

REVIEW OF THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE (MIFID)

Reply from the European federation of Investors (EuroInvestors)

2 February 2011

EuroInvestors

EuroInvestors (the European Federation of Investors or EFI) was created in the summer of 2009, following the financial crisis which demonstrated the limits of the almost exclusive dialogue between regulators and the financial industry, largely ignoring the user side. EFI aims at representing and defending at the European level the interests of financial services users in order to promote training, research and information on investments, savings, borrowings and Personal Finances of individuals in Europe, by grouping the organisations pursuing the same objectives at a national or international level. Already about 45 national organizations of investors and other financial services users have joined us, and EFI already represents about two million European citizens.

Executive Summary

• Capital markets structures

The Markets in Financial Instruments Directive (MiFID) came into force on 1 November 2007. In the name of a quite theoretical notion of “competition”, it allowed and promoted the fragmentation of European equity markets: “MTFs” were created in addition to the existing “regulated markets” (“RM”); OTC trades were also encouraged and could represent today about 40 % of the trades, although no one really seems to know for sure. The results are quite damaging for investors, especially individual ones¹:

- Order (“pre trade”) and trade (“post trade”) data transparency has deteriorated considerably, as small investors do not usually get the data from the new market venues, i.e. they now probably miss about 50% or more of the data;
- The costs for collecting consolidated market data are now much too high for small investors. MiFID has ignored the nature of capital markets data as a public good.
- The average size of disclosed trades has collapsed, but certainly not the orders’ size from end investors, and studies on the impact of the markets fragmentation on liquidity are contradictory at best.
- The “best execution” of retail orders - especially in terms of best price - is simply not the case according to a recent study².
- The cost of shares’ trading for small investors (transaction and information costs) has not decreased.

¹ See for example the European Investors Working Group (EIWG) report “*Restoring Investor confidence in European Capital Markets*”, February 2010, pages 5 and 13:
<http://www.ceps.eu/book/restoring-investor-confidence-european-capital-markets>

² See Annex 1: Equiduct study for EuroInvestors, January 2011

Overall, MiFID has helped to further marginalize individual investors, despite the fundamental economic purpose of the capital markets (as opposed to intermediated finance) which is to connect directly end investors and issuers of capital. MiFID facilitated the re-intermediation of equity markets to the benefit of financial intermediaries - especially the big ones who could invest enough in information technology to profit from the fragmentation – and to the detriment of non financial issuers as well as end investors, pushing those further to “packaged” – i.e. high embedded commissions - products.

This marginalization of small investors has continued in the MiFID revision process which has largely ignored their complaints:

- The CESR technical advice to the Commission barely takes EFI’s requests into consideration if any (we refer to our replies to CESR’s consultations on secondary equity markets³, on investor protection and intermediaries⁴ and on non equity markets transparency⁵).
- This European Commission consultation paper claims that “*the Directive has driven ... better protection and services for investors*” and that “*positive feedback has been received from market participants*”, while retail investors’ feedback has been mostly negative, in particular, at the Commission’s Public Hearing on the Review of the MiFID (20 September 2010)⁶.

EFI is also surprised by the lack of evidence produced in the Commission’s consultation document to support these assertions.

Small and medium size end investors ask urgently for:

- A fact-finding study being conducted on the impact of MiFID -induced changes on small and individual investors, and the consequences on the economic and social value of the now largely “re –intermediated” European capital markets;
- a publicly enforced and controlled “consolidated tape” both for pre- and post-trade data, which must be easily and freely accessible by all investors in the equity market at least as before the introduction of MiFID;
- The actual enforcement of the “best execution” duty;
- The reduction of “dark” and OTC trading to more acceptable levels, certainly less than 10% of total market activity;
- The thorough improvement of pre- and post –trade transparency of fixed income products sold to retail investors;
- A minimum liquidity level of these fixed income securities sold to retail investors on the secondary market.

• **Investor protection**

Investor protection is one of the key objectives of the MiFID Directive.

EFI welcomes several proposals from the Commission such as:

- The better identification of “complex” investment products which would require an “appropriateness” test from the intermediaries before any selling to non –qualified investors;

³ http://www.esma.europa.eu/popup_responses.php?id=5550

⁴ http://www.esma.europa.eu/popup_responses.php?id=5562

⁵ http://www.esma.europa.eu/popup_responses.php?id=5627

⁶ See

http://ec.europa.eu/internal_market/securities/docs/isd/20100920/euroinvestors_euroshareholders_g_prache_en.pdf

- The incompatibility between getting paid by providers on product sales (“inducements”) and using an “independent advice” label, with some qualifications.

But some **critical issues for investor protection are unfortunately not addressed** by the consultation document:

- **The insufficient enforcement of the fair information rules⁷**: we have evidence of widespread misleading information to retail investors that is persisting year after year⁸. It is unfortunate that the Commission seems not to have investigated the actual implementation of this key provision of MiFID over the last three years.
- **The widespread and misleading use of the “advice” and “advisors” words in MiFID**: As long as financial intermediaries’ remuneration is mostly coming from the investment products providers, these intermediaries should not be allowed to label themselves as “advisers”: they are not advisers but sales people. Why do regulators allow and promote such a misleading labeling of sales professionals as “financial advisers” in the retail investments area that is so critical to the future well –being of EU citizens?
- The necessity for **unbiased, competent and knowledgeable advice** and in the interest of the client: *“recent developments in financial markets have highlighted how the sale of financial products to retail consumers has been influenced by unbalanced fee structures and compensation mechanisms. In some cases, such compensation mechanisms compromise the ability of investment advisors to uphold the primacy of customers’ interests.”*⁹
- The actual **justification and disclosure of the so –called “inducements”** and sales –based remuneration of “advisors” by product providers: this key investor protection feature of MiFID is not properly enforced in Member States and is even ignored by CESR’s “*Consumer guide to MiFID*” despite the requests from investor and consumer advocates¹⁰.
- The necessity for MiFID investor protection provisions to **cover all retail financial investment products** offered to EU citizens, and not only – as it is currently the case – about only one fifth of them (securities and funds). The “PRIPs” initiative is unfortunately unlikely to meet this objective because of its now too narrowed scope (we refer to our reply to the PRIPs Consultation¹¹).

⁷ Article 19.2 of the Framework directive and article 27 of the Implementing directive

⁸ See case study attached as annex 2

⁹ The European Investors Working Group (EIWG) report “*Restoring Investor confidence in European Capital Markets*”, February 2010:

<http://www.ceps.eu/book/restoring-investor-confidence-european-capital-markets>

¹⁰ See FIN-USE 2008 report, page 9: http://ec.europa.eu/internal_market/fin-use_forum/docs/annualrep_2007_en.pdf

¹¹

<http://euroinvestors.org/upload/positions/EFI%20PRIPs%20reply%20to%20EC%20202011%2001311296556000.pdf>

The 83 pages questionnaire from the European Commission is not tailored to individual investors and savers. This is why we did not reply to some questions which are designated to other than individual investors “market participants”.

2. DEVELOPMENTS IN MARKET STRUCTURES

2.1. Defining admission to trading

(1) What is your opinion on the suggested definition of admission to trading? Please explain the reasons for your views.

EFI believes that admission to trading should remain a meaningful concept and is concerned that such a concept would be watered down by being applied to other organised trading facilities than Regulated Markets (RMs). It should neither apply to any new category of market venues to be invented by the European Authorities such as “*Organised trading facilities*”.

2.2. Organised trading facilities

2.2.1. General requirements for all organised trading facilities

(2) What is your opinion on the introduction of, and suggested requirements for, a broad category of organised trading facility to apply to all organised trading functionalities outside the current range of trading venues recognised by MiFID? Please explain the reasons for your views.

EFI understands and supports the rationale behind the Commission’s proposal for a broad category of organised trading facility (OTF), aiming at restricting the scope of unregulated OTC transactions and ensuring that trading systems with similar functionalities are subject to similar requirements.

But EFI is not in favor of creating another category of market venue to address problems coming from the first fragmentation of market venues by MiFID in 2007. Such a proposal would increase the complexity already created by MiFID. End investors would be even more confused than before. How they are supposed to understand the difference between:

- “*multiple trading facilities*” (MTF) which already do not generally understand (for example there is not one word on MTFs in the CESR “Consumer Guide to MiFID”);
- And “*organised trading facilities*”?

This would likely further increase the opacity of the equity markets for the end users: issuers and end investors.

EFI believes the alternative solution to reduce the scope of OTC trading is to impose very low and carefully designed thresholds to OTC operators (crossing networks, etc.) above which they will be obliged to switch to a regulated market venue (RM, MTF or Systematic Internaliser). We even question the relevance of keeping this third regulated category of “systematic internalisers” as only 10 of these exist three years after the MiFID implementation.

(3) What is your opinion on the proposed definition of an organised trading facility? What should be included and excluded?

See our reply to Q2.

(4) What is your opinion about creating a separate investment service for operating an organised trading facility? Do you consider that such an operator could passport the facility?

See our reply to Q2.

(5) What is your opinion about converting all alternative organised trading facilities to MTFs after reaching a specific threshold? How should this threshold be calculated, e.g. assessing the volume of trading per facility/venue compared with the global volume of trading per asset class/financial instrument? Should the activity outside regulated markets and MTFs be capped globally? Please explain the reasons for your views.

See our reply to Q2.

Yes, we believe OTC activity should be capped globally, in addition to the individual thresholds mentioned previously.

2.2.2. Crossing systems

(7) What is your opinion on the suggested clarification that if a crossing system is executing its own proprietary share orders against client orders in the system then it would prima facie be treated as being a systematic internaliser and that if more than one firm is able to enter orders into a system it would be prima facie be treated as a MTF? Please explain the reasons for your views.

Yes, we agree.

2.2.3. Trading of standardised OTC derivatives on exchanges or electronic trading platforms where appropriate

(8) What is your opinion of the introduction of a requirement that all clearing eligible and sufficiently liquid derivatives should trade exclusively on regulated markets, MTFs, or organised trading facilities satisfying the conditions above? Please explain the reasons for your views.

Yes, we agree, except for “organised trading facilities” (see Q2). This is the only way to ensure the protection of investors.

(9) Are the above conditions for an organised trading facility appropriate? Please explain the reasons for your views.

See Q2.

(10) Which criteria could determine whether a derivative is sufficiently liquid to be required to be traded on such systems? Please explain the reasons for your views.

This technical matter should be handed to ESMA.

(12) Are there existing OTC derivatives that could be required to be traded on regulated markets, MTFs or organised trading facilities? If yes, please justify. Are there some OTC derivatives for which mandatory trading on a regulated market, MTF, or organised trading facility would be seriously damaging to investors or market participants? Please explain the reasons for your views.

Yes: Forex products, CDS and interest rate swaps could be required to be traded on regulated markets or MTFs. Transparency does not hurt liquidity in contrary to what some financial industry people try to make European Authorities believe. One should remember that in 2008 the most illiquid markets were also the most opaque: fixed income and ABS in particular, whereas the main equity markets remained open and liquid at all time, even though they deal with the longest term and risky securities.

2.3 Automated trading and related issues

(13) Is the definition of automated and high frequency trading provided above appropriate?

Not applicable to retail investors.

(14) What is your opinion of the suggestion that all high frequency traders over a specified minimum quantitative threshold would be required to be authorised?

We agree (see Q2). EFI believes these are often “free riders” exploiting the data from “real” end investors who do not benefit from their activities.

Yes, it is necessary. Otherwise the asymmetry of information between these professional market participants and “real” end investors will increase further, as the latter will never match the technology investments done by the former.

(15) What is your opinion of the suggestion that high frequency traders might be required to provide liquidity on an ongoing basis where they actively trade in a financial instrument under similar conditions as apply to market makers? Under what conditions should this be required?

We agree.

(20) What is your opinion about requiring orders to rest on the order book for a minimum period of time? How should the minimum period be prescribed? What is your opinion of the alternative, namely of introducing requirements to limit the ratio of orders to transactions executed by any given participant? What would be the impact on market efficiency of such a requirement?

Yes, a minimum period of time is a good requirement to avoid the multiplication of “fake” orders by high frequency traders.

2.4. Systematic internalisers

(21) What is your opinion about clarifying the criteria for determining when a firm is a SI? If you are in favour of quantitative thresholds, how could these be articulated? Please explain the reasons for your views.

See Q2

2.5. Further alignment and reinforcement of organisational and market surveillance requirements for MTFs and regulated markets as well organised trading facilities

(23) What is your opinion of the suggestions to further align organisational requirements for regulated markets and MTFs? Please explain the reasons for your views.

Yes, we agree. We do not see the rationale for these to be unaligned in the first place. Regulatory arbitrage and uneven playing fields must be avoided.

2.6. SME markets

(25) What is your opinion of the suggestion to introduce a new definition of SME market and a tailored regime for SME markets under the framework of regulated markets and MTFs? What would be the potential benefits of creating such a regime?

EFI fully agrees with the essential economic and social need to promote SME markets.

We believe a prerequisite step for the Commission is to research evidence on the impact of MiFID on SME issuers. It would seem that the market venues competition generated by MiFID has mainly touched the most liquid issues, i.e. mostly the ones from large corporations. Therefore we are concerned that MiFID is having a negative impact on SMEs' access to capital.

3: PRE-AND POST-TRADE TRANSPARENCY

3.1. Equity markets

3.1.1 Pre-trade transparency

(27) What is your opinion of the suggested changes to the framework directive to ensure that waivers are applied more consistently?

The reference price waiver should be deleted.

(31) What is your opinion about keeping the large in scale waiver thresholds in their current format? Please explain the reasons for your views.

EFI supports keeping the large in scale waiver thresholds in their current format. EFI is indeed concerned that there is a widespread confusion when some industry participants mention a reduction in the size of orders and trades to justify a revision of the current format of large in scale waivers, i.e. to expand the scope of dark and OTC trades even further. There is absolutely no evidence (and we have not seen any research on this sensitive issue) that investors' orders size has decreased. Since MiFID implementation, it appears that the orders from investors are often sliced into pieces by market intermediaries, not by the end clients. Then, of course the sliced orders turn into sliced trades as well. The benefits of such practices for end investors - if any - should be investigated. At the very least, market information and statistics tools should distinguish "real" orders" coming from the end clients from the sliced orders engineered by market intermediaries.

(32) What is your opinion about the suggestions for reducing delays in the publication of trade data? Please explain the reasons for your views

EFI supports suggestions for reducing delays in the publication of data. In addition, comprehensive trade data should be made available free of charge to all investors after five minutes.

3.2. Equity-like instruments

(33) What is your opinion about extending transparency requirements to depositary receipts, exchange traded funds and certificates issued by companies? Are there any further products (e.g. UCITS) which could be considered? Please explain the reasons for your views.

Yes, EFI supports such an extension to ADRs, ETFs and certificates. These transparency requirements should also apply to investment funds (UCITS or non UCITS) that are admitted for trading on regulated markets (RMs and MTFs).

3.3. Trade transparency regime for shares traded only on MTFs or organised trading facilities

(35) What is your opinion about reinforcing and harmonising the trade transparency requirements for shares traded only on MTFs or organised trading facilities? Please explain the reasons for your views.

We agree. We see no reason for lower transparency requirements to start with.

(36) What is your opinion about introducing a calibrated approach for SME markets? What should be the specific conditions attached to SME markets?

See reply to Q 25.

3.4. Non equity markets

3.4.2. Post-trade transparency

(37) What is your opinion on the suggested modification to the MiFID framework directive in terms of scope of instruments and content of overarching transparency requirements? Please explain the reasons for your views.

EFI supports a modification of the MiFID framework directive to include a wider scope to include bonds, structured products and derivatives.

(38) What is your opinion about the precise pre-trade information that regulated markets, MTFs and organised trading facilities as per section 2.2.3 above would have to publish on non-equity instruments traded on their system? Please be specific in terms of asset-class and nature of the trading system (e.g. order or quote driven).

Same requirements as for equities. Plus availability free of charge to all investors after five minutes.

(40) In view of calibrating the exact post-trade transparency obligations for each asset class and type, what is your opinion of the suggested parameters, namely that the regime be transaction-based, and predicated on a set of thresholds by transaction size? Please explain the reasons for your views.

EFI is not comfortable with transaction size being the only criterion. EFI believes that, in particular, all large bond issues should be subject to the same transparency requirements as equities on the regulated markets. This implies that all these large issues have identified market makers with binding maximum spreads and minimum bids and offers within those spreads. This is working very well for ETFs, including bond ETFs.

(41) What is your opinion about factoring in another measure besides transaction size to account for liquidity? What is your opinion about whether a specific additional factor (e.g. issuance size, frequency of trading) could be considered for determining when the regime or a threshold applies? Please justify.

See reply to Q 40 above.

3.5. Over the counter trading

(42) Could further identification and flagging of OTC trades be useful? Please explain the reasons.

Yes. As mentioned previously, the regulators themselves do not really know the size of the OTC market.

4. DATA CONSOLIDATION*

4.1. Improving the quality of raw and ensuring it is provided in a consistent format

4.2. Reducing the cost of post trade data for investors

(49) In your view, what would constitute a "reasonable" cost for the selling or dissemination of data? Please provide the rationale/criteria for such a cost.

As far as small investors are concerned, this cost should by no means be superior to what was before MiFID, i.e. free of charge after some delay.

(50) What is your opinion about applying any of these suggestions to non-equity markets? Please explain the reasons for your views.

We agree with such an extension. We see no reason to have a lower quality of trade data for non – equity markets, especially for those most directly relevant to small investors (bonds).

4.3. A European Consolidated tape

(51) What is your opinion of the suggestion for the introduction of a European Consolidated Tape for post-trade transparency? Please explain the reasons for your views, including the advantages and disadvantages you see in introducing a consolidated tape.

EFI asks for a publicly enforced and controlled “consolidated tape” both for pre- and post-trade data. This “tape” shall be easily and freely accessible by all investors in the equity market at least as before MiFID. This is a major failure of MiFID and of the fragmentation of equity markets it has generated. The very least the Regulator should do is fixing the fragmentation of market data, as this was done in the US.

Currently, retail investors most often do not get any comprehensive trade data neither from their brokers nor intermediaries, and generally only get those of the “home” market (the “RM”).

Also, we disagree with the proposed exclusion of pre –trade data from this market data consolidation proposal: this would increase the asymmetry of the market information between “professional” and small end investors. For instance the US consolidated tape applies also to pre –trade data.

(52) If a post-trade consolidated tape was to be introduced which option (A, B or C) do you consider most appropriate regarding how a consolidated tape should be operated and who should operate it? Please explain the reasons for your view

EFI’s first choice is Option A, i.e. a formal consolidated tape operated by a single, non –profit seeking entity, established and appointed by a legal act.

Indeed, three years after MiFID’s implementation, the financial industry has not come up with anything close to a consolidated tape solution. It is not realistic to believe that the industry would come up any time soon with a consolidated tape as defined above. Such a solution is now very urgently needed.

Please note that this was the Option adopted for the US equity markets.

If the European Authorities would still give in to some financial industry lobbies, option B would be a compromise/ ESMA should manage the tender process.

In any option, including option C, the European Authorities should set very tight and mandatory deadlines, as small investors have suffered long enough from the disappearance of the comprehensive equity market data in Europe.

(53) If you prefer option A please outline which entity you believe would be best placed to operate the consolidated tape (e.g. public authority, new entity or an industry body).

The new ESMA seems the obvious choice (or a new entity controlled by ESMA). In the US, the SEC tightly controls two not for profit associations dedicated to the consolidation of equity markets data.

(54) On Options A and B, what would be the conditions to make sure that such an entity would be commercially viable? In order to make operating a European consolidated tape commercially viable and thus attaining the regulatory goal of improving quality and supply of post-trade data, should market participants be obliged to acquire data from the European single entity as it is the case with the US regime?

Yes.

(55) On Option B, which of the two sub-options discussed for revenue distribution for the data appears more appropriate and would ensure that the single entity described would be commercially viable?

The first sub-option under which trading venues and APAs would make their data available to the single entity on a reasonable commercial basis is preferable as it would more safely ensure timely and free of charge information to retail investors.

(56) Are there any additional factors that need to be taken into account in deciding who should operate the consolidated tape (e.g. latency, expertise, independence, experience, competition)?

The governance and independence factors are obviously key for such an essential economic and social service.

(57) Which timeframe do you envisage as appropriate for establishing a consolidated tape under each of the three options described?

The consolidated tape should be fully operational no later than January 1st, 2012. That would be more than four years after the fragmentation of equity markets in Europe. Investors should not wait much longer.

(58) Do you have any views on a consolidated tape for pre-trade transparency data?

See reply to Q 51. We do not see why - contrary to US investors – European investors should be deprived of comprehensive best offers and bids prices. This is generating a huge asymmetry and discrimination between professional and big investors on the one side (who can afford to pay for consolidated pre –trade data) and the small ones (who can't and who actually most often don't get it. We refer to the attached recent study published by EFI¹²: a consolidated tape for pre –trade data is necessary as well.

(59) What is your opinion about the introduction of a consolidated tape for non-equity trades? Please explain the reasons for your views.

EFI strongly supports the introduction of a European consolidate tape for non-equity trades for the very same reasons as for equity ones.

5. MEASURES SPECIFIC TO COMMODITY DERIVATIVES MARKETS

5.1. Specific requirements for commodity derivative exchanges

(60) What is your opinion about requiring organised trading venues which admit commodity derivatives to trading to make available to regulators (in detail) and the public (in aggregate) harmonised position information by type of regulated entity? Please explain the reasons for your views.

Yes. Currently, these are very non transparent financial instruments.

(63) What is your opinion about requiring organised commodity derivative trading venues to design contracts in a way that ensures convergence between futures and spot prices? What is your opinion about other possible requirements for such venues, including introducing limits to how much prices can vary in a given timeframe? Please explain the reasons for your views.

EFI agrees that commodity derivative contracts should be designed in a way that ensures convergence between futures and spot prices.

¹² See Annex 1

Also the information should be standardized to the maximum extent possible.

5.2. MiFID exemptions for commodity firms

5.3. Definition of other financial instruments

5.4. Emission allowances

(66) What is your opinion on whether to classify emission allowances as financial instruments? Please explain the reasons for your views.

We agree with the Commission's proposal to consider this classification as an option in a forthcoming study.

6. Transaction Reporting

6.1. Scope

(67) What is your opinion on the extension of the transaction reporting regime to transactions in all financial instruments that are admitted to trading or traded on the above platforms and systems? Please explain the reasons for your views.

Yes, but on RMs and MTFs only (see reply to Q2).

(68) What is your opinion on the extension of the transaction reporting regime to transactions in all financial instruments the value of which correlates with the value of financial instruments that are admitted to trading or traded on the above platforms and systems? Please explain the reasons for your views.

Yes

(69) What is your opinion on the extension of the transaction reporting regime to transactions in depositary receipts that are related to financial instruments that are admitted to trading or traded on the above platforms and systems? Please explain the reasons for your views.

Yes.

(70) What is your opinion on the extension of the transaction reporting regime to transactions in all commodity derivatives? Please explain the reasons for your views.

Yes.

(72) What is your opinion of an obligation for regulated markets, MTFs and other alternative trading venues to report the transactions of non authorised members or participants under MiFID? Please explain the reasons for your views.

Yes.

(73) What is your opinion on the introduction of an obligation to store order data? Please explain the reasons for your views.

Yes.

(74) What is your opinion on requiring greater harmonisation of the storage of order data? Please explain the reasons for your views.

Yes.

6.2. Content of reporting

(79) What is your opinion on introducing implementing acts on a common European transaction reporting format and content? Please explain the reasons for your views?

Yes, standardization is definitely the way to go.

6.3. Reporting Channels

(80) What is your opinion on the possibility of transaction reporting directly to a reporting mechanism at EU level? Please explain the reasons for your views.

EFI agrees. This also implies rationalization and streamlining of the securities clearing and settlement processes in Europe.

7. INVESTOR PROTECTION AND PROVISION OF INVESTMENT SERVICES

7.1.1 Optional exemptions for some investment service providers

(84) What is your opinion about limiting the optional exemptions under Article 3 of MiFID? What is your opinion about obliging Member States to apply to the exempted entities

requirements analogous to the MiFID conduct of business rules for the provision of investment advice and fit and proper criteria?

EFI agrees with the Commission's proposal. The optional exemptions should be maintained but the exempted entities should be subject to certain MiFID based requirements as proposed by the Commission.

7.1.2 Application of MiFID to structured deposits

□(85) What is your opinion on extending MiFID to cover the sale of structured deposits by credit institutions? Do you consider that other categories of products could be covered?

1) EFI supports this proposal, and, more generally, harmonised investor protection rules for all retail investment products (which the PRIPs regulation proposal from the commission partially achieves – see EFI's reply to the PRIPs consultation).

All types of structured deposits, whoever is providing them, must be subject to MiFID investor protection rules in order to ensure that all types of relevant products will effectively be covered without any redundancy.

2) Yes. We refer to the EFI reply to the PRIPs consultation: EFI strongly believes all retail investment products should be subject to MiFID's investor protection rules (conduct of business, fair and not misleading information, inducements, etc.).

7.1.3 Direct sales by investment firms and credit institutions

(86) What is your opinion about applying MiFID rules to credit institutions and investment firms when, in the issuance phase, they sell financial instruments they issue, even when advice is not provided? What is your opinion on whether, to this end, the definition of the service of execution of orders would include direct sales of financial instruments by banks and investment firms? Please explain the reasons for your views.

Yes, EFI sees no reason not to apply MiFID rules to these investment products sales to investors. And yes, the service of execution of orders should include direct sales of financial instruments by banks and investment firms of any other financial provider. Also, this should apply when an investment firm does not sell its own securities but acts on behalf of an issuer.

7.2.1 Execution only services

(87) What is your opinion of the suggested modifications of certain categories of instruments (notably shares, money market instruments, bonds and securitised debt), in the context of so-called "execution only" services? Please explain the reasons for your views

EFI supports the Option A.

The MiFID appropriateness requirements aim to prevent complex products being sold on an execution only basis to retail clients who do not have the experience or knowledge to understand the risks of such products. The MiFID definition of “complex products” must be fine –tuned to include for example most structured UCITS and hedge funds.

(88) What is your opinion about the exclusion of the provision of "execution-only" services when the ancillary service of granting credits or loans to the client (Annex I, section B (2) of MiFID) is also provided? Please explain the reasons for your views.

EFI believes that granting a credit or a loan to a client when he is subscribing to an investment product complexifies the deal and increases the client’s leverage and risk exposure.

For that reason, the “execution only regime” does not seem appropriate in such cases.

(89) Do you consider that all or some UCITS could be excluded from the list of non-complex financial instruments? In the case of a partial exclusion of certain UCITS, what criteria could be adopted to identify more complex UCITS within the overall population of UCITS? Please explain the reasons for your views.

UCITS should not continue to be treated automatically as non –complex instruments. For instance, some hedge funds recently obtained the UCITS label enabling them to distribute complex UCITS products in the EU. In addition, recent supervisory experience highlights that a number of UCITS are too sophisticated (complex formula funds) to be easily understood by retail clients. Clearly, such highly complex products should not be recommended to retail clients.

As a result, there is a case for treating structured UCITS and UCITS which employ complex portfolio management techniques as complex financial instruments for the purposes of the appropriateness test. ESMA could define criteria on this basis.

However, knowledgeable private investors should not be barred from investing in such funds on an “execution only basis”. This would constitute a serious blow to private investors’ rights and freedom. Every investor should have the right to sign a waiver to enable him to invest in any product on an execution only basis.

(90) Do you consider that, in the light of the intrinsic complexity of investment services, the "execution-only" regime should be abolished? Please explain the reasons for your views.

Since EFI supports Option A with some qualifications (question 87), it considers that the execution only regime should not be abolished and option B should certainly be avoided. For example, ordinary shares and bonds qualify as non –complex instruments. The issue is more upstream: every EU

Member States should ensure that learning the characteristics of basic retail investment products is part of the students' financial curricula.

7.2.2 Investment advice

(91) What is your opinion of the suggestion that intermediaries providing investment advice should: 1) inform the client, prior to the provision of the service, about the basis on which advice is provided; 2) in the case of advice based on a fair analysis of the market, consider a sufficiently large number of financial instruments from different providers? Please explain the reasons for your views.

Proposal Nr. 1

This implies that the provision of investment advice would be clearly separated from the sale of investment products, which is actually quite rarely the case. In that case though EFI would agree.

Proposal Nr. 2

The European Authorities must face the reality of the retail distribution in Europe:

1/ In the EU, a vast majority of financial intermediaries sells only products from their own Group (especially retail banks and insurance companies' distribution networks);

2/ An even larger majority of financial intermediaries is compensated directly or indirectly on the basis of product sales, not on "*a fair analysis of the market*" (actually many intermediaries do not even have the proper training nor competencies to be able to do that anyway).

This is why we have never seen for example any commission –based intermediary or bank or insurance network intermediary promoting ETFs instead of standard index funds, the reason being that the commission they get on ETFs is zero or very low compared to the one they usually get on ordinary index funds. In that case, it does not matter that they "*consider a sufficiently large number of financial instruments from different providers*", as they are likely to select only instruments with medium to high commissions, excluding for example low or no commission products like ETFs. The case study attached (Annex 2) shows how detrimental such an "advice" can be for the retail investors.

Therefore, only a tiny minority of intermediaries (the "fee-based" ones) could provide "*advice based on a fair analysis of the market*", assuming they have the proper training and competencies to do that.

Then, considering "*a sufficiently large number of financial instruments from different providers*" can only be relevant for that very small portion of European financial intermediaries.

Also, advice should not only be based on "*a fair analysis of the market*", but also on the profile, needs, financial and tax situation of the client.

Finally, what is more important is to forbid the vast majority of the financial intermediaries to label themselves as "advisors" as they are in reality sales people. This is terribly misleading for an average EU citizen who has a low financial education level. You don't see car dealers labelling themselves as

“transportation advisors”. Doctors “advise” you for your health but they are not paid by the pharmaceutical companies nor other health services providers.

(92) What is your opinion about obliging intermediaries that provide advice to specify in writing to the client the underlying reasons for the advice provided, including the explanation on how the advice meets the client's profile? Please explain the reasons for your views.

Ok, that could help in case of future problems, but this is a bit cumbersome for the provider and for the client, and does not address the key problem: as long as the intermediary’s remuneration is based directly or indirectly on the sale of investment products, his “advice” cannot be fair nor independent.

(93) What is your opinion about obliging intermediaries to inform the clients about any relevant modifications in the situation of the financial instruments pertaining to them? Please explain the reasons for your views.

Most intermediaries continue to get assets –based commissions as long as the client remains invested in the product sold. However, EFI has evidence that quite a lot of these intermediaries no longer care about the clients’ interests and needs.

In that case, it seems legitimate and necessary that the intermediary provides monitoring of its advice at least as long as he gets commissions.

(94) What is your opinion about introducing an obligation for intermediaries providing advice to keep the situation of clients and financial instruments under review in order to confirm the continued suitability of the investments? Do you consider this obligation be limited to longer term investments? Do you consider this could be applied to all situations where advice has been provided or could the intermediary maintain the possibility not to offer this additional service? Please explain the reasons for your views.

As mentioned above, EFI considers that an intermediary who is paid asset –based commissions as long as the client remains invested in the product sold (the majority of cases), should have an obligation to keep the situation of clients and financial instruments under review in order to confirm the continued suitability of the investments.

7.2.3. Informing clients on complex products

(95) What is your opinion about obliging intermediaries to provide clients, prior to the transaction, with a risk/gain and valuation profile of the instrument in different market conditions? Please explain the reasons for your views.

EFI considers essential that the intermediary provides the client with a risk/gain profile in various market conditions and with a valuation profile of structured funds, OTC derivatives and other complex or tailor-made products.

Such a disclosure should enable the client to better measure the characteristics of the product and to assess the risks attached thereto.

□(96) What is your opinion about obliging intermediaries also to provide clients with independent quarterly valuations of such complex products? In that case, what criteria should be adopted to ensure the independence and the integrity of the valuations?

Again, EFI considers that an intermediary who is paid asset –based commissions every year as long as the client remains invested in the product sold (the majority of cases), should provide such valuations. And ESMA should define the criteria, as many structured products providers mention a “market value” without disclosing how they compute it.

(97) What is your opinion about obliging intermediaries also to provide clients with quarterly reporting on the evolution of the underlying assets of structured finance products? Please explain the reasons for your views.

Every intermediary should be obliged to respond to a reasonable requests for information arising from professional or retail clients about the evolution of the underlying assets of structured funds, hedge funds, ABS, OTC derivatives and other complex products.

The periodicity of such reports should be further researched though and may depend on the type of product involved.

(98) What is your opinion about introducing an obligation to inform clients about any material modification in the situation of the financial instruments held by firms on their behalf? Please explain the reasons for your views.

EFI supports the principle of this new general obligation that complements the current obligation to send to clients a statement of their assets.

“Material modification” should be clearly defined.

(99) What is your opinion about applying the information and reporting requirements concerning complex products and material modifications in the situation of financial instruments also to the relationship with eligible counterparties? Please explain the reasons for your views.

No comments

(100) What is your opinion of, in the case of products adopting ethical or socially oriented investment criteria, obliging investment firms to inform clients thereof?

EFI believes that if such social and ethical criteria are presented as marketing elements in order to influence an investment decision, it is important that such information is presented in a clear, not misleading and hopefully comparable way.

7.2.4. Inducements

(101) What is your opinion of the removal of the possibility to provide a summary disclosure concerning inducements? Please explain the reasons for your views.

The disclosure of inducements requirement of MiFID is not really enforced. To start with, CESR has entirely omitted this requirement in its “Consumer guide to MiFID” despite the requests of investor and consumer advocates. Therefore, many national regulators have also omitted it. How can one expect any retail investor to be aware of the inducements and their impact on advice when regulators are hiding this crucial regulation from them? The Commission should first and at last fix this obvious lack of implementation by Level 3 and national authorities and ask ESMA to clearly communicate the inducements provisions to consumers.

Secondly, the consultation document does not provide any assessment of the level of implementation of these provisions. The Commission should investigate the actual implementation in the field which is very poor, and ask ESMA to act upon the conclusions of such an investigation.

Thirdly, EFI agrees with the removal of the possibility to provide a only a “summary” disclosure concerning inducements, as it enables intermediaries not to apply in reality the spirit and letter of the MiFID on full disclosure of the amount of inducements received for a given product sale. But this is less important than the first two points which are a prerequisite

(102) Do you consider that additional ex-post disclosure of inducements could be required when ex-ante disclosure has been limited to information methods of calculating inducements? Please explain the reasons for your views.

It is crucial to provide as much as possible ex ante information. Ex post disclosure is much too late: the retail investor has already subscribed to the product. EFI’s experience and research is that in most cases, the intermediary is able to give the exact amount of inducements he or she is getting on a given product, or at least a good estimate (for example when commissions’ percentages are increasing on a scale basis).

Of course, if the intermediary is still only capable to provide a too vague estimate of the inducement ex ante (although we know of no such case), then he should at the very least provide the required information ex post asap, and then offer to the client the possibility to opt out at no cost.

(103) What is your opinion about banning inducements in the case of portfolio management and in the case of advice provided on an independent basis due to the specific nature of these services? Alternatively, what is your opinion about banning them in the case of all investment services? Please explain the reasons for your views.

We refer to our reply to question 91.

1/ EFI believes that inducements should be banned in the case of portfolio management if they do not benefit the investor. This rule already exists in France for example for funds of funds or for certain unit-linked pension products (“Perp”).

2) In the case of “*advice provided on an independent basis*”, if it is provided on a truly independent basis, it already means that the provider of such advice is not commission –based, i.e. does not get inducements from product providers.

EFI believes - as already explained on Question 91 – the key issue is not to ban inducements in the case of “*advice provided on an independent basis*”, but to prevent any financial intermediary to label himself as an “independent financial advisor” or even “financial advisor” as long as the major part of his remuneration comes directly or indirectly from the sale of investment products.

Such “advice” is obviously anything but independent (see our example above on ETFs, and the attached case study). Therefore we are happy to see that the European Authorities are now eventually trying to address this very serious issue (there was nothing as such in the CESR consultations).

But EFI does not believe that banning inducements in the case of “*advice provided on an independent basis*”, is the right solution.

First, it would need to be clarified: does it mean intermediaries can label themselves as “independent advisors” only if they do not get inducements from third parties?

Secondly, if this is the case that would solve only a small part of the problem, as the large majority of retail financial intermediaries in Europe are not multi –providers but belong to financial groups networks: retail banks, insurance salaried sales force or agents, provider –owned broker networks, etc. It is quite important that the Commission takes this reality into account. In addition, “universal banking” is widespread in Europe, allowing all major commercial banks to distribute their own asset management products and often also their insurance products.

Thirdly, such a proposal would likely hurt and discriminate the least “dependent” financial intermediaries - the ones not linked to banks or insurance companies networks - and who are multi-providers, which is still better than single provider intermediaries in terms of “advice” and client choice.

These intermediaries are already generally much smaller than the bank and insurance groups related ones, and generally have a much smaller market share. EFI does not see the need to target and penalize this specific distribution channel without addressing the larger issue of the main and captive distribution channels.

Fourth, in several EU member states this could hurt retail investors as several tax codes favor opaque remuneration and conflicts of interest versus independent advice by disallowing the deduction of advisor fees from the amount of investment proceeds, while these are taxed net of commissions.

Again, the principal problem is that the vast majority of retail financial intermediaries are certainly not “advisors” but sales people. They should not be allowed to label themselves as “advisors” or “financial advisors”. Again, we know of no car dealer who dears market himself as a “transportation advisor”. The average European retail investor has a low financial literacy level and relies heavily on so called “advice”, which is often a grossly misleading labelling. In addition, the captive distribution networks should make very clear to their clients that they are most often mono –providers and that they earn their living by selling their groups’ products.

7.2.5. Provision of services to non-retail clients and classification of clients

□(104) What is your opinion about retaining the current client classification regime in its general approach involving three categories of clients (eligible counterparties, professional and retail clients)? Please explain the reasons for your views.

The problem with this current classification is that it does not distinguish between qualified and non – qualified investors. The “appropriateness” tests are cumbersome both for the intermediary and for the client and sometimes invasive (clients required to provide their income, etc.). Moreover, they do not give precise information on how qualified the investor is.

EFI believes the mandatory curriculum in the Member States should include a consistent package of the investment literacy. In France, for example, students under 18 are generally not taught during maths classes what an interest rate is. Mathematics curriculum must include basic financial mathematics.

(105) What are your suggestions for modification in the following areas:
a) Introduce, for eligible counterparties, the high level principle to act honestly, fairly and professionally and the obligation to be fair, clear and not misleading when informing the client;

Of course.

b) Introduce some limitations in the eligible counterparties regime. Limitations may refer to entities covered (such as non-financial undertakings and/or certain financial institutions) or financial instruments traded (such as asset backed securities and nonstandard OTC derivatives); and/or

No comments

c) Clarify the list of eligible counterparties and professional clients per se in order to exclude local public authorities/municipalities? Please explain the reasons for your views.

Local public authorities/municipalities should be classified as retail clients *per se* allowed to opt up for the professional clients' status.

(106) Do you consider that the current presumption covering the professional clients' knowledge and experience, for the purpose of the appropriateness and suitability test, could be retained? Please explain the reasons for your views.

Yes. If they need an appropriateness test, then they are not "professional" clients. Both approaches have to be consistent with one another.

7.2.6. Liability of firms providing services

(107) What is your opinion on introducing a principle of civil liability applicable to investment firms? Please explain the reasons for your views.

Of course. In fact EFI believes investment firms were already liable.

For example in France, a civil liability regime already exists under French law and is effectively applicable to investment firms (including banks) if and when financial loss can be proven.

Of course, such a civil liability regime can only be effective if retail investors can access collective redress schemes. To EFI's knowledge, this is only really possible in the Netherlands.

(108) What is your opinion of the following list of areas to be covered: information and reporting to clients, suitability and appropriateness test, best execution, client order handling? Please explain the reasons for your views.

The civil liability regime must apply to all breaches of MiFID regulations as long as they generate losses for investors.

EFI sees no reason to make any exception.

7.2.7. Execution quality and best execution

(109) What is your opinion about requesting execution venues to publish data on execution quality concerning financial instruments they trade? What kind of information would be useful for firms executing client orders in order to facilitate compliance with best execution obligations? Please explain the reasons for your views.

This is rather useless for retail investors.

There is a much more pressing issue regarding “best execution”. This was a major provision of the MiFID Directive. This consultation document does not address it, which is all the more surprising as “best execution is simply not happening for retail investors”¹³, and they have no means to ensure that their orders receive “best execution”.

What would be useful for retail investors to ensure they get the best execution of their orders is:

- Going back to pre –MiFID levels of pre -and post –trade transparency;
- Ensure the best price for their orders.

Currently, most retail brokers do not clearly explain to their retail customers that they channel their orders to only one venue (usually the RM), and that the pre- and post –trade data they provide are not consolidated but most often come from only one venue. More importantly, our research¹⁴ shows that retail clients often do not get the best price because of the MiFID induced market fragmentation and because it is too complex and costly for retail brokers to find the best price among all the venues.

(110) What is your opinion of the requirements concerning the content of execution policies and usability of information given to clients should be strengthened? Please explain the reasons for your views.

See EFI's reply to Question 109 above.

7.2.8. Dealing on own account and execution of client orders

(111) What is your opinion on modifying the exemption regime in order to clarify that firms dealing on own account with clients are fully subject to MiFID requirements? Please explain the reasons for your views.

Firms dealing on their own account should be fully subject to MiFID requirements and alert their clients that they are acting as such. This is clearly one of the loopholes in the investor protection provisions that must be closed.

¹³ See the European Investors Working Group (EIWG) report “*Restoring Investor confidence in European Capital Markets*”, February 2010, page

¹⁴ See Annex 1

(112) What is your opinion on treating matched principal trades both as execution of client orders and as dealing on own account? Do you agree that this should not affect the treatment of such trading under the Capital Adequacy Directive? How should such trading be treated for the purposes of the systematic internaliser regime? Please explain the reasons for your views.

See previous reply.

7.3. Authorisation and organisational requirements

7.3.1. Fit and proper criteria

(113) What is your opinion on possible MiFID modifications leading to the further strengthening of the fit and proper criteria, the role of directors and the role of supervisors? Please explain the reasons for your view.

EFI agrees with the idea to widen the scope of application for fit and proper criteria so that all members of the board of directors would have to comply with the MiFID requirements.

7.3.2. Compliance, risk management and internal audit functions

No comments.

7.3.3. Organisational requirements for the launch of products, operations and services

No comments

7.3.4. Specific organisational requirements for the provision of the service of portfolio Management

No comments

7.3.5. Conflicts of interest and sales process

(118) Do you consider that implementing measures are required for a more uniform application of the principles on conflicts of interest?

Yes, this should be included in the ESMA competencies.

7.3.6. Segregation of client assets

(119) What is your opinion of the prohibition of title transfer collateral arrangements involving retail clients' assets? Please explain the reasons for your views.

Any title transfer should be formally approved by the client on the basis of clear information and fair remuneration, and the amount of transferred assets should not exceed the amount of the debt due by the client to the firm (increased by an appropriate haircut).

8. FURTHER CONVERGENCE OF THE REGULATORY FRAMEWORK AND OF SUPERVISORY PRACTICES

8.1. Options and discretions

We refer to EFI's reply to CESR on Investor Protection and Intermediaries.

8.2. Supervisory powers and sanctions

8.2.1. Powers of competent authorities

(134) Do you consider that appropriate administrative measures should have at least the effect of putting an end to a breach of the provisions of the national measures implementing MiFID and/or eliminating its effect? How the deterrent effect of administrative fines and periodic penalty payments can be enhanced? Please explain the reasons for your views.

Yes. As mentioned above, publicity of the sanction with naming the investment firm is effective. The amount of the administrative fines must also have a deterring effect and should be harmonised upwards at the EU level. Proceeds should be at least partly used to fund investor representatives as such a move has been a commitment of the Commission since early 2009, but not implemented as of today¹⁵.

(135) What is your opinion on the deterrent effects of effective, proportionate and dissuasive criminal sanctions for the most serious infringements? Please explain the reasons for your views.

EFI believes such criminal sanctions are useful.

(136) What are the benefits of the possible introduction of whistleblowing programs? Please explain the reasons for your views.

¹⁵ See 4 March 2009 EC Communication on Driving European recovery: *«The interests of European investors, consumers and SMEs, must be at the centre of the reform...The Commission will ... ensure that the voice of European investors is much more strongly heard on all financial issues. The Commission therefore proposes to*

(137) Do you think that the competent authorities should be obliged to disclose to the public every measure or sanction that would be imposed for infringement of the provisions adopted in the implementation of MiFID? Please explain the reasons for your views

Yes, this is a quite essential condition for sanctions to be effective as a deterrent against infringements.

CHAPITRE 9. REINFORCEMENT OF SUPERVISORY POWERS IN KEY AREAS

9.1. Ban on specific activities, products or practices

(142) What is your opinion on the possibility to ban products, practices or operations that raise significant investor protection concerns, generate market disorder or create serious systemic risk? Please explain the reasons for your views.

Yes, ESMA and the national competent authorities should be able to ban it in order to better protect retail investors.

(143) For example, could trading in OTC derivatives which competent authorities determine should be cleared on systemic risk grounds, but which no CCP offers to clear, be banned pending a CCP offering clearing in the instrument? Please explain the reasons for your views.

(144) Are there other specific products which could face greater regulatory scrutiny? Please explain the reasons for your views.

Yes: asset backed securities, derivatives based products, CFDs, complex products like life insurance and pension products, Forex and commodities products.

provide direct funding to facilitate the capacity-building of investor stakeholders to represent their interests in financial services policies at EU level... A proposal will be presented by the end of 2009"

The “best execution” of retail trades

European equity trades execution Cost of opportunity analysis¹⁶

Methodology

- The following statistics are based on full depth order book data prices across 7⁽¹⁾ European venues: ***Xetra, Euronext, Chi-X, Turquoise, BATS, Borsa Italiana and Equiduct HybridBook.***
- Only order books trades from continuous trading phases on one specific day: **Thursday January 13th 2011** are considered in the analysis.
- The analysis does not include a UK stock as the UK retail market is different from continental Europe. It is based on the Retail Service Provider (RSP) model: it is a quote driven share dealing: the retail investors will send to the Retail Service Providers a request for quote. The RSPs will provide a quote for the deal. The UK retail investors have no access to the LSE order book.
- Our algorithm compares the real traded price of all trades with the prices available on each of the different venues at the precise point in time for each trade of the day.
- A trade is considered to have missed a better price if:
 - In the case of a buy order, the VWAP⁽²⁾ available on the consolidated market is strictly lower than the real traded price,
 - In the case of a sell order, the VWAP available on the consolidated market is strictly higher than the real traded price.
- For all trades missing the best price, we calculate the optimal split of the traded volume across the relevant venues, prioritising venues accordingly to prices and volume.
- The price improvement is calculated as the difference between the real traded price and the VWAP of the consolidated book i.e. the best available price across all different venues.

⁽¹⁾ : *In the fragmentation and Best Execution analytics provided regularly by Equiduct, the venue Tradegate is not part of the reference markets selected by Equiduct. The reasons are linked to the market model and the access to this liquidity as well as a market share below 0.5% on the main European indices which does not qualify it to be in the Equiduct’s European consolidated book. European Systematic Internalisers are also not in this panel of reference markets for the same reasons.*

⁽²⁾ *Volume-Weighted Average Price - represents the total value of shares traded in a particular stock, divided by the total volume of shares traded in that stock.*

¹⁶ This analysis was provided by Equiduct for EuroInvestors

AGEAS

- Number of venues where the stock is tradable during continuous : 5
- Executed value: 32,143,828 €
- # trades: 7,123
- Executed value missing the best price on another venue: 2,853,521 € - **8.9%**
- # trades missing the best price on another venue: 612 – **8.6%**
- # trades executed on the home market missing the best price on another venue: **9.2%**
- Total Value Improvement for January 13th : 1,788 €
- Average Price Improvement for trades missing the best price: **2.9 € - 7.5 Bps per trade**
- Average Price Improvement for trades executed on the HM missing the best price: **3.2 € - 7.6 Bps**
- If we extrapolate for a whole year (~250 days of trading), then the Total Value Improvement for a year would be: **447,000 €**
- Total Value Improvement for a year for trades executed on the Home Market missing the best price: **392,000 €**

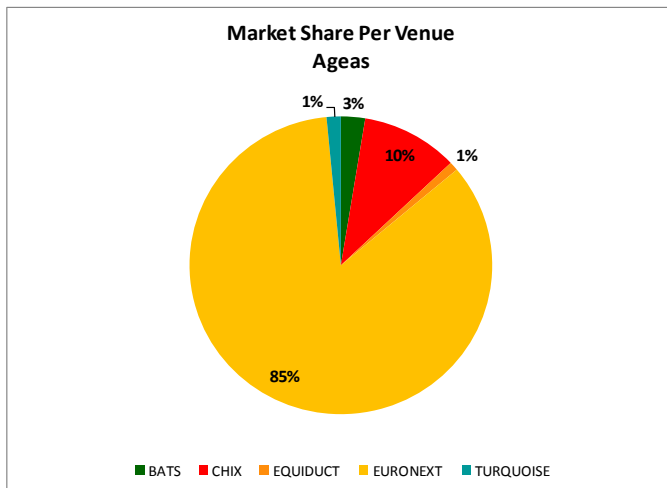


Chart 1: Market Share per venue

It is based on trades occurred during continuous trading only.

It shows that for Ageas, the Home Market only has 85% market share. So when a retail broker sends his clients' orders on the Home Market only, it misses the prices available on the other venues which represent all together 15% of the market for Ageas.



Chart 2: Simulated optimal Split

8.9% of the value traded on all the venues missed the best price available on another venue.

The chart 2 shows how it should have been split to achieve the best price.

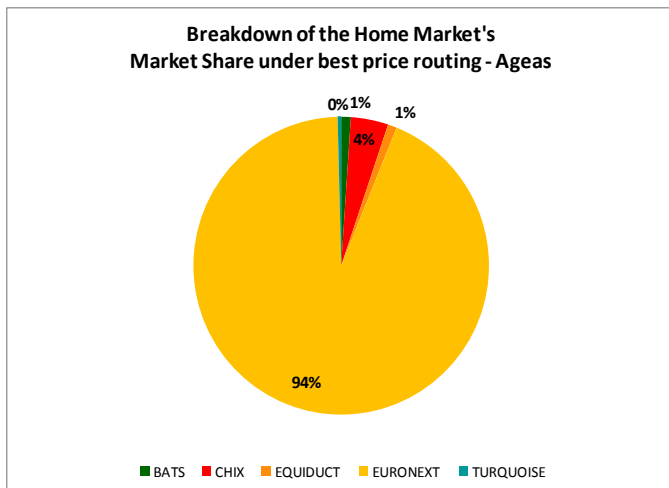


Chart 3: Breakdown of the Home Market market share

It shows that only 94% of the trades occurred on Euronext should have been done there, 6% should have been executed on another venue.

ENI

- Number of venues where the stock is tradable: 6
- Executed value: 417,418,135 €
- # trades: 28,769
- Executed value missing the best price on another venue: 41,900,083 € - **10.04%**
- # trades missing the best price on another venue: 2,930 – **10.2%**
- # trades executed on the home market missing the best price on another venue: **16.3%**
- Total Value Improvement for January 13th : 12,895 €
- Average Price Improvement for trades missing the best price: **4.4 € - 3.5 Bps**
- Average Price Improvement for trades executed on the HM missing the best price: **4.3 € - 3.2 Bps per trade**
- If we extrapolate for a whole year (~250 days of trading), then the Total Value Improvement for a year would be: **3,223,750 €**
- Total Value Improvement for a year for trades executed on the Home Market missing the best price: **2,455,500 €**

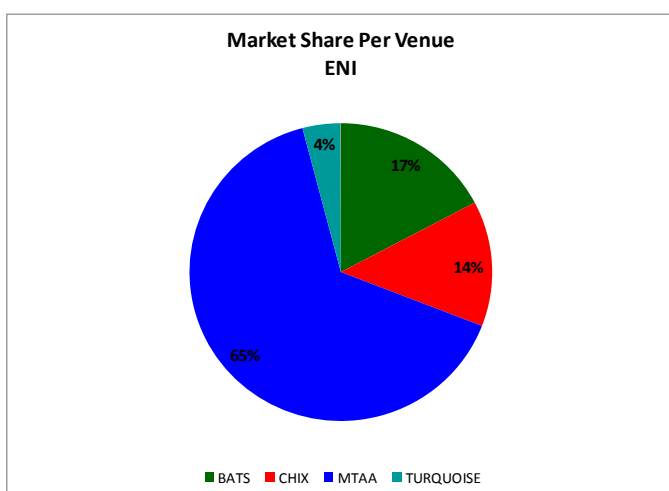


Chart 1: Market Share per venue

It is based on trades occurred during continuous trading only.

It shows that for ENI, the Home Market only has 65% market share. So when a retail broker sends his clients' orders on the Home Market only, it misses the prices available on the other venues which represent all together 35% of the market for ENI.

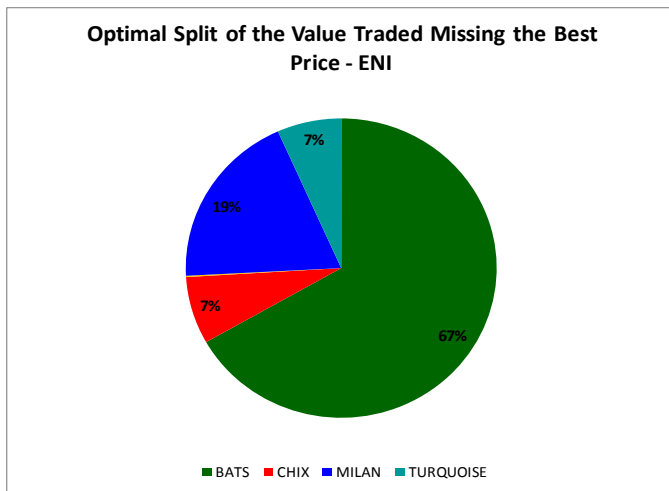


Chart 2: Simulated optimal Split
 10.2% of the value traded on all the venues missed the best price available on another venue.
 The chart 2 shows how it should have been split to achieve the best price.

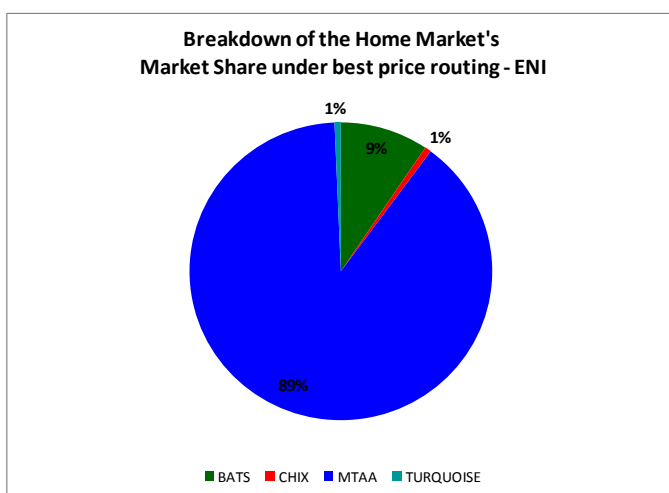


Chart 3: Breakdown of the HM market share
 It shows that only 89% of the trades occurred on MTA should have been done there, 11% should have been executed on another venue.

SIEMENS

- Number of venues where the stock is tradable: 6
- Executed value: 300,797,019 €
- # trades: 24,966
- Executed value missing the best price on another venue: 48,364,237 € - **16.1%**
- # trades missing the best price on another venue: 3,976 – **15.9%**
- # trades executed on the home market missing the best price on another venue: **14.1%**
- Total Value Improvement for January 13th : 7,329 €
- Average Price Improvement for trades missing the best price: **1.8 € - 2 Bps**
- Average Price Improvement for trades executed on the HM missing the best price: **1.9 € - 1.1 Bps per trade**
- If we extrapolate for a whole year (~250 days of trading), then the Total Value Improvement for a year would be: **1,832,250 €**
- Total Value Improvement for a year for trades executed on the Home Market missing the best price: **504,250 €**

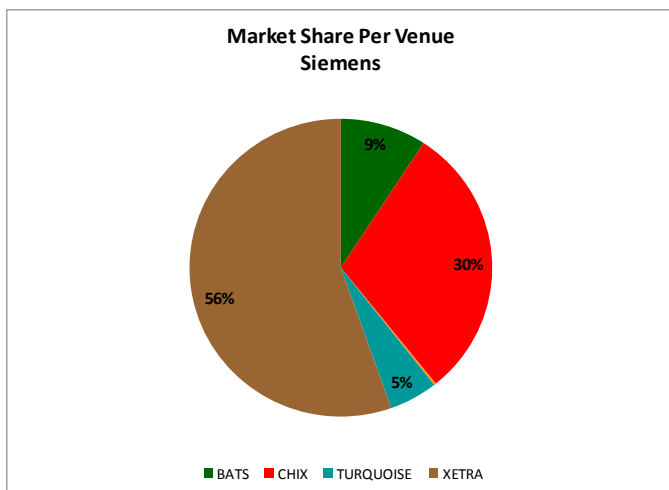


Chart 1: Market Share per venue
It is based on trades occurred during continuous trading only.
It shows that for Siemens, the Home Market only has 56% market share. So when a retail broker sends his clients' orders on the Home Market only, it misses the prices available on the other venues which represent all together 44% of the market for ENI.

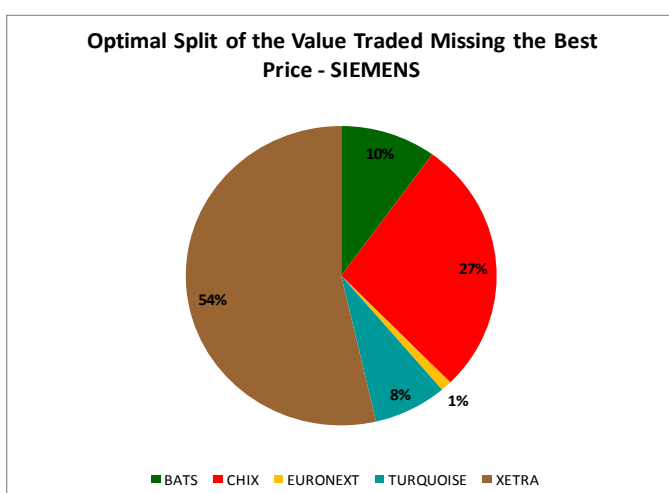


Chart 2: Optimal Split
15.9% of the value traded on all the venues missed the best price available on another venue.
The chart 2 shows how it should have been split to achieve the best price.

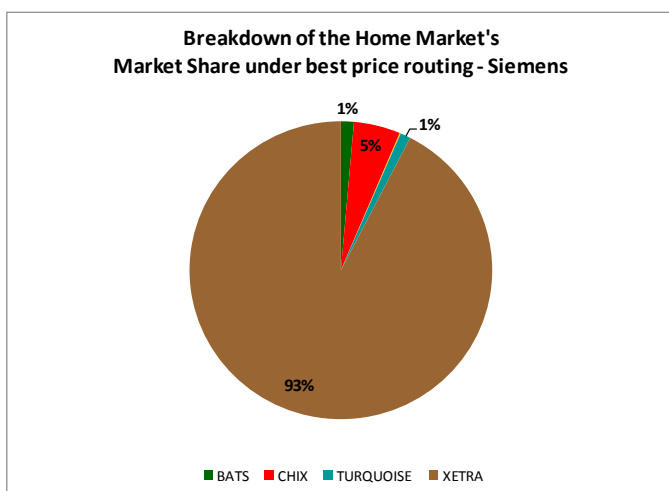


Chart 3: Breakdown of the HM market share
It shows that only 93% of the trades occurred on Xetra should have been done there, 7% should have been executed on another venue.

SOCIETE GENERALE

- Number of venues where the stock is tradable: 5
- Executed value: 468,723,530 €
- # trades: 57,025
- Executed value missing the best price on another venue: 73,864,485 € - **15.8%**
- # trades missing the best price on another venue: 9,418 – **16.5%**

- # trades executed on the home market missing the best price on another venue: **19.3%**
- Total Value Improvement for January 13th : 16,770 €
- Average Price Improvement for trades missing the best price: **1.8 € - 2.5 Bps per trade**
- Average Price Improvement for trades executed on the HM missing the best price: **1.9 € - 2.7 Bps**
- If we extrapolate for a whole year (~250 days of trading), then the Total Value Improvement for a year would be: **4,192,500 €**
- Total Value Improvement for a year for trades executed on the Home Market missing the best price: **3,140,750 €**

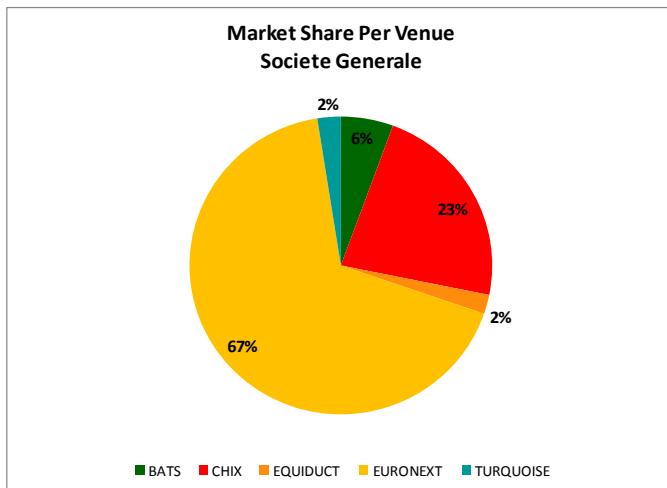


Chart 1: Market Share per venue

It is based on trades occurred during continuous trading only.

It shows that for Societe Generale, the Home Market only has 67% market share. So when a retail broker sends his clients' orders on the Home Market only, it misses the prices available on the other venues which represent all together 33% of the market for ENI.

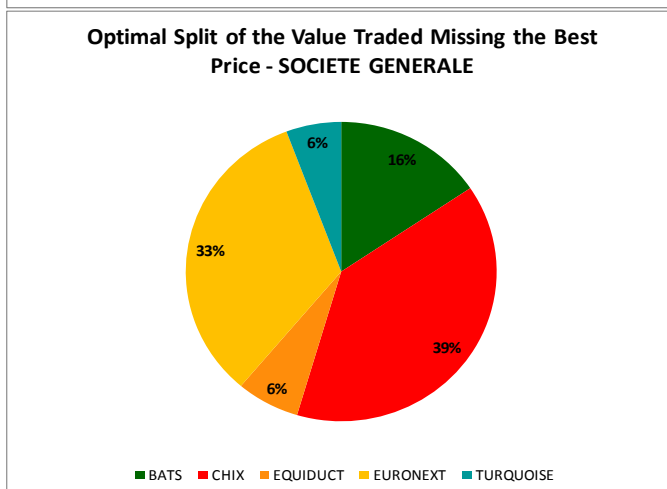


Chart 2: Optimal Split

16.5% of the value traded on all the venues missed the best price available on another venue.

The chart 2 shows how it should have been split to achieve the best price.

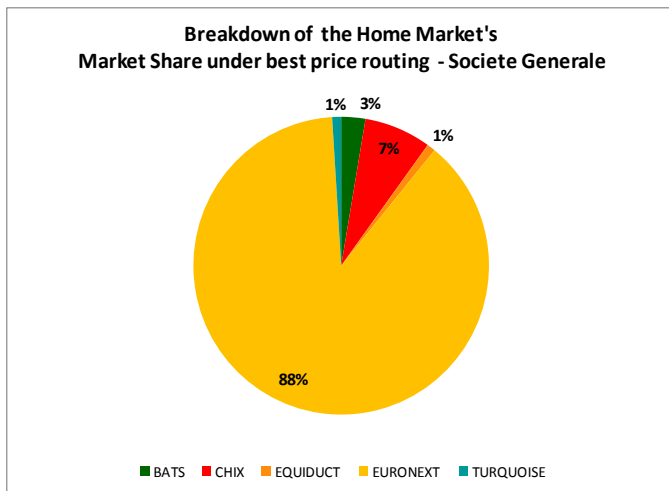


Chart 3: Breakdown of the HM market share
It shows that only 88% of the trades occurred on Euronext should have been done there, 12% should have been executed on another venue.

Conclusions

- Brokers only displaying information from the Home Markets would miss between 20 and 40% of the liquidity available on other venues:
 - BEL20: Home Market's market share = 63.2% in December 2010¹⁷
 - CAC40: Home Market's market share = 61.6% in December 2010¹
 - DAX30: Home Market's market share = 65.7 % in December 2010¹
 - MIB40: Home Market's market share = 78.6% in December 2010¹
- Because the online brokers are often only connected to the Home Markets and because the Home Markets only have ~60% of the liquidity, it results in a cost of opportunity to the investor who has no access to that liquidity and to the better prices sometimes available there.
- **Between 10 and 20% of the trades** executed on the Home Markets could have achieved a better price on another venue.
- The cost of opportunity amounts to a few Euros per trade; in total **6.5M€ per year** for the 4 stocks analysed here only.
- It is most likely that most of the cost of opportunity is supported by the retail investors given that:
 - Retail brokers are mostly only connected to the Home Market
 - They don't have the Smart Order Routing Technology required (for cost reasons) to split the orders and send it where the best prices are.
- MiFID has introduced competition to the equity market but the benefits of that competition are not available to the retail investors

Sources: Equiduct LFA

¹⁷ Source: Thomson Reuters

Long term net financial performance - the primary factor for investments adequacy

Hard lessons from a real case

We chose a very simple case: the choice between two retail UCITS funds, not complex and opaque personal pension products like deferred or variable annuities:

- Fund A is not actively marketed to consumers because it provides very low or no trailer fee to distributors
- Fund B is actively marketed by a large bank. Its inducements are most probably very high and most probably even higher than the disclosed total fund expenses.

Therefore, one can assume that fund B attracted many more future pensioners than Fund A.

See the dramatic consequences of this choice in the table and the lessons drawn below.

(to simplify, we showed the impact of one investment instead of repeated investments every year, but that does not change the conclusions).

1st lesson : investing early even in a diverse retail portfolio of equities can lead to value destruction over the long term

Equity markets usually provide real value protection and even growth over the long term. Equities markets yes, not all packaged equity products by far.

In this real case, over 40 years, the EU saver who picked fund B is likely to have underperformed the comparable equity market and another comparable investment product by more than 71 %. Also, after tax he is likely to have lost money on a real basis (after inflation), even with a diversified 100% equity portfolio. Imagine what he would get with a bond product!

2nd lesson: the early timing of an investment for the long term can give worse results than a later timing; it depends on the choice of the investment product.

It heavily depends on the investment product selected, and odds are not in favor of savers as the marketed product is the one to avoid.

The investment product choice is much more important than the starting date of the retirement saving effort.

In this real case, the EU citizen who started to save 40 years before retirement choosing fund B will likely get 22 % less income than the citizen who started 20 years after him but having found and chosen Fund A.

3rd lesson: Product disclosure and information at the point of sale is too often grossly misleading, and the damage caused to the long term saver is sky high.

The word “misleading” is used in its MifID Directive sense.

In this real case, the fund B information at the point of sale (we have written proof) promises exactly the same thing as Fund A. Only in a section of the fund prospectus called “economy of the product” (not in the expenses section), one could read: “*in exchange of the dividends associated to the shares included in the index, the holder will get a net asset value based on the closing price of the index and no entry and exit fees for the subscriptions collected by the distributor*”. Even this quote that nobody probably read is itself inconsistent with the stated total expenses of 1.5 to 2.5 % when one knows that the recent average dividend yield of this index is above 3% anyway.

The very large inducement is not disclosed in the information at the point of sale, is not even identified as such, and not even quantified in the product disclosures. Disclosures on costs are also misleading to say the least.

4th lesson: the lack of disclosure of net performance and of the performance of the comparable performance indicator is also too often very misleading

In this real case:

- The performance disclosure is not net of tax (the disclosure of the tax impact on performance is mandatory in the US but not in Europe).
- Also, the retail investor will not be aware that he is losing money after inflation, because it is not disclosed anywhere.
- Comparable indicator's performance is missing in the information at the point of sale. Even in the prospectus summary, it is impossible to learn if the index is comparable or not, i.e. if it is a "price" only index (without dividends reinvested), a "net return" index (with dividends net of a theoretical withholding tax) or a "global return" (with gross dividends) one. In most cases, these three have very different performance profiles. CESR has "advised" to use a comparable performance indicator whenever possible. This should be mandatory, more precisely and clearly spelled out, and actually enforced.

5th lesson: it is very difficult to assess the long term performance of retail investment products for lack of publicly disclosed long term track records

In this real case (a typical one for that matter), the two products have a disclosed history of six years only. To assess their potential as long term investment products, we had to assume the same yearly average performance for future years as for the last 6 years. This is a big caveat in such analyses (e.g. over ten years – 2000 to 2009 it would have been even much worse because of the collapse of equity markets in 2001 and 2002). It is also potentially misleading as no one knows how they could have performed over the long term, which is the only term that matters for pension investments. Even the European regulator does not require more than 10 year track records.

Two existing index UCITS funds replicating the French Big Cap equity index (CAC 40 index)

Ucits		Fund A	Fund B	Loss Fund B / Fund A	Inflation Insee index	Cac 40 Index global return	Cac 40 Index Price return
Stated objective		"reproduce the evolution of the CAC 40 index"	"Exactly replicate the evolution of the CAC 40"				
Distribution		not promoted	Promoted and "advised"				
Performance (net of fund fees) (gross of entry and broker fees)	2004	11.37%	8.44%		2.11%	11.40%	7.40%
	2005	26.97%	24.69%		1.53%	26.60%	23.40%
	2006	18.95%	15.95%		1.53%	20.87%	17.53%
	2007	4.58%	1.70%		2.59%	4.16%	1.31%
	2008	-39.66%	-42.83%		1.00%	-40.33%	-42.68%
	2009	26.43%	22.32%		0.91%	27.58%	22.32%
End Value of Investment (for € 1 € invested)	6 years	1.3420	1.1150	-17%	1.1006	1.3516	1.1065
Cumulated perf. before tax Annualized perf. before tax	6 years	34.20%	11.50%	-66%	10.06%	35.16%	10.65%
		5.02%	1.83%	-64%	1.61%	5.15%	1.70%
Cumulated perf. after tax* Annualized perf. after tax*	6 years	23.56%	7.92%	-46%	10.06%		
		3.59%	1.28%	-44%	1.61%		
End Value of Investment (before tax, for € 1 invested))	20 years	2.66559	1.43746	-46%			
	30 years	4.35200	1.72343	-60%			
	40 years	7.10535	2.06628	-71%			
Disclosed max. fund fees		0.25%	2.50%**				
Disclosed actual 2009 fees		0.25%	2.31%				
Actual inducements		<0.25%	> to 3%				

* From 2011 on the French tax on capital gains is 31.1%, composed of 19% income tax and 12.1% social levies.

** 1.5% before 1 April 2009

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