders which deal only on own account, should not be assimilated to market makers, as the strategies they pursue does not systematically result in providing liquidity to the market. Moreover, the proposed regulation imposes rules that go well beyond those that apply to the systematic internaliser and the traditional market making activity. It would be inconsistent with the rules of risk management imposed on investment firms. At last, FBF supports the initiative which purposed that high frequency trading participants become regulated entities.
	9) How appropriately do the requirements on resilience, contingency arrangements and business continuity arrangements in Directive Articles 18, 19, 20 and 51 address the risks involved?	The FBF supports the Commission's proposals on this topic. However, the wording should be amended in order to clarify that circuit breakers should be coordinated between venues as far as possible.
	10) How appropriate are the requirements for investment firms to keep records of all trades on own account as well as for execution of client orders, and why?	In French branch networks, the vast majority of orders are already recorded and dated, either electronically (more than 70% of orders are placed via the Internet) or by telephone (around 25% of orders are placed via recorded call centres). In branch networks, residual market orders placed in branches (an ever smaller number) are systemically recorded in writing (in particular, telephone orders that do not go through call centres are always confirmed by fax). Accordingly, the need for a regulatory framework for recording is less acute than in other

		countries. However, the FBF believes that such requirements can contribute to market abuse's prevention, even if such requirements will add significant burden and cost. Furthermore the proposed text contains an inconsistency since the requirement to keep records of relevant transactions data for five years in the Regulation (see art. 22.1) is not consistent with the one to keep telephone conversations and electronic communications for three years in the Directive (art. 16.7).
	11) What is your view of the requirement in Title V of the Regulation for specified derivatives to be traded on organised venues and are there any adjustments needed to make the requirement practical to apply?	The French Banking Federation approval to the approach proposed by the Commission for a derivatives instrument centralized negotiation is subject to compliance to delegated acts based on criterion drafted under article 24 of the regulation especially the criteria of standardization and liquidity. The French Banking Federation considers that contracts standardization, harmonized execution order regime and central counterparties are fundamental conditions to manage the systemic risk. Nevertheless and to avoid the concentration of that risk, French banks have always been opposed to the model which set up a unique framework for market infrastructure, clearing and custodianship. Each activity shall fundamentally have its own structure and shall not be mixed with others.

		However, investments firms shall be authorized to continue to deal some of their transaction other the counter and by the way continue to net some of these transactions on bilateral ways (netting / collateral agreement) in order to suit to their clients requests in terms of risk management and default risk.
	12) Will SME gain a better access to capital market through the introduction of an MTF SME growth market as foreseen in Article 35 of the Directive?	The FBF strongly supports any development aiming at promoting SMEs access to financial markets. In that way, the proposals made by the European Commission should be welcomed. However, it is important to make sure that these rules are in accordance with the scheme set up by Prospectus and Market abuse Directive.
	13) Are the provisions on non-discriminatory access to market infrastructure and to benchmarks in Title VI sufficient to provide for effective competition between providers? If not, what else is needed and why? Do the proposals fit appropriately with EMIR?	The FBF supports the proposed removal of barriers and discriminatory practices that can be used to prevent competition in the provision of clearing services for all financial instruments. The FBF also supports the introduction of explicit and detailed requirements for open access by trading venues to clearing services. The FBF believes in competition between trading venues and between providers of post-trade market infrastructure. Furthermore, the requirement that CCPs provide non-discriminatory clearing access for financial instruments

		regardless of execution venue should be supported as well. We agree with the fact that this covers access to the associated margin pool within the CCP. It is of paramount importance to ensure that associated provisions are harmonized across EMIR and MiFIR to make sure that there is a level playing field between instruments subject to EMIR and those not. Furthermore, there should not be a difference in the Level 1 provisions on access under EMIR and MiFID. We therefore suggest that Article 28 of MiFIR be amended such that it also applies to derivative contracts subject to EMIR access obligations. Level 2 measures should also support this goal.
	14) What is your view of the powers to impose position limits, alternative arrangements with equivalent effect or manage positions in relation to commodity derivatives or the underlying commodity? Are there any changes which could make the requirements easier to apply or less onerous in practice? Are there alternative approaches to protecting producers and consumers which could be considered as well or instead?	○ **Position limits can contribute to the security of the markets, particularly for commodities markets.** To be effective, limits must be appropriate, fair and accurate in defining the goal. They cannot be set ex-ante and must rely on an analysis of historical datas, a detailed survey of the main market members and participants, and a good knowledge of the fundamentals from the underlying physical markets. On such basis, Art. 1 & 2 - Section 59 are not satisfactory in the way position limits could be set up. In particular, the willingness to impose <u>trading</u> limits on the

		number of contracts is inappropriate. This could be detrimental for the market liquidity and the capacity for the market to assume its price discovery mechanism. ○ **Position management rules are should be more appropriate.** In our view, the revision of the MiFID should be the opportunity to create position management rules which give powers to market operators to determine - in a dynamic way and according to alternative arrangements - if any participant is potentially building a position which raises a threat to the orderly functioning and integrity of financial markets, given the specific circumstances of the underlying market and taking into account such factors as the levels of open interest, liquidity and the supply of the underlying commodity. In that context, hard/ex-ante position limits would be used only as last resort measure in individual cases, if there is a threat to the orderly functioning and integrity of financial markets. ○ **Position limits are already in place on several markets but they are at the CCP level**, which is the first place to know and be able to act on the final prime contractor when this one is known by the CCP (this refers to the usage of "omnibus accounts"). To be efficient, limits should be set up for a firm on a common standards identification process throughout Europe for the minimum. Depending on a more precise definition to be fixed by ESMA about the expected goals to be achieved by such

		mechanism, position limits should be considered based on the global exposure resulting from outstanding on the spot (physical) market, as well as derivatives positions held on the underlying instrument whether they are traded on a RM, an MTF or an OTF. Procedures and definitions for limits must be set up at ESMA level to keep a comprehensive and identical methodology regardless on which European country the booking is supported. With respect to commodity products/markets, ESMA should validate limits with the competent sectoral regulator when available. ○ **Looking at difficulties faced by the US CFTC in setting up its position limits regulation to comply with the Dodd Frank Act, we recommend the European Parliament to set up appropriate aggregation rules**. Any aggregation regime should recognize that market participants that have completely separate management should not be aggregated. For entities which are governed through totally independent managements, the follow-up in real time of the various accounts in regards of the global position limit is irrelevant in terms of confidentiality and conflict of interests. It would be impossible to know/request positions taken by entities in which a company holds an equity interest since they are independently operated and regulated.

Investor protection	15) Are the new requirements in Directive Article 24 on independent advice and on portfolio management sufficient to protect investors from conflicts of interest in the provision of such services?	The FBF deems that the provisions of Article 24 allow any conflicts of interest that can potentially emerge in a relationship between the investor and the provider of the investment service to be identified, managed and, if warranted, terminated. Providing clients an ongoing assessment of the suitability of the financial instruments recommended is likely to create operational problems, in particular in a retail bank, due to the formalism associated with this provision. There already exists a disclosure obligation associated with the lifetime of the financial instrument.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	Complexity should not be rejected out of hand. Often, it allows the client to enjoy good performance, while, at the same time, protecting all or part of the investment upon maturity. The client's interests are often better protected by a structured product than by a vanilla product. Therefore the obligation to assess the appropriateness of all structured UCITS without distinction does not seem relevant. In order to make the decision to invest, the client must have a reasonable understanding of the degree of risk and liquidity. The Directive should lay down the criteria for placing a product in the category of complex products and task the ESMA with the responsibility for drawing up a list of the financial instruments of interest. The FBF believes that a distinction should be made between complex UCITS and non-complex UCITS. It seems to us that

		ETFs (even synthetic ones) should be considered as non-complex (as they are equity like instruments).
	17) What if any changes are needed to the scope of the best execution requirements in Directive Article 27 or to the supporting requirements on execution quality to ensure that best execution is achieved for clients without undue cost?	Regarding this principle, we cannot help but praise the draft directive, which aims at making available to the public, free of charge, the data relating to the quality of execution of the transactions. However, it is hard to gain a clear idea of the impacts of such a measure without information on the contents of the technical standards to be drawn up by the ESMA.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	The obligation to act honestly, professionally and not to be misleading should, of course, be applied to all client categorizations. We believe that in any case an opportunity should be granted to eligible counterparties or professional clients to receive greater protection by voluntarily changing category without immediately requiring greater protection for these categories of client.
	19) Are any adjustments needed to the powers in the Regulation on product intervention to ensure appropriate protection of investors and market integrity without unduly damaging financial markets?	The addition of further regulatory requirements to the European draft in areas or subject matter that have not been harmonised will impede achieving the aims of the European draft and will run the risk of creating competitive distortions harmful to national institutions.
Transparenc y	20) Are any adjustments needed to the pre-trade transparency requirements for shares, depositary receipts, ETFs, certificates and similar in Regulation Articles 3, 4 and 13 to	The FBF supports pre-trade transparency reinforcement.

	make them workable in practice? If so what changes are needed and why?	Such transparency, and its potential waivers, should be uniformly applied across the European Union under a effective control of ESMA to ensure a level playing field. Regarding the MIFID I regime on pre-trade transparency, only the large in scale waiver should be maintained (see, "*large in scale compared to normal market size*"). Beside, the FBF agrees that transparency requirements should be extended to depositary receipts and certificates issued by companies but not to exchange traded funds, where the trading process differs completely from the process used to trade in equities. For ETFs the rule should be calibrated differently.
	21) Are any changes needed to the pre-trade transparency requirements in Regulation Articles 7, 8, 17 for all organised trading venues for bonds, structured products, emission allowances and derivatives to ensure they are appropriate to the different instruments? Which instruments are the highest priority for the introduction of pre-trade transparency requirements and why?	Bonds and derivatives' pre-trade transparency can only be conceived as far as a real liquidity exists for those instruments. Now, bond market is by nature illiquid since the objective of investors is to benefit from their financial characteristics matched with a maturity (which is a main difference with shares which don't have any maturity), except may be during the thirty days following their issue ("*buy and hold market*"). As regards derivatives' market, liquidity of the considered derivative category will also be determining, to be usefully able to set up criteria of pre-trade transparency. Without this liquidity criterion, such a pre-trade transparency will be difficult to obtain,

		certain bespoke products being elaborated to meet the specific hedge needs of expressed by the clients. However, ESMA should be the central player to elaborate those pre-trade transparency criteria and be sufficiently empowered to ensure a level playing field across the EU, and controlling any waivers' possibilities.
	22) Are the pre-trade transparency requirements in Regulation Articles 7, 8 and 17 for trading venues for bonds, structured products, emission allowances and derivatives appropriate? How can there be appropriate calibration for each instrument? Will these proposals ensure the correct level of transparency?	To complete question 21, the FBF considers necessary to allow the development of safe and transparent markets. Pre-trade transparency for structured products can only be envisaged as far as they are simple and liquid, bespoke products being, by nature, not susceptible to enter into this category.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	See questions 21 and 22.
	24) What is your view on the data service provider provisions (Articles 61 - 68 in MiFID), Consolidated Tape Provider (CTPs), Approved Reporting Mechanism (ARMs), Authorised Publication Authorities (APAs)?	The FBF is strongly in favour of a single tape where all transactions should be consolidated in an organised and sound manner. Unfortunately, the commission's proposal will not permit to achieve this goal even if progress can be noticed compared to the current framework.

		The FBF believes that the regulation should impose ESMA to set up regulatory technical standards on data standards and reference data, and define the setting up conditions of one consolidated tape which comprises all transactions carried out on equity market. Regarding ARMs, a provision should be included to ensure ARMs' clients are provided with a satisfactory service level. This could be met *inter alia* by requesting ARMs to issue Service Level Agreements.
	25) What changes if any are needed to the post-trade transparency requirements by trading venues and investment firms to ensure that market participants can access timely, reliable information at reasonable cost, and that competent authorities receive the right data?	See question 24
Horizontal issues	26) How could better use be made of the European Supervisory Authorities, including the Joint Committee, in developing and implementing MiFID/MiFIR 2?	Coordination between the European supervisory authorities must be encouraged. In addition, it is fundamental to take into account that such co-operation is reinforced in an effective way, and to ensure a strict control regarding the possibilities given to competent authorities to derogate from the MIF legal framework of controls, in order to avoid as much as possible the possible lawful arbitrations carried out within the European Union, sources of competition distortion between the Member States.

	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	The FBF supports a maximum clarification of the regulation at level 1 making it possible for ESMA to ensure a harmonised implementation at European level of a level playing field. The freedom of initiative left with the competent authorities, without a prior control of ESMA (i.e. sale's prohibition of complex products) poses real practical problems and of legal certainty, calling into question the idea of a level playing field at a European level. The FBF supports a control of the sale of complex products as far as it harmonised at European level.
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	Market abuse directive and regulation, European market and infrastructure regulation (EMIR), capital requirement directive (CRD IV), REMIT, packaged retail investment products (PRIPs) and transparency directive should be considered with MIFID/MIFIR 2 development.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	A strong consistency should be reached with rules currently implemented in the United States through the Dodd Frank Act, and specifically swap dealers' rules.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	N/A

	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	The current suggested balance between level 1and level 2 raises important uncertainties regarding the legal framework which will rise, in particular from the delegated acts which remain multiple and leave at the end a relatively low visibility.

Detailed comments on specific articles of the draft Directive

Article number	**Comments**
Article 16.10 :	Article 16.10 prohibits investment firms from concluding title transfer collateral arrangements with retail clients for the purpose of securing or covering clients' obligations. The FBF believes this provision, which aims is to protect retail client's assets, is not justified. the retain wording is to broad and not coherent with the objective explained in Recital 37 which only points out : "*at least when retail clients' assets are involved, it is appropriate to limit the possibility of investment firms to conclude title transfer financial collateral arrangements as defined under Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements36, for the purpose of securing or otherwise covering their obligations*". As a consequence, the FBF believes that such a prohibition should not apply to the situation where the <u>only</u> purpose of the title transfer collateral arrangement to be entered into with a client is to secure or otherwise cover that particular client' obligations. Indeed, if entering into such an arrangement with a client in that case were not permitted, it would mean that an investment firm acting as an intermediary for a retail client could not use his or her assets to guarantee, by a transfer collateral arrangement (in most cases, a clearing house), the transaction entered into by the investment firm on his (the client's) behalf. In consequence, the investment firm would have to set up this collateral with its own funds or instruments, resulting in the cost of the transaction being higher for the retail client in question.

	The FBF then suggest redrafting paragraph 10 as follows: "*An investment firm shall not conclude title transfer collateral arrangements with a retail client unless such arrangement is for the purpose of securing or covering present or future, actual or contingent or prospective obligations of that client in connection with an investment service provided to him or her*".
Article ... :	
Article ... :	
Detailed comments on specific articles of the draft Regulation	
Article number	**Comments**
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