Setting the global standard for investment professionals

Mr. Markus Ferber, MEP
Member of ECON Committee
Rapporteur on MiFID/MiFIR 2

CFA Institute
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Interest Representative
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Re: Questionnaire on MiFID/MiFIR 2

Dear Mr. Ferber and ECON Committee Members,

CFA Institute is pleased to comment on the European Parliament's questionnaire on the European Commission's proposal for MiFID/MiFIR 2 of 20 October 2011 (COM(2011)0652).

CFA Institute is a global, not-for-profit professional association of more than 107,000 portfolio managers, investment analysts, advisers, and other investment professionals in 137 countries, of whom more than 97,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 135 member societies in 58 countries and territories. The mission of CFA Institute is to lead the investment profession globally by setting the highest standards of ethics, education, and professional excellence.

CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency and integrity of global financial markets.

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Ideally, market regulation fosters efficient capital markets by permitting investors to make well-informed decisions and providing issuers with lower capital costs. CFA Institute believes that the best regulatory systems promote transparency of price data and relevant issuer information. They are designed and enforced to maintain and enhance market credibility, openness, and investor confidence; and ensure a level playing field in trade execution for all market participants.

Please see the attached document for our response to the questionnaire. If you or your staff have any questions or seek clarification of our views, please feel free to contact either:

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Sincerely,

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Review of the Markets in Financial Instruments Directive

Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

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

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

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

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

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?	No comment.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	No comment.
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	No comment.
	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?	No comment.
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?	CFA Institute welcomes the further detailed clarifications on governance as detailed in the expanded Directive Articles 9, 48 and 65. Proper oversight of investment firms, trading venues and data suppliers is key to establishing efficient and responsible markets. A diversified and qualified managing body is able to balance the need to let senior

		management formulate business plans, enter into transactions and contracts on behalf of the company, and make relevant decisions. The managing body is also responsible in particular for establishing accountability and assessing reasonable internal controls. These internal controls should be regularly reviewed to assess and ensure their effectiveness via independent third party reviews. Managing bodies should act in a manner that is consistent with their oversight duties on behalf of shareowners while allowing senior management the freedom to execute the company's strategies without undue interference. Also managing bodies of investment firms, trading venues and data providers must be appropriately independent and seek competent individuals whilst refraining from nominating individuals with a large number of existing mandates. It is crucial that individuals have sufficient time to dedicate to their operations as well as real independence of thought being thus able to operate without any potential conflicts of interest. CFA Institute believes that managing body members should limit the number of memberships (or similar) they accept at any one time and limit their terms to a specific managing body to no more than 15 years. This enables new members with fresh insight and ideas and increased independence to be elected. In order to be really effective managing bodies must take steps in their structures and procedures to ensure that insiders and executive owners are unable to exercise undue control over the managing body's activities and decisions. The managing body should strive for a diversity of backgrounds, expertise, gender and perspectives, including an increased investor focus. CFA Institute believes that these attributes will; • Improve the likelihood that the managing body will act independently of management and in the best interests of shareowners • Reduce the influence of board members who are executive or financial officers of other companies who might have a natural

		inclination to support senior management's perspectives • Ensure that managing body members are able to understand the many complicated financial transactions and activities • Ensure that company activities are presented properly in any financial statements • Ensure that shareowner and investor views are considered. CFA Institute believes that managing bodies should have an independent majority as this is more likely to foster independent decision making as well as mitigating conflicts of interest that may arise. Furthermore whilst independence is seen as key – suitable qualifications is an imperative. Managing bodies should seek members who can provide a diverse range of competent perspectives based on their experience and expertise, it is of paramount importance that the managing body members are knowledgeable and conversant in the language of finance and accounting. Managing bodies of investment firms, trading venues and data suppliers must adopt procedures and take measures to limit, manage, and disclose any conflicts of interest that might affect their decisions and their work. Conflicts of interest present a source of risk to the attainment of client objectives and investment firms, as well as trading firms and data suppliers where appropriate should take all reasonable steps to mitigate and control for any conflicts of interest that arise in the course of business. This requires firms, where appropriate, to separate operating functions of the business; to establish vertical reporting structures; to make clear and complete disclosures; and to take measures to ensure independence, objectivity, and accountability in the investment decision-making process. Such measures are necessary to protect client interests. CFA Institute believes that where applicable investment firms should establish a proxy voting policy that sets out the responsibilities, systems, and processes by which proxy voting is conducted and

		administered. Firms should provide this information to clients so that they can determine whether the policy is consistent with their own objectives. Investment firms should also establish a proxy policymaker to ensure that voting decisions are conducted in accordance with relevant guidelines and that investors' best interests are served. Managing bodies should ensure that senior managers set, monitor, enforce and disclose a written code of high ethical standards for corporate officers and employees, CFA Institute believes that a publically accessible corporate code of ethics: • Creates a baseline of good corporate governance that will work to achieve the appropriate balance between smooth corporate operations and safeguarded shareowner interests • Refocuses corporate officers on their responsibilities to shareowners and the investing public • Sends an important message to investors, employees, customers, suppliers, and other constituencies that the company intends to act ethically. Where it is deemed appropriate to have a Nomination committee, CFA Institute believes that the managing body should have absolute authority to appoint its independent members to the committee. Removing these appointments from the authority of management helps to ensure that the committee performs its assigned tasks in consideration of what is in the best interests of shareowners.
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?	CFA Institute's principle position regarding the organisation of trading and markets is that all trading venues conducting similar types of business, and all orders of similar types and sizes, should be subject to the same rules, in order to provide a level playing field. This concept, above all else, is fundamental to achieve a fair market structure that serves the interests of all types of investors. Our comments relate to equity markets; we are not able to opine on the

		appropriateness of the OTF category as it relates to non-equity markets. The Organised Trading Facility definition is substantively akin to an MTF, with the exception that the operator of an OTF will have a degree of discretion over how a transaction is executed. In equity markets, however, it seems that most broker crossing systems (not currently regulated as trading venues) could either be categorised as systematic internalisers or MTFs. Therefore, we question the value of the OTF category for equities. Indeed, the existing trading venue categories should be used to the fullest extent possible; the creation of new trading categories creates complexity and could raise the potential for regulatory arbitrage. We also note that OTF operators will be prohibited from trading against their own propriety capital within the system. We support the intention behind this prohibition, namely to ensure neutrality and to protect client interests by removing the possibility for the OTF operator to profit by trading against client orders. In other words, it removes the potential for the OTF operator to pick and choose which order flow to internalise, thereby removing the risk of the operator "cream skimming" desirable order flow or trading ahead of client orders. We understand some concerns that banks play a valuable role as supplemental liquidity providers within broker crossing systems, and that by preventing them from being able to combine internalisation of client order flow with multilateral crossing, there may be insufficient liquidity within the OTF to satisfy clients' needs at any given time. However, a trading venue must be neutral; if OTFs could combine internalisation with multilateral crossing, then exchanges (RMs and MTFs) would be disadvantaged. The alternative (to maintain a level playing field) would be to allow RMs and MTFs to establish proprietary trading operations of their own to trade against client order flow routed to their systems. Clearly this would present conflicts of interest and would not be in the best interests of

		investors. This outcome could damage price formation if marketable orders were internalised rather than executed against displayed limit orders. Accordingly, to maintain a level playing field, we support prohibiting the OTF operator from being able to trade against its own proprietary capital within the system. Finally, in light of the preceding argument, there is a risk that firms continue to operate systems that combine bilateral activity (internalisation) with multilateral crossing as a means to exempt themselves from the OTF framework. That is, by operating a system that does not meet the definition of an OTF, they may be able to label its activity as "OTC" and hence exempt it from the market-oriented rules that apply to organised trading venues. Authorities should be cognizant of this risk and act accordingly.
	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?	The existing definition of OTC – namely, activity that is "ad hoc and irregular… carried out with wholesale counterparties… characterised by dealings above standard market size… outside the systems usually used by the firm concerned for its business as a systematic internaliser" – remains appropriate in our view. Rather than changing the definition, the focus of authorities should be on appropriate capture of all activity currently labelled as "OTC", by ensuring that activity that does not meet this definition is channelled into appropriate venues. The introduction of the OTF framework should result in some activity currently classified as OTC being categorised as OTF. However, in equity markets, activity in broker crossing systems is estimated to be small (estimates vary but such estimates are typically less than 5% of all trading volume). Consequently, it is likely that OTC activity will remain significant. An important and related area is how OTC transactions are reported. We

		envisage the provisions to establish Approved Publication Arrangements (addressed in question 24 below) will improve the quality of OTC trade reports and hence help provide cleaner estimates of the true volume of OTC trading. Finally, we wish to note that it should not be the aim of authorities to eliminate OTC trading. Genuine OTC transactions (as defined above) serve an important role, enabling investors to obtain efficient executions for non-standard types of business.
	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?	CFA Institute supports the provisions under Article 17 to require firms engaging in algorithmic trading (including high-frequency trading) to be authorised and to have in place effective risk management systems and controls over the operation of trading algorithms. With regards to Article 17 paragraph 3, our position is that, if HFT firms, systematic internalisers and/or over-the-counter market makers (or other investment firms engaging in algorithmic trading) are afforded certain privileges that are not available to other investors, such as preferential data access that is not available to other investors, then it would be appropriate to subject such firms to certain obligations, such as a requirement to provide liquidity irrespective of the direction of market movements. However, we recognise the view that the wording of paragraph 3, which requires algorithms to be in "continuous operation… with the result of providing liquidity on a regular and ongoing basis" may be construed as overly stringent. For example, traditional market maker obligations required (among others) market makers to quote prices at the best bid or ask for a certain percentage of time during regular trading hours. Accordingly, we suggest that authorities establish detailed guidance as to what would be considered acceptable for "ongoing" liquidity provision. The provisions related to direct electronic access are broadly appropriate. We support the view that firms providing direct electronic access should implement robust risk management procedures and controls

		and retain adequate oversight of the activities of their clients utilising sponsored-access arrangements. Such controls are necessary to protect the integrity and efficient functioning of the markets. We also agree with the provisions regarding co-location. Co-location services should be made available to all investors wishing to pay for these services. The fees charged should be transparent, fair and non-discriminatory, as drafted under Article 51. The provisions related to circuit breakers and systems resilience under Article 51 are also reasonable. In our view, circuit breakers and/or other more sophisticated forms of trading limitations can be effective tools for curbing excessive market instability. They should be applied consistently across all trading venues in order to provide investors with assurance that, irrespective of where they trade, the same protections are in place. Article 51 paragraph 3 also requires regulated markets 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." Firstly, we question why these requirements only apply to regulated markets (RMs), particularly given that a significant volume of electronic order book transactions take place on MTFs. Indeed, RMs continue to lose market share to other venues. Consequently, the same requirements in respect of the afore-mentioned provisions should apply to all organised trading venues, not just RMs. Secondly, regarding the specifics of the provisions under Article 51 paragraph 3, we are concerned that the proposal to place a limit on the ratio of unexecuted orders to transactions could have adverse consequences. Whilst this may reduce the volume of message traffic (itself a cost to the market ecosystem), a cap may restrict the ability of investors engaging in statistical arbitrage (a significant source of liquidity) to

		adjust their quotes in response to changes in the fair value of related securities. This would result in pricing inefficiencies across related financial instruments and markets.
	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?	We are not able to comment further on the specifics of the contingency and business continuity arrangements.
	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?	Such record keeping is appropriate as it provides an audit trail for authorities to be able to review client order handling practices. It also enables authorities to trace transactions in the event of suspected malpractice, regulatory infringements, or during periods of exceptional market circumstances.
	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?	CFA Institute supports greater exchange trading of derivatives. Trading on organised, electronic multilateral venues facilitates efficient price discovery through displayed pre-trade quotations and publication of post-trade prices and volumes. Public price transparency underpins investor confidence and helps strengthen liquidity, thus contributing to more resilient markets. The non-discretionary nature of exchanges and other organised electronic multilateral trading venues ensures fair market access and fair treatment of investors. It is also easier to monitor for potential instances of market abuse when transactions are conducted through such transparent, organised venues. CFA Institute is therefore supportive of a requirement for all clearing-eligible and sufficiently liquid derivatives to trade exclusively on transparent organised trading venues. The distinction of "clearing-eligible" and "sufficiently liquid" is important for at least two reasons. Firstly, if a contract cannot be accurately margined, collateralised and marked to market, such that it is not permissible for central counterparty (CCP) clearing, then it follows that the contract must be insufficiently standardised for exchange trading to be

		practicable. Accordingly, it would be inappropriate to mandate exchange-trading for such clearing-ineligible contracts. Secondly, it would be commercially unviable for derivatives exchanges to list contracts for which no "sufficiently liquid" market exists, whether through a lack of interest from corporate end users, investors, or speculators. If investors were required to use exchanges to trade such contracts, they may find the costs prohibitive to the extent that they forego hedging their business risks altogether. Accordingly, we believe that the Regulation takes the correct approach in focussing on clearing-eligible and sufficiently liquid derivatives for mandatory on-exchange trading.
	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?	In general, SMEs are more risky investments than large capitalisation companies. The potential risks SMEs pose for investors include: less capital and so less balance sheet strength compared with large cap companies; fewer products and services and so less diversified revenues; fewer customers and fewer suppliers; typically less management talent in reserve due to company size; and higher potential for fraud and impropriety arising from weaker internal controls compared with large cap companies. Consequently, a tailored regime for SMEs that would exempt them from the same reporting, listing and governance requirements that apply to all other listed firms should make it very clear to investors that these companies adhere to lower listing and reporting standards, so that investors are not caught unaware that they have invested in a higher-risk company. In light of these observations, the provisions under Article 35 of the Directive related to MTF SME growth markets appear reasonable. Specifically, they require the MTF to ensure that (among others) "…there is sufficient information published to enable investors to make an informed judgment about whether or not to invest in the instruments, either an appropriate admission document or a prospectus…." And that "there is appropriate ongoing periodic

		financial reporting by or on behalf of an issuer on the market, for example audited annual reports;…[and] there are effective systems and controls aimed at preventing and detecting market abuse on that market as required under the [Market Abuse Regulation]". We support these provisions, and hope that they enable SMEs to gain better access to capital markets as envisioned.
	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?	Title VI of the Regulation requires, under Article 28, central counterparties (CCPs) to "accept to clear financial instruments on a non-discriminatory and transparent basis, including as regards collateral requirements and fees related to access, regardless of the trading venue on which a transaction is executed." Article 30 addresses non-discriminatory access to benchmarks, specifically, "Where the value of any financial instrument is calculated by reference to a benchmark, a person with proprietary rights to the benchmark shall ensure that CCPs and trading venues are permitted, for the purposes of trading and clearing, non-discriminatory access to: (a) relevant price and data feeds and information on the composition, methodology and pricing of that benchmark; and (b) licences." We believe these provisions are appropriate as they designed to support competition. We are not able to comment further.
	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?	In general, CFA Institute does not believe that hard position limits are an appropriate or effective tool for managing derivative positions. Hard position limits are somewhat blunt because they do not take account of the complexities and interconnectedness between various financial instruments and their underlying instruments. Accordingly, hard position limits can potentially distort price discovery across interconnected instruments and markets. Furthermore, hard position limits would be difficult to calculate across both exchange and OTC markets because exchange markets tend to use multilateral netting, whereas OTC markets are bilateral and, as such, positions are calculated gross. Additionally, hard position limits would be difficult

		to calibrate; some customers may use the derivative to hedge an underlying exposure, whereas other customers may be seeking to hedge exposures to other correlated instruments. Any use of position limits would at least need to be calibrated to take into account the ratio of the position to total market size or open interest. Moreover, a better approach to position limits would be to focus on exposures. Such an exposure management regime would, for example, be based on the size of the derivative's delta (i.e. the sensitivity of the derivative price to changes in the price of the underlying), and also the price impact per trade. In the case of the former, a very large delta would trigger large margin calls for very small movements in prices. Accordingly, CFA Institute favours an exposure management approach over the imposition of position limits.
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?	In general, our members in the EU believe this is a problem. In a 2009 poll, CFA Institute asked these members: "In your opinion, do you believe the fee structures of investment products drive their sale to customers rather than their suitability for customers?" The responses came in with 64% indicating that they thought the fee structures of investment products were more important than customer suitability in driving their sale to customers. (See the survey results, at: http://www.cfainstitute.org/Survey/retail_investment_products_poll.pdf) Moreover, CFA Institute members globally believe mis-selling of investment products by financial advisers remains a serious problem. In the "Financial Market Integrity Outlook Survey" that CFA Institute conducted in January 2011, mis-selling ranked as the number 1 issue both globally and in EMEA. (See the survey at: http://www.cfainstitute.org/Survey/financial_market_integrity_outlook_2011.pdf) This feedback from investment professionals underlines the concerns about the mis-selling of investment products and suggests that changes are needed with regard to the importance that fees have in the sale of investment products to retail investors. To address this issue, the

		Commission proposes bans on the payment of "fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients" when the advice is provided on an "independent basis".[i] We note that this proposal from the Commission takes place in parallel to other moves by EU national regulators. In the UK, the Retail Distribution Review, which would require all retail financial consultants to have a certain level of qualification, intends to ban all inducements by 2013 and move from commission-based product selling to a full fee-based service. Denmark and the Netherlands are also considering banning inducements. In general, we are concerned that the Commission's proposals to ban inducements and fees/commissions for independent advisers would create an uneven playing field. In particular, we expect that such a regulatory structure would impair independent firms' competitive standing while permitting non-independent distributors—primarily banking entities—to continue to engage in similar activities. This would create confusion for investors, while giving banks an unfair competitive advantage. Moreover, we do not believe that this concern can be remedied by applying similar restrictions on banking entities to prohibit the use of inducements and fees in their sales programs. In the case of banking entities, the sellers are employees of the banks and any inducements might be difficult to trace by regulators. Making such inducements traceable would likely add complexity and could incur costs that the banks might potentially pass along to their customers. Consequently, we suggest that the European Parliament consider the following suggestions as mechanisms to help manage the issue of inducements: - We believe that education of financial advisers is essential to best serving the interest of investors. All financial advisers advising retail investors in the EU should be subject to equivalent minimum standards in terms of training and certification. - At the minimum, all distributors should have to disclose to retail investors the full cost of advice prior to any sale to enable them to

		make well-informed decisions. The definition of such costs should be "expansive," including the payment of any inducements, fees or commissions and any hidden costs. - Disclosure of such costs must be made in a standardized and easy-to-understand format so that investors can compare products and make a reasoned investment decision. Hence the importance of a Key Investor Information Document ("KIID") for Packaged Retail Investment Products ("PRIPs") allowing the comparison of competing products. The PRIPs proposal is of paramount importance for the protection of retail investors, and it is hard to see why its publication has been delayed so much.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	Article 25 defines for which "non-complex" products "execution only" service is allowed – meaning the investment firm does not need to assess the suitability of the product to the investment profile of the client prior to any sale. The Commission is proposing to limit the products allowed to be sold on an execution-only basis to the following (changes in the Directive are underlined): "shares admitted to trading on a regulated market or in an equivalent third country market, or on a[n] MTF, where these are shares in companies, and excluding shares in non-UCITS collective investment undertakings and shares that embed a derivative; (ii) bonds or other forms of securitised debt, admitted to trading on a regulated market or on an equivalent third country market or on a MTF, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved; (iii) money market instruments, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved; (iv) shares or units in UCITS excluding structured UCITS as referred to in Article 36 paragraph 1 subparagraph 2 of Commission Regulation 583/2010;

		(v) other non-complex financial instruments for the purpose of this paragraph. Under Article 36 of Commission Regulation 583/2010, "structured UCITS shall be understood as UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or UCITS with similar features." As expressed in our response to the ESMA consultation on guidelines for UCITS ETFs and structured UCITs (ESMA/2011/220), we believe that it is not appropriate for synthetic ETFs and structured UCITS to qualify like other UCITS products as "non complex products" under MiFID. Many voices are arguing that the focus of regulators should be on risky products, not complex products, which may, in regular instances, limit risk. We fully agree that complexity does not necessarily mean higher risk. For example, the risk of loss when buying shares is much larger than for a financial product where protection of capital is guaranteed and the payment of interest is determined by a formula linked to a base rate. However, we believe that complexity requires more transparency. Therefore, rather than relying solely on mandatory suitability tests, which potentially limit investors' freedom to invest in a broad range of products, we suggest enhancing the disclosures to investors on these "complex" products to enable them to make informed investment decisions. For these reasons, we strongly encourage EU regulators to publish its PRIPs proposals without delay. At the same time, we underline that a first priority of EU regulators should be the enforcement of existing rules. How firms conduct their suitability test differs widely from one Member State to another and from one firm to another. Guidelines - possibly drafted by ESMA - on how to

		conduct a suitability test would be very useful to ensure a certain level of harmonization.
	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?	The main change introduced by MiFID 2 is that each execution venue shall make available to the public, without charge, data relating to the quality of execution of transactions on that venue on at least an annual basis. Regulatory technical standards on the content and format of this data will be drafted by ESMA. We believe that this is appropriate modification.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	As regards protection of retail investors, please see our answers to questions 15, 16, 17 and 19.
	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?	Rather than giving more powers to the Commission, ESMA or Member States to ban certain financial products, we strongly encourage EU regulators to enhance the quality and comparability of disclosures to investors, and in particular retail investors. Again, a standardized KIID for PRIPS would greatly contribute to this objective.
Transparency	20) Are any adjustments needed to the pre-trade transparency requirements for shares, depositary receipts, ETFs, certificates and similar in Regulation Articles 3, 4 and 13 to make them workable in practice? If so what changes are needed and why?	The pre-trade transparency requirements for depositary receipts, ETFs and certificates are the same as for equities. This equivalence is appropriate as these instruments are equity-like in substance. They have a similar economic exposure profile as equities and are issued and traded on exchanges (as well as over-the-counter) in much the same way as common equities are issued and traded. Therefore it is appropriate to apply the same pre-trade transparency requirements to equities and equity-like instruments. We do not envision the need for amendments to Articles 3, 4, and 13 of the Regulation; however greater detail (expected by means of "delegated acts") is required to facilitate the implementation of these requirements.
	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	As with many of the provisions under the revised Directive and Regulation, much of the detail over how the pre-trade transparency framework for non-equity markets will be calibrated and

	ensure they are appropriate to the different instruments? Which instruments are the highest priority for the introduction of pre-trade transparency requirements and why?	implemented are left to "delegated acts". Accordingly, the principles as currently drafted are very high-level, and more detail is subsequently needed for the appropriateness of these requirements to be properly assessed. The pre-trade transparency provisions under Articles 7, 8, and 17 of the Regulation essentially follow the same principles as those that apply to equity markets. The pre-trade transparency principles for non-equity financial instruments that apply to organised trading venues (RMs, MTFs and OTFs, Articles 7 and 8) are unobjectionable. However, it should be noted that in practice, much of the 'organised' trading that takes place in these instruments is already pre-trade transparent. In bond markets, the growth of electronic trading platforms and the pre-trade transparency frameworks in place among various electronic venues should inform the ultimate calibration of the pre-trade transparency regime for non-equity markets. In bond markets in particular, the pre-trade transparency requirements for off-exchange transactions are significant because most of the trading volume in this asset class takes place over-the-counter (OTC). In our view, a single pre-trade transparency requirement for OTC transactions would be impractical. Unlike equity markets, dealers play a significant role in bond markets. The sheer number of debt securities, the large sizes in which they trade, and, away from government bonds, the relative infrequency of transactions and low secondary market liquidity are all conducive to an OTC market structure. Consequently, a single requirement to quote prices on thousands of issues in an illiquid market would likely result in fewer dealers making markets, reduced liquidity, and greater costs to investors. Therefore, the quoting requirements under Article 17 for systematic internalisers, in which quotes must be made available on a non-discriminatory basis and be binding below a certain size, are potentially significant. If policymakers decide to proceed with pre-trade transparency requirements for OTC transactions in bond

		markets, we urge caution to at least ensure that the calibration takes account of the liquidity characteristics of the issue in question. For example, the quoting thresholds should take some account of average trade sizes, the overall issuance size, the number of dealers quoting in a given issue, and the frequency of quotations, among other liquidity factors. CFA Institute's view is that the immediate focus of the transparency framework for non-equity markets should be on post-trade transparency.
	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?	See our response to question 21. We have no further comments.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	In general, CFA Institute's view on pre-trade transparency in equity markets is that all orders should be displayed unless they are large relative to normal market sizes or have non-standard terms. With regards to equities, we support the continuation of the existing approach to waivers from pre-trade transparency, which allows exemptions for (a) orders that are large in scale, (b) reference price systems, (c) negotiated transactions, and (d) orders held in an order management facility. We support retaining the existing thresholds for the large-in-scale waiver – there is no clear evidence that lowering the 'large' size thresholds would benefit investors, but there is reason to believe that doing so would further reduce the volume of displayed liquidity. We believe that a minimum size threshold for dark reference price systems that offer price improvement on the prices established in lit markets would be appropriate. Finally, we also support a more centralised role for ESMA in overseeing the granting of waivers.

		With regards to non-equity markets, the pre-trade transparency waiver principles are broadly similar. However, they are clarified in Article 8(4) of the Regulation to account for the specific characteristics of trading activity in a product, and the liquidity profile of a product, including the number and type of market participants in a given market and any other relevant criteria for assessing liquidity. These factors are appropriate. As we have noted in our answer to question 21, calibration according to liquidity characteristics is particularly important for non-equity financial instruments.
	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)?	CFA Institute is broadly supportive of the provisions to establish APAs, ARMs and CTPs. We believe that the APA regime should ensure that trade reports are published according to consistent standards over data quality and content, thereby improving the utility of post-trade data for investors. In turn, by addressing post-trade data quality, the APA framework should facilitate the consolidation of data and enable CTPs to emerge. The implementation of a consolidated tape is one of the most important initiatives under the revised MiFID. The approach prescribed, under which commercial consolidated tape providers must be authorised and supervised by competent authorities, and provide consolidated information in a continuous electronic stream as close to real time as possible, is the right approach at this stage, given the foundations established by the APA framework. Provided that CTPs are subject to the same minimum standards, investors should benefit from competition among CTP providers. Furthermore, the commercially-driven approach is likely to be the quickest and most efficient to implement, given existing resources and technological expertise in the industry. However, we must caution that, if such efforts in equity markets do not meet the prescribed standards, fail to lower costs or fail live up to

		investors' needs, then it may be necessary to review the commercially-driven model for the provision of consolidated data and consider the introduction of a mandatory consolidated tape for equity markets. With regards to the specific provisions of Article 67 for CTPs, we have two concerns. Firstly, the provisions indicate that CTPs will have to consolidate post-trade data for equity markets (under paragraph 1) and non-equity financial instruments (under paragraph 2). In principle, CFA Institute supports the provision of consolidated data for all financial instruments. However, given that post-trade transparency frameworks are yet to be implemented for non-equity markets, it is difficult to envisage whether the provisions under paragraph 2 are appropriate. For example, depending on the calibration of transparency requirements for bond markets, publication of volume information (required under Article 67 paragraph 2(c)) may or may not be appropriate. In some markets, such as Italy, transactions above a certain size threshold are published with an indication that they are above the given size, rather than publishing the actual size transacted, in order to provide protection to dealers. Secondly, and moreover, if CTPs are required to consolidate data from equity markets and non-equity markets, some data providers may be deterred from registering as CTPs. Depending on how the post-trade transparency framework is implemented for various types of non-equity financial instruments, it may or may not be cost-prohibitive or too complex for a data provider to consolidate non-equity market data. This uncertainty could discourage firms from registering as CTPs altogether. Therefore, it may be more appropriate to necessitate only the provision of consolidated post-trade data from equity markets at this stage. Firms should be encouraged to provide consolidated data in non-equity markets – to reiterate, CFA Institute is supportive of this in principle – but this should not be necessitated

		if it risks discouraging the emergence of firms registering as CTPs. The most critical aspect of the reforms over data provision is the implementation of a consolidated tape in equity markets and this should not be jeopardised by other proposals. We therefore suggest leaving open the possibility to require provision of consolidated data in non-equity markets after an appropriate period of time to assess how the post-trade transparency framework works in these markets. Finally, we note that Article 67 paragraph 3 requires the consolidation of data from "at least the regulated markets, MTFs, OTFs and APAs". For a consolidated tape to provide the completeness and hence usefulness that investors need, it must include OTC transactions as well those taking place on organised venues. Provided that OTC transactions are reported through one of the afore-mentioned venues, and that the consolidation of data from these venues includes *all* transactions reported though them, the wording of paragraph 3 is sufficient, but may require elaboration in the implementing measures.
	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?	The provisions to shorten the permissible reporting delays and to reduce costs by unbundling data and making data available free of charge after fifteen minutes are appropriate. These measures are all essential to improve the accessibility and usefulness of post-trade data for investors. In particular, we wish to emphasise that exceptions to real-time trade publication for "large" trades should not extend beyond the current trading day (or the start of the next trading day), and trades published with a delay should also be identified as such in trade reports. Please also refer to our comments on the provision of consolidated data in question 24.
Horizontal issues	26) How could better use be made of the European Supervisory Authorities, including the Joint Committee, in developing and	No comment.

	implementing MiFID/MiFIR 2?	
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	No comment.
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	No comment.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	The most prominent requirements in jurisdictions outside the EU that must be borne in mind when developing standards under MiFID/MiFIR 2 are those stemming from the Dodd-Frank Act in the United States, particularly in relation to the regulatory rule-makings for OTC derivatives. The OTC derivatives market is truly global in nature and hence international dialogue on regulatory matters is imperative in this sector of the financial services industry.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	No comment.
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	The Directive leaves much of the detail to be established via "delegated acts". Consequently, it is difficult to envisage at this stage how certain provisions will be implemented. We encourage policymakers to provide greater clarity and specifics at the Level 1 stage whenever possible.

Detailed comments on specific articles of the draft Directive

Article number	**Comments**
Article ... :	
Article ... :	
Article ... :	

Detailed comments on specific articles of the draft Regulation	
Article number	**Comments**
Article ... :	
Article ... :	
Article ... :	

[i] A firm providing investment advice on an independent basis is defined as one that "shall assess a sufficiently large number of financial instruments available on the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firms." Since independent advisers would not be able to get paid by product providers—that means that their revenues should come from investors, in the form of fees or commissions.
In a similar manner, the Commission proposal stipulates that, "when providing portfolio management, the investment firm shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients".