February 13, 2012

Markus Ferber
European Parliament
Rue Wiertz
Altiero Spinelli 15E242
B-1047 Brüssel

Re: Questionnaire on MiFID/MiFIR 2

Dear MEP Ferber:

The Investment Company Institute ("ICI") and ICI Global appreciate the opportunity to provide comments on the review of the Markets in Financial Instruments Directive ("MiFID") through your questionnaire examining the MiFID/MiFIR 2 proposals. The questionnaire raises a number of significant issues to both ICI and ICI Global members.

ICI is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds ("ETFs"), and unit investment trusts ("UITs"). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of over $12 trillion and serve over 90 million shareholders.

ICI Global is a global fund trade organization based in London; members include regulated U.S. and non-U.S. based funds publicly offered to investors in jurisdictions worldwide. ICI Global seeks to advance the common interests and to promote public understanding of global investment funds, their managers, and investors. Members of ICI Global manage total assets of over $1 trillion in non-U.S. funds.

ICI and ICI Global members, and their shareholders, have a strong interest in ensuring that the European financial markets are highly competitive, transparent and efficient, and that the regulatory structure that governs the financial markets encourages, rather than impedes, liquidity, transparency, and price discovery. Consistent with these goals, we have strongly supported efforts to address issues that may impact the fair and orderly operation of the financial markets and investor confidence in those markets and have long advocated for regulatory changes that would result in more efficient markets for investors.

We are filing this response jointly as the issues surrounding the trading of securities by funds clearly are of global importance. Many funds utilize intricately linked global trading desks and are concerned about the regulation and structure of the financial markets in all jurisdictions in which they trade. In particular, our members are very active in the European markets and are therefore particularly interested in the MiFID review.

It is clear that the debate over these issues will be lengthy. We therefore offer our assistance as the issues under MiFID/MiFIR 2 continue to be examined and look forward to the opportunity to meet with you to discuss these issues further.

At this time, we are not providing comments on each and every question posed by the questionnaire and are limiting our comments to the most significant issues impacting funds. We will, however, submit further comments as appropriate to supplement our answers or address other issues raised by the questionnaire.

If you have any questions on our comments, please feel free to contact the undersigned, or Ari Burstein at 1-202-371-5408 or aburstein@ici.org.

Sincerely,

/s/ Karrie McMillan

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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.**

Name of the person/ organisation responding to the questionnaire	**Investment Company Institute (ICI) and ICI Global.** ICI is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds ("ETFs"), and unit investment trusts ("UITs"). ICI Global is a global fund trade organization based in London; members include regulated U.S. and non-U.S. based funds publicly offered to investors in jurisdictions worldwide. Combined, members of ICI and ICI Global manage total assets of over $12 trillion and serve over 90 million shareholders. For purposes of this document, the term "fund" refers to publicly offered, substantively regulated funds commonly offered to retail investors such as U.S. registered investment companies or their non-U.S. fund corollaries.

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?	We believe an exemption may be needed to address certain third country access issues, as those provisions are currently drafted, that could have implications for the manner in which EU funds

		operate, significantly the ability of EU asset managers to delegate investment management services to affiliates and third parties outside the EU and to choose third country brokers. We discuss our concerns in this area further in our response to Question 4.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	ICI and ICI Global do not have a specific view on this question at this time.
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	We support the inclusion of custody and safekeeping as a core service, bringing the providers of these important functions under the scope of MiFID and MiFIR and regulatory supervision in general. Significantly, as a core service, providers will be able to more easily passport their services which, in turn, should improve competition and potentially lower costs for investors. We note, however, that issues regarding MiFID and MiFIR's third country access provisions discussed in Question 4 need to be resolved to ensure that service providers outside of the EU can provide investors with necessary custody and safekeeping services. Only in this manner can the benefits of including custody and safekeeping as a core service be fully realized.
	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?	Some degree of regulation of third country access to EU markets is appropriate. Trade agreement commitments regarding access for third country firms also should inform the development of these provisions. We appreciate the goal of establishing a level playing field for third country firms wishing to provide

		investment services to EU clients. We believe, however, that the Commission's current proposal in MiFID/MiFIR 2 raises significant questions. **Omission of Professional Clients from Non-Branch Regime and Access to Third Country Manager Expertise**: MiFID/MiFIR 2 sets forth two regimes – a "non-branch regime" applying to firms which provide certain specified investment services to eligible counterparties and a "branch" regime applying to firms which conduct investment business with retail clients. Professional clients are not mentioned in relation to either regime. This is of significant importance to funds and asset managers and their ability to access third country manager expertise, whether within a global asset management firm or outside their firm. EU asset managers are generally classified as professional clients under MiFID and not eligible counterparties. The proposal by implication suggests that professional clients are excluded from the non-branch regime and therefore a branch would be required. This approach sharply contrasts with the delegation provisions in the Alternative Investment Fund Managers Directive and the UCITS Directive, which make no reference to third country delegated managers having to be authorized under those Directives. We recommend that this position be reconsidered, particularly in light of the material overlap in the kinds of entities which can be classified as "professional clients" and "eligible counterparties." Given this overlap, it is unclear why these two categories should be afforded such different treatment. The existing MiFID framework provides adequate protections in this context and should be retained.

		Equivalence Regime: We are unclear as to whether a third country firm that establishes a branch would be required to comply with both the Directive and its domestic rules. To ensure the delivery of an outcomes based equivalence regime, branches of non-EU firms providing services into the EU should not be required to comply with the detail of both their domestic third country regulations and those elements of the Directive that provide for rules which generally are for the same regulatory purpose and provide the same level of investor protection. Such an obligation would result in the unnecessary duplication of regulatory requirements and increased costs and confusion for investors and fund managers. As a general principle, it is important that any standards that are adopted are applied consistently across EU member states to ensure the consistency of the outcomes for investors and fund managers. Therefore, as proposed in a number of places in MiFID 2, including in Article 43(2) in the context of those organizational requirements applicable to the branch of a third country firm, it is important that EU Member States are not able to impose requirements additional to those covered by the Directive. **Cooperation Agreements**: We note that under Regulation Article 37.2 (which relates to the non-branch regime), the cooperation agreements intended to be entered into between ESMA and third country authorities are to include provisions giving ESMA access to all information regarding third country firms and allowing it to conduct on-site inspections of those firms. It is important to consider that some countries may only be authorized to enter into information sharing agreements with

		entities that have direct supervisory authority over a firm. The requirements regarding information sharing therefore should reflect international information sharing standards and conventions, including confidentiality safeguards. **Equivalent Reciprocal Recognition**: We are concerned that the requirement for third countries to provide for equivalent reciprocal recognition of the MiFID/MiFIR 2 prudential framework is not workable. "Equivalent reciprocal recognition" has been previously considered by regulators with little or limited success, including between the Commission and the U.S. Securities and Exchange Commission. Some third country regulators also may lack authority under their legislative mandates to provide such recognition. It is therefore difficult to see how such reciprocity could be achieved in an effective way in the near future. We therefore recommend that this requirement be deleted. **Exception from Requirement to Establish a Branch or Register with ESMA**: We note that there is a reverse solicitation exception to the MiFID/MiFIR 2 third country requirements, which is where an EU-based client has requested the third country firm's services at its "own exclusive initiative." With respect to the Directive, this exception only appears in the Recitals so it would be helpful for it to be reproduced in the main body of the Directive to make clear that such reverse solicitation is possible, with retail clients and professional clients. It also should be clear that where the reverse solicitation has resulted in an EU person becoming a client of the third country firm, the third country firm can have

		subsequent interactions with that client so that continuing activities which are part of the client relationship are considered to be provided under the reverse solicitation.
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?	We do not have comments on the specific corporate governance requirements in the Directive at this time. As the new requirements on corporate governance are considered, however, similar requirements in other directives should be examined to ensure consistency across all regulations and to avoid any unnecessary confusion and expense. In addition, new requirements should be flexible to reflect the wide array of corporate structures that exist for investment firms, trading venues and data service providers.
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? 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?	We appreciate the desire to create a level playing field for all trading venues and to address the issue of broker crossing networks in the equity markets, as well as the need to capture future trading models under the current regulatory framework. We are concerned, however, about the continuing uncertainty of the use of, and difficulties complying with parameters surrounding, the Organized Trading Facility ("OTF") category and the resulting potential negative impact on the availability of trading venues for investors if firms are forced to change their business models in light of the requirements of an OTF. Most significantly, we understand that the prohibition on the execution of client orders against proprietary capital could prove problematic, particularly in the non-equity markets that rely on broker participation and the commitment of capital. Similarly,

		we believe that the prohibition on OTFs connecting with one another in a way that enables orders in different OTFs to interact may further fragment liquidity in the markets. In addition, given that transactions that are executed through broker crossing networks and derivatives trading venues are not necessarily comparable, we believe that it may not be useful for OTFs to operate as a "catch-all" venue covering both types of arrangements.
	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?	We strongly support the Commission's aim of increasing regulation in the area of algorithmic trading, particularly through the provisions of Directive Article 17 requiring an investment firm to have in place effective systems and risk controls and by increasing information provided to competent authorities about algorithms. Algorithmic trading has become a significant part of the global market structure and funds rely heavily on technology for the efficient execution of their trades. Nevertheless, concerns have been raised regarding several aspects of algorithmic trading, such as the negative impact on funds by the high rate of cancelled orders and certain practices by market participants that may be considered abusive including strategies designed to detect the trading of large blocks of securities by funds so that traders can front-run those blocks. **Directive Article 17.3**: Directive Article 17.3 states that an algorithmic trading strategy must be in continuous operation during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions. It appears that while the intention of this requirement is to

		address issues surrounding algorithms utilized by, for example, high frequency traders whose trading strategies are more akin to those of market makers, the broad scope of the language of this provision may sweep in algorithms utilized by investors, such as funds, to execute orders. This would be extremely detrimental to the manner in which funds trade and would serve little purpose in addressing the risks involved with algorithmic trading. More fundamentally, given the manner in which algorithms utilized by funds are designed, these algorithms would not be able to meet the requirements of continuous operation. The language of Article 17.3 should be amended to make clear that it does not capture the types of algorithms utilized by funds to execute trades. **Direct Electronic Access**: Investment firms that provide direct electronic access ("DEA") to a trading venue should have in place effective systems and controls to ensure that such an arrangement does not result in risks to the markets or trading that could be contrary to the Market Abuse Directive/Regulation. We urge the Commission, however, to provide flexibility to the numerous types of DEA arrangements currently in operation rather than adopting a "one size fits all" approach. Also, any information which DEA providers collect in the course of monitoring trading should be subject to stringent confidentiality safeguards.
	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 events of May 6, 2010 in the United States highlighted the need for requirements along the lines of those delineated in Directive Article 51 for systems resilience, contingency arrangements and circuit breakers in the context of electronic

		trading. **Cancelled Orders**: We support action to address the increasing number of order cancellations in the financial markets. Our members report that certain of the practices and strategies surrounding cancellations often are designed solely to detect the trading of large blocks of securities by funds and to trade with or ahead of those blocks. We support Article 51.3 that provides that Member States require a regulated market to have in place effective systems, procedures and arrangements to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions, including having systems to limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant. **Direct Electronic Access**: We support requiring regulated markets that provide direct electronic access to have in place effective systems and controls to address risks presented by such arrangements similar to those required of investment firms. **Co-Location**: We believe that co-location services should be required to be provided on a non-discriminatory basis and that the associated fees are equitably allocated and reasonable.
	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?	We support investment firms keeping accurate records of trades. We stress, however, that in the case of transactions carried out on behalf of clients, there must be strong confidentiality requirements in place to protect records of client transactions. For example, access to trading records that are generated that contain information such as the details of the identity of the

		client should be limited to investment firm personnel that are responsible for the recordkeeping function. We believe that, at a minimum, there ought to be confidentiality restrictions placed on investment firms based on Article 5(2) of the existing MiFID Implementing Directive (Directive 2006/73/EC). Confidentiality of information regarding fund trades is of significant importance. Any premature or improper disclosure of this information can lead to frontrunning of a fund's trades, adversely impacting the price of the stock or other instrument that the fund is buying or selling.
	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?	We support the overall goals of increased transparency, increased market oversight and enhanced liquidity in the OTC derivatives market. Bearing in mind the size of the OTC derivatives market, however, we believe that it would be better to let the migration of derivatives to trading venues occur in a phased manner rather than bringing about a sudden shift through an overly restrictive formula identifying the criteria for the obligation to trade on regulated markets, MTFs or OTFs. We welcome the requirement for ESMA to conduct a public consultation on the classes of derivatives which are sufficiently liquid to be subject to the trading requirement. We also support ESMA maintaining a register of derivatives subject to the trading requirement. We strongly support the use of the option in the Regulation for ESMA to consult with competent authorities of third countries regarding the trading requirement. Given that third country regulation targeting OTC derivatives trading may in some cases

		have extraterritorial scope and therefore overlap with EMIR, we believe that cooperation with third country regulators is essential to create consistent and sensible cross-border regulations. For example, we strongly advocate for the need to consider the implementation of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") as well as the proposed rules on OTC derivatives published in October 2011 by the Hong Kong Monetary Authority (HKMA) and the Hong Kong Securities & Futures Commission (SFC) in connection with any reforms in this area. Finally, we are concerned that although EMIR and MiFIR recognize the possibility of third country central counterparties ("CCP") and trading venues being used to satisfy the clearing and trading obligations, this is restricted to situations where the CCP or trading venue is subject to equivalent requirements to those applied in the EU. As discussed in our answer to Question 4, we are concerned that this "equivalence" standard suggests that third country regimes will be evaluated against a fixed set of standards which may be difficult to apply; we believe an outcomes-based approach, taking into account the individual features of third country regimes, would be preferable. In addition, we are concerned that the requirement for equivalent reciprocal recognition of EU CCPs and trading venues by third countries may not be viable in practice.
	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?	ICI and ICI Global do not have a specific view on this question at this time.

	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?	We support non-discriminatory access to market infrastructure; we are concerned by the current trend towards concentration in the provision of certain services and believe that non-discriminatory access of trading venues to clearing houses, for example, will improve competition and, in turn, lower investment and borrowing costs, eliminate inefficiencies and foster innovation in the financial markets. We note, however, that the non-discriminatory access requirements in Regulation Articles 28 and 29 differ in some respects from the corresponding provisions in the most recent EMIR compromise proposal (Articles 8 and 8a). Most significantly, EMIR provides broader discretion for CCPs and trading venues to refuse access, simply providing that they must give full reasons for any refusal. The Regulation, on the other hand, states that access may only be denied under specific conditions, which are to be set out by the Commission in delegated acts. Although Articles 28 and 29 are expressed to be without prejudice to EMIR, we believe it is desirable that the two sets of provisions are consistent and we support the approach taken in the Regulation.
	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?	We do not believe that hard position limits are appropriate for all categories of market participants. For example, we do not think that imposing position limits on funds that invest in certain types of derivatives (*e.g.*, futures contracts or fully collateralized swaps in various commodities to replicate the performance of commodity indices) would advance the goals of preventing market manipulation and disorderly markets. Further, we believe that the failure to carefully craft position limits could

		have an adverse impact on certain fund investors, which is problematic in that funds are one of the primary vehicles for small investors to access the commodities markets. In the United States, ICI has recommended that registered funds that comply with the leverage requirements of the Investment Company Act of 1940 and that take passive, long-only positions should not be subject to position limits. These funds, among other things, do not selectively target particular physical commodities or amass significant positions in any one commodity such that their selling decisions could affect market pricing. Imposing position limits on such registered funds could harm the futures and swaps markets as well as fund investors in those markets by reducing the liquidity available to commodity producers and end-users that rely on these funds to take the other side of their trades. By reducing liquidity, price discovery would be impaired because fewer traders, and consequently fewer transactions, in the commodities derivatives markets would result in less transparency and information to identify the true market price of a contract. The imposition of position limits may also impair an important portfolio diversification tool for fund investors.
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?	Directive Article 24.6 states that when providing portfolio management, an investment firm must 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. We believe that the Directive should provide flexibility for the types of arrangements that funds enter into and, at the very least, should make clear that

		certain types of benefits, such as non-monetary benefits, continue to be permitted as long as they are disclosed. Current MiFID rules requiring disclosure of inducements and applying strict standards to the circumstances where, for example, commission sharing arrangements are permitted are, in our view, sufficient to manage conflicts of interest and ensure fair treatment of professional clients.
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	ICI and ICI Global do not have a specific view on this question at this time.
	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?	Given the complexities of the current market structure and the associated difficulties investors face when assessing market performance, the need for improved information to investors about execution quality is significant. MiFID currently does not require venues to publish harmonized data on execution quality. Potentially relevant information for best execution evaluation is therefore not generally available in a readily comparable format. We therefore support the provisions in Directive Article 27 that would improve the availability of information to investors, such as the requirement for execution venues to make available to the public data relating to the quality of execution of transactions on that venue on at least an annual basis and that investment firms provide appropriate information to their clients on their order execution policy. Article 27.5 contains a new provision requiring investment firms to summarize and make public on an annual basis, for each class

		of financial instruments, the top five execution venues where they executed client orders in the preceding year. ESMA is required to develop draft regulatory technical standards to determine the content and the format of information to be published by investment firms under this requirement. We recommend that any technical standards clarify that an investment firm not be required to disclose this information for any specific client but instead only on an aggregate basis; otherwise, we are concerned that this requirement could lead to the disclosure of information about fund orders that could be used by others to adversely impact the price of the stock or other instrument that the fund is buying or selling. We also support recommendations previously put forth by commenters on MiFID/MiFIR 2 to require that investment firms that provide a portfolio management service be provided with best execution by the investment firm with whom they place orders, notwithstanding that the portfolio manager is categorized by MiFID as an eligible counterparty.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	As discussed in our response to Question 4, we are concerned about the omission of professional clients from the non-branch regime in the draft Regulation regarding third country access to EU markets and the impact on third country investment managers.
	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	We support providing regulators with the necessary tools to ensure investor protection and the fair and orderly operation of the financial markets. We believe, however, that intervention

	financial markets?	powers should only be used in extreme situations and should be subject to a high level of safeguards and transparency. In general, therefore, we support the safeguards which have been built into the Regulation but recommend the implementation of a minimum notice period to be fulfilled prior to the exercise of intervention powers. **Safeguards Surrounding Intervention Powers**: We support the obligation on Member State regulators to assess the likely effect of any ban on investors and to consult with other Member State regulators. We note, however, that with respect to proposed power to prohibit or restrict financial activities, "financial activity" has not been defined or limited in any way; we therefore recommend that more clarity be provided on the scope of this power. We also support that ESMA coordinate interventions, particularly since ESMA must assess whether interventions are proportionate and justified. However, due to the broad scope of Regulation Article 31, it appears that ESMA could target specific persons which it believes are engaged in harmful practices. Although ESMA may be well positioned to assess the impact of widespread or pan-European instruments and activities, we believe that the regulation of individual market participants should be left solely to Member State regulators, who are closest to national markets and therefore best placed to assess the risks. **Notice of Intervention**: If the proposed intervention powers are given to Member State and European regulators, they should be

		under an obligation to give the market sufficient notice of any action that they intend to take. Instability could result if the markets are not given sufficient time to absorb the effect of the proposed intervention. In this regard, we note that although Member State regulators and ESMA must publish notices on their websites detailing any proposed interventions, there is nothing in the Regulation to indicate how far in advance the notice will be published. To avoid the markets receiving insufficient notice of any proposed action, we advocate the inclusion of a minimum notice period during which any intervention action may not be taken. **Reinstating Trading of Products or Provision of Activities Post-Intervention**: We believe that the process for reinstating the trading or distribution of a product or the provision of an activity should be clarified (possibly through later measures). **"Rolling" Three-Month Bans**: We note that although any prohibition or restriction implemented by ESMA must be renewed every three months, there is no limit specified on the number of times that ESMA can renew a ban. Given that ESMA interventions are designed to act as temporary measures for use in extreme situations, we recommend that an upper limit be placed on the number of times in which ESMA can renew a ban.
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?	As investors, transparency of market information is vital to making informed investment decisions. A robust pre-trade transparency regime provides investors with access to information about trading opportunities, facilitates price formation and assists investment firms in providing best

		execution to their clients. While we strongly support increasing pre-trade transparency, there are limits to the benefits of such an action, particularly if increased transparency results in negative consequences for the manner in which funds and other investors execute transactions. As discussed further in our response to Question 23, it is therefore important that the waivers to pre-trade transparency remain available under Regulation Article 4 for the types of orders executed by funds, such as those that are large in scale compared to normal market size. It is equally important that these waivers remain flexible so as not to create difficulties for investors when executing orders. In conjunction with requirements to make public current bid and offer prices, we support the extension of pre-trade transparency rules to actionable indications of interests.
	21) Are any changes needed to the pre-trade transparency requirements in Regulation Articles 7, 8, and 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? 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	In general, we believe that the same benefits that pre-trade transparency brings in the equity markets can be realized in the non-equity markets. However, it is equally important that waivers to pre-trade transparency are available for the types of orders executed by funds in the non-equity markets. We also caution that any new pre-trade transparency requirements in the non-equity markets must be tailored as much as possible to the particular characteristics of the instruments traded in these markets and that it will be difficult simply to apply the regulations overseeing the equities markets to the regulation in non-equity markets. In this respect, we support the

	instrument? Will these proposals ensure the correct level of transparency?	Commission's aim of calibrating transparency requirements according to the characteristics of different instruments and note that the waiver and deferred publication regimes will be particularly relevant to the calibration of transparency requirements.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	As discussed in our response to Question 20, waivers to pre-trade transparency requirements are important for the types of orders executed by funds. Any changes to the existing waivers must therefore be carefully crafted to not create difficulties for funds when executing orders. We strongly support the Commission's view that orders that are large-in-scale require waivers to avoid having too large a market impact when executed. Given that many fund orders fall below the large-in-scale thresholds but still result in market impact, it is equally important that other pre-trade transparency waivers remain available to the orders executed by funds. For example, given that the reference price waiver has not been specifically reproduced and that the detail of the waiver regime will largely be implemented through delegated acts, its effect on the operation of trading venues such as dark pools is currently unclear. Dark pools are of significant importance to funds, because any premature disclosure of information about fund orders can lead to frontrunning of a fund's trades. Similarly, we support an exemption from pre-trade transparency requirements for "stubs"; such an exemption would facilitate the ability for funds to execute large trades and at the same time prevent leakage of information about their on-going orders.

		We support the Commission's desire to ensure that waivers are applied consistently and coherently and that their use is not being abused. Nevertheless, while we appreciate that ESMA is to have a role in coordinating the granting of waivers, we are concerned that the ability of a Member State regulator to refer a waiver decision in relation to another Member State back to ESMA - even after a positive finding in relation to that other Member State - may unduly delay the granting of waivers. We also are not convinced that waivers currently in force need to be re-assessed following the commencement of MiFID/MiFIR 2.
	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)?	We support the need for stronger and consistent standards for data reporting services. This will be important if a consolidated tape is to be established, which we strongly support.
	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?	We strongly support the reduction of delays in the publication of post-trade market data. More effective transparency can show which venues or firms are providing the best prices and also may be useful to enable investors to monitor whether they are receiving best execution. Adequate exceptions to post-trade transparency, however, must remain for certain large orders executed by funds. We strongly support the ability for competent authorities to authorize regulated markets under Regulation Article 6 to provide for deferred publication of the details of transactions based on their type or size. We note that the transaction reports contemplated by Regulation Article 23 are to include, among other things, designations to

		identify the clients on whose behalf the investment firm has executed the transaction. While we appreciate the need for competent authorities to have access to this information, we are concerned about the confidentiality of this information. Currently, the only confidentiality safeguard surrounding transaction reports is the generic professional secrecy obligation in Directive Article 81. We believe that this is insufficient given the broadening of transaction reporting requirements to include non-equity instruments and the sensitivity of the data which regulators will be handling. In particular, there should be safeguards ensuring that the data contained in transaction reports is used solely for the relevant regulatory purposes and that regulators themselves have sufficient data privacy systems and firewalls to ensure that personal investor information remains protected. It also is critical that the designations identifying clients are managed so that the identity of the underlying position taker is not made public and that restrictions be placed on the personnel who are able to access the data. Finally, the need for confidentiality safeguards is not limited to regulators; it also is critical that any reporting mechanism is subject to a statutory obligation to maintain the confidentiality of reported information. These concerns could be dealt with through a Level 2 measure similar to Article 5(2) of the existing MiFID Implementing Directive (Directive 2006/73/EC). We note that the Regulation Article 23 obligation to report transactions will not apply to OTC transactions in financial instruments "which do not or are not likely to have an effect on a

		financial instrument admitted to trading or traded on an MTF or an OTF." We believe that further guidance on the application of this category of OTC transactions would provide more certainty with respect to compliance with the new regulations.
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?	ICI and ICI Global do not have specific views on this question at this time.
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	ICI and ICI Global do not have specific views on this question at this time.
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	It is important to retain consistency between the many existing and proposed EU financial services initiatives such as MiFID/MiFIR 2, EMIR, Market Abuse Directive/Regulation, AIFMD, and the Capital Requirements Directive. As discussed in our responses to several of the other questions, many of the provisions in these initiatives overlap and impact one another. Therefore, all of these initiatives should be considered as the examination of MiFID/MiFIR 2 continues.
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	Jurisdictions around the world are starting to, or are already facing, a number of common issues. As the Commission examines MiFID/MiFIR 2, we urge it to work closely with regulators around the globe to create consistent and sensible cross-border regulations. Our increasingly global markets demand such cooperation among national regulators to avoid negative consequences of incongruent regulatory requirements

		and to encourage regulatory efficiencies. One initiative that clearly should be considered as the debate over MiFID/MiFIR 2 continues is the implementation of the U.S. Dodd-Frank Act. The Dodd-Frank Act has implications for numerous provisions in MiFID/MiFIR 2, primarily those relating to the oversight and reform of the derivatives markets. Further, the U.S. Securities and Exchange Commission in 2010 issued a concept release seeking input on many of the topics raised in MiFID/MiFIR 2 and this questionnaire. See http://www.sec.gov/rules/concept/2010/34-61358.pdf and http://www.sec.gov/comments/s7-02-10/s70210.shtml.
	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	ICI and ICI Global do not have specific views on this question at this time.
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	ICI and ICI Global do not have specific views on this question at this time.

Detailed comments on specific articles of the draft Directive	
Article number	**Comments**
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