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Markets in financial instruments, and repeal of Directive 2004/39/EC***I

Amendments adopted by the European Parliament on 26 October 2012 on the proposal for a directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast) (COM(2011)0656 – C7-0382/2011 – 2011/0298(COD))[1]

(Ordinary legislative procedure – recast)

[Amendment No 1 unless otherwise indicated]

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council

(Recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Acting in accordance with the ordinary legislative procedure[1],

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1 The matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0306/2012).

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

2 OJ C 161, 7.6.2012, p.3.

3 OJ C 191, 29.6.2012, p. 80.

Whereas:

(1) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[2] has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field[3] sought to establish the conditions under which authorised investment firms and banks could provide specified services or establish branches in other Member States on the basis of home country authorisation and supervision. To this end, that Directive aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.

(3) In recent years more investors have become active in the financial markets and are offered an even more complex wide ranging set of services and instruments. In view of these developments the legal framework of the ***European*** Union should encompass the full range of investor-oriented activities. To this end, it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection and to allow investment firms to provide services throughout the ***European*** Union, being an internal market, on the basis of home country supervision. In view of the preceding, Directive 93/22/EEC was replaced by Directive 2004/39/EC.

(4) The financial crisis has exposed weaknesses in the functioning and in the transparency of financial markets. The evolution of financial markets have exposed the need to strengthen the framework for the regulation of markets in financial instruments***, including where trading in such markets takes place over the counter,*** in order to increase transparency, better protect investors, reinforce confidence, ***address*** unregulated areas, ensure that supervisors are granted adequate powers to fulfil their tasks.

(5) There is agreement among regulatory bodies at international level that weaknesses in corporate governance in a number of financial institutions, including the absence of effective checks and balances within them, have been a contributory factor to the financial crisis. Excessive and imprudent risk taking may lead to the failure of individual financial institutions and systemic problems in Member States and globally. Incorrect conduct of firms providing services to clients may lead to investor detriment and loss of investor confidence. In order to address the potentially detrimental effect of these weaknesses in corporate governance arrangements, the provisions of this Directive should be supplemented by more detailed principles and minimum standards. These principles and standards should apply taking into account the nature, scale and complexity of investment firms. ***Notwithstanding the responsibilities of shareholders to ensure that boards carry out their responsibilities appropriately, the measures involved should include limits on the number of directorships that directors of financial institutions should hold. Those measures should be applied in a way which takes account of the demands of effectively managing such institutions, while also allowing, where appropriate, the directors of such firms to continue in particular to***

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1 Position of the European Parliament of 26 October 2012.
2 OJ L 145, 30.4.2004, p. 1.
3 OJ L 141, 11.6.1993, p. 27.

act as directors of not-for-profit organisations in accordance with corporate social responsibility.

(6) The High Level Group on Financial Supervision in the European Union invited the European Union to develop a more harmonised set of financial regulation. In the context of the future European supervision architecture, the European Council of 18 and 19 June 2009 also stressed the need to establish a European single rule book applicable to all financial institutions in the Single Market.

(7) In the light of the above, Directive 2004/39/EC is now partly recast as this new Directive and partly replaced by Regulation (EU) No …/… [MiFIR]. Together, both legal instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and third-country firms providing investment services or activities in the ***European*** Union. This Directive should therefore be read together with the Regulation. This Directive should contain the provisions governing the authorisation of the business, the acquisition of qualifying holding, the exercise of the freedom of establishment and of the freedom to provide services, the operating conditions for investment firms to ensure investor protection, the powers of supervisory authorities of home and host Member States, the sanctioning regime. Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the areas referred to, the proposal should be based on Article 53(1) of the Treaty on the Functioning of the European Union (TFEU). The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State.

(8) It is appropriate to include in the list of financial instruments ▌commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments. ***Contracts of insurance in respect of activities of classes set out in Annex I of Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of business of Insurance and Reinsurance (Solvency II)[1] if entered into with an insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, are not derivatives or derivative contracts for the purposes of this Directive.***

(9) A range of fraudulent practices have occurred in spot secondary markets in emission allowances (EUAs) which could undermine trust in the emissions trading schemes, set up by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emissions allowance trading within the Community[2], and measures are being taken to strengthen the system of EUA registries and conditions for opening an account to trade EUAs. In order to reinforce the integrity and safeguard the efficient functioning of those markets, including comprehensive supervision of trading activity, it is appropriate to complement measures taken under Directive 2003/87/EC by bringing emission allowances fully into the scope of this Directive and of Regulation (EU) No .../...[MAR] ▌. ***By contrast it is***

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1 ***OJ L 335, 17.12.2009, p. 1.***

2 OJ L 275, 25.10.2003, p. 32.

appropriate to clarify that spot foreign exchange transactions are outside the scope of the Directive even though currency derivatives are included.

(10) The purpose of this Directive is to cover undertakings the regular occupation or business of which is to provide investment services and/or perform investment activities on a professional basis. Its scope should not therefore cover any person with a different professional activity.

(11) It is necessary to establish a comprehensive regulatory regime governing the execution of transactions in financial instruments irrespective of the trading methods used to conclude those transactions so as to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. A coherent and risk-sensitive framework for regulating the main types of order-execution arrangement currently active in the European financial marketplace should be provided for. It is necessary to recognise the emergence of a new generation of organised trading systems alongside regulated markets which should be subjected to obligations designed to preserve the efficient and orderly functioning of financial markets ***and to ensure that such organised trading systems do not benefit from regulatory loopholes***.

(12) All trading venues, namely regulated markets, multilateral trading facilities (MTFs), and organised trading facilities (OTFs), should lay down transparent rules governing access to the facility. However, while regulated markets and MTFs should continue to be subject to ▌similar requirements regarding whom they may admit as members or participants, OTFs should be able to determine and restrict access based inter alia on the role and obligations which ***they*** have in relation to their clients. ***Trading venues should be able to allow users to specify the type of order flow that their orders interact with prior to their orders entering the system provided this is done in an open and transparent manner and does not involve discrimination by the platform operator.***

(13) ▌Systematic internalisers should be defined as investment firms which, on an organised, ***regular*** and systematic basis, deal on own account by executing client orders outside a regulated market, an MTF or an OTF ***in a bilateral system***. In order to ensure the objective and effective application of this definition to investment firms, any bilateral trading carried out with clients should be relevant and quantitative criteria should complement the qualitative criteria for the identification of investment firms required to register as systematic internalisers, laid down in Article 21 of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive[1]. While ***trading venues are facilities*** in which multiple third-party buying and selling interests interact in the system, a systematic internaliser should not be allowed to bring together third-party buying and selling interests ***in functionally the same way as a trading venue***.

(14) Persons administering their own assets and undertakings, who do not provide investment services and/or perform investment activities other than dealing on own account should not be covered by the scope of this Directive unless they are market makers, members or participants of a regulated market or an MTF, or they execute

[1] OJ L 241, 2.9.2006, p. 1.

orders from clients by dealing on own account. By way of exception, persons who deal on own account in financial instruments as members or participants of a regulated market or an MTF, including as market makers in relation to commodity derivatives, emission allowances, or derivatives thereof, as an ancillary activity to their main business, which on a group basis is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions[1], should not be covered by the scope of this Directive. Technical criteria for when an activity is ancillary to such a main business should be clarified in ***regulatory technical standards, taking into account the criteria specified in this Directive which should include the scale of the activity and the extent to which it reduces risks arising from the main business***. Dealing on own account by executing client orders should include firms executing orders from different clients by matching them on a matched principal basis (back-to-back trading), which should be regarded as acting as principals and should be subject to the provisions of this Directive covering both the execution of orders on behalf of clients and dealing on own account. The execution of orders in financial instruments as an ancillary activity between two persons whose main business, on a group basis, is neither the provision of investment services within the meaning of this Directive nor of banking services within the meaning of Directive 2006/48/EC should not be considered as dealing on own account by executing client orders.

(15) References in the text to persons should be understood as including both natural and legal persons.

(16) Insurance or assurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are subject to Directive 2009/138/EC should be excluded ***except for certain provisions relating to insurance products used as investment vehicles***. ***Investments are often sold to clients in the form of insurance contracts as an alternative to or substitute for financial instruments regulated under this Directive. To deliver consistent protection for retail clients, it is important that investments under insurance contracts are subject to the same conduct of business standards, in particular those relating to managing conflicts of interest, restrictions on inducements, and rules on ensuring the suitability of advice or appropriateness of non-advised sales. The investor protection and conflicts of interest requirements in this Directive should therefore be applied equally to those investments packaged under insurance contracts and coordination should be ensured between this Directive and other relevant law including Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation[2].***

(17) Persons who do not provide services for third parties but whose business consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive.

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1 OJ L 177, 30.6.2006, p. 1.
2 OJ L 9, 15.1.2003, p. 3.

(18) Persons who provide investment services only on an incidental basis in the course of professional activity should also be excluded from the scope of this Directive, provided that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services.

(19) Persons who provide investment services consisting exclusively in the administration of employee-participation schemes and who therefore do not provide investment services for third parties should not be covered by this Directive.

(20) It is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof, with the exception of bodies that are partly or wholly State-owned the role of which is commercial or linked to the acquisition of holdings.

(21) In order to clarify the regime of exemptions for the European System of Central Banks (ESCB), other national bodies performing similar functions and the bodies intervening in the management of public debt, it is appropriate to limit such exemptions to the bodies and institutions performing their functions in accordance with the law of one Member State or in accordance with the ***European*** Union law as well as to international bodies of which one or more Member States are members.

(22) It is necessary to exclude from the scope of this Directive collective investment undertakings and pension funds whether or not coordinated at ***European*** Union level, and the depositaries or managers of such undertakings, since they are subject to specific rules directly adapted to their activities.

(22a) For a well-functioning internal market in electricity and natural gas, and for the carrying out of the tasks of transmission system operators (TSOs) under Directive 2009/72/EC[1], Directive 2009/73/EC[2], Regulation (EC) No 714/2009[3], Regulation (EC) No 715/2009[4], or network codes and guidelines adopted pursuant to those Regulations, it is necessary that TSOs are exempted when issuing transmission rights, in the form of either physical transmission rights or financial transmission rights, and when providing a platform for secondary trading.

(23) In order to benefit from the exemptions from this Directive the person concerned should comply on a continuous basis with the conditions laid down for such exemptions. In particular, if a person provides investment services or performs investment activities and

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1 ***Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009, concerning common rules for the internal market in electricity (OJ L 198, 30.7.2009, p. 20).***

2 ***Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009, concerning common rules for the internal market in natural gas (OJ L 211, 14.8.2009, p. 94).***

3 ***Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity (OJ L 211, 14.8.2009, p. 15).***

4 ***Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks (OJ L 211, 14.8.2009, p. 36).***

is exempted from this Directive because such services or activities are ancillary to his main business, when considered on a group basis, he should no longer be covered by the exemption related to ancillary services where the provision of those services or activities ceases to be ancillary to his main business.

(24) Persons who provide the investment services and/or perform investment activities covered by this Directive should be subject to authorisation by their home Member States in order to protect investors and the stability of the financial system.

(25) Credit institutions that are authorised under Directive 2006/48/EC should not need another authorisation under this Directive in order to provide investment services or perform investment activities. When a credit institution decides to provide investment services or perform investment activities the competent authorities, before granting an authorisation, should verify that it complies with the relevant provisions of this Directive.

(26) Structured deposits have emerged as a form of investment product but are not covered under any legislative act for the protection of investors at ***European*** Union level, while other structured investments are covered by such legislative acts. It is appropriate therefore to strengthen the confidence of investors and to make regulatory treatment concerning the distribution of different packaged retail investment products more uniform in order to ensure an adequate level of investor protection across the ***European*** Union. For this reason, it is appropriate to include in the scope of this Directive structured deposits. In this regard, it is necessary to clarify that since structured deposits are a form of investment product, they do not include ***simple*** deposits linked solely to interest rates, such as Euribor or Libor, regardless of whether or not the interest rates are predetermined, or whether they are fixed or variable. ***Such simple deposits are therefore outside the scope of this Directive.***

(27) In order to strengthen the protection of investors in the ***European*** Union, it is appropriate to limit the conditions under which Member States can exclude the application of this Directive to persons providing investment services to clients who, as a result, are not protected under the Directive. In particular, it is appropriate to require Member States to apply requirements at least analogous to those laid down in this Directive to those persons, in particular in the phase of authorisation, in the assessment of their reputation and experience and of the suitability of any shareholders, in the review of the conditions for initial authorisation and on-going supervision as well as on conduct of business obligations.

(28) In cases where an investment firm provides one or more investment services not covered by its authorisation, or performs one or more investment activities not covered by its authorisation, on a non-regular basis it should not need an additional authorisation under this Directive.

(29) For the purposes of this Directive, the business of reception and transmission of orders should also include bringing together two or more investors thereby bringing about a transaction between those investors.

(30) Investment firms and credit institutions distributing financial instruments they issue themselves should be subject to the provisions of this Directive when they provide investment advice to their clients. In order to eliminate uncertainty and strengthen

investor protection, it is appropriate to provide for the application of this Directive when, in the primary market, investment firms and credit institutions distribute financial instruments issued by them without providing any advice. For this purpose, the definition of the service of execution of orders on behalf of clients should be extended.

(31) The principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorisation where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities. An investment firm which is a legal person should be authorised in the Member State in which it has its registered office. An investment firm which is not a legal person should be authorised in the Member State in which it has its head office. In addition, Member States should require that an investment firm's head office must always be situated in its home Member State and that it actually operates there.

(32) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector[1] has provided for detailed criteria for the prudential assessment of proposed acquisitions in an investment firm and for a procedure for their application. In order to provide legal certainty, clarity and predictability with regard to the assessment process, as well as to the result thereof, it is appropriate to confirm the criteria and the process of prudential assessment laid down in Directive 2007/44/EC. In particular, competent authorities should appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria: the reputation of the proposed acquirer; the reputation and experience of any person who will direct the business of the investment firm; the financial soundness of the proposed acquirer; whether the investment firm will be able to comply with the prudential requirements based on this Directive and on other directives, in particular on Directives 2002/87/EC[2] and 2006/49/EC[3]; ***whether the acquisition will increase conflicts of interests;*** whether there are reasonable grounds to suspect that money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC[4] is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(33) An investment firm authorised in its home Member State should be entitled to provide investment services or perform investment activities throughout the ***European*** Union

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1 OJ L 247 , 21/09/2007, p. 1.

2 Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p. 1).

3 Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201).

4 Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

without the need to seek a separate authorisation from the competent authority in the Member State in which it wishes to provide such services or perform such activities.

(34) Since certain investment firms are exempted from certain obligations imposed by Directive 2006/49/EC , they should be obliged to hold either a minimum amount of capital or professional indemnity insurance or a combination of both. The adjustments of the amounts of that insurance should take into account adjustments made in the framework of Directive 2002/92/EC. This particular treatment for the purposes of capital adequacy should be without prejudice to any decisions regarding the appropriate treatment of these firms under future changes to ***European*** Union law on capital adequacy.

(35) Since the scope of prudential regulation should be limited to those entities which, by virtue of running a trading book on a professional basis, represent a source of counterparty risk to other market participants, entities which deal on own account in financial instruments, including those commodity derivatives covered by this Directive, as well as those that provide investment services in commodity derivatives to the clients of their main business on an ancillary basis to their main business when considered on a group basis, provided that this main business is not the provision of investment services within the meaning of this Directive, should be excluded from the scope of this Directive.

(36) In order to protect an investor's ownership and other similar rights in respect of securities and his rights in respect of funds entrusted to a firm those rights should in particular be kept distinct from those of the firm. This principle should not, however, prevent a firm from doing business in its name but on behalf of the investor, where that is required by the very nature of the transaction and the investor is in agreement, for example stock lending.

(37) The requirements concerning the protection of client assets are a crucial tool for the protection of clients in the provision of services and activities. These requirements can be excluded when full ownership of funds and financial instrument is transferred to an investment firm to cover any present or future, actual or contingent or prospective obligations. This broad possibility may create uncertainty and jeopardise the effectiveness of the requirements concerning the safeguard of client assets. Thus, at least when retail clients' assets are involved, it is appropriate to limit the possibility of investment firms to conclude title transfer financial collateral arrangements as defined under Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements[1], for the purpose of securing or otherwise covering their obligations.

(38) It is necessary to strengthen the role of management bodies of investment firms in ensuring sound and prudent management of the firms, the promotion of the integrity of the market and the interest of investors. ***In the interests of a coherent approach to corporate governance it is desirable to align the requirements for investment firms as far as possible to those included in Directive .../.../EU [CRD IV] and to ensure that such requirements are proportionate to the nature, scale and complexity of their business. To prevent conflicts of interest an executive member of the management body of investment firms should not also be an executive member of the management***

[1] OJ L 168, 27.6.2002, p. 43.

body of a trading venue but could be a non-executive member of such a management body, for example in order to provide user participation in decision-making. The management body of an investment firm should at all time commit sufficient time and possess adequate knowledge, skills and experience to be able to understand the business of the investment firm and its main risk. To avoid group thinking and facilitate critical challenge, management boards of investment firms should be sufficiently diverse as regards age, gender, provenance, education and professional background to present a variety of views and experiences. Gender balance is of a particular importance to ensure adequate representation of demographical reality. ***Where practiced, employee representation in the management body should also be seen as a positive way of enhancing diversity, by adding a key perspective and genuine knowledge of the internal workings of the institution. Furthermore mechanisms are needed to ensure that members of management bodies can be held accountable in case of severe mis-management.***

(39) In order to have an effective oversight and control over the activities of investment firms, the management body should be responsible and accountable for the overall strategy of the investment firm, taking into account the investment firm's business and risk profile. The management body should assume clear responsibilities across the business cycle of the investment firm, in the areas of the identification and definition of the strategic objectives of the firm, of the approval of its internal organisation, including criteria for selection and training of personnel, of the definition of the overall policies governing the provision of services and activities, including the remuneration of sales staff and the approval of new products for distribution to clients. Periodic monitoring and assessment of the strategic objectives of investment firms, their internal organisation and their policies for the provision of services and activities should ensure their continuous ability to deliver sound and prudent management, in the interest of the integrity of the markets and the protection of investors.

(40) The expanding range of activities that many investment firms undertake simultaneously has increased potential for conflicts of interest between those different activities and the interests of their clients. It is therefore necessary to provide for rules to ensure that such conflicts do not adversely affect the interests of their clients.

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(42) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive[1] allows Member States to require, in the context of organisational requirements for investment firms, the recording of telephone conversations or electronic communications involving client orders. Recording of telephone conversations or electronic communications involving client orders is compatible with the Charter of Fundamental Rights of the European Union and is justified in order to strengthen investor protection, to improve market surveillance and increase legal certainty in the interest of investment firms and their clients. The importance of such records is also mentioned in the technical advice to the Commission, released by the Committee of European Securities Regulators on 29 July

[1] OJ L 241, 2.9.2006, p. 26.

2010. For these reasons, it is appropriate to provide in this Directive for the principles of a general regime concerning the recording of telephone conversations or electronic communications involving client orders. ***For communications between retail clients and financial institutions it is appropriate to allow the Member States to recognise instead appropriate written records of such communications for financial institutions established and branches located within their territory.***

(43) Member States should ensure ***respect for the*** right of protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data[1] and Directive 2002/58/EC ***of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector[2] which govern the processing of personal data carried out in application of this Directive***. This protection should, in particular, extend to telephone and electronic recording. ***Processing of personal data by the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[3] in the application of this Directive is subject to Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[4].***

(44) The use of trading technology has evolved significantly in the past decade and is now extensively used by market participants. Many market participants now make use of algorithmic trading where a computer algorithm automatically determines aspects of an order with minimal or no human intervention. A specific subset of algorithmic trading is high-frequency trading where a trading system analyses data or signals from the market at high speed***, typically in milliseconds or microseconds,*** and then sends or updates large numbers of orders within a very short time period in response to that analysis. High-frequency trading is typically done by the traders using their own capital to trade and rather than being a strategy in itself ***can often involve*** the use of sophisticated technology to implement more traditional trading strategies such as market making or arbitrage.

(45) In line with Council conclusions on strengthening ***European*** Union financial supervision of June 2009, and in order to contribute to the establishment of a single rulebook for ***European*** Union financial markets, help further develop a level playing field for Member States and market participants, enhance investor protection and improve supervision and enforcement, the ***European*** Union is committed to minimise, where appropriate, discretions available to Member States across ***European*** Union financial services law. In addition to the introduction in this Directive of a common regime for the recording of telephone conversations or electronic communications involving client orders, it is appropriate to reduce the possibility of competent authorities to delegate supervisory tasks in certain cases, to limit discretions in the

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1 OJ L 281, 23.11.1995, p. 31.
2 ***OJ L 201, 31.7.2002, p. 37.***
3 ***OJ L 331, 15.12.2010, p. 84.***
4 ***OJ L 8, 12.1.2001, p. 1.***

requirements applicable to tied agents and to the reporting from branches. ***However, while competent authorities have responsibilities under this Directive to safeguard investor protection, nothing in this Directive prevents Member States from nominating authorities in addition to the competent authorities to provide additional monitoring of markets to enhance the protection of retail investors.***

(46) ***Technical advances have enabled high-frequency trading and an evolution of business models. High-frequency trading is facilitated by the co-location of market participants' facilities in close physical proximity to a trading venue's matching engine. To ensure orderly and fair trading conditions it is essential to require trading venues to provide such co-location services on a non-discriminatory, fair and transparent basis.*** The use of ***high-frequency*** trading technology has increased the speed, capacity and complexity of how investors trade. It has also enabled market participants to facilitate direct access by their clients to markets through the use of their trading facilities, through direct ***market*** access or sponsored access. Trading technology has provided benefits to the market and market participants generally such as wider participation in markets, ***arguably*** increased liquidity, ***although doubts remain about the real depth of liquidity provided,*** narrower spreads, reduced short term volatility and the means to obtain better ***price formation and*** execution of orders for clients. Yet, ***high-frequency*** trading technology also gives rise to a number of potential risks such as an increased risk of the overloading of the systems of trading venues due to large volumes of orders, risks of algorithmic trading generating duplicative or erroneous orders or otherwise malfunctioning in a way that may create a disorderly market. In addition there is the risk of algorithmic trading systems overreacting to other market events which can exacerbate volatility if there is a pre-existing market problem. ***Algorithmic*** trading or high frequency ***trading*** can***, like any other form of trading,*** lend itself to certain forms of abusive behaviour if misused ***which should be prohibited under Regulation (EU) No .../... [new MAR]. High-frequency trading may also, because of the information advantage provided to high-frequency traders, prompt investors to choose to execute trades in venues where they can avoid interaction with high-frequency traders***. ***It is appropriate to subject high-frequency trading strategies which rely on certain specified characteristics to particular regulatory scrutiny. While these are predominantly strategies which rely on trading on own account such scrutiny should also apply where the execution of the trading strategy is structured in such a way as to avoid the execution taking place on own account.***

(47) These potential risks from increased use of technology are best mitigated by a combination of specific risk controls directed at firms who engage in algorithmic or high frequency trading and other measures directed at operators of ***all*** trading venues that are accessed by such firms. ***These should reflect and build on the technical guidelines issued by ESMA in February 2012 on systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities (ESMA/2012/122) in order to strengthen the resilience of markets in the light of technological developments.*** It is desirable to ensure that all high-frequency trading firms be authorised when they are a direct member of a trading venue. This should ensure they are subject to organisational requirements under the Directive and are properly supervised. ***In this respect, ESMA should play an important coordinating role by defining appropriate tick sizes in order to ensure orderly markets at Union level. In addition, all orders should be subject to appropriate risk controls at source. It is therefore also appropriate to end the practice of sponsored and naked***

access to avoid the risk that firms with insufficient controls in place create disorderly market conditions and to ensure that market participants can be identified and held accountable for any disorderly conditions for which they are responsible. It is also necessary to be able to clearly identify order flows coming from high-frequency trading. ESMA should also continue to monitor developments in technology and in methods used to access trading venues and should continue to prepare guidelines to ensure that the requirements of this Directive can continue to be effectively applied in the light of new practices.

(48) Both firms and trading venues should ensure robust measures are in place to ensure that ***high-frequency and*** automated trading does not create a disorderly market and cannot be used for abusive purposes. Trading venues should also ensure their trading systems are resilient and properly tested to deal with increased order flows or market stresses and that circuit breakers are in place ***on all trading venues*** to temporarily halt trading if there are sudden unexpected price movements.

(48a) It is also necessary to ensure that the fee structures of trading venues are transparent, non-discriminatory and fair and that they are not structured in such a way as to promote disorderly market conditions. It is therefore appropriate to ensure that trading venue fee structures incentivise a lower ratio of system messages to executed trades with higher fees applying to practices such as the cancellation of high volumes or proportions of orders which could create such disorderly conditions and which require trading venues to increase the capacity of infrastructure without necessarily benefitting other market participants.

(49) In addition to measures relating to algorithmic and high frequency trading it is appropriate to ***prohibit sponsored and naked access and to*** include controls relating to investment firms providing direct ***market*** access to markets for clients ▌. It is also appropriate that firms providing direct ***market*** access ensure that persons using this service are properly qualified and that risk controls are imposed on the use of the service. It is appropriate that detailed organisational requirements regarding these new forms of trading should be prescribed in more detail in delegated acts. ***In addition to ESMA's powers to prepare updated guidelines on different forms of market access and associated controls, this*** should ensure that requirements may be amended where necessary to deal with further innovation and developments in this area.

(50) There is a multitude of trading venues currently operating in the Union , among which a number are trading identical instruments. In order to address potential risks to the interests of investors it is necessary to formalise and further ***coordinate*** the processes on the consequences for trading on other venues if one trading venue decides to suspend or remove a financial instrument from trading. In the interest of legal certainty and to adequately address conflicts of interests when deciding to suspend or to remove instruments from trading, it should be ensured that if one regulated market or MTF stops trading due to non disclosure of information about an issuer or financial instrument, the others follow that decision. In addition, it is necessary to ***further*** formalise and improve the exchange of information and the cooperation of trading venues in cases of exceptional conditions in relation to a particular instrument that is traded on various venues. ***This should include arrangements to prevent trading venues using information transmitted in the context of a suspension or removal of an instrument from trading for commercial purposes.***

(51) More investors have become active in the financial markets and are offered a more complex wide-ranging set of services and instruments and, in view of these developments, it is necessary to provide for a degree of harmonisation to offer investors a high level of protection across the ***European*** Union. When Directive 2004/39/EC was adopted, the increasing dependence of investors on personal recommendations required to include the provision of investment advice as an investment service subject to authorisation and to specific conduct of business obligations. The continuous relevance of personal recommendations for clients and the increasing complexity of services and instruments require enhancing the conduct of business obligations in order to strengthen the protection of investors.

(51a) While enhanced conduct of business obligations for advisory services are necessary they are not sufficient to ensure appropriate investor protection. In particular, Member States should ensure that where investment firms design investment products or structured deposits for sale to professional or retail clients those products are designed to meet the needs and characteristics of an identified target market within the relevant category of clients. Moreover, Member States should ensure that the investment firm takes reasonable steps to ensure that the investment product is marketed and distributed to clients within the target group. However, this should not relieve third-party distributers of responsibility where they market or distribute the product outside the target group without the knowledge or consent of the firm that designed the product. Producers should also periodically review the performance of their products, to assess whether the products have performed in accordance with theirs design and to establish whether their target market for the product remains correct. Investors also need appropriate information about products and in particular information on a consistent basis about the cumulative impact of different layers of charges on the investment return. The provisions of Article 80(8) of Directive 2006/48/EC should be taken into account in this regard.

(52) In order to give all relevant information to investors, it is appropriate to require investment firms providing investment advice to clarify the basis of the advice they provide, in particular the range of products they consider in providing personal recommendations to clients, ***the cost of the advice or, where the cost of fees and inducements cannot be ascertained prior to the provision of the advice, the manner in which the cost will be calculated,*** whether ***the*** investment advice ***is provided in conjunction with the acceptance or receipt of third-party inducements*** and whether ***the investment firms*** provide the clients with the ***periodic*** assessment of the suitability of the financial instruments recommended to them. It is also appropriate to require investment firms to explain their clients the reasons of the advice provided to them. ***Guidelines by ESMA could be useful in ensuring effective and consistent application of these provisions.*** In order to further define the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the ***advice*** is provided ***in conjunction with*** the ***acceptance or receipt*** of ***third-party inducements. When*** providing ***discretionary*** portfolio management, the ***investment firm*** should***, prior*** to the ***agreement, inform*** the ***client about*** the ***expected scale*** of ***inducements***, ***and periodic reports should disclose all inducements paid or received***. ***Given the need to ensure that such third-party inducements do not prevent the investment firm from acting in the best interests of the***

client, provision should also be made to allow under certain conditions a prohibition on the receipt of such inducements or to require them to be transferred to the client.

(52a) To further protect consumers, it is also appropriate to ensure investment firms do not remunerate or assess the performance of their own staff in a way that conflicts with the firm's duty to act in the best interests of their clients. Remuneration of staff selling or advising on investments should therefore not be solely dependent on sales targets or the profit to the firm from a specific financial instrument as this would create incentives to deliver information which is not fair, clear and not misleading and to make recommendations which are not in the best interests of clients.

(52b) Given the complexity of investment products and the continuous innovation in their design, it is also important to ensure that staff who advise on or sell investment products to retail clients possess an appropriate level of knowledge and competence in relation to the products offered. Investment firms need to allow their staff sufficient time and resources to achieve this knowledge and competence and to apply it in providing services to clients.

(53) Investment firms are allowed to provide investment services that only consist of execution and/or the reception and transmission of client orders, without the need to obtain information regarding the knowledge and experience of the client in order to assess the appropriateness of the service or the instrument for the client. Since these services entail a relevant reduction of clients' protections, it is appropriate to improve the conditions for their provision. In particular, it is appropriate to exclude the possibility to provide these services in conjunction with the ancillary service consisting of granting credits or loans to investors to allow them to carry out a transaction in which the investment firm is involved, since this increases the complexity of the transaction and makes more difficult the understanding of the risk involved. It is also appropriate to better define the criteria for the selection of the financial instruments to which these services should relate in order to exclude the financial instruments which embed a derivative ***unless that derivative does not increase the risk to the client,*** or incorporate a structure which makes it difficult for the client to understand the risk involved.

(54) Cross-selling practices are a common strategy for retail financial service providers throughout the ***European*** Union. They can provide benefits to retail clients but can also represent practices where the interest of the client is not adequately considered. For instance, certain forms of cross-selling practices, namely tying practices where two or more financial services are sold together in a package and at least one of those services is not available separately, can distort competition and negatively affect clients' mobility and their ability to make informed choices. An example of tying practices can be the necessary opening of current accounts when an investment service is provided to a retail client. While practices of bundling, where two or more financial services are sold together in a package, but each of the services can also be purchased separately, may also distort competition and negatively affect customer mobility and clients' ability to make informed choices, they at least leave choice to the client and may therefore pose less risk to the compliance of investment firms with their obligations under this Directive. The use of such practices should be carefully assessed in order to promote competition and consumer choice.

(55) A service should be considered to be provided at the initiative of a client unless the client demands it in response to a personalised communication from or on behalf of the firm to that particular client, which contains an invitation or is intended to influence the client in respect of a specific financial instrument or specific transaction. A service can be considered to be provided at the initiative of the client notwithstanding that the client demands it on the basis of any communication containing a promotion or offer of financial instruments made by any means that by its very nature is general and addressed to the public or a larger group or category of clients or potential clients.

(56) One of the objectives of this Directive is to protect investors. Measures to protect investors should be adapted to the particularities of each category of investors (retail, professional and counterparties). However, in order to enhance the regulatory framework applicable to the provision of services irrespective of the categories of clients concerned, it is appropriate to make it clear that principles to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading apply to the relationship with any clients.

(57) By way of derogation from the principle of home country authorisation, supervision and enforcement of obligations in respect of the operation of branches, it is appropriate for the competent authority of the host Member State to assume responsibility for enforcing certain obligations specified in this Directive in relation to business conducted through a branch within the territory where the branch is located, since that authority is closest to the branch, and is better placed to detect and intervene in respect of infringements of rules governing the operations of the branch.

(58) It is necessary to impose an effective 'best execution' obligation to ensure that investment firms execute client orders on terms that are most favourable to the client. This obligation should apply to the firm which owes contractual or agency obligations to the client.

(58a) In order to contribute to a wider shareholder base across the Union, the best execution framework should be enhanced for retail investors so they can access the wider range of execution venues that are now available across the Union. Advances in technology for monitoring best execution should be considered when applying the best execution framework.

(59) In order to enhance the conditions under which investment firms comply with their obligation to execute orders on terms most favourable to their clients in accordance with this Directive, it is appropriate to require execution venues to make available to the public data relating to the quality of execution of transactions on each venue.

(60) Information provided by investment firms to clients in relation to their order execution policies often are generic and standard and do not allow clients to understand how an order will be executed and to verify firms' compliance with their obligation to execute orders on term most favourable to their clients. In order to enhance investor protection it is appropriate to specify the principles concerning the information given by investment firms to their clients on the order execution policies and to require firms to make public, on ***a quarterly*** basis, for each class of financial instruments, the top five execution venues where they executed client orders in the preceding year ***and to take account of that information and information published by trading venues on execution quality in their policies on best execution***.

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(62) Persons who provide investment services on behalf of more than one investment firm should not be considered as tied agents but as investment firms when they fall under the definition provided in this Directive, with the exception of certain persons who may be exempted.

(63) This Directive should be without prejudice to the right of tied agents to undertake activities covered by other Directives and related activities in respect of financial services or products not covered by this Directive, including on behalf of parts of the same financial group.

(64) The conditions for conducting activities outside the premises of the investment firm (door-to-door selling) should not be covered by this Directive.

(65) Member States' competent authorities should not register or should withdraw the registration where the activities actually carried on indicate clearly that a tied agent has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities.

(66) For the purposes of this Directive eligible counterparties should be considered as acting as clients.

(67) The financial crisis has shown limits in the ability of non-retail clients to appreciate the risk of their investments. While it should be confirmed that conduct of business rules should be enforced in respect of those investors most in need of protection, it is appropriate to better calibrate the requirements applicable to different categories of clients. To this extent, it is appropriate to extend some information and reporting requirements to the relationship with eligible counterparties. In particular, the relevant requirements should relate to the safeguarding of client financial instruments and monies as well as information and reporting requirements concerning more complex financial instruments and transaction. In order to better ***reflect*** the ***functions*** of municipalities and local public authorities, ***which should not be making a business out of speculative instruments,*** it is appropriate to clearly exclude them from the list of eligible counterparties and of clients who are considered to be professionals while still allowing these clients ***to request*** treatment as professional clients ***where stringent conditions established by Member States are met***.

(68) In respect of transactions executed between eligible counterparties, the obligation to disclose client limit orders should only apply where the counter party is explicitly sending a limit order to an investment firm for its execution.

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(70) Investment firms should all have the same opportunities of joining or having access to regulated markets throughout the ***European*** Union. Regardless of the manner in which transactions are at present organised in the Member States, it is important to abolish the technical and legal restrictions on access to regulated markets.

(71) In order to facilitate the finalisation of cross-border transactions, it is appropriate to provide for access to clearing and settlement systems throughout the ***European*** Union by investment firms, irrespective of whether transactions have been concluded through regulated markets in the Member State concerned. Investment firms which wish to participate directly in other Member States' settlement systems should comply with the relevant operational and commercial requirements for membership and the prudential measures to uphold the smooth and orderly functioning of the financial markets.

(72) The provision of services by third-country firms in the ***European*** Union is subject to national regimes and requirements. These regimes are highly differentiated and the firms authorised in accordance with them do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. It is appropriate to introduce a common regulatory framework at ***European*** Union level ***for third-country firms, including both investment firms and market operators***. ***In order to provide a basis for third-country firms to benefit from a passport enabling them to provide investment services and carry out investment activities throughout the EU, the*** regime should harmonise the existing fragmented framework, ensure certainty and uniform treatment of third-country firms accessing the ***European*** Union, ensure that an ***effective*** equivalence assessment ***is*** carried out by the Commission***, prioritising the assessment of the EU's largest trading partners and areas within the scope of the G-20 programme,*** in relation to the regulatory and supervisory framework of third countries and should provide for a comparable level of protections to investors in the EU receiving services ***provided*** by third-country firms.

(73) The provision of services to retail clients ***or to clients who have chosen to waive certain protections in order to be treated as professional clients*** should always require the establishment of a branch in the ***European*** Union. The establishment of the branch shall be subject to authorisation and supervision in the ***European*** Union. Proper cooperation arrangements should be in place between the competent authority concerned and the competent authority in the third country. Sufficient initial capital should be at free disposal of the branch. Once authorised the branch should be subject to supervision in the Member State where the branch is established; the third-country firm should be able to provide services in other Member States through the authorised and supervised branch, subject to a notification procedure. The provision of services ***into the Union*** without branches should be limited to eligible counterparties ***and professional clients other than those who have waived protections in order to be treated as professional clients***. ***Except where provided only at the own exclusive initiative of the client, it*** should be subject to registration by ESMA and to supervision in the third country. Proper cooperation arrangements should be in place between ESMA and the competent authorities in the third country.

(74) The provision of this Directive regulating the provision of ***investment*** services ***or activities*** by third-country firms in the ***European*** Union should not affect the possibility for persons established in the Union to receive investment services by a third-country firm at their own exclusive initiative. ***Where*** a third-country firm provides services at ***the*** own exclusive initiative of a person established in the Union, the services should not be deemed as provided in the territory of the Union. ***Where*** a third-country firm solicits clients or potential clients in the Union or promotes or advertises investment services or activities together with ancillary services in the Union, it should not be deemed as a service provided at the own exclusive initiative of the client.

(75) The authorisation to operate a regulated market should extend to all activities which are directly related to the display, processing, execution, confirmation and reporting of orders from the point at which such orders are received by the regulated market to the point at which they are transmitted for subsequent finalisation, and to activities related to the admission of financial instruments to trading. This should also include transactions concluded through the medium of designated market makers appointed by the regulated market which are undertaken under its systems and in accordance with the rules that govern those systems. ***Given the importance of market makers to the orderly and efficient functioning of markets trading venues should have written agreements in place with market makers clarifying their obligations and ensuring that in all but exceptional circumstances they fulfil their commitment to provide liquidity to the market.*** Not all transactions concluded by members or participants of the regulated market, MTF or OTF are to be considered as concluded within the systems of a regulated market, MTF or OTF. Transactions which members or participants conclude on a bilateral basis and which do not comply with all the obligations established for a regulated market, an MTF or an OTF under this Directive should be considered as transactions concluded outside a regulated market, an MTF or an OTF for the purposes of the definition of systematic internaliser. In such a case the obligation for investment firms to make public firm quotes should apply if the conditions established by this Directive are met.

(76) The provision of core market data services which are pivotal for users to be able to obtain a desired overview of trading activity across ***European*** Union markets and for competent authorities to receive accurate and comprehensive information on relevant transactions should be subject to authorisation and regulation to ensure the necessary level of quality.

(77) The introduction of approved publication arrangements should improve the quality of trade transparency information published in the OTC space and contribute significantly to ensuring that such data is published in a way facilitating its consolidation with data published by trading venues.

(78) ***Now that a market structure is in place which allows for competition between multiple trading venues it is essential that an effective and comprehensive consolidated tape is in operation as soon as possible.*** The introduction of a commercial solution for a consolidated tape for equities ***and equity-like instruments*** should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters ***to ensure that consistent and accurate market data is made available*** which are in competition with each other in order to ***deliver*** technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible. ***In order to facilitate the early development of a viable consolidated tape, the Commission should adopt delegated acts specifying certain details concerning the information obligation on consolidated tape providers (CTPs) as soon as possible. By requiring all CTPs to consolidate all APA data it will be assured that competition will take place on the basis of quality of service to clients rather than breadth of data covered. Nevertheless it is appropriate to make provision now for a public solution to be developed if the commercial solution does not lead to the timely delivery of an effective and comprehensive consolidated tape.***

(79) Revision of Directive 2006/49/EC should fix the minimum capital requirements with which regulated markets should comply in order to be authorised, and in so doing should take into account the specific nature of the risks associated with such markets.

(80) Operators of a regulated market should also be able to operate an MTF in accordance with the relevant provisions of this Directive.

(81) The provisions of this Directive concerning the admission of instruments to trading under the rules enforced by the regulated market should be without prejudice to the application of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities[1]. A regulated market should not be prevented from applying more demanding requirements in respect of the issuers of securities or instruments which it is considering for admission to trading than are imposed pursuant to this Directive.

(82) Member States should be able to designate different competent authorities to enforce the wide-ranging obligations laid down in this Directive. Such authorities should be of a public nature guaranteeing their independence from economic actors and avoiding conflicts of interest. In accordance with national law, Member States should ensure appropriate financing of the competent authority. The designation of public authorities should not exclude delegation under the responsibility of the competent authority.

(83) The G-20 summit in Pittsburgh on 25 September 2009 agreed to improve the regulation, functioning and transparency of financial and commodity markets to address excessive commodity price volatility. The Commission Communications of 28 October 2009 on A Better Functioning Food Supply Chain in Europe, and of 2 February 2011 on Tackling the Challenges in Commodity Markets and Raw Materials outlined measures that fall to be taken in the context of the review of Directive 2004/39/EC. ***In September 2011, the International Organization of Securities Commissions published Principles for the Regulation and Supervision of Commodity Derivatives Markets. These principles were endorsed by the G-20 summit in Cannes on 4 November 2011 which called for market regulators to have formal position management powers, including the power to set ex ante position limits as appropriate.***

(84) The powers made available to competent authorities should be complemented with explicit powers to ***obtain*** information from any person regarding the size and purpose of a position in derivatives contracts related to commodities and to request the person to take steps to reduce the size of the position in the derivative contracts.

(85) Explicit powers should be granted to ***trading venues and to*** competent authorities to limit the ability of any person or class of persons ***to*** enter into ***or hold*** a derivative contract in relation to a commodity***, based on technical standards determined by ESMA, and to otherwise manage positions in such a way as to promote integrity of the market for the derivative and the underlying commodity without unduly constraining liquidity***. The application of a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are

[1] OJ L 184, 6.7.2001, p. 1.

necessary to secure the integrity and orderly functioning of the market. ***Such limits should not apply to positions which objectively reduce risks directly relating to commercial activities in relation to the commodity. In order to avoid unintended impacts on the markets for the underlying commodity from the regulation of derivatives it is also appropriate to clarify the distinction between spot contracts and futures contracts.***

(86) ***In addition to the powers made available to competent authorities, all trading*** venues which offer trading in commodity derivatives should have in place appropriate limits ***and such other appropriate position management arrangements as are necessary*** to support liquidity, prevent market abuse, and ensure the orderly pricing and settlement conditions. ***Such arrangements may include for instance identification of build-up of large position concentrations especially close to settlement, position limits, price movement limits, ordering liquidation or transfer of open positions, suspension of trading, altering delivery terms or conditions, cancelling trades and requiring delivery intentions.*** ESMA should maintain and publish a list containing summaries of all such measures in force. ***Limits*** should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to whom they apply and any exemptions thereto, as well as to the relevant quantitative thresholds which constitute the limits or which may trigger other obligations. ***Given that no one trading venue can see the aggregate positions taken by its members or participants in the overall market it is also appropriate to allow for specification of the controls through regulatory technical standards***, including with a view to avoiding any divergent effects of the limits applicable to comparable contracts on different venues.

(87) Venues where the most liquid commodity derivatives are traded should publish an aggregated weekly breakdown of the positions held by different types of market participants, including the clients of those not trading on their own behalf. A comprehensive and detailed breakdown both by the type and identity of the market participant should be ***communicated*** to the competent authority upon request, ***taking account, where applicable, of reporting requirements already imposed under Article 8 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency[1].***

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(89) It is desirable to facilitate access to capital for smal and medium-sized enterprises (SME) and to facilitate the further development of specialist markets that aim to cater for the needs of smaller and medium-sized issuers. These markets which are usually operated under this Directive as MTFs are commonly known as SME markets, growth markets or junior markets. The creation within the MTF category of a new sub category of SME growth market and the registration of these markets should raise their visibility and profile and aid the development of common pan-European regulatory standards for those markets. ***Attention should be focused on how to provide future law for the further fostering and promotion of use of this market as a new asset class that will be attractive for investors. All other EU market regulation should be updated to provide a lessening of administrative burdens and to provide further incentives for listing of SMEs on the SME growth markets.***

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[1] ***OJ L 326, 8.12.2011, p. 1.***

(90) The requirements applying to this new category of markets need to provide sufficient flexibility to be able to take into account the current range of successful market models that exist across Europe. They also need to strike the correct balance between maintaining high levels of investor protection, which are essential to fostering investor confidence in issuers on these markets, while reducing unnecessary administrative burdens for issuers on those markets. It is proposed that more details about SME market requirements such as those relating to criteria for admission to trading on such a market would be further prescribed in delegated acts or technical standards.

(91) Given the importance of not adversely affecting existing successful markets the option should remain for operators of markets aimed at SME issuers to choose to continue to operate such a market in accordance with the requirements under the Directive without seeking registration as an SME growth market.

(92) Any confidential information received by the contact point of one Member State through the contact point of another Member State should not be regarded as purely domestic.

(93) It is necessary to enhance convergence of powers at the disposal of competent authorities so as to pave the way towards an equivalent intensity of enforcement across the integrated financial market. A common minimum set of powers coupled with adequate resources should guarantee supervisory effectiveness.

(94) In view of the significant impact and market share acquired by various MTFs, it is appropriate to ensure that adequate cooperation arrangements are established between the competent authority of the MTF and that of the jurisdiction in which the MTF is providing services. In order to anticipate any similar developments, this should be extended to OTFs.

(95) In order to ensure compliance by investment firms and regulated markets, those who effectively control their business and the members of the investment firms and regulated markets' management body with the obligations deriving from this Directive and from Regulation (EU) No .../... [MiFIR] and to ensure that they are subject to similar treatment across the ***European*** Union, Member States should be required to provide for administrative sanctions and measures which are effective, proportionate and dissuasive. Therefore, administrative sanctions and measures set out by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication, key sanctioning powers and levels of administrative pecuniary sanctions.

(96) In particular, competent authorities should be empowered to impose pecuniary sanctions which are sufficiently high to offset the benefits that can be expected and to be dissuasive even for larger institutions and their managers.

(97) In order to ensure a consistent application of sanctions across Member States, when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, Member States should be required to ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities take into account all relevant circumstances.

(98) In order to ensure sanctions have a dissuasive effect on the public at large, sanctions should normally be published, except in certain well-defined circumstances.

(99) In order to detect potential breaches, competent authorities should have the necessary investigatory powers, and should establish effective ***and reliable*** mechanisms to encourage reporting of potential or actual breaches***, including protection of employees reporting breaches within their own institution***. These mechanisms should be without prejudice to adequate safeguards for accused persons. Appropriate procedures should be established to ensure the right of the reported person of defence and to be heard before the adoption of a final decision concerning him as well as the right to seek remedy before a tribunal against a decision concerning him.

(100) This Directive should refer to both administrative sanctions and measures in order to cover all actions applied after a violation is committed, and which are intended to prevent further infringements, irrespective of their qualification as a sanction or a measure under national law.

(101) This Directive should be without prejudice to any provisions in the law of Member States relating to criminal sanctions. ***Without prejudice to the legal systems of the Member States, they should ensure that where it is alleged that a member of the management board of an investment firm or of a market operator has breached the provisions of or has committed an offence in matters falling within the scope of this Directive or of Regulation (EU)No .../... [MiFIR], he may be personally subject to criminal or civil proceedings.***

(102) With a view to protecting clients and without prejudice to the right of customers to bring their action before the courts, it is appropriate that Member States ensure that public or private bodies are established with a view to settling disputes out-of-court, to cooperate in resolving cross-border disputes, taking into account Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes[1] and Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes . When implementing provisions on complaints and redress procedures for out-of-court settlements, Member States should be encouraged to use existing cross-border cooperation mechanisms, in particular the Financial Services Complaints Network (FIN-Net).

(103) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be in accordance with the rules on transfer of personal data to third countries as laid down in Directive 95/46/EC. Any exchange or transmission of personal data by ESMA with third countries should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.

(104) It is necessary to reinforce provisions on exchange of information between national competent authorities and to strengthen the duties of assistance and cooperation which they owe to each other. Due to increasing cross-border activity, competent authorities should provide each other with the relevant information for the exercise of their functions, so as to ensure the effective enforcement of this Directive, including in

[1] OJ L 115, 17.4.1998, p. 31.

situations where infringements or suspected infringements may be of concern to authorities in two or more Member States. In the exchange of information, strict professional secrecy is needed to ensure the smooth transmission of that information and the protection of particular rights.

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(106) ***The*** power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of details concerning exemptions, the ***specification*** of ***certain*** definitions, the criteria for the assessment of proposed acquisitions of an investment firm, the organisational requirements for investment firms, the management of conflicts of interest, conduct of business obligations in the provision of investment services, the execution of orders on terms most favourable to the client, the handling of client orders, the transactions with eligible counterparties, the SME growth markets, the conditions for the assessment of initial capital of third-country firms, measures concerning systems resilience, circuit breakers and electronic trading, the admission of financial instruments to trading, the suspension and removal of financial *instruments* from trading, the thresholds for position reporting held by categories of traders, the ***clarification of what constitutes a reasonable commercial basis for an APA to make information public, for CTPs to provide access to data streams and for an approved reporting mechanism (ARM) to report information, the clarification of details of the information obligation on CTP, the*** cooperation between competent authorities. It is of particular importance that the Commission ***carry*** out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(107) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. These powers ***should*** relate to the adoption of the ***effective*** equivalence decision concerning third country legal and supervisory framework for the provision of services by third-country firms and they should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[1].

(108) Technical standards in financial services should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the ***European*** Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission. ***To ensure consistent investor and consumer protection across financial services sectors, ESMA should carry out its tasks, to the extent possible, in close cooperation with the other two European Supervisory Authorities within the framework of the Joint Committee of the European Supervisory Authorities.***

(109) The Commission should adopt the regulatory technical standards developed by ESMA ***specifying the criteria for determining whether an activity is ancillary to the main business,*** regarding procedures for granting and refusing requests for authorisation of

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[1] OJ L 55, 28.2.2011, p. 13

investment firms, regarding requirements for management bodies, regarding acquisition of qualifying holding, regarding obligation to execute orders on terms most favourable to clients, regarding cooperation and exchange of information, regarding freedom to provide investment services and activities, regarding establishment of a branch, regarding provision of services by third-country firms, ***in regarding the limits on holdings of certain commodity derivatives and further specifying the position checks applicable to other commodity derivatives,*** regarding procedures for granting and refusing requests for authorisation of data reporting services providers, regarding organisational requirements for APAs and CTPs and regarding cooperation among competent authorities. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No ***1095/2010.***

(110) The Commission should also be empowered to adopt implementing technical standards ***developed*** by ESMA regarding procedures for granting and refusing requests for authorisation of investment firms, regarding acquisition of qualifying holding, regarding the trading process on finalisation of transactions in MTFs and OTFs, regarding the suspension and removal of instruments from trading, regarding freedom to provide investment services and activities, regarding the establishment of a branch, regarding provision of services by third-country firms, regarding position reporting by categories of traders, regarding the submission of information to ESMA, regarding the obligation to cooperate, regarding cooperation among competent authorities, regarding exchange of information and regarding consultation prior to authorisation. ***The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.***

(111) The Commission should submit a report to the European Parliament and the Council assessing the functioning of organised trading facilities, the functioning of the regime for SME growth markets, the impact of requirements regarding automated and high-frequency trading, the experience with the mechanism for banning certain products or practices and the impact of the measures regarding commodity derivatives markets.

(112) Since the objective of this Directive, namely creating an integrated financial market in which investors are effectively protected and the efficiency and integrity of the overall market are safeguarded, requires the establishment of common regulatory requirements relating to investment firms wherever they are authorised in the ***European*** Union and governing the functioning of regulated markets and other trading systems so as to prevent opacity or disruption on one market from undermining the efficient operation of the European financial system as a whole and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective

(113) The establishment of a consolidated tape for non-equity instruments is deemed to be more difficult to implement than the consolidated tape for equity instruments and potential providers should be able to gain experience with the latter before constructing it. In order to facilitate the proper establishment of the consolidated tape for non-equity

financial instruments, it is therefore appropriate to provide for an extended date of application of the national measures transposing the relevant provision. ***Nevertheless it is appropriate to make provision now for a public solution to be developed if the commercial solution does not lead to the timely delivery an effective and comprehensive consolidated tape.***

(113a) In order to further develop the Union framework governing securities, the Commission should put forward a proposal for a regulation on securities law further specifying the definition of safekeeping and administration of financial instruments and should also, in conjunction with ESMA, the European Supervisory Authority (European Banking Authority) and the European Systemic Risk Board promote work on standardisation of identifiers and messaging so as to enable near-real time transaction analysis and the identification of complex product structures, such as those containing derivatives or repos.

(114) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data, the freedom to conduct a business, the right to consumer protection, the right to an effective remedy and to a fair trial, the right not to be tried or punished twice for the same offence, and has to be implemented in accordance with those rights and principles.

(114a) The European Data Protection Supervisor has been consulted,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

DEFINITIONS AND SCOPE

Article 1
Scope

1. This Directive shall apply to investment firms, regulated markets, data reporting service providers and third-country firms providing investment services or activities in the ***European*** Union.

2. This Directive establishes requirements in relation to the following:

   (a) authorisation and operating conditions for investment firms;

   (b) provision of investment services or activities by third-country firms with the establishment of a branch;

   (c) authorisation and operation of regulated markets;

   (d) authorisation and operation of data reporting service providers; and

(e) supervision, cooperation and enforcement by competent authorities.

3. ***This Directive*** shall also apply to credit institutions authorised under Directive 2006/48/EC, when providing one or more investment services and/or performing investment activities, and ***to credit institutions and investment firms*** when selling or advising clients in relation to deposits other than those with a rate of return which is determined in relation to an interest rate ***(structured deposits).***

▌

3a. The following provisions shall also apply to insurance undertakings and insurance intermediaries, including tied insurance intermediaries, authorised or registered under, respectively, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance[1], Directive 2002/92/EC or Directive 2009/138/EC, when selling or advising clients in relation to insurance-based investments:

- ***Article 16(3);***

- ***Articles 23 to 26; and***

- ***Articles 69 to 80 and 83 to 91, where necessary, for the purpose of allowing competent authorities to give effect to the articles referred to in the first and second indents in relation to insurance-based investments.***

Article 2
Exemptions

1. This Directive shall not apply to:

(a) insurance undertakings or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 2009/138/EC, ***without prejudice to Article 1(3a)***;

(b) persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions ▌;

(d) persons who do not provide any investment services or activities other than dealing on own account unless they:

(i) are market makers;

(ii) are a member of or a participant in a regulated market or multilateral trading facility (MTF) ***or have direct market access to a trading venue***;

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[1] ***OJ L 345, 19.12.2002, p. 1.***

(iia) engage in algorithmic trading;

(iib) given the scale of ***their trading activities are deemed to have a significant market presence by the competent authority; or***

(iii) deal on own account ***when*** executing client orders.

Persons who are exempt under ***point (i) do not also need to meet the conditions laid down in this point in order to be exempt.***

This exemption shall apply to persons who, when dealing emission allowances, do not provide any investment services or activities other than dealing on own account and do not execute client orders, and which own or directly operate installations subject to Directive 2003/87/EC;

(e) persons which provide investment services consisting exclusively in the administration of employee-participation schemes;

(f) persons which provide investment services which only involve both administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(g) the members of the ESCB and other national bodies performing similar functions in the ***European*** Union, other public bodies charged with or intervening in the management of the public debt in the ***European*** Union and international bodies of which ***three*** or more Member States are members ***and which are charged with or intervening in the management of the public debt***;

(h) collective investment undertakings and pension funds whether coordinated at ***European*** Union level or not and the depositaries and managers of such undertakings;

(i) persons who:

(i) deal on own account in financial instruments, excluding persons who deal on own account ***when*** executing client orders ▌ ,

(ii) provide investment services, other than dealing on own account, exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings, or

(iii) provide investment services, other than dealing on own account, in commodity derivatives or derivative contracts included in point (10) of Section C of Annex I or emission allowances or derivatives thereof to the clients of their main business,

provided that in all cases***:***

– this is an ancillary activity to their main business, when considered on a ***consolidated or non-consolidated*** group basis, and that main business is not the provision of investment services within the meaning of this

Directive or banking services under Directive 2006/48/EC ***or acting as a market-maker in relation to commodity derivatives***,

– ***they report annually to the relevant competent authority the basis on which they consider that their activity under points (i), (ii) and (iii) is ancillary to their main business***;

(j) persons providing investment advice in the course of providing another professional activity not covered by this Directive provided that the provision of such advice is not specifically remunerated;

(l) associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;

(m) 'agenti di cambio' whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998;

(n) transmission system operators as defined in Article 2(4) of Directive 2009/72/EC or Article 2(4) of Directive 2009/73/EC when carrying out their tasks under those Directives or Regulation (EC) 714/2009 or Regulation (EC) 715/2009 or network codes or guidelines adopted pursuant those Regulations.

2. The rights conferred by this Directive shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the ESCB performing their tasks as provided for by the TFEU and the Statute of the ESCB and of the European Central Bank (ECB) or performing equivalent functions under national parliaments.

3. The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of the ***exemption laid down in paragraph 1(c) to clarify when*** an activity is provided in an incidental manner.

3a. ESMA shall develop draft regulatory technical standards to specify the criteria for determining whether an activity is ancillary to the main business, taking into account at least the following:

(a) the extent to which the activity is objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity;

(b) the need for ancillary activities to constitute a minority of activities at group level, and at an entity level unless services provided only to other members of the same group;

(c) the size of the activity relative to the main activities and the significance of the activity in the relevant markets;

(d) the desirability of limiting net credit risk exposures to non-systemically significant levels;

(e) the scale of market risk associated with the activity relative to the market risk arising from the main business;

(f) systemic relevance of the sum of net positions and exposures of a non-financial counterparty as referred to in Article 10 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories[1].

ESMA shall submit those draft regulatory technical standards to the Commission by [...]*.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 3
Optional exemptions

1. Member States may choose not to apply this Directive to any persons for which they are the home Member State, provided that the activities of those persons are authorised and regulated at national level, where those persons:

(a) are not allowed to hold clients' funds or securities and which for that reason are not allowed at any time to place themselves in debit with their clients;

(b) are not allowed to provide any investment service except the provision of investment advice, with or without the reception and transmission of orders in transferable securities and units in collective investment undertakings, and ***the reception and transmission of orders in transferable securities and units in collective investment undertakings at the initiative of the client; and***

(c) in the course of providing that service, are allowed to transmit orders only to:

(i) investment firms authorised in accordance with this Directive;

(ii) credit institutions authorised in accordance with Directive 2006/48/EC;

(iii) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities to be at least as stringent as those laid down in this Directive, in Directive 2006/48/EC or in Directive 2006/49/EC;

(iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of such undertakings;

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[1] ***OJ L 201, 27.7.2012, p. 1.***

* ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

(v) investment companies with fixed capital, as defined in Article 15(4) of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent[1], the securities of which are listed or dealt in on a regulated market in a Member State;

1a. Member States' regimes shall submit the persons referred to in paragraph 1 to requirements which are at least analogous to the following requirements under this Directive, ***taking into account their size, risk profile and legal form***:

(a) conditions and procedures for authorisation and on-going supervision as established in Article 5 (1) and (3), Articles 7, 8, 9, 10, 21***,*** 22 ***and 23 and the respective implementing measures adopted by the Commission by means of delegated acts in accordance with Article 94***;

(b) conduct of business obligations as established in Article 24(1), (2), (3), (5) and Article 25(1), (4) and (5) and the respective implementing measures in Directive 2006/73/EC;

(c) organisational requirements as established in Article 16(3) and the delegated acts adopted by the Commission in accordance with Article 94.

1b. Member States shall require persons excluded from the scope of this Directive under paragraph 1 to be covered under an investor-compensation scheme recognised in accordance with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes[2] or under a system ensuring equivalent protection to their clients. ***Member States may allow professional indemnity insurances as an alternative coverage, where this would be appropriate and proportionate in the view of the size, risk profile and legal nature of the persons excluded from the scope of this Directive under paragraph 1. Member States shall ensure that persons who are excluded from the scope of this Directive under paragraph 1 and who are selling financial instruments to retail clients or providing investment advice or portfolio management to retail clients, have to obey rules for investor protection which are equivalent to the provisions of Article 16(6) and (7) and Articles 24 and 25.***

2. Persons excluded from the scope of this Directive according to paragraph 1 shall not benefit from the freedom to provide services and/or activities or to establish branches as provided for in Articles 36 and 37 respectively.

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1 OJ L 26, 31.1.1977, p. 1.
2 OJ L 84, 26.3.1997, p. 22.

3. Member States shall notify the Commission and ESMA of the exercise of the option under this Article and shall ensure that each authorisation granted in accordance with paragraph 1 mentions that it is granted according to this Article.

4. Member States shall communicate to ESMA the provisions of national law analogous to the requirements of this Directive listed in paragraph 1.

Article 4
Definitions

1. For the purposes of this Directive, the definitions provided in Article 2 of Regulation (EU) No …/… [MiFIR] shall apply to this Directive.

2. The following definitions shall also apply:

(1) 'investment services and activities' means any of the services and activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I;

The Commission shall adopt delegated acts in accordance with Article 94 measures specifying:

- the derivative contracts referred to in point 7 of Section C of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;

- the derivative contracts referred to in point (10) of Section C of Annex I that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls;

(2) 'ancillary service' means any of the services listed in Section B of Annex I;

(3) 'investment advice' means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments;

(4) 'execution of orders on behalf of clients' means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients . Execution of orders includes the conclusion of agreements to sell financial instruments issued by a credit institution or an investment firm at the moment of their issuance;

(5) 'dealing on own account' means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;

(6) 'market maker' means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital ▌;

(7) ‘portfolio management’ means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;

(8) ‘client’ means any natural or legal person to whom an investment firm provides investment or ancillary services;

(9) ‘professional client’ means a client meeting the criteria laid down in Annex II;

(10) ‘retail client’ means a client who is not a professional client;

(11) 'SME growth market' means a MTF that is registered as an SME growth market in accordance with Article 35;

(12) ‘small and medium-sized enterprise’ means a company that ***has*** an average market capitalisation of less than ***EUR 200 000 000***;

(13) ‘limit order’ means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size;

(14) ‘financial instrument’ means those instruments specified in Section C of Annex I;

(15) ‘money-market instruments’ means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;

(16) ‘home Member State’ means:

(a) in the case of investment firms:

(i) if the investment firm is a natural person, the Member State in which its head office is situated;

(ii) if the investment firm is a legal person, the Member State in which its registered office is situated;

(iii) if the investment firm has, under its national law, no registered office, the Member State in which its head office is situated;

(b) in the case of a regulated market, the Member State in which the regulated market is registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the regulated market is situated;

(17) ‘host Member State’ means the Member State, other than the home Member State, in which an investment firm has a branch or performs services and/or activities or the Member State in which a regulated market provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same Member State;

(18) ‘competent authority’ means the authority, designated by each Member State in accordance with ***Article 69***, unless otherwise specified in this Directive;

(19) ‘credit institution’ means a credit institution as defined under Directive 2006/48/EC;

(20) ‘UCITS management company’ means a management company as defined in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[1];

(21) ‘tied agent’ means a natural or legal person who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts, promotes investment and/or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;

(22) ‘branch’ means a place of business other than the head office which is a part of an investment firm, which has no legal personality and which provides investment services and/or activities and which may also perform ancillary services for which the investment firm has been authorised; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;

(23) ‘qualifying holding’ means a direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market[2], taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;

(24) ‘parent undertaking’ means a parent undertaking as defined in Articles 1 and 2 of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts[3];

(25) ‘subsidiary’ means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking;

(26) ‘close links’ means a situation in which two or more natural or legal persons are linked by:

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1 OJ L 302, 17.11.2009, p. 32.
2 OJ L 390, 31.12.2004, p. 38.
3 OJ L 193, 18.7.1983, p. 1.

(a) 'participation' which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

(b) 'control' which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings;

(c) a situation in which they are permanently linked to one and the same person by a control relationship;

(27) 'management body' means the governing body of a firm ***or data services provider***, comprising the supervisory and the managerial functions, which has the ultimate decision-making authority and is empowered to set the firm's ***or data services provider's*** strategy, objectives and overall direction. Management body shall include persons who effectively direct the business of the firm*;*

(28) 'management body in its supervisory function' means the management body acting in its supervisory function of overseeing and monitoring management decision-making;

(29) 'senior management' means individuals who exercise executive functions with a firm and who are responsible and accountable for the day-to-day management of the firm, including the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;

(30) 'algorithmic trading' means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention. This definition does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the confirmation of orders ***or to execute client orders or to fulfil any legal obligation through the determination of a parameter of the order***; ***or to the processing of executed transactions;***

(30a) 'high-frequency trading' means algorithmic trading in financial instruments at speeds where the physical latency of the mechanism for transmitting, cancelling or modifying orders becomes the determining factor in the time taken to communicate the instruction to a trading venue or to execute a transaction;

(30b) 'high-frequency trading strategy' means a trading strategy for dealing on own-account in a financial instrument which involves high-frequency trading and has at least two of the following characteristics:

(i) it uses co-location facilities, direct market access or proximity hosting;

(ii) it relates to a daily portfolio turnover of at least 50 %;

(iii) the proportion of orders cancelled (including partial cancellations) exceeds 20 %;

(iv) the majority of positions taken are unwound within the same day;

(v) over 50 % of the orders or transactions made on trading venues offering discounts or rebates to orders which provide liquidity are eligible for such rebates;

(31a) "direct market access" means an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can transmit orders electronically to the investment firm's internal electronic trading systems for automatic onward transmission under the investment firm's trading code to a specified trading venue;

(31b) 'sponsored and naked market access' means an arrangement where a member or participant of a trading venue permits a person to use its trading code so the person can transmit orders electronically under the investment firm's trading code to a specified trading venue without the orders being routed through the investment firm's internal electronic trading systems;

▌

(33) 'cross-selling practice' means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.

(33a) 'insurance-based investment' means an insurance contract where the amount payable to the client is exposed to the market value of an asset or payout from an asset or reference value, and where the client does not directly hold the asset;

(33b) 'investment product' means an product where the amount payable to the client is determined with reference to the value of financial instruments or the product is a structured deposit or the product is an insurance-based investment or the product is a packaged retail investment product as defined in Article ... of Directive ..../..../EU [PRIPS];

(33c) 'discretionary portfolio management' means portfolio management where the mandate from the client allows the portfolio manager discretion to select the investment products or financial instruments in which the client's funds are invested;

(33d) 'Third-country firm' means a firm that would be an investment firm or market operator if its head office were located within the Union.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify some technical elements of ***or amend*** the definitions laid down in ***points (3), (11), (12), and (27) to (33d) of*** paragraph 2 of this Article, ***if appropriate,*** to ***take into account:***

(a) technical developments in financial markets;

(b) the list of abusive practices referred to in Article 34b(b) of Regulation (EU) No …/… [MAR] in particular with regard to high-frequency trading and including, but not limited to, spoofing, quote stuffing and layering.

TITLE II

AUTHORISATION AND OPERATING CONDITIONS FOR INVESTMENT FIRMS

CHAPTER I

CONDITIONS AND PROCEDURES FOR AUTHORISATION

Article 5
Requirement for authorisation

1. Each Member State shall require that the performance of investment services or activities as a regular occupation or business on a professional basis be subject to prior authorisation in accordance with the provisions of this Chapter. Such authorisation shall be granted by the home Member State competent authority designated in accordance with Article 69.

2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate an MTF or an organised trading facility (OTF), subject to the prior verification of their compliance with the provisions of this Chapter.

3. Member States shall register all investment firms. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to ESMA.

   ESMA shall establish a list of all investment firms in the ***European*** Union. The list shall contain information on the services or activities for which each investment firm is authorised and it shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

   Where a competent authority has withdrawn an authorisation in accordance with Article 8(b) to (d), that withdrawal shall be published on the list for a period of five years.

4. Each Member State shall require that:

   - any investment firm which is a legal person, have its head office in the same Member State as its registered office,

- any investment firm which is not a legal person or any investment firm which is a legal person but under its national law has no registered office, have its head office in the Member State in which it actually carries on its business.

Article 6
Scope of authorisation

1. The home Member State shall ensure that the authorisation specifies the investment services or activities which the investment firm is authorised to provide. The authorisation may cover one or more of the ancillary services set out in Section B of Annex I. Authorisation shall in no case be granted solely for the provision of ancillary services.

2. An investment firm seeking authorisation to extend its business to additional investment services or activities or ancillary services not foreseen at the time of initial authorisation shall submit a request for extension of its authorisation.

3. The authorisation shall be valid for the entire ***European*** Union and shall allow an investment firm to provide the services or perform the activities, for which it has been authorised, throughout the ***European*** Union, either through the establishment of a branch or the free provision of services.

Article 7
Procedures for granting and refusing requests for authorisation

1. The competent authority shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to this Directive.

2. The investment firm shall provide all information, including a programme of operations setting out inter alia the types of business envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Chapter.

3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted.

4. ESMA shall develop draft regulatory technical standards to specify:

   (a) the information to be provided to the competent authorities under Article 7(2) including the programme of operations;

   (b) the tasks of nomination committees required under Article 9(2);

   (c) the requirements applicable to the management of investment firms under Article 9(8) and the information for the notifications under Article 9(5);

(d) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, under Article 10(1) and (2).

ESMA shall submit those draft regulatory technical standards to the Commission by ***[…]****.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ▌ Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in Article 7(2) and in Article 9(5).

ESMA shall submit those draft implementing technical standards to the Commission by ***[…]****.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 8
Withdrawal of authorisation

The competent authority may withdraw the authorisation issued to an investment firm where such an investment firm:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no investment services or performed no investment activity for the preceding six months, unless the Member State concerned has provided for authorisation to lapse in such cases;

(b) has obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in Directive 2006/49/EC;

(d) has seriously and systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for investment firms;

(e) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.

Every withdrawal of authorisation shall be notified to ESMA.

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* ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

* ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

Article 9
Management body

-1. For the purposes of this Directive, a non-executive director is defined as follows:

A non-executive director or outside director is a member of the board of directors of a company who does not form part of the executive management team. He or she is not an employee of the company or affiliated with it in any other way. They are differentiated from inside directors, who are members of the board who also serve or previously served as executive managers of the company.

Non-executive directors shall have responsibilities in the following areas:

- ***Non-executive directors shall constructively challenge and contribute to the development of strategy;***
- ***Non-executive directors shall scrutinise the performance of management in meeting agreed goals and objectives and monitoring, and where necessary removing, senior management and in succession planning;***
- ***Non-executive directors shall satisfy themselves that financial information is accurate and that financial controls and systems of risk management are robust and defensible;***
- ***Non-executive directors shall be responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, senior management and in succession planning.***

Non-executive directors shall also provide independent views on:

- ***resources;***
- ***appointments;***
- ***standards of conduct.***

Non-executive directors shall be the custodians of the governance process. They shall not be involved in the day-to-day running of business but shall monitor the executive activity and contribute to the development of strategy.

1. ***Members*** of the management body of any investment firm shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties***, and allowing for a broad range of experience to be acknowledged so as not to discriminate against women***.

Members of the management body shall, in particular, fulfil the following requirements:

(a) All members of the management body shall commit sufficient time to perform ***their*** functions in the investment firm. ***The number of directorships a member of the***

management body can hold at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities.

Members of the management body of institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall not combine at the same time more than one of the following combinations:

(i) one executive directorship with two non-executive directorships

(ii) four non-executive directorships.

Executive or non-executive directorships held:

(i) within the same group***;***

(ii) within institutions which:

- ***are members of the same institutional protection scheme if the conditions of Article 108(7) of Regulation (EU) No .../2012 [CRD IV] are fulfilled;***
- ***have established links according to Article 108(6) of Regulation (EU) No .../2012 [CRD IV]; or***

(iii) within undertakings (including non-financial institutions) where the institutions owns a qualifying holding.

shall be considered as one single directorship.

Members of the management body shall not combine at the same time an executive directorship in an investment firm with an executive directorship in a regulated market, an MTF or an OTF even within the same group.

Point (a) shall include:

(i) undertakings and non-financial entities:

- ***in which there is a qualified holding within the meaning of Article 4(21) of Regulation (EU) No .../2012 [CRD IV];***
- ***in which there is participation within the meaning of Article 4(49) of Regulation (EU) No .../2012 [CRD IV]; or***
- ***which have close links within the meaning of Article 4(72) of Regulation (EU) No .../2012 [CRD IV] with certain non-financial institutions.***

(ii) parent financial holding companies within the meaning of Article 4(65), (66) and (67) of Regulation(EU) No .../2012 [CRD IV] controlling a central or regional credit institution adhering to an IPS scheme.

(b) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the investment firm's activities, and in particular the main risk involved in those activities.

(c) Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management ***and to effectively oversee and monitor management decision-making***.

Investment firms ***shall*** devote adequate resources to the induction and training of members of the management body.

Where the market operator that seeks authorisation to operate an MTF or an OTF and the persons that effectively direct the business of the MTF or the OTF are the same as the members of the management body of the regulated market, those persons shall be deemed to comply with the requirements laid down in the first subparagraph.

2. Member States shall require investment firms, where appropriate and proportionate in view of the nature, scale and complexity of their business, to establish a nomination committee to assess compliance with the first paragraph and to make recommendations, when needed, on the basis of their assessment. The nomination committee shall be composed of members of the management body who do not perform any executive function in the institution concerned. Where, under national law, the management body does not have any competence in the process of appointment of its members, this paragraph shall not apply.

3. Member States shall require investment firms ***and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to its management bodies. In particular:***

(a) Investment firms shall put in place a policy promoting professionalism responsibility and commitment as the guiding criteria for senior recruitment, safeguarding that those appointed are unquestionably loyal to the interests of the institution.

(b) Investment firms shall also take concrete steps towards a more balanced representation on boards, such as training of nomination committees, the creation of rosters of competent candidates, and the introduction of a nomination process where at least one candidate of each sex is presented.

(c) Where practiced, employee representation in the management body shall also, by adding a key perspective and genuine knowledge of the internal workings of the institution, be seen as a positive way of enhancing diversity.

Competent authorities shall require investment firms to implement a 1/3 gender quota by …*.

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* ***OJ: please insert date: two years after the date of entry into force of this Directive.***

4. ESMA shall develop draft regulatory standards to specify ***how the institution should take into account*** the following:

(a) the notion of sufficient time commitment of a member of the management body to perform his functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the investment firm which competent authorities must take into account when they authorise a member of the management body to combine more directorships than permitted as referred to in paragraph 1(a);

(b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 1(b),

(c) to notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 1(b),

(d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body,

(e) the notion of diversity to be taken into account for the selection of members of the management body.

ESMA shall submit those draft regulatory technical standards to the Commission by [...]*.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

▌

5. Member States shall require the investment firm to notify the competent authority of all members of its management body and of any changes to its membership, with all information needed to assess whether the firm complies with paragraphs 1, 2 and 3.

6. Member States shall require the management body of an investment firm to ensure that the firm is managed in a sound and prudent way and in a manner that promotes the integrity of the market and the interest of the its clients. To this end, the management body shall:

(a) define, approve and oversee the strategic objectives of the firm;

(b) define, approve and oversee the organisation of the firm, including the skills, knowledge and expertise required to personnel, the resources, the procedures and the arrangements for the provision of services and activities by the firm, taking into account the nature, scale and complexity of its business and all the requirements with which the firm must comply;

(c) define, approve and oversee a policy as to services, activities, products and operations offered or provided by the firm, in accordance with the risk tolerance

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* ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

of the firm and the characteristics and needs of the clients to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate;

(ca) define, approve and oversee the firm's remuneration of sales staff which should be designed to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest, and disclose the remuneration structure to customers, where appropriate, such as where potential conflicts of interest cannot be managed or avoided, without prejudice to Article 24;

(d) provide effective oversight of senior management***;***

(da) maintain an anti-fraud strategy.

The management body shall monitor and periodically assess the effectiveness of the investment firm's organisation and the adequacy of the policies relating to the provision of services to clients and take appropriate steps to address any deficiencies.

Members of the management body in its supervisory function shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.

7. The competent authority shall refuse authorisation if it is not satisfied that the persons who will effectively direct the business of the investment firm are of sufficiently good repute or sufficiently experienced, or if there are objective and demonstrable grounds for believing that the management body of the firm may pose a threat to its effective, sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.

8. Member States shall require that the management of investment firms is undertaken by at least two persons meeting the requirements laid down in paragraph 1.

By way of derogation from the first subparagraph, Member States may grant authorisation to investment firms that are natural persons or to investment firms that are legal persons managed by a single natural person in accordance with their constitutive rules and national laws. Member States shall nevertheless require that:

(a) alternative arrangements be in place which ensure the sound and prudent management of such investment firms and the adequate consideration of the interest of clients and the integrity of the market;

(b) the natural persons concerned are of sufficiently good repute, possess ***an appropriate level of*** knowledge ▌ and ***competence*** and ***are given*** sufficient time to perform their duties ***and update and validate their knowledge and competence***.

8a. Without prejudice to the legal systems of the Member States, Member States shall ensure that where it is alleged that a member of the management board has breached the provisions of or has committed an offence in relation to matters falling within the scope of this Directive or of Regulation (EU) No .../... [MiFIR], he may be personally subject to criminal and civil proceedings.

8b. This Article shall be without prejudice to provisions on the representation of employees in company boards as provided for by national law or practice.

Article 10
Shareholders and members with qualifying holdings

1. The competent authorities shall not authorise the performance of investment services or activities by an investment firm until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings.

   The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an investment firm, they are not satisfied as to the suitability of the shareholders or members that have qualifying holdings.

   Where close links exist between the investment firm and other natural or legal persons, the competent authority shall grant authorisation only if those links do not prevent the effective exercise of the supervisory functions of the competent authority.

2. The competent authority shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

3. Member States shall require that, where the influence exercised by the persons referred to in the first subparagraph of paragraph 1 is likely to be prejudicial to the sound and prudent management of an investment firm, the competent authority take appropriate measures to put an end to that situation.

   Such measures may consist in applications for judicial orders or the imposition of sanctions against directors and those responsible for management, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Article 11
Notification of proposed acquisitions

1. Member States shall require any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an investment firm or to further increase, directly or indirectly, such a qualifying holding in an investment firm as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the investment firm would become its subsidiary (the 'proposed acquisition'), first to notify in writing the competent authorities of the investment firm in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 13(4).

   Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an investment firm first to

notify in writing the competent authorities, indicating the size of the intended holding. Such a person shall likewise notify the competent authorities if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the investment firm would cease to be his subsidiary.

Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

In determining whether the criteria for a qualifying holding referred to in Article 10 and in this Article are fulfilled, Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

2. The relevant competent authorities shall work in full consultation with each other when carrying out the assessment provided for in Article 13(1) (the 'assessment') if the proposed acquirer is one of the following:

(a) a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(b) the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or

(c) a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the competent authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the competent authority that has authorised the investment firm in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

3. Member States shall require that, if an investment firm becomes aware of any acquisitions or disposals of holdings in its capital that cause holdings to exceed or fall below any of the thresholds referred to in the first subparagraph of paragraph 1, that investment firm is to inform the competent authority without delay.

At least once a year, investment firms shall also inform the competent authority of the names of shareholders and members possessing qualifying holdings and the sizes of

such holdings as shown, for example, by the information received at annual general meetings of shareholders and members or as a result of compliance with the regulations applicable to companies whose transferable securities are admitted to trading on a regulated market.

4. Member States shall require that competent authorities take measures similar to those referred to in paragraph 3 of Article 10 in respect of persons who fail to comply with the obligation to provide prior information in relation to the acquisition or increase of a qualifying holding. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.

Article 12
Assessment period

1. The competent authorities shall, promptly and in any event within two working days following receipt of the notification required under the first subparagraph of Article 11(1), as well as following the possible subsequent receipt of the information referred to in paragraph 2 of this Article, acknowledge receipt thereof in writing to the proposed acquirer.

   The competent authorities shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 13(4) (the 'assessment period'), to carry out the assessment.

   The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

2. The competent authorities may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

   For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.

3. The competent authorities may extend the interruption referred to in the second subparagraph of paragraph 2 up to 30 working days if the proposed acquirer is one of the following:

   (a) a natural or legal person situated or regulated outside the ***European*** Union;

   (b) a natural or legal person not subject to supervision under this Directive or Directives 2009/65/EC, 2009/138/EC or 2006/48/EC.

4. If the competent authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the competent authority to make such disclosure in the absence of a request by the proposed acquirer.

5. If the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

6. The competent authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

7. Member States may not impose requirements for the notification to and approval by the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

8. ESMA shall develop draft regulatory technical standards to establish an exhaustive list of information, referred to in paragraph 4 to be included by proposed acquirers in their notification, without prejudice to paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ▌ Articles 10 to 14 of Regulation (EU) No 1095/2010.

8a. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in Article 11(2).

ESMA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 13
Assessment

1. In assessing the notification provided for in Article 11(1) and the information referred to in Article 12(2), the competent authorities shall, in order to ensure the sound and prudent management of the investment firm in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the investment firm, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation and experience of any person who will direct the business of the investment firm as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the investment firm in which the acquisition is proposed;

(d) whether the investment firm will be able to comply and continue to comply with the prudential requirements based on this Directive and, where applicable, other Directives, in particular Directives 2002/87/EC and 2006/49/EC, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

(da) whether the proposed acquisition increases the risk of conflicts of interest;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

The Commission shall be empowered to adopt delegated acts in accordance with Article 94 which adjust the criteria set out in the first subparagraph of this paragraph.

2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 11(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 12(1), (2) and (3), where two or more proposals to acquire or increase qualifying holdings in the same investment firm have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Article 14

Membership of an authorised investor compensation scheme

The competent authority shall verify that any entity seeking authorisation as an investment firm meets its obligations under Directive 97/9/EC at the time of authorisation.

This Article shall not apply to structured deposits issued by credit institutions which are members of a deposit guarantee scheme recognised under Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes[1].

Article 15
Initial capital endowment

Member States shall ensure that the competent authorities do not grant authorisation unless the investment firm has sufficient initial capital in accordance with the requirements of Directive 2006/49/EC having regard to the nature of the investment service or activity in question.

Article 16
Organisational requirements

1. The home Member State shall require that investment firms comply with the organisational requirements set out in paragraphs 2 to 8 of this Article and in Article 17.

2. An investment firm shall establish adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and tied agents with its obligations under the provisions of this Directive as well as appropriate rules governing personal transactions by such persons.

3. An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in Article 23 from adversely affecting the interests of its clients. ***These arrangements shall include a policy and other necessary arrangements to assess the compatibility of the investment product with the needs of the clients to whom it would be offered, and to ensure that investment products or structured deposits designed by the firm for sale to professional or retail clients meet the needs of an identified target market and that an investment firm marketing investment products ensures that the investment product is marketed to clients within the target group. Sales targets and internal inducement schemes shall not incentivise the sale of products outside the targeted group. In particular, an investment firm which designs investment products, structured deposits or financial instruments shall have in place a product approval process and shall take all the necessary operational and procedural measures to implement this product approval process. Before investment products and financial instruments are placed or distributed in the market, these products and instruments need approval according to the product approval process. All the relevant risks shall be carefully assessed and products and instruments shall only be placed or distributed when this is in the interests of the targeted group of clients. The product approval process shall ensure that existing products are regularly reviewed in order to ensure that the product is continuing to meet the needs of the identified target market. The product approval process shall be reviewed annually. An investment firm shall at all times be able to provide the relevant competent authority an up to date and detailed description of the nature and details of its product approval process.***

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[1] ***OJ L 135, 31.5.1994, p. 5.***

4. An investment firm shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To this end the investment firm shall employ appropriate and proportionate systems, resources and procedures.

5. An investment firm shall ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the supervisor to monitor the firm's compliance with all obligations.

   An investment firm shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

6. An investment firm shall arrange for records to be kept of all services and transactions undertaken by it which shall be sufficient to enable the competent authority to monitor compliance with the requirements under this Directive, and in particular to ascertain that the investment firm has complied with all obligations with respect to clients or potential clients.

7. Records shall include the recording of telephone conversations or electronic communications involving, at least, transactions concluded when dealing on own account and client orders when the services of reception and transmission of orders and execution of orders on behalf of clients are provided.

   Member States may waive the obligation to record telephone conversations when the investment firm does not as its main business receive and transmit orders and execute orders on behalf of clients.

   With regard to communications between financial institutions and retail clients Member States may instead of the records referred to in the first subparagraph recognise the adequate documentation of the content of such telephone conversations in the form of minutes where such minutes are signed by the client.

   Records of telephone conversation or electronic communications recorded in accordance with ***the first subparagraph or the minutes prepared in accordance with the second subparagraph*** shall be provided to the client involved upon request. ***Member States*** shall ***require that such records are*** kept ***until one year after the investment has ended***.

   Relevant persons of the investment firm may undertake the conversations and communications ***referred to in subparagraph 1 only on equipment provided by the investment firm and of which records are kept.***

8. An investment firm shall, when holding financial instruments belonging to clients, make adequate arrangements so as to safeguard clients' ownership rights, especially in the event of the investment firm's insolvency, and to prevent the use of a client's instruments on own account except with the client's express consent.

9. An investment firm shall, when holding funds belonging to clients, make adequate arrangements to safeguard the clients' rights and, except in the case of credit institutions, prevent the use of client funds for its own account.

10. An investment firm shall not conclude title transfer collateral arrangements with retail clients for the purpose of securing or covering clients' present or future, actual or contingent or prospective obligations.

11. In the case of branches of investment firms, the competent authority of the Member State in which the branch is located shall, without prejudice to the possibility of the competent authority of the home Member State of the investment firm to have direct access to those records, enforce the obligation laid down in paragraph 6 and 7 with regard to transactions undertaken by the branch.

12. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to ▌ specify the concrete organisational requirements laid down in paragraphs 2 to 9 of this Article to be imposed on investment firms and on branches of third-country firms authorised in accordance with Article 43 performing different investment services and/or activities and ancillary services or combinations thereof.

Article 17
Algorithmic ***and high-frequency*** trading

1. An investment firm that engages in algorithmic trading shall have in place effective systems and risk controls ***suitable to the business it operates*** to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders or the system otherwise functioning in a way that may create or contribute to a disorderly market. Such a firm shall also have in place effective systems and risk controls to ensure the trading systems cannot be used for any purpose that is contrary to Regulation (EU) No .../... [MAR] or to the rules of a trading venue to which it is connected. The investment firm shall have in place effective ***business*** continuity arrangements to deal with any unforeseen failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure they meet the requirements in this paragraph.

2. An investment firm that engages in algorithmic trading shall at least annually ***on its own initiative and at any other time on request*** provide to its home competent authority a ***detailed*** description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions in paragraph 1 are satisfied and details of the testing of its systems. ***An investment firm shall, at the request of a*** competent authority***, submit*** further information about its algorithmic trading and the systems used for that trading.

2a. An investment firm that engages in a high frequency trading strategy shall store in an approved form the raw audit trail of any quotation and trading activities performed on any trading venue and make it available to the national competent authority upon request.

3. ***An investment firm that engages in market making including through participation in a market making scheme offered by a trading venue shall enter into a binding written agreement between the firm and the trading venue regarding the essential obligations arising from the market making and shall adhere to the terms and conditions of the agreement, including liquidity provision. The investment firm shall have in place effective systems and controls to ensure that it fulfils its obligations under the agreement at all times. Where any investment firm deploys an algorithmic trading strategy in order to fulfil its obligations as a market maker it shall ensure that the algorithm*** shall be in continuous operation during the trading hours of the trading venue to which it sends orders or through the systems of which it executes transactions ***and that the*** trading parameters or limits of ***the algorithm*** shall ensure that ***the investment firm*** posts firm quotes at competitive prices with the result of providing liquidity on a regular and ongoing basis to these trading venues at all times regardless of prevailing market conditions ***unless the written agreement provides otherwise***.

4. ***Investment firms shall not provide sponsored and naked market access to a trading venue.*** An investment firm that provides direct ***market*** access to a trading venue shall have in place effective systems and controls which ensure a proper assessment and review of the suitability of persons using the service, that persons using the service are prevented from exceeding appropriate pre set trading and credit thresholds, that trading by persons using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market or be contrary to Regulation (EU) No [MAR] or the rules of the trading venue. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of the service and that under the agreement the firm retains responsibility for ensuring trading using that service complies with the requirements of this Directive, the Regulation (EU) No .../... [MAR] and the rules of the trading venue.

5. An investment firm that acts as a general clearing member for other persons shall have in place effective systems and controls to ensure clearing services are only applied to persons who are suitable and meet clear criteria and that appropriate requirements are imposed on those persons to reduce risks to the firm and to the market. The investment firm shall ensure that there is a binding written agreement between the firm and the person regarding the essential rights and obligations arising from the provision of that service.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify the detailed organisational requirements laid down in paragraphs 1 to 5 to be imposed on investment firms performing different investment services and/or activities and ancillary services or combinations thereof.

Article 18
Trading process and finalisation of transactions in an MTF and an OTF

1. Member States shall require that investment firms or market operators operating an MTF or an OTF, in addition to meeting the organisational requirements laid down in Article 16, establish transparent rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders. They shall have

arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruption.

2. Member States shall require that investment firms or market operators operating an MTF or an OTF establish transparent rules regarding the criteria for determining the financial instruments that can be traded under its systems.

Member States shall require that, where applicable, investment firms or market operators operating an MTF or an OTF provide, or are satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instruments traded.

3. Member States shall require that investment firms or market operators operating an MTF or an OTF establish, publish and maintain transparent ***and non-discriminatory*** rules, based on objective criteria, governing access to its facility.

3a. Member States shall require investment firms or market operators operating an MTF or an OTF to have arrangements in place to identify clearly any conflict of interest between the interest of the MTF or OTF, its owners or its operator and the sound operation of the MTF or OTF, and to manage the potential adverse consequences for the operation of the MTF or OTF or its participants arising from any such conflicts of interest.

4. Member States shall require that investment firms or market operators operating an MTF or an OTF clearly inform its users of their respective responsibilities for the settlement of the transactions executed in that facility. Member States shall require that investment firms or market operators operating an MTF or an OTF have put in place the necessary arrangements to facilitate the efficient settlement of the transactions concluded under the systems of the MTF or an OTF.

4a. Member States shall require that an MTF or OTF has at least three materially active members or users, each having the opportunity to interact with all the others in respect to price formation.

5. Where a transferable security, which has been admitted to trading on a regulated market, is also traded on an MTF or an OTF without the consent of the issuer, the issuer shall not be subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF or an OTF.

6. Member States shall require that any investment firm or market operator operating an MTF or an OTF comply immediately with any instruction from its competent authority pursuant to Article 72(1) to suspend or remove a financial instrument from trading.

7. Member States shall require investment firms and market operators operating an MTF or an OTF to provide the competent authority ***and ESMA*** with a detailed description of the functioning of the MTF or OTF***, including any links to or participation by a regulated market, an MTF, an OTF or a systematic internaliser owned by the same investment firm or market operator, and a list of their members and/or users***. Every authorisation to an investment firm or market operator as an MTF and an OTF shall be

notified to ESMA. ESMA shall establish a list of all MTFs and OTFs in the ***European*** Union. The list shall contain information on the services an MTF or an OTF provides and entail the unique code identifying the MTF and the OTF for use in reports in accordance with Article 23 and Articles 5 and 9 of Regulation (EU) No …/… [MiFIR]. It shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

8. ESMA shall develop draft implementing technical standards to determine the content and format of the description and notification referred to in paragraph 8.

ESMA shall submit those draft implementing technical standards to the Commission by ***[...]***[*].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 19
Specific requirements for MTFs

1. Member States shall require that investment firms or market operators operating an MTF, in addition to meeting the requirements laid down in Articles 16 and 18, shall establish ***and implement*** non-discretionary rules for the execution of orders in the system.

2. Member States shall require that the rules referred to in Article 18(4) governing access to an MTF comply with the conditions established in Article 55(3).

3. Member States shall require that investment firms or market operators operating an MTF to have arrangements***:***

(a) to be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks;

(b) to identify clearly and manage the potential adverse consequences, for the operation of the MTF or for its participants, of any conflict of interest between the interest of the MTF, its owners or its operator and the sound functioning of the MTF;

(c) to have effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems; and

(d) to have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed.

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[*] ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

4. Member States shall require a MTF to ***comply with Articles 51 and 51a and to*** have in place effective systems, procedures and arrangements to ***do so***.

5. Member States shall ensure that Articles 24, 25, 27 and 28 are not applicable to the transactions concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF. However, the members of or participants in the MTF shall comply with the obligations provided for in Articles 24, 25, 27 and 28 with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an MTF.

Article 20
Specific requirements for OTFs

1. Member States shall require that investment firms and market operators operating an OTFs establish arrangements preventing the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF ***or from any entity that is part of the same corporate group and/or legal person as the investment firm and/or market operator.***

The investment firm or market operator or an entity that is part of the same corporate group and/or legal person as the investment firm and/or market operator shall not act as a systematic internaliser in an OTF operated by itself and an OTF shall not connect with a systematic internaliser in a way which enables orders in an OTF and orders or quotes in a systematic internaliser to interact. An OTF shall not connect with another OTF in a way which enables orders in different OTFs to interact.

1a. Member States shall require that where a bond, structured finance product or emission allowance is admitted to trading on a regulated market or traded on an MTF, investment firms and market operators operating an OTF only allow orders which are large in scale to be executed on the OTF.

1b. Investment firms or market operators operating an OTF shall have discretion in operating the OTF only in relation to:

(a) how a transaction is to be executed; and

(b) how clients interact.

2. A request for authorisation as an OTF shall include a detailed explanation why the system does not correspond to and cannot operate as a regulated market, MTF, or systematic internaliser. ***Once authorised, an operator of an OTF shall report annually to the competent authority providing an updated explanation.***

2a. Member States shall require investment firms and market operators operating an OTF take appropriate steps to identify and manage any conflict of interest arising in connection with the oversight and operation of the OTF which could adversely affect the members or participants of the OTF.

3. Member States shall ensure that Articles 24, 25, 27 and 28 are applied to the transactions concluded on an OTF.

4. Member States shall require ▌ OTFs ***to comply with Article 51 and 51a and to*** have in place effective systems, procedures and arrangements to ***do so***.

CHAPTER II

OPERATING CONDITIONS FOR INVESTMENT FIRMS

SECTION 1

GENERAL PROVISIONS

Article 21
Regular review of conditions for initial authorisation

1. Member States shall require that an investment firm authorised in their territory comply at all times with the conditions for initial authorisation established in Chapter I of this Title.

2. Member States shall require competent authorities to establish the appropriate methods to monitor that investment firms comply with their obligation under paragraph 1. They shall require investment firms to notify the competent authorities of any material changes to the conditions for initial authorisation.

   ESMA may develop guidelines regarding the monitoring methods referred to in this paragraph.

Article 22
General obligation in respect of on-going supervision

▌ Member States shall ensure that the competent authorities monitor the activities of investment firms so as to assess compliance with the operating conditions provided for in this Directive. Member States shall ensure that the appropriate measures are in place to enable the competent authorities to obtain the information needed to assess the compliance of investment firms with those obligations.

Article 23
Conflicts of interest

1. Member States shall require investment firms to take all ***necessary*** steps to identify ***all*** conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof***, including those caused by the receipt of inducements from third parties or by the firm's own remuneration and other incentive structures***.

2. Where organisational or administrative arrangements made by the investment firm in accordance with Article 16(3) to ***prevent or*** manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to:

   (a) define the steps that investment firms might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when providing various investment and ancillary services and combinations thereof;

   (b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm.

SECTION 2

PROVISIONS TO ENSURE INVESTOR PROTECTION

Article 24
General principles and information to clients

1. Member States shall require that, when providing investment services or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in this Article and in Article 25.

1a. Member States shall ensure that where investment firms design investment products or structured deposits for sale to professional or retail clients, those products are designed to meet the needs of an identified target market within the relevant category of clients. Member States shall ensure that investment firms take reasonable steps to ensure that each investment product is marketed and distributed to clients within the target group and that sales targets and internal reward schemes or inducements do not provide an incentive for marketing or distribution of the investment product outside the target group. Member States shall require investment firms which design investment products or structured deposits for sale to professional or retail clients to provide information to any third party distributor on the intended target market for the product.

1b. Member States shall ensure that the manner in which an investment firm remunerates its staff, appointed representatives or other investment firms does not impede compliance with its obligation to act in the best interests of clients. Member States shall ensure that where staff advise on, market or sell investment products or financial instruments to retail clients, the remuneration structures involved do not prejudice their ability to provide an objective recommendation, where applicable, or to

provide information in a manner that is fair, clear and not misleading in accordance with paragraph 2 and does not otherwise give rise to undue conflicts of interest.

In particular, Member States shall ensure that:

(a) remuneration is not largely dependent on targets for the sale or profitability of investment products or financial instruments;

(b) remuneration or other arrangements including performance assessment do not provide an incentive to staff to recommend a particular investment product or financial instrument to a retail client when the investment firm could offer another investment product or financial instrument which would better meet that client's objectives.

1c. Member States shall ensure that investment firms are not regarded as fulfilling their obligations under Article 23 or of the first paragraph of this Article where, in particular, they pay any person except the client or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service or ancillary service by any party except the client, other than where the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the relevant service to the client and does not impair compliance with the firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients and:

(a) is transferred to the investor accompanied by documentation detailing all the services and the fee or commission that is associated with it;

(b) enables or is necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients; or

(c) its existence, nature and amount, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, prior to the provision of the relevant service;

unless Member States provide that the requirements of this paragraph are only satisfied where the value of the fee, commission or non-monetary benefit is transferred to the client. **[Am. 5]**

2. All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

3. Appropriate information shall be provided to clients or potential clients ***at the appropriate time*** about:

- the investment firm and its services; ***where investment advice is given the information shall specify the scope of the products covered by the advice,***

- ***product structures and the client categorisation of the intended target market,*** financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those ***product structures, financial*** instruments or in respect of particular investment strategies,

- execution venues,

- costs and associated charges ***related to both investment or ancillary services and any investment product, structured deposit or financial instruments recommended or marketed to clients***.

For all investment products the information in the first subparagraph shall include the total cost of investment by means of a standardised illustration of the cumulative effect on returns of all deductions, including fees and costs, which are not caused by the occurrence of underlying market risk, on the basis of a standardised projection expressed as a cash amount before investment and at least once a year for each actual investment.

3a. When investment advice or discretionary portfolio management is provided, the appropriate information referred to in paragraph 3 shall be provided before the investment advice is given and shall include the following:

(a) the range of investment products and financial instruments on which the recommendation will be based and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm;

(b) whether a fee is payable by the consumer for the advice and, if so, the fee or basis for calculating it;

(c) whether the firm receives any fees, commissions, monetary or non-monetary benefits or other inducements from third parties in relation to the provision of the investment advice and, where applicable, the mechanisms for transferring the inducement to the client;

(d) whether the investment firm will provide the client with a periodical assessment of the suitability of the financial instruments recommended to clients,

The information referred to in the first subparagraph ***and in paragraph 1c(c) shall*** be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. ***Member States*** may ***require that this*** information ▌ be provided in a standardised format.

4. In cases where an investment service is offered as part of a financial product which is already subject to other provisions of ***European*** Union law or common Union standards related to credit institutions and consumer credits with respect to information requirements, this service shall not be additionally subject to the obligations set out in paragraphs 2***, 3 and 3a***.

5. ***Member States may additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits in relation to the provision of investment advice or discretionary portfolio management. This may include requiring any such fees, commissions or non-monetary benefits to be returned to the client or offset against fees paid by the client.***

5a. Member States shall require that where an investment firm informs the client that investment advice or discretionary portfolio management is given on an independent basis, the investment firm assesses a sufficiently large number of investment products or financial instruments available on the market which are sufficiently diversified with regard to their type and issuers or product providers to ensure that the client's investment objectives can be suitably met and is not limited to financial instruments issued or provided by entities having close links with the investment firm.

Where the investment firm informs the client that investment advice is given on an independent basis, Member States shall ensure that the acceptance of any fees, commissions or non-monetary benefits in relation to investment advice or discretionary portfolio management is prohibited. **[Am. 6]**

6. ***Member States shall require an investment firm*** when providing ***discretionary*** portfolio management ***to disclose in a periodic report all inducements paid or received in relation to the discretionary portfolio management during the preceding period. Member States shall ensure that an investment firm does not remunerate or assess the performance of its employees, representatives or other associated investment firms in a way that conflicts with its duty to act in the best interests of*** clients. **[Am. 7]**

7. When an investment service is offered ***to a retail client*** together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component.

ESMA***, in cooperation with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), through the Joint Committee of the European Supervisory Authorities,*** shall develop by ***[...]***[*], and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to ensure that investment firms comply with the principles set out ***in this Article*** when providing investment or ancillary services to their clients***, including the conditions with which the information must comply in order to be fair, clear and not misleading, the details about content and format of information to clients in relation to investment firms and their services, the criteria for the assessment of different issuers and product providers for the provision of investment advice on an independent basis, the criteria to assess compliance of firms receiving inducements with the obligation to act honestly, fairly and professionally in***

[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

accordance with the best interest of the client. Those delegated acts shall take into account: **[Am. 8]**

(a) the nature of the service(s) offered or provided to the client or potential client, taking into account the type, object, size and frequency of the transactions;

(b) the nature of the ***investment*** products being offered or considered including different types of financial instruments and deposits referred to in Article 1(2);

(c) the retail or professional nature of the client or potential clients or, in the case of paragraph 3, their classification as eligible counterparties***;***

(ca) the parameters for the standardised illustrations referred to in paragraph 3.

Article 25

Assessment of suitability and appropriateness and reporting to clients

-1. Member States shall require investment firms to ensure and demonstrate that natural persons giving investment advice or information about investment products, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and this Article and shall publish the criteria used to assess knowledge and competence.

1. When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation ***including his ability to bear losses, his risk tolerance*** and his investment objectives so as to enable the firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him ***and, in particular, are in accordance with his risk tolerance and ability to bear losses***.

Member States shall ensure that where an investment firm provides investment advice recommending a package of services or products bundled pursuant to Article 24(7) each individual component is suitable for the client as well as the overall bundled package.

2. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 1, ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client. ***Where a bundle of services or products is envisaged pursuant to Article 24(7) the assessment should consider whether each individual component is appropriate as well as the overall bundled package.***

Where the investment firm considers, on the basis of the information received under the previous subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. This warning may be provided in a standardised format.

Where clients or potential clients do not provide the information referred to under the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the investment firm shall warn them that the firm is not in a position to determine whether the service or product envisaged is appropriate for them. This warning may be provided in a standardised format.

3. Member States shall allow investment firms when providing investment services that only consist of execution or the reception and transmission of client orders with or without ancillary services, with the exclusion of the ancillary service specified in Section B (1) of Annex 1, to provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 2 where all the following conditions are met:

(a) the services ***relate*** to any of the following financial instruments:

(i) shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where these are shares in companies, and excluding shares in non-UCITS collective investment undertakings and shares that embed a derivative ***unless the derivative does not increase risk to the investor;***

(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 ***would make*** it difficult for ***a*** client to understand the risk involved ***unless the derivative does not increase risk to the investor***;

(iii) money market instruments, excluding those that embed a derivative or incorporate a structure which ***would make*** it difficult for ***a*** client to understand the risk involved unless ***the derivative does not increase the risk to the investor;***

(iv) shares or units in UCITS ▌;

(v) other non-complex financial instruments for the purpose of this paragraph.

For the purpose of this point, if the requirements and the procedure laid down under subparagraphs 3 and 4 of paragraph 1 of Article 4 of Directive 2003/71/EC of the European Parliament and of the Council of 14 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading[1] are fulfilled, a third-country market shall be considered as equivalent to a regulated market.

(b) the service is provided at the initiative of the client or potential client,

(c) the client or potential client has been clearly informed that in the provision of this service the investment firm is not required to assess the suitability or appropriateness of the instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant

[1] OJ L 345, 31.12.2003, p. 64.

conduct of business rules. This warning may be provided in a standardised format,

(d) the investment firm complies with its obligations under Article 23.

4. The investment firm shall establish a record that includes the document or documents agreed between the firm and the client that set out the rights and obligations of the parties, and the other terms on which the firm will provide services to the client. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

5. The client must receive from the investment firm adequate reports ***in a durable medium*** on the service provided to its clients. These reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client. When providing investment advice ***to retail clients***, the investment firm shall ***provide the client with a record in a durable medium specifying at least the client's objectives, the recommendation and*** how the advice given meets the personal characteristics ***and objectives*** of the client. ***Where an investment firm provides discretionary portfolio management and where an investment firm providing investment advice informs the client that it will provide an assessment of suitability on a periodic basis in accordance with Article 24(3a)(d) it shall inform the client about the frequency of the assessment and the related communication and the report shall include information about the performance of the relevant investment products and, where investment advice or discretionary portfolio management is provided, an updated assessment of the suitability of those investment products.***

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 o ensure that investment firms comply with the principles set out ***in paragraphs 1 to 5*** when providing investment or ancillary services to their clients. Those delegated acts shall ***in particular specify criteria for the assessment of knowledge and competence required under paragraph 1 and shall*** take into account:

(a) the nature of the service(s) offered or provided to the client or potential client, taking into account the type, object, size and frequency of the transactions;

(b) the nature of the products being offered or considered, including different types of financial instruments and banking deposits referred to in Article 1(2);

(c) the retail or professional nature of the client or potential clients or, in the case of paragraphs 5, their classification as eligible counterparties.

7. ESMA shall develop by ***[...]***[*], and update periodically, guidelines for the assessment of financial instruments incorporating a structure which makes it difficult for the client to understand the risk involved in accordance with paragraph 3(a).

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[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

Article 26

Provision of services through the medium of another investment firm

Member States shall allow an investment firm receiving an instruction to perform investment or ancillary services on behalf of a client through the medium of another investment firm to rely on client information transmitted by the latter firm. The investment firm which mediates the instructions will remain responsible for the completeness and accuracy of the information transmitted.

The investment firm which receives an instruction to undertake services on behalf of a client in this way shall also be able to rely on any recommendations in respect of the service or transaction that have been provided to the client by another investment firm. The investment firm which mediates the instructions will remain responsible for the appropriateness for the client of the recommendations or advice provided.

The investment firm which receives client instructions or orders through the medium of another investment firm shall remain responsible for concluding the service or transaction, based on any such information or recommendations, in accordance with the relevant provisions of this Title.

Article 27

Obligation to execute orders on terms most favourable to the client

1. Member States shall require that investment firms take all ***necessary*** steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client the investment firm shall execute the order following the specific instruction.

   Where an investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which shall include all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

1a. An investment firm shall not receive any remuneration, discount or non-monetary benefit for routing orders to a particular trading venue or execution venue.

2. Member States shall require that each execution venue makes available to the public, without any charges, data relating to the quality of execution of transactions on that venue on at least ***a quarterly*** basis ***and that following execution of a transaction on behalf of a client the investment firm shall, on request, inform the client where the order was executed***. Periodic reports shall include details about price, speed of execution and likelihood of execution for individual financial instruments.

3. Member States shall require investment firms to establish and implement effective arrangements for complying with paragraph 1. In particular Member States shall require investment firms to establish and implement an order execution policy to allow them to obtain, for their client orders, the best possible result in accordance with paragraph 1.

4. The order execution policy shall include, in respect of each class of instruments, information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the investment firm to obtain on a consistent basis the best possible result for the execution of client orders.

Member States shall require that investment firms provide appropriate information to their clients on their order execution policy. That information shall explain clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed by the firm for the client. Member States shall require that investment firms obtain the prior consent of their clients to the execution policy.

Member States shall require that, where the order execution policy provides for the possibility that client orders may be executed outside a regulated market, MTF or OTF, the investment firm shall, in particular, inform its clients about this possibility. Member States shall require that investment firms obtain the prior express consent of their clients before proceeding to execute their orders outside a regulated market MTF or OTF or an MTF. Investment firms may obtain this consent either in the form of a general agreement or in respect of individual transactions.

4a. Member States shall require investment firms to summarise and make public on a quarterly basis, for each class of financial instruments, the top five execution venues in terms of trading volumes sent where they executed client orders in the preceding quarter and data on the execution quality obtained.

5. Member States shall require investment firms to monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. ***That assessment shall also consider what changes, if any, need to be made to the policy in the light of the information published under paragraphs 2 and 4a.*** Member States shall require investment firms to notify clients of any material changes to their order execution arrangements or execution policy.

▌

6. Member States shall require investment firms to be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with the firm's execution policy ***and this Article***.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning:

(a) the criteria for determining the relative importance of the different factors that, pursuant to paragraph 1, may be taken into account for determining the best possible result taking into account the size and type of order and the retail or professional nature of the client;

(b) factors that may be taken into account by an investment firm when reviewing its execution arrangements and the circumstances under which changes to such

arrangements may be appropriate. In particular, the factors for determining which venues enable investment firms to obtain on a consistent basis the best possible result for executing the client orders;

(c) the nature and extent of the information to be provided to clients on their execution policies, pursuant to paragraph 4.

8. ESMA shall develop draft regulatory technical standards to determine:

(a) the specific content, the format and the periodicity of data related to the quality of execution to be published in accordance with paragraph 2, taking into account the type of execution venue and the type of financial instrument concerned;

(b) the content and the format of information to be published by investment firms in accordance with paragraph 5, second subparagraph.

ESMA shall submit those draft regulatory technical standards to the Commission by ***[...]***[*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ▌ Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 28
Client order handling rules

1. Member States shall require that investment firms authorised to execute orders on behalf of clients implement procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders, relative to other client orders or the trading interests of the investment firm.

These procedures or arrangements shall allow for the execution of otherwise comparable client orders in accordance with the time of their reception by the investment firm.

2. Member States shall require that, in the case of a client limit order in respect of shares admitted to trading on a regulated market which are not immediately executed under prevailing market conditions, investment firms are, unless the client expressly instructs otherwise, to take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants. Member States may decide that investment firms comply with this obligation by transmitting the client limit order to a regulated market or MTF. Member States shall provide that the competent authorities may waive the obligation to make public a limit order that is large in scale compared with normal market size as determined under Article 4 of Regulation (EU) No …/… [MiFIR].

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures which define:

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[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

(a) the conditions and nature of the procedures and arrangements which result in the prompt, fair and expeditious execution of client orders and the situations in which or types of transaction for which investment firms may reasonably deviate from prompt execution so as to obtain more favourable terms for clients;

(b) the different methods through which an investment firm can be deemed to have met its obligation to disclose not immediately executable client limit orders to the market.

Article 29

Obligations of investment firms when appointing tied agents

1. Member States shall allow an investment firm to appoint tied agents for the purposes of promoting the services of the investment firm, soliciting business or receiving orders from clients or potential clients and transmitting them, placing financial instruments and providing advice in respect of such financial instruments and services offered by that investment firm.

2. Member States shall require that where an investment firm decides to appoint a tied agent it remains fully and unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the firm. Member States shall require the investment firm to ensure that a tied agent discloses the capacity in which he is acting and the firm which he is representing when contacting or before dealing with any client or potential client.

Member States shall prohibit tied agents registered in their territory from handling clients' money and/or financial instruments.

Member States shall require the investment firms to monitor the activities of their tied agents so as to ensure that they continue to comply with this Directive when acting through tied agents.

3. Tied agents shall be registered in the public register in the Member State where they are established. ESMA shall publish on its website references or hyperlinks to the public registers established under this Article by the Member States that decide to allow investment firms to appoint tied agents.

Member States shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess ***the*** appropriate general, commercial and professional knowledge ***and competence*** so as to be able to ***deliver the investment service or ancillary service and to*** communicate accurately all relevant information regarding the proposed service to the client or potential client.

Member States may decide that***, subject to appropriate control,*** investment firms ***rather than competent authorities*** can verify whether the tied agents which they have appointed are of sufficiently good repute and possess the knowledge as referred to in the third subparagraph.

The register shall be updated on a regular basis. It shall be publicly available for consultation.

4. Member States shall require that investment firms appointing tied agents take adequate measures in order to avoid any negative impact that the activities of the tied agent not covered by the scope of this Directive could have on the activities carried out by the tied agent on behalf of the investment firm.

Member States may allow competent authorities to collaborate with investment firms and credit institutions, their associations and other entities in registering tied agents and in monitoring compliance of tied agents with the requirements of paragraph 3. In particular, tied agents may be registered by an investment firm, credit institution or their associations and other entities under the supervision of the competent authority.

5. Member States shall require that investment firms appoint only tied agents entered in the public registers referred to in paragraph 3.

5a. Member States shall require investment firms to provide tied agents they appoint with up to date information on the investment product and the target market as determined in accordance with Article 24(1) and to ensure that the tied agent provides the client with the information required under Article 24(3).

6. Member States may reinforce the requirements set out in this Article or add other requirements for tied agents registered within their jurisdiction.

Article 30
Transactions executed with eligible counterparties

1. Member States shall ensure that investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Articles 24 (with the exception of paragraph 3), 25 (with the exception of paragraph 5) and 27 and Article 28(1) in respect of those transactions or in respect of any ancillary service directly related to those transactions.

Member States shall ensure that, in their relationship with eligible counterparties, investment firms act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the eligible counterparty and of its business.

2. Member States shall recognise as eligible counterparties for the purposes of this Article investment firms, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under ***European*** Union law or the national law of a Member State, undertakings exempted from the application of this Directive under Article 2(1)(k) , national governments and their corresponding offices including public bodies that deal with public debt at national level, central banks and supranational organisations.

Classification as an eligible counterparty under the first subparagraph shall be without prejudice to the right of such entities to request, either on a general form or on a trade-by-trade basis, treatment as clients whose business with the investment firm is subject to Articles 24, 25, 27 and 28.

3. Member States may also recognise as eligible counterparties other undertakings meeting pre-determined proportionate requirements, including quantitative thresholds. In the event of a transaction where the prospective counterparties are located in different jurisdictions, the investment firm shall defer to the status of the other undertaking as determined by the law or measures of the Member State in which that undertaking is established.

Member States shall ensure that the investment firm, when it enters into transactions in accordance with paragraph 1 with such undertakings, obtains the express confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty. Member States shall allow the investment firm to obtain this confirmation either in the form of a general agreement or in respect of each individual transaction.

4. Member States may recognise as eligible counterparties third country entities equivalent to those categories of entities referred to in paragraph 2.

Member States may also recognise as eligible counterparties third country undertakings such as those referred to in paragraph 3 on the same conditions and subject to the same requirements as those laid down at paragraph 3.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to specify measures which define:

(a) the procedures for requesting treatment as clients under paragraph 2;

(b) the procedures for obtaining the express confirmation from prospective counterparties under paragraph 3;

(c) the predetermined proportionate requirements, including quantitative thresholds that would allow an undertaking to be considered as an eligible counterparty under paragraph 3.

SECTION 3

MARKET TRANSPARENCY AND INTEGRITY

Article 31
Monitoring of compliance with the rules of the MTF or the OTF and with other legal obligations

1. Member States shall require that investment firms and market operators operating an MTF or OTF establish and maintain effective arrangements and procedures, relevant to the MTF or OTF, for the regular monitoring of the compliance by its users or clients

with their rules. ***Member States shall ensure that investment*** firms and market operators operating an MTF or an OTF shall monitor ***orders placed and cancelled and*** the transactions undertaken by their users or clients under their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse ***and shall deploy the resource necessary to ensure that such monitoring is effective***.

2. Member States shall require investment firms and market operators operating an MTF or an OTF to report significant breaches of its rules or disorderly trading conditions or conduct that may involve market abuse to the competent authority. Member States shall also require investment firms and market operators operating an MTF or an OTF to supply the relevant information without delay to the authority competent for the investigation and prosecution of market abuse and to provide full assistance to the latter in investigating and prosecuting market abuse occurring on or through its systems.

Article 32

Suspension and removal of instruments from trading on an MTF ***or an OTF***

1. ***Without prejudice to the right of the competent authority under Article 72(d) and (e) to demand suspension or removal of an instrument from trading, the operator of an MTF or OTF may suspend or remove from trading a financial instrument which no longer complies with the rules of the MTF or OTF unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.***

   Member States shall require that an investment firm or a market operator operating an MTF ***or OTF*** that suspends or removes from trading a financial instrument makes public this decision, communicates it to regulated markets, MTFs and OTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States. ***Where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument, the relevant competent authority in the meaning of point (7) of Article 2 of Commission Regulation (EC) No 1287/2006*** shall require that other regulated markets, MTFs and OTFs ***and any other trading arrangement*** trading the same financial instrument shall also suspend or remove that financial instrument from trading ***as soon as possible***. Member States shall require the other regulated markets, MTFs and OTFs to communicate their decision to their competent authority and all regulated markets, MTFs and OTFs trading the same financial instrument, including an explanation ***where it was decided*** not to suspend or remove the financial instrument from trading.

2. ESMA shall develop draft implementing technical standards to determine format and timing of the communications and the publication referred to in paragraph 1.

   ESMA shall submit those draft implementing technical standards to the Commission by [...]*[*]*.

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[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to list the specific situations constituting significant damage to the investors' interests***, to:***

(a) ***specify the notion of "as soon as possible"*** and the orderly functioning of the internal market, as referred to in paragraphs 1 and 2;

(b) determine issues relating to the non-disclosure of information about the issuer or financial instrument, as referred to in paragraph 1***, including the necessary procedure for lifting the suspension of trading in a financial instrument***.

Article 34
Cooperation and exchange of information for MTFs and OTFs

1. Member States shall require that an investment firm or a market operator operating an MTF or an OTF immediately informs investment firms and market operators of other MTFs, OTFs and regulated markets of:

(a) disorderly trading conditions; and

(c) system disruptions;

in relation to a financial instrument.

1a. Member States shall require that an investment firm or a market operator operating an MTF or an OTF which identifies conduct that may indicate abusive behaviour within the scope of Regulation (EU) No .../... [MAR] immediately informs the competent authority designated under Article 16 of that Regulation or a body to which the tasks of the competent authority have been delegated in accordance with Article 17 of that Regulation in order to facilitate real-time cross-market surveillance.

2. ESMA shall develop draft regulatory technical standards to determine the specific circumstances that trigger an information requirement as referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by**...**[*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with in Articles 10 to 14 of Regulation (EU) No 1095/2010.

[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

SECTION 4

SME MARKETS

Article 35
SME growth markets

1. Member States shall provide that the operator of a MTF may apply to its home competent authority to have the MTF registered as an SME growth market.

2. Member States shall provide that the home competent authority may register the MTF as an SME growth market if the competent authority receives an application referred to in paragraph 1 and is satisfied that the requirements in paragraph 3 are complied with in relation to the MTF.

3. The MTF shall be subject to effective rules, systems and procedures which ensure that the following is complied with:

   (a) the majority of issuers whose financial instruments are admitted to trading on the market are small and medium-sized enterprises (SMEs);

   (b) appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers on the market;

   (c) on initial admission to trading of financial instruments on the market 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 if the requirements in Directive 2003/71/EC are applicable in respect of a public offer being made in conjunction with the admission to trading;

   (d) there is appropriate ongoing periodic financial reporting by or on behalf of an issuer on the market, for example audited annual reports;

   (e) issuers on the market and persons discharging managerial responsibilities in the issuer and persons closely associated with them comply with relevant requirements applicable to them under the Regulation (EU) No …/… [MAR];

   (f) the storage and public dissemination of regulatory information concerning the issuers on the market;

   (g) there are effective systems and controls aimed at preventing and detecting market abuse on that market as required under the Regulation (EU) No …/… [MAR].

4. The criteria in paragraph 3 are without prejudice to compliance by the operator of the MTF with other obligations under this Directive relevant to the operation of MTFs. They also do not prevent the operator of the MTF from imposing additional requirements to those specified in that paragraph.

5. Member States shall provide that the home competent authority may deregister a MTF as an SME growth market in any of the following cases:

   (a) the operator of the market applies for its deregistration;

   (b) the requirements in paragraph 3 are no longer complied with in relation to the MTF.

6. Members States shall require that if a home competent authority registers or deregisters an MTF as an SME growth market under this Article it shall as soon as possible notify ESMA of that registration. ESMA shall publish on its website a list of SME growth markets and shall keep the list up to date.

7. Member States shall require that where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on another SME growth market ***only with*** the ***explicit*** consent of the issuer. In such a case however, the issuer shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME market.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 further specifying the requirements set out in paragraph 3. The measures shall take into account the need for the requirements to maintain high levels of investor protection to promote investor confidence in those markets while minimising the administrative burdens for issuers on the market.

CHAPTER III

RIGHTS OF INVESTMENT FIRMS

Article 36
Freedom to provide investment services and activities

1. Member States shall ensure that any investment firm authorised and supervised by the competent authorities of another Member State in accordance with this Directive, and in respect of credit institutions in accordance with Directive 2006/48/EC, may freely perform investment services and/or activities as well as ancillary services within their territories, provided that such services and activities are covered by its authorisation. Ancillary services may only be provided together with an investment service and/or activity.

   Member States shall not impose any additional requirements on such an investment firm or credit institution in respect of the matters covered by this Directive.

2. Any investment firm wishing to provide services or activities within the territory of another Member State for the first time, or which wishes to change the range of services or activities so provided, shall communicate the following information to the competent authorities of its home Member State:

(a) the Member State in which it intends to operate;

(b) a programme of operations stating in particular the investment services and/or activities as well as ancillary services which it intends to perform and whether it intends to use tied agents in the territory of the Member States in which it intends to provide services. Where an investment firm intends to use tied agents, the investment firm shall communicate to the competent authority of its home Member State the identity of those tied agents.

Where an investment firm intends to use tied agents, the competent authority of the home Member State of the investment firm shall, within one month from the reception of the information, communicate to the competent authority of the host Member State designated as contact point in accordance with Article 83(1) the identity of the tied agents that the investment firm intends to use to provide services in that Member State. The host Member State shall publish such information. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.

3. The competent authority of the home Member State shall, within one month of receiving the information, forward it to the competent authority of the host Member State designated as contact point in accordance with Article 83(1). The investment firm may then start to provide the investment service or services concerned in the host Member State.

4. In the event of a change in any of the particulars communicated in accordance with paragraph 2, an investment firm shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the home Member State shall inform the competent authority of the host Member State of those changes.

5. Any credit institution wishing to provide investment services or activities as well as ancillary services according to paragraph 1 through tied agents shall communicate to the competent authority of its home Member State the identity of those tied agents.

Where the credit institution intends to use tied agents, the competent authority of the home Member State of the credit institution shall, within one month from the reception of the information, communicate to the competent authority of the host Member State designated as contact point in accordance with Article 83(1) the identity of the tied agents that the credit institution intends to use to provide services in that Member State. The host Member State shall publish such information.

6. Member States shall, without further legal or administrative requirement, allow investment firms and market operators operating MTFs and OTFs from other Member States to provide appropriate arrangements on their territory so as to facilitate access to and use of their systems by remote users or participants established in their territory.

7. The investment firm or the market operator that operates an MTF shall communicate to the competent authority of its home Member State the Member State in which it intends to provide such arrangements. The competent authority of the home Member State of the MTF shall communicate, within one month, this information to the Member State in which the MTF intends to provide such arrangements.

The competent authority of the home Member State of the MTF shall, on the request of the competent authority of the host Member State of the MTF and within a reasonable delay, communicate the identity of the members or participants of the MTF established in that Member State.

8. ESMA shall develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4 and 7.

ESMA shall submit those draft regulatory technical standards to the Commission by ***[...]***[*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ▌ Articles 10 to 14 of Regulation (EU) No 1095/2010.

9. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3, 4 and 7.

ESMA shall submit those draft implementing technical standards to the Commission by [31 December 2016].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 37
Establishment of a branch

1. Member States shall ensure that investment services and/or activities as well as ancillary services may be provided within their territories in accordance with this Directive and Directive 2006/48/EC through the establishment of a branch provided that those services and activities are covered by the authorisation granted to the investment firm or the credit institution in the home Member State. Ancillary services may only be provided together with an investment service and/or activity.

Member States shall not impose any additional requirements save those allowed under paragraph 8, on the organisation and operation of the branch in respect of the matters covered by this Directive.

2. Member States shall require any investment firm wishing to establish a branch within the territory of another Member State first to notify the competent authority of its home Member State and to provide it with the following information:

(a) the Member States within the territory of which it plans to establish a branch;

(b) a programme of operations setting out inter alia the investment services and/or activities as well as the ancillary services to be offered and the organisational

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[*] ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

structure of the branch and indicating whether the branch intends to use tied agents and the identity of those tied agents;

(c) the address in the host Member State from which documents may be obtained;

(d) the names of those responsible for the management of the branch.

Where an investment firm uses a tied agent established in a Member State outside its home Member State, such tied agent shall be assimilated to the branch and shall be subject to the provisions of this Directive relating to branches.

3. Unless the competent authority of the home Member State has reason to doubt the adequacy of the administrative structure or the financial situation of an investment firm, taking into account the activities envisaged, it shall, within three months of receiving all the information, communicate that information to the competent authority of the host Member State designated as contact point in accordance with Article 83(1) and inform the investment firm concerned accordingly.

4. In addition to the information referred to in paragraph 2, the competent authority of the home Member State shall communicate details of the accredited compensation scheme of which the investment firm is a member in accordance with Directive 97/9/EC to the competent authority of the host Member State. In the event of a change in the particulars, the competent authority of the home Member State shall inform the competent authority of the host Member State accordingly.

5. Where the competent authority of the home Member State refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the investment firm concerned within three months of receiving all the information.

6. On receipt of a communication from the competent authority of the host Member State, or failing such communication from the latter at the latest after two months from the date of transmission of the communication by the competent authority of the home Member State, the branch may be established and commence business.

7. Any credit institution wishing to use a tied agent established in a Member State outside its home Member State to provide investment services and/or activities as well as ancillary services in accordance with this Directive shall notify the competent authority of its home Member State.

Unless the competent authority of the home Member State has reason to doubt the adequacy of the administrative structure or the financial situation of a credit institution, it shall, within three months of receiving all the information, communicate that information to the competent authority of the host Member State designated as contact point in accordance with Article 83(1) and inform the credit institution concerned accordingly.

Where the competent authority of the home Member State refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the credit institution concerned within three months of receiving all the information.

On receipt of a communication from the competent authority of the host Member State, or failing such communication from the latter at the latest after two months from the date of transmission of the communication by the competent authority of the home Member State, the tied agent can commence business. Such tied agent shall be subject to the provisions of this Directive relating to branches.

8. The competent authority of the Member State in which the branch is located shall assume responsibility for ensuring that the services provided by the branch within its territory comply with the obligations laid down in Articles 24, 25, 27, 28, of this Directive and Articles 13 to 23 of Regulation (EU) No …/… [MiFIR] and in measures adopted pursuant thereto.

   The competent authority of the Member State in which the branch is located shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under Articles 24, 25, 27, 28 of this Directive and Articles 13 to 23 of Regulation (EU) No …/… [MiFIR] and measures adopted pursuant thereto with respect to the services and/or activities provided by the branch within its territory.

9. Each Member State shall provide that, where an investment firm authorised in another Member State has established a branch within its territory, the competent authority of the home Member State of the investment firm, in the exercise of its responsibilities and after informing the competent authority of the host Member State, may carry out on-site inspections in that branch.

10. In the event of a change in any of the information communicated in accordance with paragraph 2, an investment firm shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change by the competent authority of the home Member State.

11. ESMA shall develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4 and 10.

    ESMA shall submit those draft regulatory technical standards to the Commission by ***[...]***[*].

    Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ▌down Articles 10 to 14 of Regulation (EU) No 1095/2010.

12. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3 and 10.

    ESMA shall submit those draft implementing technical standards to the Commission by [31 December 2016].

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[*] ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 38
Access to regulated markets

1. Member States shall require that investment firms from other Member States which are authorised to execute client orders or to deal on own account have the right of membership or have access to regulated markets established in their territory by means of any of the following arrangements:

   (a) directly, by setting up branches in the host Member States;

   (b) by becoming remote members of or having remote access to the regulated market without having to be established in the home Member State of the regulated market, where the trading procedures and systems of the market in question do not require a physical presence for conclusion of transactions on the market.

2. Member States shall not impose any additional regulatory or administrative requirements, in respect of matters covered by this Directive, on investment firms exercising the right conferred by paragraph 1.

Article 39
Access to central counterparty, clearing and settlement facilities and right to designate settlement system

1. Member States shall require that investment firms from other Member States have the right of access to central counterparty, clearing and settlement systems in their territory for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

   Member States shall require that access of those investment firms to such facilities be subject to the same non-discriminatory, transparent and objective criteria as apply to local participants. Member States shall not restrict the use of those facilities to the clearing and settlement of transactions in financial instruments undertaken on a regulated market or MTF or OTF in their territory.

2. Member States shall require that regulated markets in their territory offer all their members or participants the right to designate the system for the settlement of transactions in financial instruments undertaken on that regulated market, subject to the following conditions:

   (a) such links and arrangements between the designated settlement system and any other system or facility as are necessary to ensure the efficient and economic settlement of the transaction in question;

   (b) agreement by the competent authority responsible for the supervision of the regulated market that technical conditions for settlement of transactions

concluded on the regulated market through a settlement system other than that designated by the regulated market are such as to allow the smooth and orderly functioning of financial markets.

This assessment of the competent authority of the regulated market shall be without prejudice to the competencies of the national central banks as overseers of settlement systems or other supervisory authorities on such systems. The competent authority shall take into account the oversight/supervision already exercised by those institutions in order to avoid undue duplication of control.

Article 40
Provisions regarding central counterparty, clearing and settlement arrangements in respect of MTFs

1. Member States shall not prevent investment firms and market operators operating an MTF from entering into appropriate arrangements with a central counterparty or clearing house and a settlement system of another Member State with a view to providing for the clearing and/or settlement of some or all trades concluded by market participants under their systems.

2. The competent authority of investment firms and market operators operating an MTF may not oppose the use of central counterparty, clearing houses and/or settlement systems in another Member State except where this is demonstrably necessary in order to maintain the orderly functioning of that MTF and taking into account the conditions for settlement systems established in Article 39(2).

In order to avoid undue duplication of control, the competent authority shall take into account the oversight and supervision of the clearing and settlement system already exercised by the ***relevant*** central banks as overseers of clearing and settlement systems or by other supervisory authorities with a competence in such systems.

CHAPTER IV

PROVISION OF SERVICES BY THIRD-COUNTRY FIRMS

SECTION 1

PROVISION OF SERVICES ***OR ACTIVITIES*** WITH ESTABLISHMENT OF A BRANCH

Article 41
Establishment of a branch

1. Member States shall require that a third-country firm intending to provide investment services or ***to perform investment*** activities together with any ancillary services in their

territory through a branch acquire a prior authorisation by the competent authorities of those Member States in accordance with the following provisions:

(a) the Commission has adopted a decision in accordance with paragraph 3;

(b) the provision of services for which the third-country firm requests authorisation is subject to authorisation and supervision in the third country where the firm is established and the requesting firm is properly authorised. The third country where the third-country firm is established shall not be listed as Non-Cooperative Country and Territory by the Financial Action Task Force on anti-money laundering and terrorist financing;

(c) cooperation arrangements, that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors, are in place between the competent authorities in the Member State ***where the branch is to be established*** and competent supervisory authorities of the third country where the firm is established;

(d) sufficient initial capital is at free disposal of the branch;

(e) one or more persons responsible for the management of the branch are appointed and they comply with the requirement established under Article 9(1);

(f) the third country where the third-country firm is established has signed an agreement with the Member State where the branch ***is to*** be established, which fully comply with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements;

(g) the firm ***belongs to*** an investor-compensation scheme authorised or recognised in accordance with Directive 97/9/EC***, at the time of authorisation***.

2. Member States shall require that a third-country firm intending to provide investment services or activities together with any ancillary services to retail clients ***or to professional clients within the meaning of Section II of Annex II*** in those Member States' territory shall establish a branch in the ***European*** Union.

3. The Commission ***shall*** adopt a decision in accordance with the ***examination*** procedure referred to in ***Article 95(2)*** in relation to a third country ***stating whether*** the legal and supervisory arrangements of that third country ensure that firms authorised in that third ***country*** comply with legally binding requirements which have equivalent effect to the requirements set out in this Directive, in Regulation (EU) No …/… [MiFIR] and in Directive 2006/49/EC and their implementing measures and that third country provides for ***effective equivalence and*** reciprocal recognition of the prudential framework applicable to investment firms authorised in accordance with this Directive.

The prudential framework of a third country may be considered ***to have*** equivalent ***effect*** where that framework fulfils all the following conditions:

(a) firms providing investment services and activities in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) firms providing investment services and activities in that third country are subject to sufficient capital requirements and appropriate requirements applicable to shareholders and members of their management body;

(c) firms providing investment services and activities are subject to adequate organisational requirements in the area of internal control functions;

(d) it ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation.

The Commission may limit its decision under this paragraph to investment firms or to market operators providing one or more specified investment services or carrying out one or more specified investment activities in relation to one or more financial instruments.

A third-country firm may be authorised for the purposes of paragraph 1 where it falls within a category covered by the Commission's decision.

4. The third-country firm referred to in paragraph 1 shall submit its application to the competent authority of the Member State where it intends to establish a branch after the adoption by the Commission of the decision determining that the legal and supervisory framework of the third country in which the third-country firm is authorised is equivalent to the requirements described in paragraph 3.

Article 42
Obligation to provide information

A third-country firm intending to obtain authorisation for the provision of any investment services or ***performance of investment*** activities together with any ancillary services in the territory of a Member State shall provide the competent authority of that Member State with the following:

(a) the name of the authority responsible for its supervision in the third country concerned. When more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided;

(b) all relevant details of the firm (name, legal form, registered office and address, members of the management body, relevant shareholders) and a programme of operations setting out the investment services and/or activities as well as the ancillary services to be provided and the organisational structure of the branch, including a description of any outsourcing to third parties of essential operating functions;

(c) the name of the persons responsible for the management of the branch and the relevant documents to demonstrate compliance with requirements under Article 9 (1);

(d) information about the initial capital at free disposal of the branch.

Article 43
Granting authorisation

1. The competent authority of the Member State where the third-country firm ***has established or*** intends to establish its branch shall only grant authorisation when the following conditions are met:

   (a) the competent authority is satisfied that ***the*** conditions under Article 41 are fulfilled;

   (b) the competent authority is satisfied that the branch of the third-country firm will be able to comply with the provisions under ***paragraph 2;***

   (ba) the competent authority is satisfied that the third-country firm intends to provide a significant proportion of investment services or to perform a significant quantity of its investment activities within the European Union in the Member State where it is seeking to establish the branch.

   The competent authority shall inform the third-country firm, within six months of submission of a complete application, whether or not the authorisation has been granted.

2. The branch of the third-country firm authorised in accordance with paragraph 1, shall comply with the obligations laid down in Articles 16, 17, ***18, 19, 20,*** 23, 24, 25 and 27, Article 28(1)***, and Articles*** 30, ***31, 32, and 34*** of this Directive and in ***Articles 3*** to 23 of Regulation (EU) No …/… [MiFIR] and the measures adopted pursuant thereto and shall be subject to the supervision of the competent authority in the Member State where the authorisation was granted.

   Member States shall not impose any additional requirements on the organisation and operation of the branch in respect of the matters covered by this Directive.

Article 44
Provision of services ***and activities*** in other Member States

1. A third-country firm authorised in accordance with Article 43 shall be able to provide the services and ***perform the*** activities covered under the authorisation in other Member States of the ***European*** Union without the establishment of new branches. To this purpose, it shall communicate the following information to the competent authority of the Member State where the branch is established:

   (a) the Member State in which it intends to operate;

   (b) a programme of operations stating in particular the investment services or activities as well as the ancillary services which it intends to perform in that Member State.

   The competent authority of the Member State where the branch is established shall, within one month from receipt of the information, forward it to the competent authority of the host Member State designated as contact point in accordance with Article 83(1). The third-country firm may then start to provide the service or the services concerned in the host Member States.

In the event of a change in any of the particulars communicated in accordance with the first subparagraph, the third-country firm shall give written notice of that change to the competent authority of the Member State where the branch is established at least one month before implementing the change. The competent authority of the Member State where the branch is established shall inform the competent authority of the host Member State of those changes.

The firm shall remain subject to the supervision of the Member State where the branch is established in accordance with Article 43.

2. ESMA shall develop draft regulatory technical standards to determine:

(a) the minimum content of the cooperation arrangements referred to in Article 41(1)(c), so as to ensure that the competent authorities of the Member State granting an authorisation to a third-country firm are able to exercise all their supervisory powers under this Directive;

(b) the detailed content of the programme of operation as required in Article 42, point (b);

(c) the content of the documents concerning the management of the branch as required in Article 42, point (c);

(d) the detailed content of information regarding the initial capital at free disposal of the branch as required under Article 42, point (d).

ESMA shall submit those draft regulatory technical standards to the Commission by ***[...]****.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ▌ Articles 10 to 14 of Regulation (EU) No 1095/2010.

3. ESMA shall develop draft implementing technical standards to determine standard forms, template and procedures for the provision of information and for the notification provided for in those paragraphs.

ESMA shall submit those draft implementing technical standards to the Commission by ***[...]****.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to define the conditions for the assessment of the sufficient initial capital at free disposal of the branch taking into account the investment services or activities provided by the branch and the type of clients to whom they should be provided.

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* ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

SECTION 2

Registration and withdrawal of authorisation

Article 45
Registration

Member States shall keep a register of the ***third-country firm***s authorised in accordance with Articles 41. The register shall be publicly accessible and shall contain information on the services or activities which the third-country firms are authorised to provide. It shall be updated on a regular basis. Every authorisation shall be notified to the ESMA.

ESMA shall establish a list of all third-country firms authorised to provide services and activities in the ***European*** Union. The list shall contain information on the services or activities for which the non-EU firm is authorised and it shall be updated on a regular basis. ESMA shall publish that list on its website and update it.

Article 46
Withdrawal of authorisation

The competent authority which granted an authorisation under Article 43 may withdraw it where the third-country firm:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no investment services or performed no investment activity for the preceding six months, unless the Member State concerned has provided for the authorisation to lapse in such cases;

(b) has obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which authorisation was granted;

(d) has seriously and systematically infringed the provisions adopted pursuant to this Directive governing the operating conditions for investment firms and applicable to third-country firms;

(e) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.

Every withdrawal of authorisation shall be notified to ESMA.

The withdrawal shall be published on the list established in Article 45 for a period of five years.

TITLE III

REGULATED MARKETS

Article 47
Authorisation and applicable law

1. Member States shall reserve authorisation as a regulated market to those systems which comply with the provisions of this Title.

   Authorisation as a regulated market shall be granted only where the competent authority is satisfied that both the market operator and the systems of the regulated market comply at least with the requirements laid down in this Title.

   In the case of a regulated market that is a legal person and that is managed or operated by a market operator other than the regulated market itself, Member States shall establish how the different obligations imposed on the market operator under this Directive are to be allocated between the regulated market and the market operator.

   The operator of the regulated market shall provide all information, including a programme of operations setting out inter alia the types of business envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the regulated market has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Title.

2. Member States shall require the operator of the regulated market to perform tasks relating to the organisation and operation of the regulated market under the supervision of the competent authority. Member States shall ensure that competent authorities keep under regular review the compliance of regulated markets with the provisions of this Title. They shall also ensure that competent authorities monitor that regulated markets comply at all times with the conditions for initial authorisation established under this Title.

3. Member States shall ensure that the market operator is responsible for ensuring that the regulated market that it manages complies with all requirements under this Title.

   Member States shall also ensure that the market operator is entitled to exercise the rights that correspond to the regulated market that it manages by virtue of this Directive.

4. Without prejudice to any relevant provisions of Directive 2003/6/EC, the public law governing the trading conducted under the systems of the regulated market shall be that of the home Member State of the regulated market.

5. The competent authority may withdraw the authorisation issued to a regulated market where it:

   (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has not operated for the preceding six months, unless the Member State concerned has provided for authorisation to lapse in such cases;

(b) has obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which authorisation was granted;

(d) has seriously and systematically infringed the provisions adopted pursuant to this Directive;

(e) falls within any of the cases where national law provides for withdrawal.

6. ESMA shall be notified of any withdrawal of authorisation.

Article 48

Requirements for the management of the regulated market

1. ***Members*** of the management body of any market operator ***shall*** be at all times of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

All Members of the management body shall, in particular, fulfil the following requirements:

(a) ***They shall*** commit sufficient time to perform their functions. ***The number of directorships a member of the management body can hold at the same time shall take into account individual circumstances and the nature, scale and complexity of the institution's activities.***

Members of the management body of market operators that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall not combine at the same time more than one of the following combinations:

(i) one executive directorship***; or***

(ii) ***two*** non-executive directorships.

Executive or non-executive directorships held:

(i) within the same group***;***

(ii) within institutions which:

– ***are members of the same institutional protection scheme if the conditions of Article 108(7) of Regulation (EU) No .../2012 [CRD IV] are fulfilled,***

– ***have established links according to Article 108(6) of Regulation (EU) No .../2012 [CRD IV]; or***

(iii) within undertakings (including non-financial institutions) where the institutions owns a qualifying holding,

shall be considered as one single directorship.

▌

(b) ***They shall*** possess adequate collective knowledge, skills and experience to be able to understand the regulated market's activities, and in particular the main risk involved in those activities.

(c) ***They shall*** act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management ***and to effectively oversee and monitor management decision-making***.

Market operators ***shall*** devote adequate resources to the induction and training of members of the management body.

(ca) They shall ensure effective systems are in operation to identify and manage conflicts between the market operator and the regulated market or its members and to operate and maintain appropriate arrangements to separate different business functions.

2. Member States shall require operators of a regulated market to establish a nomination committee to assess compliance with the provisions of the first paragraph and to make recommendations, when needed, on the basis of their assessment. The nomination committee shall be composed of members of the management body who do not perform any executive function in the market operator concerned.

Competent authorities may authorise a market operator not to establish a separate nomination committee taking into account the nature, scale and complexity of the market operator's activities***, provided a reasonably comparable alternative mechanism is in place***.

Where, under national law, the management body does not have any competence in the process of appointment of its members, this paragraph shall not apply.

3. Member States shall require market operators ***and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to its management bodies.***

In particular:

(a) market operators shall put in place a policy promoting professionalism, responsibility and commitment as the guiding criteria for senior recruitment, safeguarding that those appointed are unquestionably loyal to the interests of the institution;

(b) investment firms shall also take concrete steps towards a more balanced representation on boards, such as training of nomination committees, the creation of rosters of competent candidates, and the introduction of a nomination process where at least one candidate of each sex is presented;

(c) where practiced, employee representation in the management body shall also, by adding a key perspective and genuine knowledge of the internal workings of the institution, be seen as a positive way of enhancing diversity.

4. ESMA shall develop draft regulatory standards to specify ***how the market operator should take into account*** the following:

   (a) the notion of sufficient time commitment of a member of the management body to perform his functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the market operator which competent authorities must take into account when they authorise a member of the management body to combine more directorships than permitted as referred to in paragraph 1(a);

   (b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 1(b),

   (c) ***the*** notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 1(c***), taking account of the potential for conflicts of interest***;

   (d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body,

   (e) the notion of diversity to be taken into account for the selection of members of the management body.

   ESMA shall submit those draft regulatory technical standards to the Commission ***by [...]*[*]*.**

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ▌ Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. Member States shall require the operator of the regulated market to notify the competent authority of the identity of all members of its management body and of any changes to its membership, along with all information needed to assess whether the firm complies with paragraphs 1, 2 and 3.

▌

7. The competent authority shall refuse authorisation if it is not satisfied that the persons who meant to effectively direct the business of the regulated market are of sufficiently good repute or sufficiently experienced, or if there are objective and demonstrable grounds for believing that the management body of the ***market operator*** may pose a threat to its effective, sound and prudent management and to the adequate consideration of the integrity of the market.

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[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

Member States shall ensure that, in the process of authorisation of a regulated market, the person or persons who effectively direct the business and the operations of an already authorised regulated market in accordance with the provisions of this Directive are deemed to comply with the requirements laid down in paragraph 1.

7a. The management body of a market operator shall be able to ensure that the regulated market is managed in a sound and prudent way and in a manner that promotes the integrity of the market.

The management body shall monitor and periodically assess the effectiveness of the regulated market's organisation and take appropriate steps to address any deficiencies.

Members of the management body in its supervisory function shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.

The management body shall establish, maintain and publish a statement of the policies and practices on which it relies to fulfil the requirements of this paragraph.

7b. Without prejudice to the legal systems of the Member States, they shall ensure that where it is alleged that a member of the management board has breached the provisions of or has committed an offence in matters falling within the scope of this Directive or of Regulation (EU) No .../... [MiFIR] he may be personally subject to criminal and civil proceedings. t

Article 49

Requirements relating to persons exercising significant influence over the management of the regulated market

1. Member States shall require the persons who are in a position to exercise, directly or indirectly, significant influence over the management of the regulated market to be suitable.

2. Member States shall require the operator of the regulated market:

   (a) to provide the competent authority with, and to make public, information regarding the ownership of the regulated market and/or the market operator, and in particular, the identity and scale of interests of any parties in a position to exercise significant influence over the management;

   (b) to inform the competent authority of and to make public any transfer of ownership which gives rise to a change in the identity of the persons exercising significant influence over the operation of the regulated market.

3. The competent authority shall refuse to approve proposed changes to the controlling interests of the regulated market and/or the market operator where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the regulated market.

Article 50
Organisational requirements

Member States shall require the regulated market:

(a) to have arrangements to identify clearly and manage the potential adverse consequences, for the operation of the regulated market or for its participants, of any conflict of interest between the interest of the regulated market, its owners or its operator and the sound functioning of the regulated market, and in particular where such conflicts of interest might prove prejudicial to the accomplishment of any functions delegated to the regulated market by the competent authority;

(b) to be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks;

(c) to have arrangements for the sound management of the technical operations of the system, including the establishment of effective contingency arrangements to cope with risks of systems disruptions;

(d) to have transparent and non-discretionary rules and procedures that provide for fair and orderly trading and establish objective criteria for the efficient execution of orders;

(e) to have effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems;

(f) to have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed.

Article 51
Systems resilience, circuit breakers and electronic trading

1. Member States shall require a regulated market to have in place effective systems, procedures and arrangements ***which are designed*** to ensure its trading systems are resilient, have sufficient capacity to deal with peak order and message volumes, are able to ensure orderly trading under conditions of market stress, are fully tested to ensure such conditions are met ***even in times of extreme market volatility*** and are subject to effective business continuity arrangements to ensure continuity of its services if there is any unforeseen failure of its trading systems.

1a. Member States shall require a regulated market to have in place agreements covering the conduct of market makers and to ensure that a sufficient number of investment firms take part in such agreements, who will post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and ongoing basis for a minimum proportion of continuous trading hours, taking into account prevailing market conditions, rules and regulations, unless such a requirement is not appropriate to the nature and scale of the trading on that regulated market. Member States shall require a regulated market to enter into a binding written agreement between the regulated market and the investment firm regarding the obligations

arising from the participation in such a scheme, including but not limited to liquidity provision. The regulated market shall monitor and enforce compliance by investment firms with the requirements of such binding written agreements. The regulated market shall inform the competent authority about the content of the binding written agreement and shall satisfy the competent authority of its compliance with the requirements in this paragraph.

ESMA shall develop guidelines regarding the circumstances in which an investment firm would be obliged to enter into the market making agreement referred to in this paragraph and may develop guidelines on the content of such agreements.

1b. Member States shall require a regulated market to have effective systems, procedures and arrangements in place to ensure that all orders entered into the system by a member or participant are valid for a minimum of 500 milliseconds and cannot be cancelled or modified during that period.

2. Member States shall require a regulated market to have in place effective systems, procedures and arrangements to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous ▌.

2a. Member States shall require a regulated market to be able to temporarily halt trading if there is a significant price movement in a financial instrument on that market or, where it is informed by the relevant market operator, a related market during a short period and, in exceptional cases, to be able to cancel, vary or correct any transaction. Member States shall require a regulated market to ensure that the parameters for halting trading are calibrated in a way which takes into account the liquidity of different asset classes and sub-classes the nature of the market model and types of users and is sufficient to avoid significant disruptions to the orderliness of trading.

Member States shall ensure that a regulated market reports the parameters for halting trading and any material changes to those parameters to the competent authority in a consistent and comparable manner, and that the competent authority shall in turn report them to ESMA. ESMA shall publish the parameters on its website. Member States shall require that where a regulated market which is material in terms of liquidity in that instrument halts trading, in any Member State, that trading venue has the necessary systems and procedures in place to ensure that it will notify competent authorities so as to coordinate a market-wide response and determine whether it is appropriate to halt trading other venues on which the instrument is traded until trading resumes on the original market.

3. Member States shall require a regulated market to have in place effective systems, procedures and arrangements***, including requiring members or participants to carry out appropriate testing of algorithms and providing environments to facilitate such testing,*** to ensure that algorithmic ***or high-frequency*** trading systems cannot create or contribute to disorderly trading conditions on the market ***and to manage any disorderly trading conditions which do arise from such algorithmic or high/frequency trading systems,*** including systems to ***identify all orders involving high frequency trading,*** 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 ***and enforce*** the minimum tick size that may be executed on the market.

4. Member States shall require ***regulated markets to prohibit members or participants from providing sponsored and naked market access. Member States shall require*** a regulated market that permits direct ***market*** access to have in place effective systems procedures and arrangements to ensure that members or participants are only permitted to provide such services if they are an authorised investment firm under this Directive, that appropriate criteria are set and applied regarding the suitability of persons to whom such access may be provided and that the member or participant retains responsibility for orders and trades executed using that service.

Member States shall also require that the regulated market set appropriate standards regarding risk controls and thresholds on trading through such access and is able to distinguish and if necessary to stop orders or trading by a person using direct ***market*** access separately from orders or trading by the member or participant.5. Member States shall require a regulated market to ensure that its rules on co-location services ▌ are transparent, fair and non-discriminatory.

5a. Member States shall require that a regulated market ensure that its fee structures including execution fees, ancillary fees and any rebates are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way which contributes to disorderly trading conditions or market abuse. In particular, Member States shall require a regulated market to impose market making obligations in the individual shares or a suitable basket of shares in exchange for any rebates that are granted, to impose a higher fee for placing an order that is subsequently cancelled than an order which is executed and to impose a higher fee on participants placing a high ratio of cancelled orders to executed orders and on those operating a high frequency trading strategy in order to reflect the additional burden on system capacity.

Member States shall allow a regulated market to adjust its fees for cancelled orders according to the length of time for which the order was maintained and to calibrate the fees to each financial instrument to which they apply.

6. Member States shall require that upon request by the competent authority for a regulated market, that regulated market make available to the competent authority data relating to the order book or give the competent authority access to the order book so that it is able to monitor trading.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning the requirements laid down in this Article, and in particular:

(a) to ensure trading systems of regulated markets are resilient and have adequate capacity;

▌

(c) to set out the maximum ▌ ratio of unexecuted orders to transactions that may be adopted by regulated markets ***taking into account the liquidity of the financial instrument***;

(d) ***to identify the circumstances in which it could be appropriate to slow down the flow of orders***;

(e) to ensure co-location services and fee structures are fair and non-discriminatory ***and that fee structures do not create incentives for disorderly trading conditions or market abuse;***

(ea) to determine where a regulated market is material in terms of liquidity in that instrument;

(eb) to ensure market making schemes are fair and non-discriminatory and to establish minimum market making obligations that regulated markets must stipulate when designing a market making scheme and the conditions under which the requirement to have in place a market making scheme is not appropriate;

(ec) to ensure appropriate testing of algorithms so as to to ensure that algorithmic or high-frequency trading systems cannot create or contribute to disorderly trading conditions on the market.

Article 51a
Tick sizes

1. Member States shall require regulated markets to adopt tick size regimes in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and in any other financial instrument for which regulatory technical standards are developed in accordance with paragraph 4.

2. The tick size regimes referred to in paragraph 1 shall:

(a) be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads;

(b) adapt the tick size for each financial instrument appropriately.

3. ESMA shall develop draft regulatory technical standards to specify minimum tick sizes or tick size regimes for specific shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments where this is necessary to ensure the orderly functioning of markets, in accordance with the factors in paragraph 2 and the price, spreads and depth of liquidity of the instruments.

ESMA shall submit those draft regulatory technical standards to the Commission by […][*1].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

**** OJ please insert date: 12 months after the date of entry into force of this Directive.***

4. ESMA may develop draft regulatory technical standards to specify minimum tick sizes or tick size regimes for specific financial instruments other than those listed in paragraph 3 where this is necessary to ensure the orderly functioning of markets, in accordance with the factors in paragraph 2 and the price, spreads and depth of liquidity of the instruments.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 51b

Synchronisation of business clocks

1. Member States shall require that all trading venues and their participants synchronise the business clocks they use to record the date and time of any reportable event.

2. ESMA shall develop draft regulatory technical standards to specify the level of accuracy to which clocks should be synchronised in accordance with international standards.

ESMA shall submit those draft regulatory technical standards to the Commission by [...]*.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. **[Am. 4]**

Article 52
Admission of financial instruments to trading

1. Member States shall require that regulated markets have clear and transparent rules regarding the admission of financial instruments to trading.

   Those rules shall ensure that any financial instruments admitted to trading in a regulated market are capable of being traded in a fair, orderly and efficient manner and, in the case of transferable securities, are freely negotiable.

2. In the case of derivatives, the rules shall ensure in particular that the design of the derivative contract allows for its orderly pricing as well as for the existence of effective settlement conditions.

3. In addition to the obligations set out in paragraphs 1 and 2, Member States shall require the regulated market to establish and maintain effective arrangements to verify that issuers of transferable securities that are admitted to trading on the regulated market comply with their obligations under ***European*** Union law in respect of initial, ongoing or ad hoc disclosure obligations.

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* ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

Member States shall ensure that the regulated market establishes arrangements which facilitate its members or participants in obtaining access to information which has been made public under ***European*** Union law.

4. Member States shall ensure that regulated markets have established the necessary arrangements to review regularly the compliance with the admission requirements of the financial instruments which they admit to trading.

5. A transferable security that has been admitted to trading on a regulated market can subsequently be admitted to trading on other regulated markets, even without the consent of the issuer and in compliance with the relevant provisions of Directive 2003/71/EC. The issuer shall be informed by the regulated market of the fact that its securities are traded on that regulated market. The issuer shall not be subject to any obligation to provide information required under paragraph 3 directly to any regulated market which has admitted the issuer's securities to trading without its consent.

6. The Commission shall adopt delegated acts in accordance with Article 94 which:

   (a) specify the characteristics of different classes of instruments to be taken into account by the regulated market when assessing whether an instrument is issued in a manner consistent with the conditions laid down in the second subparagraph of paragraph 1 for admission to trading on the different market segments which it operates;

   (b) clarify the arrangements that the regulated market is to implement so as to be considered to have fulfilled its obligation to verify that the issuer of a transferable security complies with its obligations under ***European*** Union law in respect of initial, ongoing or ad hoc disclosure obligations;

   (c) clarify the arrangements that the regulated market has to establish pursuant to paragraph 3 in order to facilitate its members or participants in obtaining access to information which has been made public under the conditions established by ***European*** Union law.

Article 53
Suspension and removal of instruments from trading

1. Without prejudice to the right of the competent authority under Article 72(1)(d) and (e) to demand suspension or removal of an instrument from trading, the operator of the regulated market may suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.

   Member States shall require that an operator of a regulated market that suspends or removes from trading a financial instrument makes public this decision, communicates it to other regulated markets, MTFs and OTFs trading the same financial instrument and communicates relevant information to the competent authority. The competent authority shall inform the competent authorities of the other Member States of this.

The relevant competent authority within the meaning of point (7) of Article 2 of Commission Regulation (EC) No 1287/2006 for that financial instrument shall require the suspension or removal from trading on the regulated markets, MTFs and OTFs that operate under their supervision as soon as possible and shall also require its suspension or removal in accordance with paragraph 2 where the suspension or removal is due to the non-disclosure of information about the issuer or financial instrument.

2. A competent authority which requests the suspension or removal of a financial instrument from trading on one or more regulated markets MTFs or OTFs ***in accordance with paragraph 1*** shall immediately make public its decision and inform ESMA and the competent authorities of the other Member States. Save where it is likely to cause significant damage to the investors' interests or the orderly functioning of the internal market, the competent authorities of the other Member States shall ***require*** the suspension or removal of that financial instrument from trading on the regulated markets, MTFs and OTFs that operate under their supervision.

3. ESMA shall develop draft implementing technical standards to determine the format and timing of the communications and publications referred to in paragraphs 1 and 2.

ESMA shall submit those draft implementing technical standards to the Commission by [...]*[*]*.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

▌

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 to specify the list of circumstances constituting significant damage to the investors' interests***, to specify the notion of "as soon as possible"*** and the orderly functioning of the internal market referred to in paragraphs 1 and 2 and to determine issues relating to the non-disclosure of information about the issuer or financial instrument as referred to in paragraph 1***, including the necessary procedure for lifting the suspension of trading in a financial instrument***.

Article 54
Cooperation and exchange of information for regulated markets

1. Member States shall require that, in relation to a financial instrument, an operator of a regulated market immediately informs operators of other regulated markets, MTFs and OTFs of:

(a) disorderly trading conditions;

▌ and

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[*] ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

(c) system disruptions.

1a. Member States shall require that an operator of a regulated which identifies conduct that may indicate abusive behaviour within the scope of Regulation (EU) No .../... [MAR] immediately informs the competent authority designated under Article 16 of that Regulation or a body to which the powers of the competent authority have been delegated in accordance with Article 17 of that Regulation in order to facilitate real-time cross-market surveillance.

2. ESMA shall develop draft regulatory technical standards to determine the specific circumstances that trigger an information requirement as referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by ***[...]***[*].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ▌ Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 55
Access to the regulated market

1. Member States shall require the regulated market to establish***, implement*** and maintain transparent and non-discriminatory rules, based on objective criteria, governing access to or membership of the regulated market.

2. Those rules shall specify any obligations for the members or participants arising from:

(a) the constitution and administration of the regulated market;

(b) rules relating to transactions on the market;

(c) professional standards imposed on the staff of the investment firms or credit institutions that are operating on the market;

(d) the conditions established, for members or participants other than investment firms and credit institutions, under paragraph 3;

(e) the rules and procedures for the clearing and settlement of transactions concluded on the regulated market.

3. Regulated markets may admit as members or participants investment firms, credit institutions authorised under Directive 2006/48/EC and other persons who:

(a) are of sufficient good repute;

(b) have a sufficient level of trading ability, competence and experience;

(c) have, where applicable, adequate organisational arrangements;

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[*] ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

(d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the regulated market may have established in order to guarantee the adequate settlement of transactions.

4. Member States shall ensure that, for the transactions concluded on a regulated market, members and participants are not obliged to apply to each other the obligations laid down in Articles 24, 25, 27 and 28. However, the members or participants of the regulated market shall apply the obligations provided for in Articles 24, 25, 27 and 28 with respect to their clients when they, acting on behalf of their clients, execute their orders on a regulated market.

5. Member States shall ensure that the rules on access to or membership of the regulated market provide for the direct or remote participation of investment firms and credit institutions.

6. Member States shall, without further legal or administrative requirements, allow regulated markets from other Member States to provide appropriate arrangements on their territory so as to facilitate access to and trading on those markets by remote members or participants established in their territory.

The regulated market shall communicate to the competent authority of its home Member State the Member State in which it intends to provide such arrangements. The competent authority of the home Member State shall communicate that information to the Member State in which the regulated market intends to provide such arrangements within 1 month. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.

The competent authority of the home Member State of the regulated market shall, on the request of the competent authority of the host Member State and within a reasonable time, communicate the identity of the members or participants of the regulated market established in that Member State.

7. Member States shall require the operator of the regulated market to communicate, on a regular basis, the list of the members and participants of the regulated market to the competent authority of the regulated market.

Article 56

Monitoring of compliance with the rules of the regulated market and with other legal obligations

1. Member States shall require that regulated markets establish and maintain effective arrangements and procedures for the regular monitoring of the compliance by their members or participants with their rules. Regulated markets shall monitor ***ordersplaced and cancelled and*** the transactions ▌ undertaken by their members or participants under their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse ***and shall deploy the resource necessary to ensure that such monitoring is effective***.

2. Member States shall require the operators of the regulated markets to report significant breaches of their rules or disorderly trading conditions or conduct that may involve market abuse to the competent authority of the regulated market. Member States shall also require the operator of the regulated market to supply the relevant information without delay to the authority competent for the investigation and prosecution of market abuse on the regulated market and to provide full assistance to the latter in investigating and prosecuting market abuse occurring on or through the systems of the regulated market.

Article 57

Provisions regarding central counterparty and clearing and settlement arrangements

1. Member States shall not prevent regulated markets from entering into appropriate arrangements with a central counterparty or clearing house and a settlement system of another Member State with a view to providing for the clearing and/or settlement of some or all trades concluded by market participants under their systems.

2. The competent authority of a regulated market may not oppose the use of central counterparty, clearing houses and/or settlement systems in another Member State except where this is demonstrably necessary in order to maintain the orderly functioning of that regulated market and taking into account the conditions for settlement systems established in Article 39(2).

   In order to avoid undue duplication of control, the competent authority shall take into account the oversight/supervision of the clearing and settlement system already exercised by the national central banks as overseers of clearing and settlement systems or by other supervisory authorities with competence in relation to such systems.

Article 58

List of regulated markets

Each Member State shall draw up a list of the regulated markets for which it is the home Member State and shall forward that list to the other Member States and ESMA. A similar communication shall be effected in respect of each change to that list. ESMA shall publish and keep up-to-date a list of all regulated markets on its website.

TITLE IV

POSITION LIMITS, CHECKS AND REPORTING

Article 59

Position limits and checks

1. Member States shall ensure that regulated markets, ***and*** operators of MTFs and OTFs which admit to trading or trade commodity derivatives apply limits on the ***amount*** of

contracts ***or positions*** which any given market members or participants can enter into ***or hold*** over a specified period of time in order to:

(a) support liquidity;

(b) prevent market abuse;

(c) support orderly pricing and settlement conditions***;***

(ca) promote convergence between prices in of derivatives in the delivery month and spot prices for the underlying commodity, without prejudice to price discovery in the market for the underlying commodity;

(cb) prevent the build-up of market distorting positions.

The limits ***referred to in the first subparagraph*** shall ***apply to both physically and cash settled contracts, shall*** be transparent and non-discriminatory, specifying the persons to whom they apply and any exemptions and taking account of the nature and composition of market participants and of the use they make of the contracts admitted to trading. They shall specify clear quantitative thresholds such as the maximum ***net position*** persons can enter ***into or hold over a specific period of time***, taking account the characteristics of the ***derivatives market, including liquidity, and the*** underlying commodity market, including patterns of production, consumption and transportation to market. ***They shall not apply to positions which in an objectively measurable way reduce risks directly related to commercial activities.***

1a. For positions which in an objectively measurable way reduce risks directly related to commercial activities a position check system shall be introduced. This position check shall be carried out by the regulated markets and the operators of MTFs and OTFs in accordance with the following:

(a) members and participants of regulated markets, MTFs and OTFs must report to the respective trading venue the details of their positions, in accordance with Article 60(2);

(b) regulated markets and operators of MTFs and OTFs may require information from members and participants on all relevant documentation regarding the size or purpose of a position or exposure entered into via a commodity derivative;

(c) after analysing the information received in accordance with points (a) and (b), regulated markets and operators of MTFs and OTFs may require that steps be taken by market members or participants affected, or may take steps themselves, to reduce the size of or to eliminate the position or exposure to commodity derivatives if this is necessary to ensure the integrity and orderly functioning of the markets affected;

(d) after analysing the information received in accordance with points (a) and (b), regulated markets and operators of MTFs and OTFs may, if the measures under point (c) are inadequate, limit the ability of market members or participants to enter into a commodity derivative, including by introducing

additional non-discriminatory limits on positions which market members or participants can enter into over a specified period of time, if this is necessary to ensure the achievement of the objectives referred to in paragraph 1 or the integrity and orderly functioning of the markets affected;

(e) the regulated markets, MTFs and OTFs shall, in accordance with paragraph 2, inform the competent authorities of the details of the information received in accordance with points (b) to (d) and of the measures taken;

(f) the competent authorities shall aggregate the data received from different trading venues and shall, where necessary, require market members or participants to reduce their aggregate position in accordance with paragraph 3.

1b. Regulated markets, and operators of MTFs and OTFs which admit to trading or trade commodity derivatives may impose additional arrangements in relation to the contracts and positions for which limits are set in accordance with paragraph 1 where this is necessary to ensure the integrity and orderly functioning of the markets affected. Competent authorities may also require regulated markets, and operators of MTFs and OTFs which admit to trading or trade commodity derivatives to impose such additional arrangements where necessary to ensure the integrity and orderly functioning of the markets.

2. Regulated markets, MTF and OTFs shall ***notify*** their competent authority of the details of the ***position*** limits or ***checks***. The competent authority shall communicate the same information to ESMA which shall publish and maintain on its website a database with summaries of the ***position*** limits ▌ in force.

2a. ESMA shall periodically examine the data received in accordance with paragraph 2 of this Article and Article 60(1) and (1a) and shall assess whether any measures are necessary in relation to positions which in an objectively measurable way reduce risks directly related to commercial activities in addition to those provided for in paragraph 1a of this Article in order to ensure the integrity and orderly functioning of markets.

Where it considers such measures to be necessary, ESMA shall submit a reasoned report to the Commission outlining the measures proposed and why they are needed and shall transmit that report without delay to the European Parliament and the Council.

3. ***ESMA*** shall ***draft regulatory technical standards*** to determine ***the limits referred to in paragraph 1 and to further specify the position check referred to in paragraph 1a, in particular the limits on the amount of contracts or the net position*** which any person can enter into ***or hold*** over a specified period of time***, the methods for calculating positions held by persons directly or indirectly, the modalities for applying such limits including the aggregate position across trading venues and the criteria for determining whether a position qualifies as directly reducing risks related to commercial activities***.

The limits, ***which shall also differentiate between classes of market participants, and position check*** shall take account of the conditions referred to in ***paragraphs 1 and 1a*** and the ***rules*** that have been set by regulated markets, MTFs and OTFs.

After conducting an open public consultation, ESMA shall submit those draft regulatory technical standards, to the Commission by […]*.

Power shall be delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

The limits ***and position check*** determined in the ***regulatory technical standards*** shall also take precedence over any measures imposed by competent authorities pursuant to Article 72(g) of this Directive.

4. Competent authorities shall not impose limits ▌ which are more restrictive than those adopted pursuant to paragraph 3 except in exceptional cases where they are objectively justified and proportionate taking into account the liquidity of the specific market and the orderly functioning of the market. The restrictions shall be valid for an initial period not exceeding six months from the date of its publication on the website of the relevant competent authority. Such a restriction may be renewed for further periods not exceeding six months at a time if the grounds for the restriction continue to be applicable. If the restriction is not renewed after that six-month period, it shall automatically expire.

When adopting more restrictive ***limits*** than those adopted pursuant to paragraph 3, competent authorities shall notify ESMA. The notification shall include a justification for the more restrictive ***limits***. ESMA shall within 24 hours issue an opinion on whether it considers the measure is necessary to address the exceptional case. The opinion shall be published on ESMA's website.

Where a competent authority ***imposes limits*** contrary to an ESMA opinion, it shall immediately publish on its website a notice fully explaining its reasons for doing so.

Article 60
Position reporting by categories of traders

1. Member States shall ensure that regulated markets, MTFs, and OTFs which admit to trading or trade commodity derivatives or emission allowances or derivatives thereof:

   (a) make public a weekly report with the aggregate positions held by the different categories of traders for the different financial instruments traded on their platforms in accordance with paragraph 3 ***and communicate this report to the competent authority and to ESMA***;

   (b) provide the competent authority with a complete breakdown of the positions of any or all market members or participants, including any positions held on behalf of their clients, upon request.

   The obligation laid down in point (a) shall only apply when both the number of traders and their open positions in a given financial instrument exceed minimum thresholds.

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* ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

1a. Member States shall ensure that investment firms trading in commodity derivatives or emission allowances or derivatives thereof outside a trading venue provide the competent authority, upon request, with a complete breakdown of their positions, in accordance with Article 23 of Regulation (EU) No .../...[MiFIR] and, where applicable, of Article 8 of Regulation (EU) No 1227/2011.

2. In order to enable the publication referred to in paragraph 1(a), Member States shall require members and participants of regulated markets, MTFs and OTFs to report to the respective trading venue the details of their positions in real time, including any positions held on behalf of their clients.

3. The members, participants and their clients shall be classified by the regulated market, MTF or OTF as traders according to the nature of their main business, taking account of any applicable authorisation, as either:

   (a) investment firms as defined in Directive 2004/39/EC or credit institution as defined in Directive 2006/48/EC;

   (b) investment funds, either an undertaking for collective investments in transferable securities (UCITS) as defined in Directive 2009/65/EC, or an alternative investment fund manager as defined in Directive 2011/61/EC;

   (c) other financial institutions, including insurance undertakings and reinsurance undertakings as defined in Directive 2009/138/EC , and institutions for occupational retirement provision as defined in Directive 2003/41/EC;

   (d) commercial undertakings;

   (e) in the case of emission allowances or derivatives thereof, operators with compliance obligations under Directive 2003/87/EC.

   The reports ***referred to*** in point (a) of paragraph 1 ***shall*** specify the number of long and short positions by category of trader, changes thereto since the previous report, percent of total open interest represented by each category, and the number of traders in each category.

   The reports referred to in of paragraph 1(a) and in paragraph 1a should differentiate between:

   (a) positions identified as positions which in an objectively measurable way reduce risks directly related to commercial activities; and

   (b) other positions.

4. ESMA shall develop draft implementing technical standards to determine the format of the reports referred to in paragraph 1(a) ***and paragraph 1a***, and the content of the information to be provided in accordance with paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by ***[...]***[*].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with ▌ Articles 15 of Regulation (EU) No 1095/2010.

In the case of emission allowances or derivatives thereof, the reporting shall not prejudice the compliance obligations under Directive 2003/87/EC.

4a. ESMA shall develop draft implementing technical standards to specify the measures to require all reports referred to in point (a) of paragraph 1 to be sent to ESMA at a specified weekly time, for their centralised publication by the latter.

***ESMA shall submit those draft implementing technical standards to the Commission by [...]*[*].**

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify the thresholds referred to in the last subparagraph of paragraph 1 and to refine the categories of members, participants or clients referred to in paragraph 3.

▌

5a. ESMA shall develop draft implementing technical standards to specify the measures to require all reports referred to in point (a) of paragraph 1 to be sent to ESMA at a specified weekly time, for their centralised publication by the latter.

***ESMA shall submit those draft implementing technical standards to the Commission by [...]*[*].**

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

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[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

TITLE V

DATA REPORTING SERVICES

SECTION 1

AUTHORISATION PROCEDURES FOR DATA REPORTING SERVICES PROVIDERS

Article 61
Requirement for authorisation

1. Member States shall require that the provision of data reporting services described in Annex I, Section D as a regular occupation or business be subject to prior authorisation in accordance with the provisions of this section. Such authorisation shall be granted by the home Member State competent authority designated in accordance with Article 69.

2. By way of derogation from paragraph 1, Member States shall allow any market operator to operate the data reporting services of an approved publication arrangement (APA), a consolidated tape provider (CTP) and an approved reporting mechanism (ARM), subject to the prior verification of their compliance with the provisions of this Title. Such a service shall be included in their authorisation.

3. Member States shall register all data reporting services providers. The register shall be publicly accessible and shall contain information on the services for which the data reporting services provider is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to ESMA.

   ESMA shall establish a list of all data reporting services providers in the ***European*** Union. The list shall contain information on the services for which the data reporting services provider is authorised and it shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

   Where a competent authority has withdrawn an authorisation in accordance with Article 64, that withdrawal shall be published on the list for a period of 5 years.

Article 62
Scope of authorisation

1. The home Member State shall ensure that the authorisation specifies the data reporting service which the data reporting services provider is authorised to provide. A data reporting services provider seeking to extend its business to additional data reporting services shall submit a request for extension of its authorisation.

2. The authorisation shall be valid for the entire ***European*** Union and shall allow a data reporting services provider to provide the services, for which it has been authorised, throughout the ***European*** Union.

Article 63
Procedures for granting and refusing requests for authorisation

1. The competent authority shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to this Directive.

2. The data reporting services provider shall provide all information, including a programme of operations setting out inter alia the types of services envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the data reporting services provider has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Title.

3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted.

4. ESMA shall develop draft regulatory technical standards to determine:

   (a) the information to be provided to the competent authorities under paragraph 2, including the programme of operations;

   (b) the information included in the notifications under Article 65 paragraph 4.

   ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ***[...]****.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in paragraph 2 and in Article 65(4).

   ESMA shall submit those draft implementing technical standards to the Commission by ***[...]****.

   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 64
Withdrawal of authorisation

The competent authority may withdraw the authorisation issued to a data reporting services provider where the provider:

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* ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

* ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no data reporting services for the preceding six months, unless the Member State concerned has provided for authorisation to lapse in such cases;

(b) has obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which authorisation was granted;

(d) has seriously ***or*** systematically infringed the provisions of this Directive.

Article 65

Requirements for the management body of a data reporting services provider

1. ***Members*** of the management body of a data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. ***Each*** member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management.

Where a market operator seeks authorisation to operate an APA, a CTP or an ARM and the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market, those persons are deemed to comply with the requirement laid down in the first subparagraph.

2. ESMA shall***, by [...][*],*** develop guidelines for the assessment of the suitability of the members of the management body described in paragraph 1, taking into account different roles and functions carried out by them ***and the need to avoid conflicts of interest between members of the management body and users of the APA, CTP or ARM***.

2a. Without prejudice to the legal systems of the Member States, they shall ensure that where it is alleged that a member of the management board has breached the provisions of or has committed an offence in matters falling within the scope of this Directive or of Regulation (EU) No .../... [MiFIR] he or may be personally subject to criminal and civil proceedings.

3. Member States shall require the data reporting services provider to notify the competent authority of all members of its management body and of any changes to its membership, along with all information needed to assess whether the entity complies with paragraph 1 of this Article.

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[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

4. The management body of a data reporting services provider shall be able to ensure that the entity is managed in a sound and prudent way and in a manner that promotes the integrity of the market and the interest of its clients.

5. The competent authority shall refuse authorisation if it is not satisfied that the person or the persons who shall effectively direct the business of the data reporting services provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management of the provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.

SECTION 2

CONDITIONS FOR APAS

Article 66
Organisational requirements

1. The home Member State shall require an APA to have adequate policies and arrangements in place to make public the information required under Articles 19 and 20 of Regulation (EU) No …/… [MiFIR] as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the publication of a transaction. The home Member State shall require the APA to be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.

1a. The information made public by an APA in accordance with paragraph 1 shall include, at least, the following details:

(a) the identifier of the financial instrument;

(b) the price at which the transaction was concluded;

(c) the volume of the transaction;

(d) the time of the transaction;

(e) the time the transaction was reported;

(f) the price notation of the transaction;

(g) the trading venue or systematic internaliser on which the transaction was executed on or otherwise the code 'OTC';

(h) if applicable, an indicator that the transaction was subject to specific conditions.

2. The home Member State shall require the APA to operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. ***In particular, an APA who is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.***

3. The home Member State shall require the APA to have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage before publication. The APA shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

4. The home Member State shall require the APA to have systems in place that can effectively check trade reports for completeness, identify omissions and obvious errors and request re-transmission of any such erroneous reports.

5. In order to ensure consistent harmonisation of paragraph 1, ESMA shall develop draft regulatory technical standards to determine common formats, data standards and technical arrangements facilitating the consolidation of information as referred to in paragraph 1.

   ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ***[...]***[*].

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 clarifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 specifying:

   (a) the means by which an APA may comply with the information obligation referred to in paragraph 1;

   (b) the content of the information published under paragraph 1.

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[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

SECTION 3

CONDITIONS FOR CTPS

Article 67
Organisational requirements

1. The home Member State shall require a CTP to have adequate policies and arrangements in place to collect the information made public in accordance with Articles 5 and 19 of Regulation (EU) No …/… [MiFIR], consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as is technically possible, on a reasonable commercial basis including, at least, the following details:

   (a) the identifier of the financial instrument;

   (b) the price at which the transaction was concluded;

   (c) the volume of the transaction;

   (d) the time of the transaction;

   (e) the time the transaction was reported;

   (f) the price notation of the transaction;

   (g) the trading venue ***or systematic internaliser on which*** the transaction was executed on or otherwise the code 'OTC';

   (ga) where applicable, the automated trading system that generated the transaction;

   (h) if applicable, an indicator that the transaction was subject to specific conditions.

   The information shall be made available free of charge 15 minutes after the publication of a transaction. The home Member State shall require the CTP to be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in formats that are easily accessible and utilisable for market participants.

2. The home Member State shall require a CTP to have adequate policies and arrangements in place to collect the information made public in accordance with Articles 9 and 20 of Regulation (EU) No …/… [MiFIR], consolidate it into a continuous electronic data stream and make following information available to the public as close to real time as is technically possible, on a reasonable commercial basis including, at least, the following details:

   (a) the identifier or identifying features of the financial instrument;

(b) the price at which the transaction was concluded;

(c) the volume of the transaction;

(d) the time of the transaction;

(e) the time the transaction was reported;

(f) the price notation of the transaction;

(g) the trading venue ***or systematic internaliser on which*** the transaction was executed on or otherwise the code 'OTC';

(h) if applicable, an indicator that the transaction was subject to specific conditions.

The information shall be made available free of charge 15 minutes after the publication of a transaction. The home Member State shall require the CTP to be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants.

3. The home Member State shall require the CTP to ensure that the data provided is consolidated from ***all*** the regulated markets, MTFs, OTFs and APAs and for the financial instruments specified by delegated acts under paragraph 8(c).

4. The home Member State shall require the CTP to operate and maintain effective administrative arrangements designed to prevent conflicts of interest. In particular, a market operator or an APA, who also operate a consolidated tape, shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

5. The home Member State shall require the CTP to have sound security mechanisms in place designed to guarantee the security of the means of transfer of information and to minimise the risk of data corruption and unauthorised access. The home Member State shall require the CTP to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

6. In order to ensure consistent harmonisation of paragraphs 1 and 2, ESMA shall develop draft regulatory technical standards to determine data standards and formats for the information to be published in accordance with Articles 5, 9, 19 and 20 of Regulation (EU) No …/… [MiFIR], including instrument identifier, price, quantity, time, price notation, venue identifier and indicators for specific conditions the transactions was subject to as well as technical arrangements promoting an efficient and consistent dissemination of information in a way ensuring for it to be easily accessible and utilisable for market participants as referred to in paragraphs 1 and 2, including identifying additional services the CTP could perform which increase the efficiency of the market.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ***[...]***[*] in respect of information published in accordance with Articles 5 and 19 of Regulation (EU) No …/… [MiFIR] and by ***[...]***[**] in respect of information published in accordance with Articles 9 and 20 of Regulation (EU) No …/… [MiFIR].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7. The Commission shall ▌ adopt delegated acts in accordance with Article 94 concerning measures clarifying what constitutes a reasonable commercial basis to provide access to data streams as referred to in paragraphs 1 and 2.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures specifying:

   (a) the means by which the CTP may comply with the information obligation referred to in paragraphs 1 and 2;

   (b) the content of the information published under paragraphs 1 and 2;

   (c) the ▌ financial instruments data of which must be provided in the data stream;

   (d) other means to ensure that the data published by different CTPs is consistent and allows for comprehensive mapping and cross-referencing against similar data from other sources***, and aggregation at European Union level***.

Article 67a
Single consolidated data base

1. By […][***], ESMA shall submit to the European Parliament, the Council and the Commission an opinion on the availability of high quality post-trade information made public in accordance with Articles 5 and 19 of Regulation (EU) No .../... [MiFIR] in a consolidated format capturing the entire market in accordance with user-friendly standards at a reasonable cost.

2. Where ESMA considers that post-trade information made public in accordance with Articles 5 and 19 is not available or not of high quality or does not capture the entire market, ESMA shall give a negative opinion.

3. Within three months of a negative opinion under paragraph 2, the Commission shall adopt a delegated act in accordance with Article 94 concerning measures specifying the establishment of a single entity operating a consolidated tape for post-trade information made public in accordance with Articles 5 and 19.

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[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***
[**] ***OJ please insert date: 18 months after the date of entry into force of this Directive.***
[***] ***OJ please insert date: six months after the date of application of this Directive.***

4. By […]*, ESMA shall issue to the European Parliament, the Council and the Commission an opinion on the availability of a high-quality post-trade information made public in accordance with Articles 9 and 20 of Regulation (EU) No .../... [MiFIR] in a consolidated format capturing the entire market in accordance with user-friendly standards at a reasonable cost.

5. Where ESMA considers that post-trade information made public in accordance with Articles 9 and 20 is not available or not of high quality or does not capture the entire market, ESMA shall give a negative opinion.

6. Within three months of a negative opinion under paragraph 5, the Commission shall adopt a delegated act in accordance with Article 94 concerning measures specifying the establishment of a single entity operating a consolidated tape for post-trade information made public in accordance with Articles 9 and 20.

SECTION 4

CONDITIONS FOR ARMS

Article 68
Organisational requirements

1. The home Member State shall require an ARM to have adequate policies and arrangements in place to report the information required under Article 23 of Regulation (EU) No …/… [MiFIR] as quickly as possible, and no later than the close of the following working day. Such information shall be reported in accordance with the requirements laid down in Article 23 of Regulation (EU) No …/… [MiFIR] on a reasonable commercial basis.

2. The home Member State shall require the ARM to operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. ***In particular, an ARM that is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.***

3. The home Member State shall require the ARM to have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage ▌. The home Member State shall require the ARM to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

4. The home Member State shall require the ARM to have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors and request re-transmission of any such erroneous reports.

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* ***OJ: please insert date: one year after the date of application of this Directive.***

5. The Commission ***shall*** adopt delegated acts in accordance with *Article 94*, measures clarifying what constitutes a reasonable commercial basis to report information as referred to in paragraph 1.

TITLE VI

COMPETENT AUTHORITIES

CHAPTER I

DESIGNATION, POWERS AND REDRESS PROCEDURES

Article 69
Designation of competent authorities

1. Each Member State shall designate the competent authorities which are to carry out each of the duties provided for under the different provisions of Regulation (EU) No …/… [MiFIR] and of this Directive. Member States shall inform the Commission, ESMA and the competent authorities of other Member States of the identity of the competent authorities responsible for enforcement of each of those duties, and of any division of those duties.

2. The competent authorities referred to in paragraph 1 shall be public authorities, without prejudice to the possibility of delegating tasks to other entities where that is expressly provided for in ***Article 29(4)***.

   Any delegation of tasks to entities other than the authorities referred to in paragraph 1 may not involve either the exercise of public authority or the use of discretionary powers of judgement. Member States shall require that, prior to delegation, competent authorities take all reasonable steps to ensure that the entity to which tasks are to be delegated has the capacity and resources to effectively execute all tasks and that the delegation takes place only if a clearly defined and documented framework for the exercise of any delegated tasks has been established stating the tasks to be undertaken and the conditions under which they are to be carried out. Those conditions shall include a clause obliging the entity in question to act and be organised in such a manner as to avoid conflict of interest and so that information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition. The final responsibility for supervising compliance with this Directive and with its implementing measures shall lie with the competent authority or authorities designated in accordance with paragraph 1.

   Member States shall inform the Commission, ESMA and the competent authorities of other Member States of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.

3. ESMA shall publish and keep up-to-date a list of the competent authorities referred to in paragraphs 1 and 2 on its website.

Article 70
Cooperation between authorities in the same Member State

If a Member State designates more than one competent authority to enforce a provision of this Directive ***or Regulation (EU) No …/… [MiFIR]***, their respective roles shall be clearly defined and they shall cooperate closely.

Each Member State shall require that such cooperation also take place between the competent authorities for the purposes of this Directive ***or Regulation (EU) No …/… [MiFIR]*** and the competent authorities responsible in that Member State for the supervision of credit and other financial institutions, pension funds, UCITS, insurance and reinsurance intermediaries and insurance undertakings.

Member States shall require that competent authorities exchange any information which is essential or relevant to the exercise of their functions and duties.

Article 71
Powers to be made available to competent authorities

1. Competent authorities shall be given all supervisory and investigatory powers that are necessary for the exercise of their functions. Within the limits provided for in their national legal frameworks they shall exercise such powers:

   (a) directly or in collaboration with other authorities;

   (b) under their responsibility by delegation to entities to which tasks have been delegated according to Article 69(2); or

   (c) by application to the competent judicial authorities.

2. The powers referred to in paragraph 1 shall be exercised in conformity with national law and shall include, at least, the rights to:

   (a) have access to any document in any form whatsoever***, including the records referred to in Article 16(7)*** which would be relevant for the performance of the supervisory duties and to receive a copy of it;

   (b) ***require the provision of*** information from any person and if necessary to summon and question a person with a view to obtaining information;

   (c) carry out on-site inspections;

   (ca) carry out mystery shopping;

   (d) require existing telephone and existing data traffic records ***or equivalent records referred to in Article 16(7)*** held by investment firms where a reasonable suspicion exists that such records related to the subject-matter of the inspection

may be relevant to prove a breach by the investment firm of its obligations under this Directive; these records shall however ***only*** concern the content of the communication to which they relate ***where the release of such records is consistent with data protection safeguards in place under Union and national law***;

(da) require the freezing and/or the sequestration of assets;

(e) request temporary prohibition of professional activity;

(f) require authorised investment firms and regulated markets' auditors to provide information;

(g) refer matters for criminal prosecution;

(h) allow auditors or experts to carry out verifications or investigations;

(i) ***require the provision of*** information including all relevant documentation from any person regarding the size and purpose of a position or exposure entered into via a ***commodity*** derivative, and any assets or liabilities in the underlying market.

3. If a request for records of telephone or data traffic ***in a form referred to in Article 16(7),*** referred to in point (d) of paragraph 2 of this Article requires authorisation from a judicial authority according to national rules such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

4. The processing of personal data collected in the exercise of the supervisory and investigatory powers pursuant to this Article shall be carried out in accordance with Directive 95/46/EC.

Article 72

Remedies to be made available to competent authorities

Competent authorities shall be given all supervisory remedies that are necessary for the exercise of their functions. Within the limits provided for in their national legal frameworks they shall ***have at least the following powers which may be exercised in the ways specified in Article 71(1)***:

(a) require the cessation of any practice or conduct that is contrary to the provisions of Regulation(EU) No …/… [MiFIR] and the provisions adopted in the implementation of this Directive and to desist from a repetition of that practice or conduct;

(b) ***require*** the freezing and/or the sequestration of assets;

(c) adopt any type of measure to ensure that investment firms and regulated markets continue to comply with legal requirements;

(d) require the suspension of trading in a financial instrument;

(e) require the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements;

(f) request any person that has provided information in accordance with Article 71(2) (i) to subsequently take steps to reduce the size of the position or exposure;

(g) limit the ability of any person or class of persons from entering into a commodity derivative , including by introducing non-discriminatory limits on positions or the number of such derivative contracts per underlying which any given class of persons can enter into over a specified period of time, when necessary to ensure the integrity and orderly functioning of the affected markets;

(h) issue public notices***;***

(ha) require that compensation be paid or other remedial action be taken to correct any financial loss or other damage suffered by an investor as a result of any practice or conduct that is contrary to this Directive or to Regulation (EU) No .../... [MiFIR].

(hb) suspend the marketing or sale of investment products where the conditions of Article 32 of Regulation (EU) No .../... [MiFIR] are met or where the investment firm has not developed or applied an effective product approval process or otherwise failed to comply with Article 16(3) of this Directive;

(hc) require the removal of a natural person from the management board of an investment firm or market operator.

Article 73
Administrative sanctions

1. Member States shall ensure that their competent authorities may take the appropriate administrative sanctions and measures where the provisions of Regulation (EU) No …/… [MiFIR] or the national provisions adopted in the implementation of this Directive have not been complied with, and shall ensure that they are applied. Member States shall ensure that these measures are effective, proportionate and dissuasive.

2. Member States shall ensure that where obligations apply to investment firms and market operators, in case of a breach, administrative sanctions and measures can be applied to the members of the investment firms' and market operators' management body, and any other natural or legal persons who, under national law, are responsible for a violation.

3. Member States shall provide ESMA annually with aggregated information about all administrative measures and sanctions imposed in accordance with paragraphs 1 and 2. ***ESMA shall publish that information in an annual report.***

4. Where the competent authority has disclosed an administrative measure or sanction to the public, it shall, at the same time, report that fact to ESMA.

5. Where a published sanction relates to an investment firm authorised in accordance with this Directive, ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3).

5a. ESMA shall develop draft implementing technical standards concerning the procedures and forms for submitting information as referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by [...]*.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 74
Publication of sanctions

Member States shall provide that the competent authority publishes any sanction or measure that has been imposed for breaches of the provisions of Regulation (EU) No …/… [MiFIR] or of the national provisions adopted in the implementation of this Directive without undue delay including information on the type and nature of the breach and the identity of persons responsible for it, unless such disclosure would seriously jeopardise the financial markets. Where the publication would cause a disproportionate damage to the parties involved, competent authorities shall publish the sanctions on an anonymous basis.

Article 75
Breach of authorisation requirement and other breaches

1. ***Member States*** shall ***ensure that their laws, regulations or administrative provisions provide for sanctions at least in respect of*** the following:

(a) performing investment services or activities as a regular occupation or business on a professional basis without obtaining authorisation in breach of Article 5;

(b) acquiring, directly or indirectly, a qualifying holding in an investment firm or further increasing, directly or indirectly, such a qualifying holding in an investment firm as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the investment firm would become its subsidiary (the 'proposed acquisition'), without notifying in writing the competent authorities of the investment firm in which the acquirer is seeking to acquire or increase a qualifying holding in breach of the first subparagraph of Article 11(1);

(c) disposing, directly or indirectly, of a qualifying holding in an investment firm or reducing a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50% or so that the investment firm would cease to be a subsidiary, without notifying in writing the competent authorities, in breach of the second subparagraph of Article 11(1);

(d) an investment firm having obtained an authorisation through false statements or any other irregular means in breach of Article 8(b);

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* ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

(e) an investment firm failing to comply with requirements applicable to the management body in accordance with Article 9(1);

(f) the management body of an investment firm failing to perform its duties in accordance with Article 9(6);

(g) an investment firm, on becoming aware of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 11(1), failing to inform the competent authorities of those acquisitions or disposals in breach of the first subparagraph of Article 11(3);

(h) an investment firm failing to, at least once a year, inform the competent authority of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings in breach of the second subparagraph of Article 11(3);

(i) an investment firm failing to have in place an organisational requirement imposed in accordance with the national provisions implementing Article 16 and 17;

(j) an investment firm failing to identify, prevent, manage and disclose conflicts of interests in accordance with the national provisions implementing Article 23;

(k) a MTF or an OTF failing to establish rules, procedures and arrangements or failing to comply with instructions in accordance with the national provisions implementing Articles 18, 19 and 20;

(l) an investment firm ▌ failing to provide information or reports to clients and to comply with obligations on the assessment of suitability or appropriateness in accordance with the national provisions implementing Articles 24 and 25;

(m) an investment firm accepting or receiving fees, commissions or any monetary benefit in contravention of the national provisions implementing Article 19(5) and (6);

(n) an investment firm ▌ failing to obtain the best possible result for clients when executing orders ***or*** failing to establish arrangements in accordance with national provisions implementing Article 27 and Article 28;

(o) operating a regulated market without obtaining authorisation in breach of Article 47;

(p) the management body of a market operator failing to perform its duties in accordance with Article 48(6);

(q) a regulated market or a market operator failing to have in place arrangements, systems, rules and procedures and to have available sufficient financial resources in accordance with national provisions implementing Article 50;

(r) a regulated market or a market operator failing to have in place systems, procedures, arrangements and rules or failing to grant access to data in

accordance with national rules implementing Article 51 ***or failing to implement the tick size regime required under Article 51a***;

(ra) the management body of a data service provider failing to perform its duties in accordance with Article 65;

(rb) an APA, CTP or ARM failing to fulfil its organisational requirements in accordance with Article 66, 67 or 68;

(s) a regulated market, a market operator or an investment firm ▌ failing to make public information in accordance with Articles 3, 5, 7 or 9 of Regulation (EU) No (EU) …/… [MiFIR];

(t) an investment firm ▌ failing to make public information in accordance with Articles 13, 17, 19 and 20 of Regulation (EU) No …/… [MiFIR];

(u) an investment firm ▌ failing to report transactions to competent authorities in accordance with Article 23 of Regulation (EU) No …/… [MiFIR];

(v) a financial counterparty and a non financial counterparty failing to trade derivatives on trading venues in accordance with Article 24 of Regulation (EU) No …/… [MiFIR];

(w) a central counterparty failing to grant access to its clearing services in accordance with Article 28 of Regulation (EU) No …/… [MiFIR];

(x) a regulated market, a market operator or an investment firm failing to grant access to its trade feeds in accordance with Article 29 of Regulation (EU) No …/… [MiFIR];

(y) a person with proprietary rights to benchmarks failing to grant access to a benchmark in accordance with Article 30 of Regulation (EU) No …/… [MiFIR];

(z) an investment firm marketing, distributing or selling financial instruments or performing a type of financial activity or adopting a practice in contravention of prohibitions or restrictions imposed based on ***Article 31 or*** 32 of Regulation (EU) No …/… [MiFIR];

(za) a natural person belonging to the management body of a market operator or an investment firm that has knowledge of any breaches referred to in this paragraph and decides not to report those breaches to the competent authority.

2. Member States shall ensure that in the cases referred to in paragraph 1, ***their laws, regulations or administrative provisions provide for*** administrative sanctions and measures that can be applied ***including*** at least the following:

(a) a public statement, which indicates the natural or legal person and the nature of the breach;

(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(c) in case of an investment firm, withdrawal of the authorisation of the institution in accordance with Article 8;

(d) a temporary ***or permanent*** ban against any member of the investment firm's management body or any other natural person, who is held responsible, to exercise ***management*** functions in investment firms;

(da) a temporary ban on the investment firm being a member of or participant in regulated markets, MTFs and OTFs;

(e) in case of a legal person, administrative pecuniary sanctions of up to ***15 %*** of the total annual turnover of the legal person in the preceding business year; where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;

(f) in case of a natural person, administrative pecuniary sanctions of up to ***EUR 10 000 000*** , or in the Member States where the euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this Directive;

(g) administrative pecuniary sanctions of up to ***ten times*** the amount of the benefit derived from the violation where that benefit can be determined.

▌

2a. Member States may empower competent authorities to impose additional types of sanction, or to impose sanctions exceeding the amounts referred to in points (e), (f) and (g) of paragraph 2, provided that they are consistent with Article 76.

2b. Member States shall empower competent authorities to impose effective, proportionate and dissuasive sanctions for breaches of this Directive and of Regulation EU No …/… [MiFIR] which are not referred to in paragraph 1.

Article 76
Effective application of sanctions

1. Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the responsible natural or legal person;

(c) the financial strength of the responsible natural or legal person, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;

(d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;

(e) the losses for third parties caused by the breach, insofar as they can be determined;

(f) the level of cooperation of the responsible natural or legal person with the competent authority;

(g) previous violations by the responsible natural or legal person.

2. ESMA shall issue guidelines ***by [...]***[*] addressed to competent authorities in accordance with Article 16 of Regulation No (EU) 1095/2010 on types of administrative measures and sanctions and level of administrative pecuniary sanctions.

2a. This Article is without prejudice to the powers of competent authorities to initiate criminal proceedings or impose criminal sanctions where empowered to do so under national law. Any criminal sanction imposed shall be taken into account when determining the type and level of any administrative sanction applied in addition.

Article 77
Reporting of breaches

1. Member States shall ensure that competent authorities establish effective mechanisms to encourage reporting of ***potential or actual*** breaches of the provisions of Regulation …/… [MiFIR] and of national provisions implementing this Directive to competent authorities.

Those arrangements shall include at least:

(a) specific procedures for the receipt of reports and their follow-up;

(b) appropriate protection for employees of financial institutions who denounce breaches committed within the financial institution***, including anonymity where appropriate***;

(c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Directive 95/46/EC.

2. Member States shall require financial institutions to have in place appropriate procedures for their employees to report breaches internally trough a specific channel.

2a. An employee shall not be prevented from denouncing breaches committed within the financial institution by any confidentiality rules. Any information that contributes to prove breaches committed within the financial institution shall no more be considered as confidential and the disclosure in good faith of such information shall not involve persons disclosing such information in liability of any kind.

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[*] ***OJ please insert date: 12 months after the date of entry into force of this Directive.***

Article 79
Right of appeal

1. Member States shall ensure that any decision taken under the provisions of Regulation (EU) No …/… [MiFIR] or under laws, regulations or administrative provisions adopted in accordance with this Directive is properly reasoned and is subject to the right of appeal before a tribunal. The right of appeal before a tribunal shall also apply where, in respect of an application for authorisation which provides all the information required, no decision is taken within six months of its submission.

2. Member States shall provide that one or more of the following bodies, as determined by national law, also may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that Regulation (EU) No …/… [MiFIR] and the national provisions for the implementation of this Directive are applied:

   (a) public bodies or their representatives;

   (b) consumer organisations having a legitimate interest in protecting consumers;

   (c) professional organisations having a legitimate interest in acting to protect their members.

Article 80
Extra-judicial mechanism for investors' complaints

1. Member States shall ensure the setting-up of efficient and effective complaints and redress procedures for the out-of-court settlement of consumer disputes concerning the provision of investment and ancillary services provided by investment firms, using existing bodies where appropriate. Member States shall further ensure that all investment firms adhere to one or more such bodies implementing such complaint and redress procedures.

2. Member States shall ensure that those bodies actively cooperate with their counterparts in other Member States in the resolution of cross-border disputes.

3. The competent authorities shall notify ESMA of the complaint and redress procedures referred to in paragraph 1 which are available under its jurisdictions.

   ESMA shall publish and keep up-to-date a list of all extra-judicial mechanisms on its website.

Article 81
Professional secrecy

1. Member States shall ensure that competent authorities, all persons who work or who have worked for the competent authorities or entities to whom tasks are delegated

pursuant to Article 69(2), as well as auditors and experts instructed by the competent authorities, are bound by the obligation of professional secrecy. They shall not divulge any confidential information which they may receive in the course of their duties, save in summary or aggregate form such that individual investment firms, market operators, regulated markets or any other person cannot be identified, without prejudice to requirements of national criminal law or the other provisions of this Directive ***or Regulation (EU) No…/… [MiFIR].***

2. Where an investment firm, market operator or regulated market has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties may be divulged in civil or commercial proceedings if necessary for carrying out the proceeding.

3. Without prejudice to requirements of national criminal law, the competent authorities, bodies or natural or legal persons other than competent authorities which receive confidential information pursuant to this Directive ***or to Regulation (EU) No …/… [MiFIR]*** may use it only in the performance of their duties and for the exercise of their functions, in the case of the competent authorities, within the scope of this Directive or ***of Regulation (EU) No …/… [MiFIR] or***, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them and/or in the context of administrative or judicial proceedings specifically related to the exercise of those functions. However, where the competent authority or other authority, body or person communicating information consents thereto, the authority receiving the information may use it for other purposes.

4. Any confidential information received, exchanged or transmitted pursuant to this Directive ***or to Regulation (EU) No …/… [MiFIR]*** shall be subject to the conditions of professional secrecy laid down in this Article. Nevertheless, this Article shall not prevent the competent authorities from exchanging or transmitting confidential information in accordance with this Directive ***or with Regulation (EU) No. …/… [MiFIR]*** and with other Directives ***or Regulations*** applicable to investment firms, credit institutions, pension funds, UCITS, insurance and reinsurance intermediaries, insurance undertakings regulated markets or market operators or otherwise with the consent of the competent authority or other authority or body or natural or legal person that communicated the information.

5. This Article shall not prevent the competent authorities from exchanging or transmitting in accordance with national law, confidential information that has not been received from a competent authority of another Member State.

Article 82
Relations with auditors

1. Member States shall provide, at least, that any person authorised within the meaning of Eighth Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents[1], performing in an investment firm the task described in Article 51 of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of

[1] OJ L 126, 12.5.1984, p. 20.

companies[1], Article 37 of Directive 83/349/EEC or Article 73 of Directive 2009/65/EC or any other task prescribed by law, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which that person has become aware while carrying out that task and which is liable to:

(a) constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of investment firms;

(b) affect the continuous functioning of the investment firm;

(c) lead to refusal to certify the accounts or to the expression of reservations.

That person shall also have a duty to report any facts and decisions of which the person becomes aware in the course of carrying out one of the tasks referred to in the first subparagraph in an undertaking having close links with the investment firm within which he is carrying out that task.

2. The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any contractual or legal restriction on disclosure of information and shall not involve such persons in liability of any kind.

CHAPTER II

COOPERATION BETWEEN THE COMPETENT AUTHORITIES OF THE MEMBER STATES AND WITH ESMA

Article 83
Obligation to cooperate

1. Competent authorities of different Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive ***or under Regulation (EU) No …/… [MiFIR]***, making use of their powers whether set out in this Directive or ***in Regulation (EU) No …/… [MiFIR] or*** in national law.

Competent authorities shall render assistance to competent authorities of the other Member States. In particular, they shall exchange information and cooperate in any investigation or supervisory activities.

In order to facilitate and accelerate cooperation, and more particularly exchange of information, Member States shall designate a single competent authority as a contact point for the purposes of this Directive ***and of Regulation (EU) No …/… [MiFIR].*** Member States shall communicate to the Commission, ESMA and to the other Member States the names of the authorities which are designated to receive requests for

[1] OJ L 222, 14.8.1978, p. 11.

exchange of information or cooperation pursuant to this paragraph. ESMA shall publish and keep up-to-date a list of those authorities on its website.

2. When, taking into account the situation of the securities markets in the host Member State, the operations of a regulated market an MTF, or an OTF that has established arrangements in a host Member State have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the home and host competent authorities of the regulated market shall establish proportionate cooperation arrangements.

3. Member States shall take the necessary administrative and organisational measures to facilitate the assistance provided for in paragraph 1.

Competent authorities may use their powers for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in that Member State.

4. Where a competent authority has good reasons to suspect that acts contrary to the provisions of this Directive ***or of Regulation (EU) No …/… [MiFIR]***, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify the competent authority of the other Member State and ESMA in as specific a manner as possible. The notified competent authority shall take appropriate action. It shall inform the notifying competent authority and ESMA of the outcome of the action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competence of the notifying competent authority.

5. Without prejudice to paragraphs 1 and 4, competent authorities shall notify ESMA and other competent authorities of the details of:

(a) any requests to reduce the size of a position or exposure pursuant to Article 72(1) (f);

(b) any limits on the ability of persons to enter into an instrument pursuant to Article 72(1)(g).

The notification shall include, where relevant, the details of the request pursuant to Article 72(1)(f) including the identity of the person or persons to whom it was addressed and the reasons thereof, as well as the scope of the limits introduced pursuant to Article 72(1)(g) including the person or class of persons concerned, the applicable financial instruments, any quantitative measures or thresholds such as the maximum number of contracts persons can enter into ***or outstanding positions*** before a limit is reached, any exemptions thereto, and the reasons thereof.

The notifications shall be made not less than 24 hours before the actions or measures are intended to take effect. In exceptional circumstances, a competent authority may make the notification less than 24 hours before the measure is intended to take effect where it is not possible to give 24 hours notice.

A competent authority of a Member State that receives notification under this paragraph may take measures in accordance with Article 72(1)(f) or (g) where it is satisfied that

the measure is necessary to achieve the objective of the other competent authority. The competent authority shall also give notice in accordance with this paragraph where it proposes to take measures.

When an action under (a) or (b) relates to wholesale energy products, the competent authority shall also notify the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No 713/2009.

6. In relation to emission allowances, competent authorities should cooperate with public bodies competent for the oversight of spot and auction markets and competent authorities, registry administrators and other public bodies charged with the supervision of compliance under Directive 2003/87/EC in order to ensure that they can acquire a consolidated overview of emission allowances markets.

7. The Commission shall be empowered to adopt delegated acts***, after consulting ESMA,*** in accordance with Article 94 concerning measures to establish the criteria under which the operations of a regulated market in a host Member State could be considered as of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.

8. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation arrangements referred to in paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by ***[...]***[*]***.***

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 84

Cooperation between competent authorities in supervisory activities, for on-the-spot verifications or investigations

1 A competent authority of one Member State may request the cooperation of the competent authority of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation. In the case of investment firms that are remote members of a regulated market the competent authority of the regulated market may choose to address them directly, in which case it shall inform the competent authority of the home Member State of the remote member accordingly.

Where a competent authority receives a request with respect to an on-the-spot verification or an investigation, it shall, within the framework of its powers:

(a) carry out the verifications or investigations itself; allow the requesting authority to carry out the verification or investigation;

(b) allow auditors or experts to carry out the verification or investigation.

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[*] ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

2. With the objective of converging supervisory practices, ESMA may participate in the activities of the colleges of supervisors, including on-site verifications or investigations, carried out jointly by two or more competent authorities in accordance with Article 21 of Regulation (EU) No 1095/2010.

3. ESMA shall develop draft regulatory technical standards to specify the information to be exchanged between competent authorities when cooperating in supervisory activities, on-the-spot-verifications, and investigations.

ESMA shall submit those draft regulatory technical standards to the Commission by ***[...]****.Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with ▌ Articles 10 to 14 of Regulation. (EU) No 1095/2010.

4. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations.

ESMA shall submit those draft implementing technical standards to the Commission by ***[...]****.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 85
Exchange of information

1. Competent authorities of Member States having been designated as contact points for the purposes of this Directive ***and of Regulation (EU) No …/… [MiFIR]*** in accordance with Article 83(1) shall immediately supply one another with the information required for the purposes of carrying out the duties of the competent authorities, designated in accordance to Article 69(1), set out in the provisions adopted pursuant to this Directive ***or to Regulation (EU) No …/… [MiFIR]***.

Competent authorities exchanging information with other competent authorities under this Directive ***or Regulation (EU) No …/… [MiFIR]*** may indicate at the time of communication that such information must not be disclosed without their express agreement, in which case such information may be exchanged solely for the purposes for which those authorities gave their agreement.

2. The competent authority having been designated as the contact point may transmit the information received under paragraph 1 and Articles 82 and 92 to the authorities referred to in Article 74. They shall not transmit it to other bodies or natural or legal persons without the express agreement of the competent authorities which disclosed it and solely for the purposes for which those authorities gave their agreement, except in

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* ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

* ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

duly justified circumstances. In this last case, the contact point shall immediately inform the contact point that sent the information.

3. Authorities as referred to in Article 74 as well as other bodies or natural and legal persons receiving confidential information under paragraph 1 of this Article or under Articles 82 and 92 may use it only in the course of their duties, in particular:

   (a) to check that the conditions governing the taking-up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed by Directive 93/6/EEC, administrative and accounting procedures and internal-control mechanisms;

   (b) to monitor the proper functioning of trading venues;

   (c) to impose sanctions;

   (d) in administrative appeals against decisions by the competent authorities;

   (e) in court proceedings initiated under Article 79;

   (f) in the extra-judicial mechanism for investors' complaints provided for in Article 80.

4. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the exchange of information.

   ESMA shall submit those draft implementing technical standards to the Commission by ***[...]***[*]***.***

   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

5. Neither this Article nor Articles 81 or 92 shall prevent a competent authority from transmitting to ESMA, the European Systemic Risk Board, central banks, the ESCB and the ECB, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks; likewise such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purpose of performing their functions provided for in this Directive ***or in Regulation (EU) No …/… [MiFIR]***.

Article 86
Binding mediation

1. The competent authorities may refer to ESMA situations where a request relating to one of the following has been rejected or has not been acted upon within a reasonable time:

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[*] ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

(-a) to cooperate as provided for in Article 83;

(a) to carry out a supervisory activity, an on-the-spot verification, or an investigation, as provided for in Article 84; to exchange information as provided for in Article 85.

1a The competent authorities may also refer to ESMA situations where a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another member state related to any provisions of this Directive or of Regulation(EU) No .../... [MiFIR].

2. In the situations referred to in paragraph 1, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibilities for refusing to act on a request for information foreseen in Article 87 and to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.

Article 87
Refusal to cooperate

A competent authority may refuse to act on a request for cooperation in carrying out an investigation, on-the-spot verification or supervisory activity as provided for in Article 88 or to exchange information as provided for in Article 85 only where:

(-a) such an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty, security or public policy of the Member State addressed;

(a) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the Member State addressed;

(b) final judgment has already been delivered in the Member State addressed in respect of the same persons and the same actions.

In the case of such a refusal, the competent authority shall notify the requesting competent authority and ESMA accordingly, providing as detailed information as possible.

Article 88
Consultation prior to authorisation

1. The competent authorities of the other Member State involved shall be consulted prior to granting authorisation to an investment firm which is one of the following:

(a) a subsidiary of an investment firm or credit institution authorised in another Member State;

(b) a subsidiary of the parent undertaking of an investment firm or credit institution authorised in another Member State;

(c) controlled by the same natural or legal persons as control an investment firm or credit institution authorised in another Member State.

2. The competent authority of the Member State responsible for the supervision of credit institutions or insurance undertakings shall be consulted prior to granting an authorisation to an investment firm which is:

(a) a subsidiary of a credit institution or insurance undertaking authorised in the ***European*** Union;

(b) a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in the ***European*** Union;

(c) controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in the ***European*** Union.

3. The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders or members and the reputation and experience of persons who effectively direct the business involved in the management of another entity of the same group. They shall exchange all information regarding the suitability of shareholders or members and the reputation and experience of persons who effectively direct the business that is of relevance to the other competent authorities involved, for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

4. ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation.

ESMA shall submit those draft implementing technical standards to the Commission by ***[...]***[*].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 89
Powers for host Member States

1. Host Member States shall provide that the competent authority may, for statistical purposes, require all investment firms with branches within their territories to report to them periodically on the activities of those branches.

2. In discharging their responsibilities under this Directive, host Member States shall provide that the competent authority may require branches of investment firms to provide the information necessary for the monitoring of their compliance with the standards set by the host Member State that apply to them for the cases provided for in Article 37(8). Those requirements may not be more stringent than those which the same Member State imposes on established firms for the monitoring of their compliance with the same standards.

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[*] ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

Article 90
Precautionary measures to be taken by host Member States

1. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that an investment firm acting within its territory under the freedom to provide services is in breach of the obligations arising from the provisions adopted pursuant to this Directive or that an investment firm that has a branch within its territory is in breach of the obligations arising from the provisions adopted pursuant to this Directive which do not confer powers on the competent authority of the host Member State, it shall refer those findings to the competent authority of the home Member State.

   If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the investment firm persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the following shall apply:

   (a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing offending investment firms from initiating any further transactions within their territories. The Commission and ESMA shall be informed of such measures without delay; and

   (b) the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

2. Where the competent authorities of a host Member State ascertain that an investment firm that has a branch within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the investment firm concerned to put an end to its irregular situation.

   If the investment firm concerned fails to take the necessary steps, the competent authorities of the host Member State shall take all appropriate measures to ensure that the investment firm concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the home Member State.

   Where, despite the measures taken by the host Member State, the investment firm persists in breaching the legal or regulatory provisions referred to in the first subparagraph in force in the host Member State, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. The Commission and ESMA shall be informed of such measures without delay.

   In addition, the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

3. Where the competent authority of the host Member State of a regulated market, an MTF or OTF has clear and demonstrable grounds for believing that such regulated market, MTF or OTF is in breach of the obligations arising from the provisions adopted pursuant to this Directive, it shall refer those findings to the competent authority of the home Member State of the regulated market or the MTF or OTF.

Where, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, that regulated market or the MTF persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing that regulated market or the MTF from making their arrangements available to remote members or participants established in the host Member State. The Commission and ESMA shall be informed of such measures without delay.

In addition, the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

4. Any measure adopted pursuant to paragraphs 1, 2 or 3 involving sanctions or restrictions on the activities of an investment firm or of a regulated market shall be properly justified and communicated to the investment firm or to the regulated market concerned.

Article 91

Cooperation and exchange of information with ESMA ***within the European System of Financial Supervision (ESFS), and with the ESCB***

-1a. Competent authorities, as parties to the ESFS, shall cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between them and other parties to the ESFS in accordance with the principle of sincere cooperation pursuant to Article 4(3) of the Treaty on European Union.

1. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties under this Directive and ***under Regulation (EU) No …/… [MiFIR] and*** in accordance with ▌ Regulation (EU) No 1095/2010, ***and, as appropriate, provide ESCB central banks with all information relevant for the performance of their tasks.***

Article 91a
Data protection

With regard to the processing of personal data carried out by Member States within the framework of this Directive and of Regulation (EU) No …/… [MiFIR], competent authorities shall apply the provisions of Directive 95/46/EC and the national rules implementing that Directive. With regard to the processing of personal data by ESMA within the framework of this Directive and of Regulation (EU) No…/… [MiFIR], ESMA shall comply with the provisions of Regulation (EC) No 45/2001.

Article 91b
ESMA advisory committee on high-frequency trading

By 30 June 2014, ESMA shall set up an advisory committee of national experts to determine developments of high-frequency trading that could potentially constitute market manipulation with a view to:

(a) increasing ESMA's knowledge about high-frequency trading; and

(b) providing a list of abusive practices with regard to high-frequency trading, including spoofing, quote stuffing and layering, for the purpose of Article 5(1a) of Regulation (EU) No .../... [MAR].

Article 91c
ESMA advisory committee on technology in financial markets

By 30 June 2014, ESMA shall establish an advisory committee of national experts to establish which technological developments in the markets could potentially constitute market abuse or market manipulation with a view to:

(a) increasing ESMA's knowledge about new technology related trading strategies and their potential for abuse;

(b) adding to the list of abusive practices that have already been identified that relate specifically to high frequency trading strategies; and

(c) assessing the effectiveness of different trading venues approaches to dealing with the risks associated with any new trading practices.

As a result of the assessment referred to in point (c) of the first paragraph, ESMA shall produce additional guidelines for best practice across the Union financial markets.

CHAPTER III

COOPERATION WITH THIRD COUNTRIES

Article 92
Exchange of information with third countries

1. Member States and in accordance with Article 33 of Regulation (EU) No 1095/2010, ESMA, may conclude cooperation agreements providing for the exchange of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 81. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

   Transfer personal data to a third country by a Member State shall be in accordance with Chapter IV of Directive 95/46/EC.

   Transfers of personal data to a *third* country by ESMA shall be in accordance with Article 9 of Regulation (EU) No 45/2001.

   Member States and ESMA may also conclude cooperation agreements providing for the exchange of information with third country authorities, bodies and natural or legal persons responsible for one or more of the following:

   (a) the supervision of credit institutions, other financial institutions, insurance undertakings and the supervision of financial markets;

   (b) the liquidation and bankruptcy of investment firms and other similar procedures;

   (c) the carrying out of statutory audits of the accounts of investment firms and other financial institutions, credit institutions and insurance undertakings, in the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;

   (d) oversight of the bodies involved in the liquidation and bankruptcy of investment firms and other similar procedures;

   (e) oversight of persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions;

   (f) oversight of persons active on emission allowances markets for the purpose of ensuring a consolidated overview of financial and spot markets.

   The cooperation agreements referred to in the third subparagraph may be concluded only where the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 81. Such exchange of information shall be intended for the performance of the tasks of those authorities or bodies or natural or

legal persons. Where a *cooperation* agreement involves the transfer of personal data by a Member State, it shall comply with Chapter IV of Directive 95/46/EC and with Regulation (EC) N° 45/2001 in the case ESMA is involved in the transfer.

2. Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their agreement. The same provision applies to information provided by third country competent authorities.

TITLE VII

CHAPTER 1

DELEGATED ACTS

I

Article 94
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in ***Article 2(3), Article 4(2)(1), (3), (11), (12) and (27) to (33d), Article 13(1), Article 16(12), Article 17(6), Article 23(3), Article 24(8), Article 25(6), Article 27(7), Article 28(3), Article 30(5), Article 32(3), Article 35(8), Article 44(4), Article 51(7), Article 52(6), Article 53(4), Article 60(5), Article 66(6) and (7), 67(7) and (8), Article 67a(3) and (6), Article 68(5) and Article 83(7)*** shall be conferred for an indeterminate period of time from ...[*].

3. The delegation of powers referred to in ***Article 2(3), Article 4(1), (3), (11), (12) and (27) to (33d), Article 13(1), Article 16(12), Article 17(6), Article 23(3), Article 24(8), Article 25(6), Article 27(7), Article 28(3), Article 30(5), Article 32(3), Article 35(8), Article 44(4), Article 51(7), Article 52(6), Article 53(4), Article 60(5), Article 66(6) and (7), 67(7) and (8), Article 67a(3) and (6), Article 68(5) or Article 83(7)*** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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[*] OJ please insert the date of entry into force of this Directive.

5. A delegated act adopted pursuant to ***Article 2(3), Article 4(1), (3), (11), (12) and (27) to (33d), Article 13(1), Article 16(12), Article 17(6), Article 23(3), Article 24(8), Article 25(6), Article 27(7), Article 28(3), Article 30(5), Article 32(3), Article 35(8), Article 44(4), Article 51(7), Article 52(6), Article 53(4), Article 60(5), Article 66(6) and (7), 67(7) and (8), Article 67a(3) and (6), Article 68(5) or Article 83(7)*** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***three months*** of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ***three months*** at the initiative of the European Parliament or the Council.

CHAPTER 2

IMPLEMENTING ACTS

Article 95
Committee procedure

1. ***The*** Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[1]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011[2].

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply ▌.

CHAPTER 3

FINAL PROVISIONS

Article 96
Reports and review

1. Before ***[...]**** the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on:

   (a) the functioning of organised trading facilities, taking into account supervisory experiences acquired by competent authorities, the number of OTFs authorised in the Union and their market share ***and in particular examining whether any adjustments are needed to the definition of an OTF and whether the range of instruments covered by the OTF category remains appropriate***;

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1 OJ L 191, 13.7.2001, p.45.
2 OJ L 55, 28.2.2011, p. 13.
* ***OJ please insert date: 42 months after the date of entry into force of this Directive.***

(b) the functioning of the regime for SME growth markets, taking into account the number of MTFs registered as SME growth markets, numbers of issuers present on these, and relevant trading volumes;

(c) the impact of requirements regarding automated and high-frequency trading;

(d) the experience with the mechanism for banning certain products or practices, taking into account the number of times the mechanisms have been triggered and their effects;

(e) the impact of the application ***of*** limits ***and position checks*** on liquidity, market abuse and orderly pricing and settlement conditions in commodity derivatives markets;

(f) the functioning of the consolidated tape established in accordance with Title V, in particular the availability of post-trade information of a high quality in a consolidated format capturing the entire market ***in all asset classes*** in accordance with user-friendly standards at a reasonable cost***;***

(fa) the impact of the transparency regime in relation to fees, commissions and non-monetary benefits and its impact on the proper functioning of the internal market on cross-border investment advice. **[Am. 9]**

Article 96a
Staff and resources of ESMA

By [...]*, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Directive and with Regulation (EU) No …/… [MiFIR] and submit a report to the European Parliament, the Council and the Commission.

Article 97
Transposition

1. Member States shall adopt and publish, by ***[...]***, the laws, regulations and administrative provisions necessary to comply with ***Articles 1 to 5, 7, 9, 10, 13 to 25, 27 to 32, 34 to 37, 39, 41 to 46, 48, 51 to 54, 59 to 69a, 71 to 77, 79, 80, 83, 84, 85, 87 to 90, 92 to 99 and Annexes I and II [list of all Articles which have undergone substantive changes compared to Directive 2004/39/EC]***. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made. They shall also include a statement that references in existing laws, regulations and

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* ***OJ please insert date: 18 months after the date of entry into force of this Directive.***
** ***OJ please insert date: two years after the date of entry into force of this Directive.***

administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

Members States shall apply these measures from ***[…]***[*] except for the provisions transposing Article 67(2) which shall apply from ***[…]***[**].

2. Member States shall communicate to the Commission and ESMA the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 98
Repeal

Directive 2004/39/EC ***as amended by the acts listed in Part A of Annex IIa is*** repealed with effect from ***[…]***[***]***, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of Directive 2004/39/EC set out in Part B thereof***.

References to Directive 2004/39/EC or to Directive 93/22/EEC shall be construed as references to this Directive ***or to Regulation (EU) No …/… [MiFIR] and shall be read in accordance with the correlation tables set out in Parts A and B, respectively, of Annex IIb***.

References to terms defined in, or Articles of, Directive 2004/39/EC or Directive 93/22/EEC shall be construed as references to the equivalent term defined in, or Article of, this Directive.

Article 98a
Amendment to Directive 98/26/EC

Directive 98/26/EC is amended as follows:

In Article 1, the following subparagraph is added:

> ***"This Directive shall not apply to emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community***[+]***.***

[+] ***OJ L 275, 25.10.2003, p. 32."***

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[*] ***OJ please insert date: 30 months after the date of entry into force of this Directive.***
[**] ***OJ please insert date: 42 months after the date of entry into force of this Directive.***
[***] ***OJ please insert date: 18 months after the date of entry into force of this Directive.***

Article 99

Transitional provisions

Third-country firms may ▌ provide services and activities ***through a branch*** in Member States, in accordance with national regimes**,** until ***one year*** after the ***adoption by the Commission*** of ***a decision in relation to the relevant third country in accordance with Article 41(3)***.

▌

Article 100

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 101

Addressees

This Directive is addressed to the Member States.

Done at …,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

LISTS OF SERVICES AND ACTIVITIES AND FINANCIAL INSTRUMENTS

SECTION A

INVESTMENT SERVICES AND ACTIVITIES

(1) Reception and transmission of orders in relation to one or more financial instruments;

(2) Execution of orders on behalf of clients;

(3) Dealing on own account;

(4) Portfolio management;

(5) Investment advice;

(6) Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;

(7) Placing of financial instruments without a firm commitment basis;

(8) Operation of Multilateral Trading Facilities;

▌

(10) Operation of Organised Trading Facilities.

SECTION B

ANCILLARY SERVICES

(-1a) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;

(1) Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;

(2) Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;

(3) Foreign exchange services where these are connected to the provision of investment services;

(4) Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;

(5) Services related to underwriting.

(6) Investment services and activities as well as ancillary services of the type included under Section A or B of Annex 1 related to the underlying of the derivatives included under points (5), (6), (7) and (10) of Section C where these are connected to the provision of investment or ancillary services.

SECTION C

FINANCIAL INSTRUMENTS

(1) Transferable securities;

(2) Money-market instruments;

(3) Units in collective investment undertakings;

(4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, ▌ or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

(5) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

(6) Options, futures, swaps, and any other derivative contract relating to commodities that ***are not intended to*** be physically settled provided that they are traded on a regulated market, OTF, or an MTF;

(6a) Insurance contracts linked to investment-related instruments;

(7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise referred to in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regards to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;

(8) Derivative instruments for the transfer of credit risk;

(9) Financial contracts for differences;

(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates***, emission allowances*** or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise referred to in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market , OTF, or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls;

(11) Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme);

(11a) Additional specifications in relation to points (7) and (10).

1. For the purposes of point (7), a contract which is not a spot contract within the meaning of paragraph 2 and which is not covered by paragraph 4 shall be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes if it satisfies the following conditions:

(a) it meets one of the following sets of criteria:

(i) it is traded on a third-country trading facility that performs a similar function to a regulated market, an MTF or an OTF;

(ii) it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF, an OTF or such a third country trading facility;

(iii) it is expressly stated to be equivalent to a contract traded on a regulated market, MTF, OTF or such a third country trading facility;

(b) it is cleared by a clearing house or other entity carrying out the same functions as a central counterparty, or there are arrangements for the payment or provision of margin in relation to the contract;

(c) it is standardised so that, in particular, the price, the lot, the delivery date or other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

2. A spot contract for the purposes of paragraph 1 means a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods:

(a) two trading days;

(b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

However, a contract is not a spot contract if, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period referred to in the first subparagraph.

3. For the purposes of point (10), a derivative contract relating to an underlying referred to in this Section shall be considered to have the characteristics of other derivative financial instruments if one of the following conditions is satisfied:

(a) that contract is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;

(b) that contract is traded on a regulated market, an MTF or an OTF;

(c) the conditions laid down in paragraph 1 are satisfied in relation to that contract.

4. A contract shall be considered to be for commercial purposes for the purposes of point (7) and as not having the characteristics of other derivative financial instruments for the purposes of points (7) and (10), if it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network, and it is necessary to keep in balance the supplies and uses of energy at a given time.

5. In addition to derivative contracts of a kind referred to in point (10), a derivative contract relating to any of the following shall fall within point (10) if it meets the criteria set out in both point (10) and in paragraph 3:

(a) telecommunications bandwidth;

(b) commodity storage capacity;

(c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means;

(d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;

(e) a geological, environmental or other physical variable;

(f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;

(g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation.

SECTION D

LIST OF DATA REPORTING SERVICES

(1) Operating an approved publication arrangement;

(2) Operating a consolidated tape provider;

(3) Operating an approved reporting mechanism.

ANNEX II

PROFESSIONAL CLIENTS FOR THE PURPOSE OF THIS DIRECTIVE

Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered a professional client, the client must comply with the following criteria:

I. CATEGORIES OF CLIENT WHO ARE CONSIDERED TO BE PROFESSIONALS

The following should all be regarded as professionals in all investment services and activities and financial instruments for the purposes of the Directive.

(1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities referred to: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:

(a) Credit institutions;

(b) Investment firms;

(c) Other authorised or regulated financial institutions;

(d) Insurance companies;

(e) Collective investment schemes and management companies of such schemes;

(f) Pension funds and management companies of such funds;

(g) Commodity and commodity derivatives dealers;

(h) Locals;

(i) Other institutional investors;

(2) Large undertakings meeting two of the following size requirements on a company basis:

— balance sheet total:	EUR 2 000 0000
— net turnover:	EUR 40 000 000
— own funds:	EUR 2 000 000

(3) National and regional governments, including public bodies that manage public debt at national or regional level , Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.

(4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities referred to above are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the client of an investment firm is an undertaking referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the client is deemed to be a professional client, and will be treated as such unless the firm and the client agree otherwise. The firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

This higher level of protection will be provided when a client who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

II.1II. CLIENTS WHO MAY BE TREATED AS PROFESSIONALS ON REQUEST

II.1. Identification criteria

Clients other than those referred to in Section I, including public sector bodies ***except*** local public authorities, municipalities and ***including*** private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules.

Investment firms should therefore be allowed to treat any of the above clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. These clients should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Section I.

Any such waiver of the protection afforded by the standard conduct of business regime shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved.

The fitness test applied to managers and directors of entities licensed under Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to the above assessment should be the person authorised to carry out transactions on behalf of the entity.

In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:

– the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters,

– the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000,

– the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

II.2. PROCEDURE

The clients defined above may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

– they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product,

– the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose,

– they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1 above.

However, if clients have already been categorised as professionals under parameters and procedures similar to those above, it is not intended that their relationships with investment firms should be affected by any new rules adopted pursuant to this Annex.

Firms must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm must take appropriate action.

ANNEX IIA

Part A

Repealed Directive with list of its successive amendments (referred to in Article 98)

Directive 2004/39/EC of the European Parliament and of the Council (OJ L 145, 30.4.2004, p. 1)

Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 on markets in financial instruments, as regards certain deadlines (OJ L 114, 27.4.2006, p. 60)

Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.9.2007, p. 1)

Directive 2008/10/EC of the European Parliament and of the Council of 11 March 2008 on markets in financial instruments, as regards the implementing powers conferred on the Commission (OJ L 76, 19.3.2008, p. 33)

Directive 2010/78/EC of the European Parliament and of the Council of 24 November 2010 in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 331, 15.12.2010, p. 120)

Part B	
List of time-limits for transposition into national law (referred to in Article 98)	
Directive 2004/39/EC	
Transposition period	***31 January 2007***
Implementation period	***1 November 2007***

ANNEX IIB

Correlation Tables

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Article 1(1)	***Article 1(1)***
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Article 1(3)	***Article 1(2)***
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Article 3(1)(2)	***Article 3(1) and (2)***
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Article 4(1)	
Article 4(2)	***Article 4(1)***
Article 4(3)	***Article 4(2)***
Article 5	***Article 5***
Article 6	***Article 6***
Article 7(1)(2)(3)(4)	***Article 7(1), (2), (3) and (4)***
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Article 8	***Article 8***
Article 9(1)(2)(3)(4)	***Article 9(1)***
Article 9(5)	***Article 9(2)***
Article 9(6)	
Article 9(7)	***Article 9(3)***
Article 9(8)	***Article 9(4)***
Article 10(1)(2)	***Article 10(1) and (2)***
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Article 11(1)	***Article 10(3)***

Article 11(2)	***Article 10(4)***
Article 11(3)	***Article 10(5)***
Article 11(4)	***Article 10(6)***
Article 12	***Article 10a***
Article 13	***Article 10b***
Article 14	***Article 11***
Article 15	***Article 12***
Article 16(1)(2)(3)(4)(5)(6)	***Article 13(1), (2), (3), (4), (5) and (6)***
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Article 16(8)	***Article 13(7)***
Article 16(9)	***Article 13(8)***
Article 16(10)	
Article 16(11)	***Article 13(9)***
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Article 18(1)(2)	***Article 14(1) and (2)***
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Article 18(4)	***Article 14(5)***
Article 18(5)	***Article 14(6)***
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Article 21	***Article 16***
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Article 24(1)(2)(3)	***Article 19(1), (2) and (3)***
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Article 24(5)	
Article 24(6)	
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Article 25(1)	***Article 19(4)***
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Article 25(4)	***Article 19(7)***
Article 25(5)	***Article 19(8)***
Article 25(6)	***Article 19(10)***
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Article 27(1)	***Article 21(1)***
Article 27(2)	
Article 27(3)	***Article 21(2)***
Article 27(4)	***Article 21(3)***
Article 27(5)	***Article 21(4)***
Article 27(6)	***Article 21(5)***
Article 27(7)	***Article 21(6)***
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Article 28	***Article 22***
Article 29	***Article 23***
Article 30	***Article 24***
Article 31	***Article 26***

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Article 36(1)(2)(3)(4)	***Article 31(1), (2),(3) and (4)***
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Article 36(6)	***Article 31(5)***
Article 36(7)	***Article 31(6)***
Article 36(8)(9)	***Article 31(7)***
Article 37(1)(2)(3)(4)(5)(6)	***Article 32(1), (2), (3), (4), (5) and (6)***
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Article 37(8)	***Article 32(7)***
Article 37(9)	***Article 32(8)***
Article 37(10)	***Article 32(9)***
Article 37(11)	***Article 32(10)***
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Article 69	***Article 48***
Article 70	***Article 49***
Article 71(1)(2)	***Article 50(1) and (2)***
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Article 73(1)	***Article 51(1)***
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Article 73(3)	***Article 51(4)***
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Article 96	***Article 65***
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Article 100	***Article 72***
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Part B	
Regulation (EU) No .../... [MiFIR]	***Directive 2004/39/EC***
Article 1	
Article 2	***Article 4***
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Article 4(1)	***Article 29(2) and Article 44(2)***
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Article 5(1)	***Article 30(1) and Article 45(1)***
Article 5(2)	***Article 45(1)***
Article 6(1)	***Article 30(2) and Article 45(2)***
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Article 13	***Article 27(1) and (2)***
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