



Nordic Securities Association identification number in the European Commission Register of interest 25260792642-83

EUROPEAN COMMISSION
DG Internal Market and Services

date 1 February 2011

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NSA response regarding the consultation on Review of the Market in Financial Instruments Directive (MIFID)

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The Nordic Securities Association ("NSA") represents the common interests of Member firms in the Nordic securities dealers associations towards external stakeholders primarily in the Nordic market but also on European and international issues of common interest. Members of the NSA are the Danish Securities Dealers Association, the Finnish Federation of Financial Services, the Norwegian Securities Dealers Association and the Swedish Securities Dealers Association.

The *member associations* of the NSA have actively co-operated in reviewing the MIFID consultation in the following areas

- Equities markets relates questions, section I below
- Transactions reporting, section II
- Investor protection, section III

For issues related to Fixed Income issues, a separate response is provided in relation to the Swedish market by the Swedish association.

For all other issues and markets, reference is made to the responses provided by European Banking Federation ("EBF").

NSA key points

- The substantial decided changes in the European rulebook and upcoming changes and new rules require the Commission to prioritize between the changes. This is in order not to create unnecessary operational risk in the markets due to the changes and possible, negative interactions between these new rules. For instance, we cannot find any justification for changing well functioning rules for the government- and mortgage bond markets. However, there is clear evidence of benefits of correcting negative effects in the Equities markets due to MiFID 1.

- The NSA stresses that it is complex to comment on a **number of the very general proposals**. The reason is mainly that large mandates are given to ESMA and we cannot foresee their decisions and thus the actual effect of the proposals. In addition, we have some concerns of the combination of the mandates handed over to ESMA and the numerous of task ESMA must fulfill in the light of the limited resources accessible to ESMA. The NSA regrets the **very limited time** devoted by the Commission to involve the industry in such a substantial review and we fear that the time constraint could compromise the quality of the final outcome.
- **A Broker Crossing Networks ("BCN")** should, in relation to the most traded shares, be converted into a MTF if certain conditions are met.
- **Consolidated tapes** on a European level must be developed as soon as possible for cash equities instruments
- In order to create competition on **Market data**, raw and basic data must be free of charge in order to make derived data (e.g. consolidated tape) affordable. The raw and basic data can be used and distributed without limitations. APAs and others may charge reasonable fee for processing and deriving data.
- **Transaction reporting requirements** must be fully harmonized and we urge the Commission to ensure that a common European platform is developed as soon as possible. The minimum alternative is common rules and interfaces for reporting to all different competent authorities.
- **Investor Protection rules** must be based on the best interest of the clients, a bottom-up approach, and not as the current proposal on a top-down approach. To limit the right for the clients to make their own decisions and at the same drown them in information is not the way forward. We urge the commission to only redraft the MIFID rules in this area where proved market failures have occurred.

SECTION I: EQUITIES MARKETS

The responses in this Section I **only** relates **to equities markets**.

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

NSA agrees to the proposed definition.

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

The NSA believes that it makes sense to implement some requirements for so-called organised trading facilities for equity trading in order to ensure a level playing field compared to other trading venues and to maximise the reliability in the equities markets. However, it is crucial that market participants do not face an inappropriate regulation of its bilateral, OTC trading, because such trading is a vital tool for investment firms to provide appropriate service to institutional clients when execution larger orders. On page 9, "By definition, it would exclude pure OTC trading (i.e. bilateral trades carried out on an ad hoc basis between counterparties and not under any organised facility or system". How should "ad hoc" and "organised facility" be understood and how does this fit with Directive 2004/39/EC, recital 53): "It is not the intention of this Directive to require the application of pre-trade transparency rules to transactions carried out on an OTC basis, the characteristics of which include that they are ad-hoc and irregular and are carried out with wholesale counterparties and are part of a business relationship which is itself characterized by dealings above standard market size, and where the deals are carried out outside the systems usually used by the firm concerned for its business as a systematic internaliser."?

Furthermore, the NSA agrees that Crossing Networks, which mixes various business models, should (as also proposed by the Commission) be regulated in order to ensure a level playing field (see also response to question 5 and 6). But it is essential to stress that one of the main purposes with MiFID is to create competition in order to improve market effectiveness. If almost every kind of trading will be subject to intensive regulation the competition will be eroded, leaving market participants with substantial costs to meet the requirements and no obvious benefits. Moreover, market participants already face large investment costs in technical infrastructure. To be able to access all relevant market places, to have the right technology in place and to continuously maintain and develop this is connected with substantial costs and certainly favours bigger players. Adding more costs might imply that the only viable market participants will be the present global players.

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

Depending on the definition of "an ad hoc" and "organised facility" on page 9, the requirements are in our opinion acceptable (members bilateral OTC trading must not be regulated inappropriately).

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?

NSA agrees to this proposal.

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.

Initially the NSA will underline that our response to this question is only related to **liquid shares**. In case of other instruments, please see e.g. EBF response to question 8.

A Broker Crossing Network ("BCN") is basically a "black box" which can be supported by own account flow, client flow and access from third parties. The systemic importance of these BCNs cannot be verified precisely because BCNs are not categorised under MiFID and thereby not subject to the same reporting rules as other venues, such as regulated markets or MTFs. However, although comprehensive information across all dark trading channels is not available - estimates from e.g. Thomson Reuters indicate a substantial growth in dark equity trading. During the same period volumes in the lit market were relatively unchanged¹.

The NSA believes that in case a BCN is accessible to flow from third parties it is per se a MTF and should be regulated as such without exemptions (no threshold trigger) in order to ensure fair competition and non-discriminatory access. The alternative is a serious risk of creating new, dark monopolies, which is not in line with the MiFID intentions.

In case a broker-dealer in its BCN acts as a market-maker, executes client orders against its own account on an organised, frequent and regular basis or in any other way influence the price formation process, also before an (unfilled/partly filled) order is transmitted e.g. to a regulated market, this constitutes systematic internalisation in case of liquid shares. In this case, the BCN should be regulated as a SI in case of liquid shares or as a MTF when the activities within the BCN reach 3 – 4 pct. of the global turnover within a specified timeframe for the shares in question.

In case the BCN only supports client execution, the NSA supports the proposal of a threshold trigger before the BCN is converted into a MTF. An appropriate threshold is when the OTF in its activities reaches 3 – 4 % of the global turnover for a specified timeframe for the most liquid shares. The reason is that in case such a substantial part of the market is held within one firm/one crossing system, the price discovery process will be affected and there must be a non-discriminatory access and adequate transparency as required by the regulation.

¹ <http://www.thetradenews.com/trading-venues/dark-pools/5620> and http://thomsonreuters.com/products_services/financial/financial_products/a-z/market_share_reports/

6) What is your opinion on the introduction of, and suggested requirements for, a new sub-regime for crossing networks? Please explain the reasons for your views.

The NSA agrees to the introduction of a sub-regime for BCN in order to promote the needed transparency of the importance of the BCN in respect of volume.

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.

Please see our response to question 6.

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

The proposed definition is very wide and interpreted to the letter will include Smart Order Routing (SOR) and client facilitation, which off course should not be considered as automated trading in this context. The problem with the definition is the reference to computer programmes and algorithms, which both are frequently, use for the execution of clients' orders.

Another way of defining HFT could be: *"the execution of trading strategies based on computer programs or algorithms to capture opportunities that may be small or exist for a very short period of time"*. There are four important characteristics of HFT: (1) high *volume* of trades on a daily basis with low level of profits per trade; (2) extreme short stock holding period; (3) submitting numerous orders; and (4) no significant open position overnight

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?

The NSA agrees with the proposal and note that this will imply a kind of a level playing field to the extent the HFT is a direct member of the relevant trading venue.

15) What is your opinion of the suggestions to require specific risk controls to be put in place by firms engaged in automated trading or by firms who allow their systems to be used by other traders?

The NSA agrees with the suggestions.

16) What is your opinion of the suggestion for risk controls (such as circuit breakers) to be put in place by trading venues?

The NSA agrees and we would like to point out the importance of sufficient capital requirement for this kind of institutions.

17) What is your opinion about co-location facilities needing to be offered on a non-discriminatory basis?

The NSA agrees with the proposal. In our view this obligation should also apply for service providers in the provision of co-location premises to trading venues.

18) Is it necessary that minimum tick sizes are prescribed? Please explain why.

In the opinion of the NSA, the industry as a rule should compose adequate tick size tables itself, which facilitates effective "lit trading" with minimal market impact. As a starting point, the MTF-AFME-FESE tables can be used.

However the national Competent Authority should possess a role in this work implying monitoring and ensuring appropriate solutions which facilitate effective "lit trading" with minimal market impact. The national Competent Authority should have the power to scale up the issue to ESMA having a back-up role for cross-border related tick-size issues.

19) 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 do not understand the link to market makers in the "ordinary market". Some markets – as Nordic equities markets - are order driven and do not have market makers in the same sense as a quote driven market. As a consequence, we do believe that there needs to be a distinct definition for providing liquidity for high frequency traders; it must be ensured that high frequency traders are not "noise traders" but are actually adding liquidity and quality to the market, which could be questioned at present.

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?

Where HFT is a tool in the increased competition, e.g. exploiting arbitrage possibilities among trading venues, the HF orders are often small in size and very substantial in numbers. In a "worst case scenario", there are numerous orders, which could result in quote stuffing and small size trading, which makes especially institutional traders (large size traders) worse off. Large

size traders have to bear an increase in both implicit and explicit trading costs following the decline in depth throughout the entire order book (market impact). To compensate, larger orders will increasingly be executed "in the dark" (dark pools, crossing networks etc.), compromising the price discovery process in the lit market.

In order to avoid such "worst case scenario", we believe that the right way forward would not be to "turn down or oppose technological developments". An attempt to "turn down" would e.g. be a requirement for orders to rest in the order book for a minimum period of time. This would, as we see it, not be workable and thereby compromising the use of SOR, including the use of Fill or kill and similar facilities, which is an unacceptable consequence.

Furthermore, it would not be possible to comply with best execution if an order must reside for some time in an order book.

The right way forward is rather a two step approach:

The first step is an increased focus on sound HFT. This implies a need to investigate the trading behaviour (for real trading interests, noise trading, front running, market manipulation, exploiting beneficial fee structures etc.) and change inappropriate trading behaviour by changing the structure that causes this behaviour. In this respect it would be beneficial to exploit whether MAD is adequate in its present format to capture both inappropriate HFT and HF orders. The NSA also stresses the importance of appropriate harmonised market surveillance throughout Europe without commercial interest. HFT needs also to be considered in the on-going review of the Market Abuse Directive. The NSA believes both that the definition of market manipulation in MAD and examples and guidelines on level 2 and 3 needs to be reviewed with HFT in mind.

The second step is to limit the ratio of orders to transactions executed by any given participant in order to limit the testing of the market, which – with the present round lot of 1 share - is inexpensive seen from the HFT. The limitations must be flexible and dynamic considering the market situation at all times. We propose to start at a level of 500:1 which we think, at present conditions, would not harm the willingness to bring liquidity to the market. The limit could be implemented in different ways. One way is to introduce fees for orders above that level. When the limit is introduced the evolution and the experience may then show the way forward. It is important to stress that our proposal is strictly limited to orders in cash trading in equities. Market makers should also be excluded from the limitations.

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.

The current definition should remain. It is crucial to maintain the rule that the SI-obligation **only is valid** for the so-called **liquid shares**.

22) What is your opinion about requiring SIs to publish two sided quotes and about establishing a minimum quote size? Please explain the reasons for your views.

We can accept this enlarged requirement.

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.

From an immediate point of view it is fine with a level playing field to a certain extent. However, as also stated in our response to question 2, there are differences between the various trading facilities and some differences should be kept in order to ensure the competition. Market surveillance must of course not be deprioritised.

24) What is your opinion of the suggestion to require regulated markets, MTFs and organised trading facilities trading the same financial instruments to cooperate in an immediate manner on market surveillance, including informing one another on trade disruptions, suspensions and conduct involving market abuse?

NSA agrees and it is in our opinion important and necessary for the venues to co-operate in the fragmented 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?

The NSA supports efforts to facilitate access of SMEs to direct funding. However, such efforts must not lead to less investor protection or to an increased risk of market abuse.

Besides, the NSA is unconvinced that MiFID would be the best tool to achieve the desired alleviation of the administrative burden on SMEs. Instead, it might be preferable to consider targeted amendments to the Prospectus Directive and the Market Abuse Directive.

In any event the NSA strongly objects to the definition of SMEs as based on a certain percentage of the market capitalisation on the trading venues of Home Member State of the issuer. We can see no reason to discriminate companies from smaller countries/countries with smaller trading venues.

26) Do you consider that the criteria suggested for differentiating the SME markets (i.e. thresholds, market capitalisation) are adequate and sufficient?

The proposed criteria is not workable, see question 25 above. It must also be clarified what happens once a company exceeds these thresholds, either in market cap, number of transactions or liquidity.

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

The NSA does not experience a need for more consistently applied waivers. To our understanding the waivers are applied in a consistent way.

28) What is your opinion about providing that actionable indications of interest would be treated as orders and required to be pre-trade transparent? Please explain the reasons for your views.

The NSA agrees that actionable indications of interest should be treated as orders and pre-trade-transparent as any other order.

29) What is your opinion about the treatment of order stubs? Should they not benefit from the large in scale waiver? Please explain the reasons for your views.

Stubs below 10% of large-in scale should be lit.

30) What is your opinion about prohibiting embedding of fees in prices in the price reference waiver? What is your opinion about subjecting the use of the waiver to a minimum order size? If so, please explain why and how the size should be calculated.

The NSA does not have any objections to prohibiting the embedding of fees in prices in the price reference waiver. We also believe that it makes sense to request a minimum order size for using the reference price waiver in order to minimize the use of small size dark orders, which should not be dark, and to minimize the (small share) testing of dark pools (which are based on reference price waiver) for larger orders. Moreover, small orders are adding extra costs to brokers and in the end to customers.

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

Large-in-scale waiver is rarely used and it is notable that the average order sizes have declined over the last two to three years, suggesting that it is set too high. The NSA proposes that threshold should be regularly reviewed and amended if supported by evidence.

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

The NSA opposes to reducing the publication deadlines to one minute for all trades. It will simply not be possible for manually handled trades to comply with this rule. And what if e.g. the customers submit more than one order in the same conversation? For automatically executed trades, publication must be immediately.

Decrease in the time for deferred publication as proposed is ok.

However, present rules for deferred publication imply that shares with the lowest ADT have the highest threshold for LIS with 10 pct. of the ADT compared with the most liquid shares, where the threshold is 1 pct. of the ADT. We propose a more harmonized LIS for instance 5 pct. of the ADT.

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.

NSA agrees in principle with the proposal. However, the primary market transactions generally, including creation and redemption, for ETFs and certificates should be exempted from this rule as special conditions apply.

34) Can the transparency requirements be articulated along the same system of thresholds used for equities? If not, how could specific thresholds be defined? Can you provide criteria for the definition of these thresholds for each of the categories of instruments mentioned above?

We are in favour of reinforcing and harmonising trade transparency for shares traded on an MTF. We do not believe there is evidence to require such level of transparency for organised trading facilities; we are rather worried that OTC-markets and other non-equity markets could be negatively impacted.

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.

Should basically be the same for all MTFs. However, different conditions do apply whether there is an order driven or market maker market. For OTFs there should be no pre-trade transparency. Further, rarely traded shares should not have the same pre-trade transparency requirements.

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

We recommend caution in respect of a specific approach for SME markets. Appropriate transparency rules must be designed on the basis of a consideration of the targeted investor basis and the depth and form of information most appropriate for these investors.

43) What is your opinion of the suggestions regarding reporting to be through approved publication arrangements (APAs)? Please explain the reasons for your views.

We welcome the introduction of APA in order to ensure a high level of quality and accessibility to post-trade data. It is important to avoid publication at odd places. We believe standardised interfaces should be developed for reporting to APAs.

44) What is your opinion of the criteria identified for an APA to be approved by competent authorities? Please explain the reasons for your views.

The NSA supports the criteria identified by the Commission.

45) What is your opinion of the suggestions for improving the quality and format of post trade reports? Please explain the reasons for your views.

The more and more fragmented trading demands improved quality and data consolidation. Standardising is a necessary mean to improve the quality.

47) What is your opinion of the suggestions for reducing the cost of trade data? Please explain the reasons for your views.

NSA welcomes the suggestions for reducing the cost of trade data. . Where MiFID has created a liberalised market in regards to trading, the same pattern is not applicable when it comes to information (both pre- and post transparency). There is a considerable lack of competition on the information side. Increased charges on information have also been seen. This complicates data consolidation. In short, MiFID lowered explicit trading cost but did not address implicit costs (market data). The fact is that incumbent regulated markets have even increased data pricing since MiFID, despite losing market share to compensate for loss of revenue in trading. This is a serious problem for the creation of true competition and affects not only the cost of market data and in the end the quality of the price discovery process and best execution, but also other product offerings. An example is Smart Order Routing facilities, which will be offered by various market participants – both investment firms and all kind of venues. However, in case a regulated market subsidize its Smart Order Routing offering with its excess

revenue from market data sales, we will have an unlevel playing field, where the regulated markets customers (the investment firms) who also offer Smart Order Routing facilities to their customers, actually are paying indirectly for a competitors (the regulated markets) Smart Order Routing.

At present, most MTFs do not charge for data, but ultimately have a strong incentive to monetise it if they can. However, as trading becomes more and more fragmented it is important for (retail) clients to have access to consolidated market data in an efficient and affordable way from all trading venues where "their" securities are traded in order for them to ensure that they have received best execution. So, to promote competition to ensure affordable derived data like a consolidated tape, **it is necessary to make all raw and basic data free of charge.** This would imply that neither trading venues nor information providers etc. can charge for raw or basic data.

Trading venues, information providers etc. ("Approved Publication Arrangements") would be able to charge a reasonable fee for processing the data and deriving it (e.g. consolidated information) In this way it would be possible for anyone (e.g. investors) to retrieve and use raw and basic data free of charge and to retrieve derived data (i.e. a consolidated fee or other derived products) for a reasonable fee. However, other could offer similar products without being accused of breach on intellectual property rights (you can own a product name - not a formula/product). In this way, the needed, true competition on the market data side would be promoted and derived data (i. e. consolidated tape) would be affordable for investors and other users.

48) In your view, how far data would need to be disaggregated? Please explain the reasons for your views.

On product- and country level.

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.

See our response to question 47. Firms and customers must only be charged for the processing of data and derived data and not for the raw and basic data itself. The firms and customers should be able to use raw data free of charge for own products (derived data), for distribution etc.

The revenue from market data must not subsidize the operation of the trading facility. Moreover terminal netting should be a requirement in order to avoid that the market participants are not charged fees several times for the same data.

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.

It is very important to get the consolidated tape that will compensate the clients for the fragmented trading and insufficient and poor quality information.

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.

Option B with some caution and with a new tender every third year to ensure the competition for the future. We believe standardised interfaces should be developed both for in- and output.

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).

See our response to question 52.

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?

Referring to the answers on Q 47, it should be free of charge to treat, compare, calculate and distribute raw and basic data from the trading venues/APAs. The receivers will of course have to pay for the services provided by the consolidated tape provider for its receipt, consolidation and distribution of the data/tape.

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?

See our response to question Q 47 and Q 54. The raw and basic market data should be free of charge. The APA should only charge a fixed fee for every buyer no matter how the buyer uses the information.

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)?

Yes to all the mentioned factors.

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

We have no view how long it will take to create the consolidated tape, but it is needed as soon as possible.

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

There is no need for a consolidated tape for pre-trade transparency data. Creating a consolidated tape for pre-trade transparency would not be doable, due e.g. time constraints.

SECTION II: TRANSACTION REPORTING

The NSA refers to the responses provided by EBF on Question 67-83, with the following clarifications and additions:

Extended scope: The NSA is in theory positive to the enlarged scope etc for fully harmonized Transaction reporting, but it has to be established that the new information can be provide in a format so that the information is usable and an adds value, i.e. the benefits must be larger than the quite substantial cost for implementing the changes both within the firms and the authorities. We believe that the enlarge scope etc,. should not apply until the new common European utility is up and running, alternatively when the common interfaces are developed.

Reporting of non-authorised firms trading on a trading venue must of course be provided by the relevant market place. To be solved as soon as possible.

A **clear definition of a transaction** must be developed. The current one is not clear and has resulted in a number of very difficult discussions.

The **proposed client identifier** is correctly questioned in EBF responses. Creating client identifier requires large investment and high running costs; will really the value be higher than the costs? We seriously doubt that. In any event, the identifier cannot be as complicatedly defined as "the person who has made the investment decision". If a client identifier should be necessary to introduce, the identifier should represent the end client to the extent known by the investment firm. It could absolutely not be some unknown person for the investment firm who made the investment decision.

The NSA believes a **common European reporting format** would be extremely good and beneficial for the equities markets. We are also firmly believers in a common European system to which every one reports and which ensure proper and harmonized market supervision. The requirements in this respect must be **fully harmonized**.

SECTION III: INVESTOR PROTECTION

The NSA refers to the responses provided by EBF on Question 84-124, with the following clarifications and additions:

General Comments

Protection of clients and especially retail clients is very important for the general confidence in the financial market. In 2007, MIFID introduced a new system for investor protection. In our opinion it is not time now to change the investor protection rules introduced by MiFID. We believe that most of the issues raised in the consultation could be solved within the current framework. In any event the problems encountered with information overload and a "tick-in-the-box"-system will not be solved by an enlarge information overload in combination with further limitations of the clients' right to make their own decisions. More detail rules could even increase those problems. In our opinion the starting point for rules about investor protection must be well-documented findings regarding the real needs of the investors. The top-down approach, in which the regulators and the supervisory authorities take decision about the needs of the clients, is not the right way. The top-down approach could create a situation in which the protection is based on how many pages of information the client has got (and not read) instead of the most important fact; has the client understood the instrument or investment strategy! The clients' perspective must thus be in focus.

An overload of information can't substitute short, adequate and concise information to the investor as well as continued access to relevant information on demand!

To the extent the investor protection rules in MIFID are changed as proposed, the clients will be very much affected and it will be necessary that the implementation date is such that enough time is provided for information and education of clients. This is a lesson learnt from the implementation of MIFID in 2007, when there was definitively no time for the clients to be involved in the process, there was just time to send out big information packages just before MIFID came into force.

The fundamental principle introduced by MiFID that certain clients (retail) need a higher level of protection whereas more experienced and sophisticated clients (professional clients, Eligible Counterparties) normally are assumed to understand risks involved with financial instruments and financial services should be preserved. Hence, if there are certain – well defined – groups of client classes (e.g. municipalities) that today might be classified as professional clients, and that are deemed to be inappropriate, then it should be the preferred route to calibrate on the definitions rather than reconstructing the fundamental principles for protections afforded to experienced clients.

Detailed Comments

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MiFID regulates **the secondary market** and not the primary markets for which the main protective rules are included in the prospectus directive. Furthermore, MIFID provides rules applying for the relationship between an investment firm and its clients, i.e. MiFID does not and should not regulate the relationship between an issuer and the shareholder/potential shareholder/bondholder/potential bondholder. These distinctions should preferably be clarified.

Execution-only is a very important concept for clients and must remain unchanged to the benefit of clients.

Investment advice should be available for ordinary investors at their choice and not only a product for the very rich and/or with high education affording the service and understanding the need thereof. Prohibition of inducements would also damage smaller firms and thus competition would be damaged. Underlying reasons for advice should be available and provided upon request as is the case today. Furthermore, investment advice is not a lifelong service and it must be possible for clients to ask and pay for a one off advice without the advice being executed via the advising firm.

Requirement for **information to be sent to clients** should not be enlarged; generally the clients prefer to decide themselves which information should be provided and which should be kept available. It should be carefully scrutinized which information is mandatory to provide to the clients based on the best interest of the client!

Summery disclosure concerning **inducement** must be kept as a possibility as well argued for in the EBF response. The experience is that clients take little interest in asking for the full information even clients being very much aware of the existence of inducements and being "demanding". One of our member firms with more than 200.000 clients has noted that they have between 0 – 10 requests p.a. for detailed information on inducements.

Kerstin Hermansson