European
Venues &
Intermediaries
Association

EVIA Response to the German Finance Ministry call for Evidence on the first year of MiFID2/R

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MiFID II Summary

Outstanding Issues and Topics in MiFID2

- Clarify the approach to third country access and equivalence
- Allow for true 'Open Access' to market infrastructures, in respect of the CCP acceptance of contracts concluded on third party trading venues.
- Create the conditions for lower data costs, by facilitating the unbundling of data and promoting the 'pay as you go' model. Reappraise and clarify the scope of MiFID with respect to the definitions of financial instruments, of "derivatives" as well as recalibrating the proportionate treatment of wholesale market venues from those open to retail investors
- Revise the perimeter guidance to MiFID to exclude transactions in non-investment products:
    - This should exclude foreign exchange transactions of under twelve months to delivery to align with the approach taken towards money markets and with that across the rest of the world; exclude borrowing and lending activities such as repurchase agreements; and exclude transactions in physically delivered commodities
    - It should include transactions in *Crypto* assets such as those based on blockchains, where they form investments
- Increase the agility of reference data by replacing the reliance on specific schema generated instruments [RTS 23] by embracing the ISO UPI taxonomy and its CFI classifications under RTS 2 and therefore clarify which instruments are ToTV at any point in time
- Address the absence of Issuer LEIs across the corporate bond market by substituting these with the identity of the trading venue
- Renew efforts to harmonise inconsistent interpretations of MiFID supervision between and across National Competent Authorities by introducing further Commission guidance to simplify and revise ESMA level 3 measures
- Simplify execution reports and revise the application of inappropriate retail rules such as 'Best Execution' to professional and eligible counterparties where choice and competition should be the pertinent controls

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Introduction

Formerly the Wholesale Markets Brokers' Association but with a change of identity and purpose to coincide with MiFID2/MiFIR, the European Venues and Intermediaries; Association ["EVIA"] was founded in the mid-1960's and incorporates MTFs and OTFs as well as arranging brokers across not only financial instruments and derivatives; but also, treasury and financing products, plus FX and commodities platforms.

Common to our membership are the wholesale and multilateral nature of financial markets which they operate and the global distribution of counterparty participants. Therefore, whilst MiFID2 has formed the overarching upheaval to our member's control framework, it has needed to be incorporated into a much broader global framework of market rules and operations. In this way, matters pertaining to the cross-border arrangement of liquidity and recognition of trade execution regimes takes prime-pares across firm's business concerns.

Whilst we have set out some of the difficulties and remedies here in response to the premise of the call for evidence, we underscore that MiFID2 delivered a great many benefits to transparency and conduct, resulting in a market structure much better placed to implement the remarkable ongoing developments in technology and able to harmonise with third country regimes which co-host the wholesale markets. For the record, we would pick out the following benefits: Standardisation of trading venue rulebooks and protocols; Consistency of product identification, particularly OTC (although ISIN not ideal identifier); Consistency of client identification (LEI); Improved market monitoring and provision of risk information; Improved governance and systematic issue resolution; and no noticeable liquidity disruption during implementation phase and first year set up.

In accordance with the requests of the Federal Ministry of Finance, we only respond here with respect to non-equities traded by professional and eligible counterparties and the obstacles in operating trading venues under MiFID2 and MiFIR and suggested resolutions. In the annex we add some comments on the operations on wholesale financial markets in Germany, offering German instruments or with German market participants. We also add some further comments specific MiFID designated factors pertinent in market rulebooks.

General Comments

As MiFIR trading venues, all our member firms have committed great quantities of resource over the last 36 months to implement MiFID2 and underscore that the ccomplexity and uncertainty across its breadth and interlinkages has made for extremely challenging 'business as usual' maintenance of ongoing day-to-day operations, with any final operating model and implementation still evolving.

Member trading venues note the increased appetite for trading on venues and would most welcome the simplification of data capture and onwards flows; a simpler application of the rule-book perimeters together with the coordination with related financial infrastructure regulations; and a harmonisation of approaches with third country regulations under which our firms all operate parallel and contemporaneous services. Together, we integrate all our comments and requests as the adoption and implementation of global standards and we would understand that an equivalence regime based upon mutual recognition would form part of that.

In general, the most convoluted implementation topics have occurred where the MiFID perimeter captures non-investment products, specifically foreign exchange, commodities and Repo. Rather than create more complex and cross-referenced rules, we believe that these products should be removed from the scope of MiFID by a revision to the perimeter guidance in C4, C6, C7 and C10.

The most complicated implementation projects have concerned the application of reference data to the listing of non-simple instruments, especially to derivatives and to contingent executions such as

"packages". In tandem with the responses from communities of market participants, our clients and customers, we urge a revised approach to instrument reference data and directly support the recommendations from ISDA and FIA in this regard.

The most harmful outcome from the MiFID implementation so far has concerned the economic rents charged by market monopolies in the provision and bundling of required data sets and the restriction of access to mandated CCP clearing and CSD processing. We set out these details below.

Specific Comments

Open Access

Failure to enact open access rules in both EMIR and MiFID

We would encourage policymakers to use the opportunity offered by the July 2020 European Commission review of articles 35 and 36 MIFIR to remove the barriers to 'Open Access' to Europe's trading and clearing infrastructures.

'Open Access' means ensuring non-discriminatory access to trading and clearing infrastructures. Currently, European CCPs can offer privileged access to trading venues within their own corporate group. This 'silo' model establishes monopolies, which means the market loses the benefits associated with free competition.

Open access will give market participants enhanced choice in trading and clearing services, thereby avoiding the concentration of risk presented by closed market infrastructures, and leading to lower costs, deep pools of liquidity, improved service levels, greater capital efficiency and innovation. This view is shared by IOSCO, which identified fair and open access to trading venues and CCPs, based on transparent and objective criteria, as important for ensuring safe, efficient and continuous markets[1].

While article 35-36 MIFIR prescribes non-discriminatory access to CCPs and trading venues, it currently allows competent authorities the possibility to deny such access if it would 'threaten the smooth and orderly functioning of the markets, due to liquidity fragmentation' or if it 'would adversely affect systemic risk'.

Citing these grounds, prior to MIFID II's go-life date, all relevant competent authorities chose to opt their market infrastructures out of the Open Access regime for a period of 30 months (presumably to coincide with the European Commission's review date). This means that the benefits of Open Access have so far been untested.

We would recommend policymakers to review the broad exceptions within the current regime, with an eye on assessing whether the benefits of competition are accurately weighted against the potential for 'risks. This could include tasking ESMA and/or the ECB with the assessment underlying the invocation of any exceptions, increasing the burden of proof, narrowing the ground of exceptions or removing the exceptions altogether.

[1] See Principle 18, page 101-102, CPSS Principles for Financial Market Infrastructure

Market Data Costs

Conditions encouraged for increased data dependence, costs and bundling

MiFID2/R requires trading platforms to make pre- and post-trade market data available on a "reasonable commercial basis". Notwithstanding this requirement, certain features of current market structure have led to significant price increases in some parts of the market (notably the Regulated Markets "vertically consolidated exchanges"). These should be addressed by policymakers.

The price differential between exchange data and the data of other MIFID venues is a factor of the lack of 'Open Access' (or non-discriminatory access to trading and clearing infrastructures) as the prior section of this paper explains. Because exchanges can monopolize trading in listed products, they lack the competitive strains to decrease their prices (in both trading and associated data services). In non-listed products, venues compete for market share, which tends to decrease prices.

Another contributing factor to the elevated price level is the ability of exchanges, index providers and resellers to bundle their services into a single product offering. This means the client is 'forced' to pay for trading, messaging and/or data services in one package. In addition, within the data offering, clients often have no choice but to pay for an 'all-you-can-eat' stream of data, while they would typically use only a comparatively small set.

A 'pay as you go' data offering would be more cost-efficient. Coupled with the ability to separate data services from trading and messaging functionalities, this would increase competition in the market, putting downward pressure on prices.

Disaggregation of market data could be further facilitated by the market wide adoption of ISO data standards. As an example, current MiFID reporting standards for derivatives make it impossible to tie instrument identification numbers (ISINs) to derivatives with a common set of characteristics, hindering the formation of time series of data with any of the current reference database tools and engines available (FIRDs, FITRs and the ANNA-DSB).

Defining Trade Execution and Transparency

Inappropriate reliance on the liquid cash equity template for non-equities

Most wholesale trades require the negotiated sourcing of interests and liquidity and therefore involve multiple legs as "Packaged Trades." We would recommend amendments to MiFID to enable trades to be arranged with certain component risks or "legs" to be executed on tertiary trading venues. The reporting of "Package Transactions" or contingent trades such as spreads would benefit from the linking of transaction components into sets and hierarchies by the addition of such a field in the reporting schema. This would mean that the package as a whole will be traceable by supervisors.

In respect of derivatives, we would support ongoing revisions to reference data to include "core economic terms" such as term and forward start such that transaction reporting templates promote the consolidation of products with similar properties and risks. Currently we observe the serial creation of a great many, very similar instruments and transparency reports.

We believe MiFID revisions could more explicitly define the legal point or the locus of trade execution within the negotiation and concluding process because it currently remains indistinct. In the case of pre-arranged trades or sets of contingent trades which together form a transaction it is difficult to simply answer the question, "where and when did the trade occur." It also remains indistinct in a simple contract where the point of legal execution is deemed to occur between the initial interaction of trading interests and the post-trade finality of settlement or collateral exchange, but that point remains opaque leading to potential conflicts.

EVIA would recommend a common law approach and for MiFID to explicitly define the point of execution either at a marked stage in the trade process or in the TV terms of business whereby legal risks are minimised. We note some industry initiatives in this regard to formalise obligations against credit or margin often together with an exchange of tokens guaranties settlement finality.

Defining Financial Instruments and Market Counterparties

Reference Data and Legal Entities require better identification

We believe that instrument reference data should be based upon CFI classifications under the ISO UPI format, and that it is important to increase the agility of these data files to combine instruments to represent the transactions that occur on our trading venues, whether under MiFID or equivalent third country regimes. We therefore propose that the existing structure of reference data should be collected and categorised according to RTS2 as TVs make types of instruments available to trade and adjust their properties and core economic terms day-by-day and trade-by-trade. This would establish a more extensible source library of reference data accessible by both the generic product classifications and the negotiated economic terms including linked instruments within packages and contingent trades.

We also understand that ongoing developments in data capture and mapping such as the ISDA Common Domain model could greatly improve the semantic mapping of reference data creation and access to greatly improve the information within transaction reporting. These prospective developments across the “Reg-Tech” branch of “Fin-Tech” mitigate for a flexible approach to any MiFID review in this field.

Whilst we support the LEI regime being incorporated into MiFID, counterparty identifiers need to further define branches and indeed more detailed risk units such as trading desk granularity to provide the benefits of such developments as “Smart confirmations” and real time affirmations and billing.

We are closely aware of the difficulties of data sharing between authorities and indeed reporting agents where transaction reports contain personal identifiers such as passport numbers, and we support the views in the responses of FIA and ISDA as market participants in this regard. Therefore, we commend the construction of a PII library and taxonomy to enhance data sharing without compromising privacy laws such as GDPR. European authorities should promote such solutions into global standards.

Commodities Markets

Non-Investment products should not be financial instruments, therefore physically delivered commodities should be excluded from the scope MiFID via a revision and simplification of PERG C6. MiFID rules should be confined to actions close to the point of trade, rather than ensuing positions and risk.

In operating a wide array of commodity markets covering all categories of product and all the market structure models, we believe the application of MiFID2 to these markets has been both partial and extremely complex at the same time. In short, we do not observe the benefits and access accruing to stakeholders across this segment in the manner it does in relation to financial instruments.

Whilst exchange monopolies have generally been enhanced by MiFID in certain commodities, others such as oil products, freight and precious metals have remained outside the perimeter. This conjugation of exchange, off-exchange registration, OTF, third country and OTC market models has not served any of the objectives of the legislators. The absence of any definition of commodity derivative, added to its different application in other European regulations including EMIR and REMIT and similar differences with respect to third countries has led to fragmentation between products and an absence of competition within products.

In operating the majority of OTFs arranging and executing energy markets in Europe we are closely aware of the contrast between those onshore products as opposed to the more cross-border markets. Where commodity markets are not constrained geographically to Europe, we have not witnessed any interest in participants to request and require TV rulebooks, which suggests that MiFID does not deliver the hoped-for benefits. We emphasise that most participants on our energy markets in Europe are not investment firms under MiFID. This obfuscates the application and the objectives of the legislation.

In consideration of the above, we believe that physically delivered commodity markets should be removed from the MiFID perimeter by amending PERG C6 and PERG C7 to define derivatives as instruments with cash settlement. This would clarify the treatment of physical forwards as not to be MiFID instruments and therefore to promote effective market participation.

FX Markets

Non-Investment products should not be categorised financial instruments

Foreign Exchange ["FX"] instruments that are physically settled with terms at or under twelve months should not be defined as financial instruments, but rather as payments and treated accordingly. This requires a revision of PERG C4. MiFIR should set out a simple and effective definition of a derivative as a sub-class of financial instruments which identifies the cash settlement to a contract by reference to a specified reference or calculation.

Forward agreements in general and most importantly FX forwards should not be treated as either financial instruments nor derivatives. This is in accord with global standards, notably that in the United States and that which broadly applied under MiFID1. Instead the relevant regulations applying to forwards should apply, in the case of FX this may be as payments or as funding according to the intent, structure and counterparties to the contract.

We note our comments below regarding the recent requirement by ESMA to recategorize FX Swaps. Where derivatives, FX markets are inherently global and require a more harmonised coordination to global standards access than perhaps any other market segment.

Funding and Collateral Markets

Non-Investment activities such as borrowing, and lending should not construe financial instruments or a MiFID activity.

Securities lending and repurchase ["Repo"] agreements should be regulated under SFTR and CSDR as appropriate and excluded from the MiFID perimeter by a new entry into PERG. Currently their inclusion into MiFID inadequately redefines the activity to create single instruments where in fact more than one are being created.

Similar complications arise in foreign exchange funding markets ["FX Swaps"] where the post trading committee of ESMA have recently asked the wholesale markets to reclassify those FX Swaps traded in the EU as a single instrument rather than as two associated legs to form a transaction. Amongst other complications, this approach would however would result in the near leg of a swap usually expiring even before the trade was confirmed and reported whilst preventing the netting and consolidation of risk and payments.

Trading Obligation and Trading Venue ("ToTV") Criteria

The Trading Obligation should be merged with the Clearing Obligation and harmonised as a global standard. ToTV should be broadly construed via RTS 2.

EVIA has written to ESMA and to the EU Commission at length on the imposition of the TO despite the evident fact that from the perspective of a TV, everything is ToTV. In the interests of simplicity and to encourage a harmonised global application, we believe that there should be no difference between the trading mandate and the clearing mandate. Secondly, we note the unwieldy complications that have arisen in the United States under SEF rules which discriminated between mandated and permitted products; this is echoed in MiFID by the dispersion between TO and ToTV. Finally, we note the complications which have arisen under ESMA's initial attempts to consider packages and contingent execution of multi-legged trades including derivatives.

We commend that the TO should apply to any single and simple derivative instrument which is determined to be specified under the clearing obligation. Therefore, the TO should cease to exist as autonomous to the CO.

It follows from the above that EVIA supports the application of the broad scope of ToTV. This would harmonise with the emerging approach in the United States. Together with ISDA, EVIA have written and presented our beliefs to ESMA such that any instrument as defined under RTS 2 and publicly admitted to a MiFIR trading venue should be considered as ToTV. In this way, ToTV would be defined differently by asset class to reflect individual asset class characteristics ["CFI"] and would consequently be identified by the ISO Unique Product Identifier ["UPI"] to enable semantic tools and trade processing.

This instrument UPI data should be collated across the permitted trading venues and updated by ESMA as reference data at least daily. We note that the required change in creating instrument reference data from RTS23 to RTS2 most dramatically reduces the number of instruments and substantially negates the MiFID reliance on the Derivatives Service Bureau. We underline our support for industry views on the utility and costs of ISINs as set out by FIA and ISDA in their responses to this consultation.

Third Countries

The MiFID perimeter should be clarified to provide deference to trading venue rules and mitigate duplicated reporting with respect to third country participants. This may be achieved by cross-border access provisions and equivalence provisions based upon agreed standards and mutual recognition.

We support on ongoing competency being held by the European Commission, via the European Securities Committee ["ESC"] for third-country trading venues to be considered as regulated markets for shares and derivatives under MiFIR (Art. 23 and 28(4)) and underscore the value in that equivalence determination for non-EU trading venues to mitigate risks towards fragmenting markets. To further promote these universally held goals this approach should be formally adopted to apply to any instruments that are ToTV and therefore wider than the TO [*see our comments on both a UPI defined ToTV and on negating the TO into the CO*].

Given that EVIA members operate authorised TVs across many third country regimes which should be considered equivalent, it follows that to promote efficient and effective liquidity formation and to dissuade the fragmentation of the capital of market participants, so MiFIR TVs should be able to directly source orders and trading interests from such recognised third country TVs. These interests will be on the same systems and protocols and will lead to a substantial reduction in credit, settlement and operational risks whilst increasing transparency and choice.

MiFID requires TVs to transaction report where the market participants are not investment firms in the EU. Where counterparties are investment firms in an equivalent third country domain, they would need to

make their reports to the home competent authority whilst the TV reports to the relevant MiFID competent authority. This creates evident overlaps and dual reporting; therefore, we would commend the exchange of singly reported data between NCAs. This may require a better approach to personal identification data ["PII"] contained in transaction reports and we support the approach to PII data advocated by FIA and ISDA in their responses to this consultation.

Annex 1: Note to the Finance Ministry; Comments specific to German participation in MiFID; participation and products

i. MTFs and OTFs in Germany

Outside of the cash equities markets operated by vertically integrated exchange groups, specifically the Deutsche Boerse – Eurex Group, there are no active trading venues in Germany. EVIA has only one-member firm trading venue, 360T, which offers FX markets and has recently been incorporated into the above group.

The relevance of this comment is that historically Germany has hosted a significant number of non-equities brokerage enterprises including domestic names such as Carl-Kliem, Bierbaum and InterContinental, whilst all the international brokerage firms operated branches in Frankfurt or Dusseldorf. The question arises therefore as to why none of these deeply entrenched treasury and capital markets operations could join the transition into MiFIR venues as witnessed in many other European financial centres.

Considering the scale and importance of the ECB's role across European fixed income and currency markets, together with the rising importance of Eastern European markets and Germany's pivotal role in Europe's gas and power infrastructures, we find it greatly surprising and puzzling that Germany has not hosted a greater share and a wider diversity of MiFID trading venues.

ii. MTF and OTFs admitting German Financial Instruments

Wholesale markets in Europe are focused on German assets which have always been generally accepted as the proxy for the rest of the EEA in general and the Eurozone in particular. Even leaving cash equities aside, it is indisputable that German Financial Instruments, together with their derivatives have played the dominant role in Europe's financial market structure. This is because the historical role of the Deutschemark, its assets and yield-curve has been consistently that of the benchmark or anchor price in the period since WWII. Today, not only Bunds, OBLs and Schatz instruments, but also corporate and covered credit instruments maintain that role, ostensibly because of the absence of debt issuance by European agencies.

In operating fixed income and derivatives venues, our members have helped create a market structure traded to a very great extent as a spread relationship to German benchmarks or specifically to the Eurex Bund Futures. Whilst money markets are referenced to benchmarks Euribor and Eonia [ESTR] which do not specifically reference Germany, the evolving transition from IBORs to OIS shall undoubtedly focus attention on the role of ESTR as measuring core Frankfurt central bank money rather than the European periphery via ever escalating Target 2 imbalances and the size of the ECB balance sheet.

We also note that whilst equity derivatives are traded in a variety of European centres, notably London, Paris and Amsterdam; this market structure is also predicated on both the Frankfurt hosted DAX index and on German specific domestic equity underliers to such an extent that we could state that Germany forms the basis to more than three-quarters of Europe's equity derivatives market.

iii. Market access requirements by German clients

In considering the impact of MiFID2 in a German context, we would also consider the size and scale of German end user participation in the wider wholesale markets outside of, or not exclusively Germany. By virtue of their size and global scale, German asset managers and corporates headquartered in Germany have a great requirement to manage balance sheet, credit, commodity and foreign exchange risks.

When added to wholesale market participation by German banks, we note that the capability to access non-domestic markets is vital and this is afforded in large part by Article 42 of MiFID II and Article 46(5) of MiFIR, with contextual reliance on Article 4, Article 5(1) and Recital 111 and Recital 7 together.

Annex 2: General Comments on Gaining Permissions and Operating Trading Venues

In this section we comment on some of the aspects from the initiation of MiFID2/R from the point of view of operating MTFs and OTFs in the non-equities markets segments which were brought into the scope of MiFID and related European legislation for the first time in the period around 2018.

i. Evolving wholesale markets; outlook for dealer liquidity and internalisation

It is important to set out the broader market context into which MiFID2 was launched for fixed income and derivative markets which have long been operated under a model of dealer (usually wholesale banks) intermediation by acting as principal. Therefore, interdealer interactions to hedge benchmark and prime-factor risks in large aggregated global risk "books" or portfolios which has been the dominant model is being replaced by new actors and the "agency model" due to the raised costs of capital and of conduct, combined with the very low levels of interest rates, of credit spreads and of volatility. Together with the role of trading venues as booking facilities for previously internalised trade flows and for many dealer-to-client interactions has placed emphasis on the underlying MiFID principles of "All-to-all markets" and "Open Access."

ii. Market requirements for multiple methods of trade execution; the value of the OTF

The coincident emergence of the agency model in non-equities markets together with paradigmatic advances in technology to process large datasets and to identify and arrange cashflows, instruments and the counterparty chains has placed added value to the MiFID principle not to mandate trade processes and protocols. This flexibility is required because most non-equities trade as relatively large trades in episodic markets, and usually as continent packages which altogether de-emphasises the usefulness and utility of consolidated order books ["CLOBs"] which are the foundation of equity markets. Whilst all three classifications of MiFIR trading venues [RM, MTF, OTF] have been deploying new methods of trade execution, including exchanges as indeed there are very few, if any, truly liquid markets in non-equity; the OTF category has enabled authorised multilateral venues to facilitate episodic markets where the dynamic requirement is the arrangement of contingent trades in packages and the discovery of required trade size. The digitisation of voice arranging and its interaction with electronic transparency and applications has encouraged innovation and access for markets that are becoming demonstrably "all-to-all."

iii. Defining the Perimeter: Market access and interoperation

To promote competition and innovation as well as the stated aims of the G20 Pittsburgh agreement in 2009, MiFID needs to better define and understand the regulatory perimeter of the trading venue via the application of its rulebook whereby liquidity can more effectively interact both between MiFID TVs and into third country regimes. This is because both the market participants and the products are global in nature and we observe an ongoing regional subsidiarisation and branching of market participants with less reliance on central booking of trades and reduced balance sheet management transacting solely in the USD.

A more diverse and global market requires a multilateral and deferential approach to the location and currencies of trade settlement, margining and connectivity of venues into financial market infrastructures such as those in Asia and the Americas. Post MiFID developments such as the internationalisation of the RMB and Brexit further emphasise the requirement on MiFID to conjoin EU capital markets to the rest of the world and take a proactive approach to equivalence determinations.

iv. Admittance to Trading and Trading Obligations [ToTV, TO, CO, CTP]

Together with ISDA, EVIA lobbied ESMA through the run-up to MiFID and indeed thereafter to take a more generic and transparency orientated approach to the listing of instruments and products admitted to

trading. This would have involved a listing, in real-time, by trading venues according to RTS2 and CFI codes of all those classes and sub-classes of instruments classified as "ToTV". We still maintain that an approach determined post-facto and via RTS 23 had been a major contributor not only to both costs and opacity, but also as a barrier between MiFID and third country regimes. ToTV needs a machine readable, real-time generic approach which can be simply plugged into international standards for the rapid application of deferential equivalence.

EVIA has written to ESMA on occasions around the development of the Trading Obligation despite its relatively limited application outside the cash equities market. We underline that the TO should map onto and be the same as the clearing obligation for derivatives, and that since these obligations are essentially global, they should fit into an international regime for definition and application and under the governance of a global supranational body.

We understand that industry stakeholders generally support ESMA responsibility for collection and warehousing of reference data within the FIRDS reference database in the manner that FIRDS should subsume the role of "golden source" of ToTV instruments. EVIA supports this and suggestions that ESMA should be responsible for ensuring delivery of all other reference data sets (i.e. ToTV instruments, SIs, investment firms and all other common datasets required across MiFID.

We note that the European Commission has become more interested in supporting the prevalence of consolidated tapes in the period since MiFID2 became live, we support this viewpoint but the rules around CTPs are appropriate to the number and nature of the instruments and the frequency of trades. We note the recent exchange of views in the US concerning consolidated tapes under the ongoing SEF review by the CFTC, whereby such developments are broadly encouraged. EVIA would not however consider that mandates are appropriate in MiFID, especially were instruments may trade episodically or where their identification and admittance to trading remains poorly defined.

v. Liquidity Definitions and Waivers

Most individual instruments in multilateral wholesale market venues are observed to trade episodically, infrequently, and as contingent executions in larger transactions. Trade sizes are therefore large relative to equity markets. For instance, the most frequently traded instruments, the "on-the-run" BOBLs, Schatz and Bunds which are also deliverable into the futures contracts, will trade under 50 times per day, but with average trade sizes at over Eur 25mm each. We note this creates very different counterparty requirements compared with retail, futures and some electronic markets where average trade sizes are 1/100th of this at under Eur 250,000.

vi. Exemptions: Scope, Instruments and Products

EVIA, together with ISDA lobbied ESMA for an instrument led approach to the trading framework based upon RTS2 instrument categories, articulated by ISO_CFI designations. In this way, instruments are first grouped and then sub-categorised according to varying core economic terms and would not create and recreate daily series of closely related instruments whose reporting is less easy to aggregate to assess transparency, risk and perform conduct supervision.

MiFID treats physically delivered forwards as both financial instruments and derivatives without explicitly defining what constitutes a derivative other than as residual in PERG. This creates categorisation gaps to other EU regulations and to third country rules. In capturing physical delivered forwards it often specifies commodities and FX markets in such a manner that they are dependent upon ill-defined and often less liquid "spot markets" to prescribe their treatment and interoperation under rulebooks. Often, the forward market is the primary price forming liquidity pool, and not dependent upon other segments to price and to define itself. In short, MiFID would benefit from specifying a derivative via cash settlement from a reference price and to ensure that physically delivered forwards are excluded from that perimeter definition.