

Review of the Markets in Financial Instruments Directive (MiFID): Frequently Asked Questions

1. What is MiFID?

MiFID is the Markets in Financial Instruments Directive (Directive [2004/39/EC](#)¹). It replaces the Investment Services Directive (ISD) which was adopted in 1993. It was agreed unanimously by the Member States and by a large majority in the European Parliament, and came into force in 2008. It is a cornerstone of the EU's regulation of financial markets. It seeks to improve the competitiveness of EU financial markets by creating a single market for investment services and activities, and ensuring a high degree of harmonised protection for investors in financial instruments, such as shares, bonds, derivatives and various structured products. MiFID has brought greater competition across Europe in the provision of services to investors and between trading venues. This has helped contribute to deeper, more integrated and liquid financial markets. It has also driven down costs for issuers, delivering better and cheaper services for investors, and contributing to economic growth and job creation in Europe.

2. Why is MiFID being reviewed only four years approximately after its entry into force?

In keeping with its intended objective, MiFID has contributed to a more competitive and integrated EU financial market. However, recent events and market developments have demonstrated weaknesses in some of the underlying principles of MiFID, and highlighted areas needing reinforcement or revision, for example it has arguably led to the development of new trading platforms and activities which fall outside of its scope and thus outside any regulations. Closing such a gap is necessary in order to bolster investor confidence and achieve all of MiFID's original objectives. Ensuring a more robust framework of regulation will also serve to address the more complex market reality we are now faced with, a reality which is characterised by increasing diversity in financial instruments and new methods of trading. Similar discussions are taking place in the United States and other major global financial centres.

¹ The MiFID regulatory framework consists of a framework Directive (Directive 2004/39/EC), an Implementing Directive (Directive 2006/73/EC) and an Implementing Regulation (Regulation No 1287/2006)

3. Did MiFID contribute to the crisis?

The financial crisis was caused by multiple factors. The original objectives of MiFID were to improve the resilience of EU financial markets through free competition and high levels of market transparency and investor protection. To some extent these have been achieved. However, the full effects of MiFID are yet to play out. While it is true that the Directive has not entirely delivered on its objectives, it is mistaken to assign all developments, such as the growth of trading in newer trading functionalities (for example high frequency trading) and dark environments (for example all dark pools – see question 11) to MiFID. These have more to do with technological developments.

4. What are the anticipated costs and benefits of the proposals?

The MiFID review is estimated to impose one-off compliance costs of between €512 and €732 million and ongoing costs of between €312 and €586 million per year. This represents an impact for one-off and ongoing costs of 0.10% to 0.15% and 0.06% to 0.12% respectively of total operating spending in the EU banking sector. This is only a fraction of the costs imposed at the time of the introduction of MiFID. The one-off cost impacts of the introduction of MiFID were estimated as 0.56 per cent (retail and savings banks) and 0.68 per cent (investment banks) of total operating spending. Recurring compliance costs were estimated at 0.11 per cent (retail and savings banks) to 0.17 per cent (investment banks) of total operating expenditure. The main benefits of MiFID will be very tangible, but are not readily quantifiable. The benefits of an improved level playing field, of increased market transparency, of better transparency towards regulators and stronger powers for regulators, of increased investor protection and the implied confidence investors have in financial markets, and reduction of the risk taken and the related impact on the financial stability of EU financial markets are real benefits, on which it is almost impossible to place a number.

5. How is the scope of MiFID extended and why?

Revising MiFID is an essential part of ongoing structural reforms in the aftermath of the financial crisis. These are aimed at establishing a safer, sounder, more transparent and more responsible financial system that works for the economy and society as a whole. The main objectives of the revision are:

More robust and efficient market structures: MiFID already covered Multilateral Trading Facilities and regulated markets, but the revision will now bring a new type of trading venue into its regulatory framework: the Organised Trading Facility (OTF). These are organised platforms which are currently not regulated but are playing an increasingly important role. For example, standardised derivatives contracts are increasingly traded on these platforms. The new proposal will close this loophole. The revised MiFID will continue to allow for different business models, but will ensure all trading venues have to play by the same transparency rules and that conflicts of interest are mitigated.

In order to facilitate better access to capital markets for small- and medium-sized enterprises (SMEs), the proposals will also introduce the creation of a specific label for SME markets. This will provide a quality label for platforms that aim to meet SMEs' needs.

Taking account of technological innovations: Furthermore, an updated MiFID will introduce new safeguards for algorithmic and high frequency trading activities which have drastically increased the speed of trading and pose possible systemic risks. These safeguards include the requirement for all algorithmic traders to become properly regulated, provide appropriate liquidity and rules to prevent them from adding to volatility by moving in and out of markets. Finally, the proposals will improve conditions for competition in essential post-trade services such as clearing, which may otherwise frustrate competition between trading venues.

Increased transparency: By introducing the OTF category, the proposals will improve the transparency of trading activities in equity markets, including "dark pools" (trading volumes or liquidity that are not available on public platforms). Exemptions would only be allowed under prescribed circumstances. It will also introduce a new trade transparency regime for non-equities markets (i.e. bonds, structured finance products and derivatives). In addition, thanks to newly introduced requirements to gather all market data in one place, investors will have an overview of all trading activities in the EU, helping them make a more informed choice.

Reinforced supervisory powers and a stricter framework for commodity derivatives markets: The proposals will reinforce the role and powers of regulators. In coordination with the European Securities and Markets Authority (ESMA) and under defined circumstances, supervisors will be able to ban specific products, services or practices in case of threats to investor protection, financial stability or the orderly functioning of markets. The proposals also foresee stronger supervision of commodity derivatives markets. It introduces a position reporting obligation by category of trader. This will help regulators and market participants to better assess the role of speculation in these markets. In addition, the Commission proposes to empower financial regulators to monitor and intervene at any stage in trading activity in all commodity derivatives, including in the shape of position limits if there are concerns about disorderly markets. The G20 Summit in Cannes on 3 and 4 November will also address the issue of commodity derivatives.

Stronger investor protection: Building on a comprehensive set of rules already in place, the revised MiFID sets stricter requirements for portfolio management, investment advice and the offer of complex financial products such as structured products. In order to prevent potential conflict of interest, independent advisors and portfolio managers will be prohibited from making or receiving third-party payments or other monetary gains. Finally, rules on corporate governance and managers' responsibility are introduced for all investment firms.

A. More robust and efficient market structures

6. What is proposed on clearing and access to post-trade infrastructures?

The issue at stake is about competition and the integration of EU market infrastructures. Although the vertical integration model of trading and post-trading infrastructures may present advantages in terms of coordination, it may also introduce inefficiencies with respect to competition and price transparency. The introduction of access requirements in the proposed Regulation on OTC derivatives, central counterparties and trade repositories (EMIR) is a response to these potential negative effects. While EMIR covers only OTC derivatives, MiFID will cover all financial instruments.

Access and fee provisions, requirements which prohibit the use of discriminatory prices or the imposition of unnecessary requirements, are the tools which are proposed to foster efficient competition and integration of EU markets infrastructures. They will ensure that new providers can compete for the provision of trading or central clearing services and full price transparency at each level of the post-trading chain.

7. How are developments in trading outside of venues categorised in MiFID being dealt with? How are crossing networks and the trading of standardised OTC derivatives being addressed?

Much of the trading currently being carried out outside of the MiFID venues, on a so-called over-the-counter basis, takes place on alternative types of platforms operating in the market such as broker crossing networks. The MiFID review proposes to introduce a new category of platform to adequately regulate all kinds of organised trading and to level the playing field in the EU. More specifically, the Commission proposes to introduce the new category of an organised trading facility (OTF), which will be subject to the same core requirements for the operation of a trading venue as other existing platforms. This new type of platform is defined in a broad way, so that it captures all forms of organised trading not matching the existing categories.

So-called crossing networks (systems operated by investment firms which mainly internally match client orders) would be one of the venues captured under this new category.

As a result, all organised trading, in other words trading which takes place in a system, which currently takes place outside of regulated venues will in the future be conducted on regulated venues.

Systematic internalisers also make up a share of trading outside platforms. They are investment firms who deal with their clients in an organised way, in other words any trading which goes beyond ad hoc deals. For standardised derivatives, there will be a requirement to trade them on organised venues. Trading in such derivatives will thus no longer take place outside of regulated venues. Only ad hoc trading in shares, bonds, and non-standardised derivatives will continue to be allowed to take place OTC.

See also Annex 1.

8. How will trading in standardised OTC derivatives be moved onto organised venues in line with G20 commitments?

The G20 commitment states that "all standardised OTC derivatives contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end 2012".

In order to appropriately meet this commitment in Europe, all trading of derivatives which are eligible for clearing and which are sufficiently liquid will move to either regulated markets, Multilateral Trading Facilities (which already exist in the current MiFID framework), or to the new organised trading facilities (OTFs).

ESMA shall assess and decide when a derivative which is eligible for clearing is sufficiently liquid to be traded exclusively on the various organised venues i.e. regulated markets, MTFs or organised trading facilities. Appropriate criteria for such assessment will need to be taken into consideration by ESMA.

This approach should be pragmatic and progressive enough to factor in the trading specificities of each derivative while meeting the commitment of the G20.

9. How are you taking into consideration the need to improve SME access to capital markets?

Small- and medium-sized enterprises (SMEs) across Europe make a significant contribution to economic growth, employment, innovation and social integration. Two main sources of funding for such companies are private financing by banks or other institutions or raising finance through capital markets (e.g. the issue of shares). SME markets aim at providing smaller, growing companies with a platform to raise capital both through initial offerings and ongoing fund raisings. However, not all these markets have been successful. In order to make SME markets more attractive to small companies and to investors, the Commission proposes a proportionate regime specifically designed for SME markets. This specialised regime could promote the creation of a network of markets specialised in SMEs. The rules applicable to these markets will ensure that investors have sufficient information about the listed companies at all times.

B. Taking account of technological innovations

10. What proposals are being suggested to deal with issues raised by algorithmic and high frequency trading? For example, the potential risk that increased use of automated trading could contribute to a crash such as the one that occurred in the US?

Algorithmic trading is a form of trading where a computer algorithm automatically decides to place an order with minimal or no human intervention. An important form of algorithmic trading is high frequency trading, where a trading system analyses the market at high speed and then sends large numbers of orders very quickly.

The proposals plan to introduce a series of safeguards both on market participants who use algorithms as part of their trading strategies as well as on trading venues where algorithmic and high-frequency trading takes place:

- Information requirements towards regulators on the strategies of various algorithmic traders will be enhanced, and stricter checks will be imposed on arrangements whereby members of trading venues allow other firms employing high-frequency algorithms to access public markets through their systems. Currently, regulators do not know which kinds of strategies are being used, by which strategy an order is generated, and members may not check what sort of strategies the persons using their systems are using and how those persons control their strategies.
- Trading venues will also be required to have robust controls against problems such as disorderly trading, erratic price movements, and capacity overload. To mitigate the latter, limits will be placed on how many orders per transaction participants can place as well as on how far venues may compete in attracting order flow for example by reducing the size by which prices may rise or fall ("tick size") or through the design of their fee structures. The order to transaction ratio and the minimum tick size will be determined in subsequent measures.
- Additionally, requirements for algorithmic traders to trade on a continuous basis are foreseen to reduce volatility and contribute to more orderly trading.
- Finally, we will require venues to be able to halt trading in case of significant price movements ("circuit breakers") in a harmonised fashion.

C. Increased transparency

11. What are the proposals for enhancing equity market transparency, including the issue of "dark pools"?

In all markets, buyers need to know what sellers are asking and vice versa. However, wholesale transactions are frequently carried out at non-public prices. The same applies to financial instruments. Therefore, "dark pools", or platforms where trading interests interact without full pre-trade disclosure to other users or the public, are a common feature of financial markets. It is proposed to continue to allow them but only as long as they do not cause competitive distortions and reduce the overall efficiency of the price discovery process. Limited cases where transparency can be waived, and for how long, will need to be precisely defined. Such waivers are necessary, for instance, protect investors selling large quantities of shares. Having to disclose such a large order would move the market down, which would mean they would sell at worse prices. As transparency rules are extended to other instruments, it is foreseen to also introduce the possibility, in the regulation, of waivers specific to these, taking account of the nature of trading and of the participants in the different asset classes. The specific conditions under which waivers may operate would, as for shares today, be defined in implementing measures once the regulation is approved.

Finally, the introduction of the new organised trading facility category will vastly improve pre-trade transparency in the case of trading activity currently taking place in the dark, by subjecting these platforms to the same transparency conditions as other venues.

12. Is the introduction of a mandatory consolidated tape for trade data being considered?

The reporting, publication and consolidation of trade data needs to be addressed due to problems with its formatting, cost, quality and reliability. Trade data helps investors to find the right price when looking to buy or sell, and to check whether they got the best price by comparing the price that they got with other market prices. The Commission proposes to improve the situation by introducing measures to ensure data quality and consistency as well as measures to reduce the costs of data. A mandatory consolidated tape providing a consistent and reliable record of trades will be established by data providers authorised to do so under harmonised standards set out in MiFID. Based on this trading data for the whole EU, investors will be able to make a more informed choice.

13. How will pre- and post-trade transparency requirements be extended beyond shares and why?

Currently, MiFID imposes harmonised pre-and post-trade transparency requirements only on shares admitted to trading on regulated markets. The Commission proposes to introduce pre- and post-trade transparency requirements for other instruments as well. Due to the different structure of markets in non-equity instruments compared with those in equities, it is proposed to tailor the exact transparency regime to the instrument in question. Post-trade requirements, to be specified in further detail in implementing legislation, are suggested for all bonds and structured finance products with a prospectus as well as all derivatives eligible for central clearing and those submitted to trade repositories regardless of where the trades take place. Pre-trade requirements, also to be further detailed in implementing legislation, are suggested for the same instruments both when traded on organised venues as well as when offered by investment firms in over-the-counter trading.

The reason for the introduction of pre- and post-trade transparency requirements for these instruments is that the absence of harmonised transparency requirements in non-equity markets (e.g. bonds, structured products, derivatives) has been perceived by many, including EU securities regulators, to lead to lower market efficiency and higher risks than would otherwise be the case.

14. Does MIFID constitute the start of price regulation in the area of market data?

Market participants need data on trading activity, prices and volumes in order to make decisions about how and when to invest. The data should be available on an equal and easily accessible basis. At present various incentives exist for data providers and vendors to sell their data at rates or in a way which do not correspond to the "reasonable commercial basis" or to the straightforward "consolidation of data with similar data from other sources" which MiFID envisioned. A series of steps are thus proposed to deliver on these objectives. Failing that, it is proposed that the Commission could define more precisely what constitutes a "reasonable commercial basis".

D. Reinforced supervisory powers and a stricter framework for commodity derivatives markets

15. What role will ESMA play in relation to the revised MiFID?

ESMA already plays an important role in advising the Commission on possible regulatory changes and in ensuring convergent application of the rules across Member States. Many of the proposed changes in the MiFID review stem from advice received from ESMA, and it is foreseen that it will play a major part in developing most of the technical implementing measures necessary to ensure the full functioning of the regulatory framework. In terms of specific supervisory tasks, ESMA will have an increased role in, for example, determining the conformity with MiFID of individual cases where venues propose to waive pre-trade transparency ("dark pools"). In accordance with the mandate defined in the ESMA regulation and in line with the proposed powers for ESMA in the Commission proposal for a regulation on short-selling and certain aspects of credit default swaps, It will also take any steps necessary to coordinate actions by national competent authorities regarding products considered risky from the point of view of investor protection or financial stability as well as regarding positions in derivatives by specific market participants deemed excessively large.

16. What purpose does transaction reporting serve and what measures are being proposed?

Investment firms have to report to competent authorities all their trades in all financial instruments that are admitted to trading on a regulated market. This obligation applies regardless of where the trade takes place. This system of transaction reporting enables supervisors to monitor the activities of investment firms, which helps them to ensure compliance with MiFID, and to monitor for abuses under the Market Abuse Directive (MAD). The proposals contain the following changes.

First, because market supervision is the main reason for transaction reporting, **the requirements under MiFID need to mirror the scope of the MAD**. This is not fully the case at the moment and the ongoing review of the MAD makes further changes necessary. The Commission proposes to extend the scope of transaction reporting to all financial instruments, with the exception of instruments which are not susceptible to or cannot be used for market abuse.

Second, reporting requirements today diverge between Member States, which adds costs for firms and limits the use of trade reports for competent authorities. By including the reporting requirements in the regulation, the requirements will be further harmonised, notably the information that identifies who is trading and for whom a trade is being executed. Also, the Commission will be empowered to propose technical standards on a common European transaction reporting format and content.

Finally, for cost and efficiency purposes, double reporting of trades under MiFID and the reporting requirements to trade repositories should be avoided. The Commission proposes that a trade already reported to a repository would not need to be reported again under MiFID, provided all the necessary information is thereby available to competent authorities.

E. Stronger investor protection

17. How will the revised MiFID better protect investors?

MiFID includes a number of measures aimed at protecting investors in the context of the provision of investment services. Those rules take into account the type of services (for instance, investment advice or execution of orders) and the classification of clients, with higher protection granted to retail clients. The MiFID rules include both conduct of business requirements (for instance, collecting sufficient information to ensure that the products provided are suitable or appropriate for the client) and organisational requirements (for instance, requirements to identify and manage any conflicts of interest).

However, modifications and improvements are clearly needed to strengthen the framework for the provision of services.

First, the scope of the directive should be broadened in order to cover financial products, services and entities which are currently not covered (for instance, structured deposits in line with the Commission's forthcoming initiative on Packaged Retail Investment Products early next year).

Second, conduct of business requirements should be modified in order to grant additional protection to investors. The rules for investment advice should be improved both when advice is provided on an independent basis and in the long term. Advisers declaring themselves as independent should need to match the client's profile and interests against a broad array of products available in the market while investors should be informed whether they can expect firms to monitor the suitability of advised products in the longer term. Independent advisers and portfolio managers should be prohibited from making or receiving third-party payments or other monetary benefits. The conditions for services where investors receive less protection from firms should be more limited and information to different categories of client should be enhanced, particularly when complex products are involved.

Third, **organisational requirements for the provision of services to investors should be strengthened.** For instance, the involvement of senior management in the design of the firm's policies as to how products and services may be sold or provided to their clients, and the adoption of adequate internal controls should be consolidated.

ESMA should also help to ensure an equal application of investor protection requirements across Europe

18. What proposals will MIFID make regarding commodity derivatives?

In light of recent developments and concerns expressed over the functioning of commodity derivatives markets, and as outlined by the Commission in its Communication of 2 February on tackling the challenges in raw materials and commodity markets (see [IP/11/122](#)), there is a clear need, in line with G20 commitments, to reinforce the regulation of commodity derivatives markets beyond the current policy initiatives for other derivatives markets. Efficient and well functioning physical and derivatives commodity markets are crucial for the EU economy.

The review of MiFID will be a key pillar of a comprehensive and ambitious regulatory overhaul on improving commodity market transparency and oversight.

First, it is proposed to increase transparency of trading activity on all organised trading venues by introducing a position reporting obligation by category of trader. This harmonised and more disaggregated information will help regulators and market participants to better assess the role of financial flows in these markets.

Second, **the Commission proposes to give harmonised and comprehensive powers to financial regulators to monitor and intervene at any stage in trading activity in all commodity derivatives**, including in the shape of position limits if there are concerns in terms of market integrity or orderly functioning of markets. Venues offering trading in commodity derivatives will also be required to adopt suitable limits on trading activity by traders active on their platform, to safeguard market integrity and efficiency, to be harmonised in technical implementing measures.

Third, fewer **commodity firms will be exempt from MiFID when they deal on their own account in financial instruments** or provide investment services in commodity derivatives on an ancillary basis as part of their main business and when they are not subsidiaries of financial groups. It is proposed to narrow down existing exemptions in the interests of greater regulatory oversight and transparency taking into account the need for continued exemptions for commercial firms and the risks posed by these players.

Finally, the **proposals applicable to other derivatives** regarding increasing pre- and post-trade transparency and mandatory trading on organised venues will also apply to commodity derivatives.

19. Why are emission allowances now brought under the scope of MiFID and the Market Abuse Directive?

On the emission allowances market, not only are the allowances themselves traded, but allowance derivatives are also traded. It is the latter that forms the largest part of the market. Trading in allowance derivatives already falls under the scope of MiFID and the Market Abuse Directive. By now bringing emission allowances under the same framework, the regulation on emission allowances trading (EUA) on the spot market would finally be aligned with what is already applicable to the EUA derivatives market. Together, MiFID and the rules on market abuse provide a comprehensive framework for the trading in financial instruments and the integrity of the market. The extension to EUAs will introduce greater security for traders of EUAs but without interfering with the purpose of the market, which remains emissions reduction. For more information on this point, see also [MEMO/11/719](#).

20. Will UCITS be included under MiFID as a result of the MiFID review? Will the classification of some UCITS as complex instruments change their status under the UCITS directive?

UCITS (Undertakings for Collective Investments in Transferable Securities) are financial instruments and therefore are already fully covered under MiFID. The issue which is touched upon in the MiFID review concerns their classification as complex or non-complex instruments.

The distinction is relevant in order to establish the application of the "execution-only" regime, under which banks selling certain instruments are subject to less stringent rules for the protection of the retail investors. In particular they are not obliged to assess whether the client has sufficient knowledge to understand the financial instrument – the so-called appropriateness test. The execution only regime only applies to non-complex financial instruments.

So far, all UCITS have been classified as non-complex instruments. In the meantime, however, certain UCITS have become more complex. In particular "structured UCITS" are permitted to adopt certain kinds of complex investment strategies which can raise additional challenges for investors to understand how they operate.

For this reason - for the mere purpose of the execution only regime - the MiFID review confirms the general classification of UCITS as non-complex instruments but it introduces the exception of "structured UCITS" which will now be classified as complex instruments. The consequence is that investment firms will have to apply the appropriateness test when they sell "structured UCITS".

One of the arguments against this choice was that this can affect the UCITS "label". However, the two are different issues. Indeed, any possible change in the MiFID will only affect the MiFID selling rules of certain funds by banks and not the classification of "structured UCITS" under the UCITS legislation.

Other

21. Why are some elements of MiFID placed in a directive and others in a regulation? Which parts will be in which instrument?

As in other pieces of EU financial services regulation, the split reflects the need to achieve a uniform set of rules in some areas, while allowing for national specificities in others. The De Larosière report highlighted that one of the problems leading to the crisis was an inconsistent implementation of financial services rules leading to a fragmented internal market.

As a result, **a regulation** is proposed setting out requirements on:

- the disclosure of data on trading activity to the public and transaction data to regulators and supervisors;
- the mandatory trading of derivatives on organised venues;
- removing barriers between trading venues and providers of clearing services to ensure more competition,
- and specific supervisory actions regarding financial instruments and positions in derivatives.

Such a harmonised approach will help avoid confusion in the daily functioning of markets, and minimise opportunities for harmful regulatory arbitrage between Member States.

The directive amends existing provisions on authorisation and organisational requirements for providers of investment services, and all rules regarding investor protection, including for firms located in third countries but actively engaged in EU markets. Also included in the directive are the authorisation and organisational rules applicable to different types of trading venue, providers of market data and other reporting services, as well as the complete powers to be granted by Member States to national competent authorities, including the framework of sanctions for breaches of the rules. These provisions are best situated in a directive to account for differences in national markets and legal structures as well as the profile of local investors.

22. How do the proposals to review MiFID fit with other European legislation, such as the Market Abuse Directive, Over-the-Counter derivatives, short-selling, and Packaged Retail Investment Products (PRIPs)?

The proposed review of the Market Abuse Directive (MAD) and MiFID are published at the same time because together they guarantee the competitiveness, efficiency and integrity of EU financial markets. In order to ensure that they are fully coherent and support each other's objectives and principles, they need to be updated in tandem. Moreover, the pan-EU competition facilitated by MiFID has given rise to new challenges in terms of cross-border supervision, and maximum harmonisation of the rules and competent authorities' powers in relation to offences are a necessary step.

MiFID applies to the provision of investment services or activities by banks and investment firms in relation to financial instruments and to the operation of regulated markets. The objective is to support the development of a more integrated, competitive and efficient EU market in financial instruments with appropriate rules regarding conditions for authorisation as investment firms, organisational requirements to ensure they are managed appropriately, market transparency and investor protection.

The EU legislation on OTC derivatives, central counterparties and trade repositories on the one hand, and on short-selling and credit default swaps on the other, have different objectives but complement MiFID. The first aims to minimise counterparty credit risk and operational risk, while the second works to increase harmonisation and transparency, and mitigate risks associated with short selling and the use of credit default swaps.

PRIPs are common products in the retail investment market, with broadly comparable functions for investors. Although there is no rigid definition of PRIPs, they take a variety of legal forms. While offering benefits for investors, PRIPs are often complicated and opaque. The objective of the Commission in the coming months will be to better address the problems identified in the PRIPs market by creating a robust and coherent framework in two key areas:

- 1) the rules on the form and content of disclosures about the product, and
- 2) the rules governing the sales process for PRIPs, such as the conduct of business and the conflicts of interest requirements for intermediaries distributing the products.

This is achieved by adopting a horizontal approach in the two areas, which builds on the most effective and efficient elements of existing Community legislation. In the case of selling practices, MiFID has been identified as the clear benchmark as it contains comprehensive rules covering these aspects.

23. How does MiFID compare to what other jurisdictions in the world are doing, in particular the United States? Where are the similarities and differences with the Dodd-Frank Act?

Many provisions of MiFID reflect core precepts in the regulation of securities markets globally. However, different jurisdictions have rules specific to their own markets. As regards the US, MiFID touches upon various pieces of US financial markets regulation such as the Securities Exchange Act and the Commodity Exchange Act, as well as many of the technical regulations stemming from these: Regulation National Market System, Regulation Alternative Trading System, the Investment Advisers' Act and rules applied by "self-regulatory organisations" such as the main securities exchanges and the Financial Industry Regulatory Authority.

Like the Dodd-Frank Act, which amends and supplements these texts in several ways, the review of MiFID both amends provisions already in force and adds to them in light of the financial crisis and other market developments. The most visible area of common ground concerns the overhaul of regulation of derivative markets, including commodity derivatives. In many areas, such as comprehensive regulation for professional participants in derivative markets and the regulation of alternative electronic exchanges, the changes in MiFID are less significant than those in the US, as similar provisions did not yet exist before the Dodd-Frank Act. In other areas, such as the regulation of commodity derivative markets, US regulation was more developed and the revision of Mifid allows Europe to catch up.

The Commission's proposals are in line with the principles of regulation established by the International Organisation of Securities Commissions (IOSCO). This will ensure convergence with other jurisdictions, including Australia, Asia, and South America.

The proposals in the revised MiFID complement those in the Commission's September 2010 proposals for increasing transparency and safety in derivative markets (EMIR) and, once in force, will ensure comparable rules for trading, clearing and reporting derivatives in the EU and US.

24. How is the treatment of firms and market operators from outside the EU being considered?

Currently the access of third country firms to the EU markets is not harmonised under the MiFID. Each Member State can introduce its own third country regime, subject to the general principles of the TFEU and provided that national provisions do not result in treatment more favourable than that given to EU firms. In order to overcome the existing fragmentation and to ensure a level playing field in the EU for third country players, the Commission proposes to introduce a harmonised third country equivalence regime in MiFID for the access of third country investment firms and market operators to the EU.

A firm which is authorised in a third country will be able to provide services directly to professional investors on condition that the country where it is based is deemed by the Commission to have equivalent rules and supervision. Equivalence will be granted only if the third country provides access to EU-based firms on a reciprocal basis.

In order to be allowed to provide services to retail investors, the establishment of a branch is required. A third country firm will be able to provide services to investors in other European countries from its branch, provided that it notifies the supervisors of those countries.

25. What impact will MiFID/MiFIR have on the proposed merger between Deutsche Börse and NYSE Euronext?

While the review of MiFID, as well as the roll-out of other regulatory changes such as EMIR in the EU and Dodd-Frank in the US, coincides with the proposed merger, the proposed changes are not targeted at or conditioned by any one commercial venture. Since the beginning, a key objective of MiFID has been to ensure robust competition on a level playing-field between trading platforms. This includes removing obstacles to essential post-trade services such as clearing, which may otherwise frustrate competition between venues. The proposed changes in the review thus seek to further tackle existing barriers to effective competition between trading venues and clearing service providers.

The examination of the merger on competition grounds is carried out independently of the review of MiFID by the Commission's Directorate-General for Competition.

More information is available at:

http://ec.europa.eu/internal_market/securities/isd/index_en.htm

MiFID – level playing field

	Regulated Market	MTF	OTF	Systematic internaliser	OTC
	<i>Platform trading ("multilateral")</i>			<i>OTC trading ("bilateral")</i>	
Pre-trade transparency	✓	✓	✓	✓	✗
Post-trade transparency	✓	✓	✓	✓	✓
Non-discretionary execution	✓	✓	✗	✓	✗
Transparent access rules	✓	✓	✓	✓	✗
Market surveillance	✓	✓	✓	✗	✗
Conduct of business	✗	✗	✓	✓	✓