European Securities and Markets Authority, ESMA
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- Submitted online via ESMA's website -

30 September 2011

Comments of the EAPB on the ESMA consultation paper concerning its guidelines on systems and controls in a highly automated trading environment for trading platforms, investment firms and competent authorities

Dear Madam or Sir,

The European Association of Public Banks, EAPB, welcomes the opportunity to comment on your consultation paper of 20 July 2011 concerning your guidelines on systems and controls in a highly automated trading environment for trading platforms, investment firms and competent authorities (ESMA/2011/224). We would like to point out that neither high-frequency trading (HFT) in particular, nor algorithmic trading in general, are part of the business model of our member institutions.

Answers to the questions

Q1. No. Because of the on-going review of the MiFID, the planned publication of final guidelines at the end of the year is not appropriate. Since the adoption of the European Commission's legislative proposal due by mid-October 2011, the interpretation of the present directive would not be helpful. The guidelines likely will have to be subsequently modified and revised. This creates uncertainty in the market.

Q2. Yes.

Q3. No.

Q4. ---

Q5. Yes.

Q6. No.

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Q7. ---

Q8. A further harmonisation of European trading platforms' regulations would facilitate access for potential participants.

Q9. It is unclear which case should be covered by guideline 3 (2), first bullet point. Trading platform participants should always be able to cancel erroneous trades in accordance with the trading platform's applicable rules and regulations.
Guideline 3 (2), second and third bullet point, makes reference to the measures that trading platforms can take to throttle order flow per participant. Such measures are generally appropriate but should be applied in a differentiated manner in certain cases.

Q10. With respect to guideline 3 (2), fourth bullet point, the use of safeguards on trading platforms is essential to maintain a fair and orderly pricing. Otherwise there can be sharp price fluctuations that do not mirror the market situation accurately. Such safeguards must be sensibly combined and their use clearly defined. The concrete use of which safeguards depends largely on the specifics of a given market. Consideration could be given to setting minimum requirements for trading platforms.

Q11. Guideline 4 (5) should be deleted, as it is an interpretation that is at odds with the requirements set in the relevant directives. The requirement for investment firms to "ensure that their compliance staff has a feed of all orders in as close to real time as possible" is not necessary. Monitoring order flows by evaluating order books is the task of trading surveillance offices that have the ability to evaluate order books properly, as only they monitor the market in its entirety and can thus identify manipulative orders.

Q12. The wording of guideline 4 (2), second bullet point, is not clear enough and could result in the obligation to monitor short selling by clients. Such monitoring cannot be performed either by trading platforms or by intermediaries.
The approval of orders exceeding predetermined limits according to guideline 4, explanatory notes, paragraph 33, third bullet point, makes sense. Such clearance should nonetheless not be performed by staff responsible for compliance and risk management. It would be sufficient to regulate in which cases clearance would have to be performed by whom exactly.

Q13. An objective discussion is important. The debate on HFT is often dominated by the events surrounding the flash crash in the US in May 2010. The flash crash however was caused by the specific US market structures. Key factors were the US rules on the forwarding of orders not immediately executable to other trading platforms, the absence of single-stock volatility interruptions and the mandatory market-making requirement, which led to posting of stub quotes. Under the current MiFID rules there is no mandatory requirement to forward

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orders. In Europe volatility interruptions are usually triggered if the value of a certain stock exits predetermined corridors. There is no absolute mandatory market-making requirement.

Q14. No.

Q15. With regard to guideline 5, explanatory notes, paragraph 38, it must be noted that HFT per se is not market manipulation. HFT is a technique that can be used to implement trading strategies. Regardless of the speed at which orders are generated, any manipulative strategy must be prohibited. In this respect, the described types of practise must be viewed differently. Ping orders are not manipulative and can also be generated manually. As for quote stuffing, trading platforms already have penalty mechanisms in place which stop this practice. Momentum ignition and layering and spoofing are practices which are at odds with the MAD. Market participants who adopt these practices should be penalised accordingly, no matter whether they do so in HFT or else. Generally speaking, further harmonisation of the interpretation of behaviour that constitutes market manipulation would make it easier for participants to access European markets.

Q16. No.

Q17. The obligation of guideline 6 (2), fourth bullet point, goes inappropriately beyond the requirements set in the relevant directives. Monitoring order flows by evaluating order books is done by trading surveillance offices that have the ability to evaluate order books properly, as they monitor the market in its entirety and can identify manipulative orders.

Q18. With respect to guideline 7 (2), sixth bullet point, trading platforms should ultimately be able to stop orders entered by way of SA.

Q19. With respect to guideline 7 (2), first bullet point, the policy on penalties that trading platforms impose on members should also be regulated with regard to their clients.

Q20. We do not deem it useful to publish guidelines before the legislative process of the review of the MiFID has been concluded. However, the proposed guidelines present a suiting framework in general. The relationship between the trading platform and the final client seems to be treated differently in practical. A clear statement concerning the responsibilities of the participants is necessary. The uniform interpretation by ESMA can give an orientation.

Q21. Yes.

Q22. The wording of guideline 8 (2), second bullet point, should be revised.

Q23. Yes.

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Q24. Guideline 8 (2), fifth bullet point, refers to guideline 4 (2). The wording of guideline 4 (2) is unclear in the case of the second bullet point “adequate funds or holdings of, or access to, the relevant financial instrument to complete the transaction”. This wording could result in the obligation to monitor short selling by clients, something that cannot be performed either by trading platforms or by intermediaries.
The requirement of guideline 8 (2), seventh bullet point, for investment firms to have a real-time feed of orders goes too far. Monitoring order flows by evaluating order books is the responsibility of trading surveillance offices which only have the ability to evaluate order books properly, as only they can monitor the market in its entirety. Only in this way can manipulative orders be identified.
The relationship between the service provider and the DMA/SA-client seems to be treated differently in practical. The uniform interpretation of the rights and the responsibilities of all participants by ESMA is therefore welcome, for example, concerning the risk management with a view to client orders, the adherence to limits and the execution of controls. The demand to state the rights and the obligations of the participants in a contract seems helpful in this respect.

Q25. The on-going MiFID review questions a current publication of guidelines including explanatory notes. Apart from this, the publication of explanatory notes would be helpful to achieve a uniform interpretation of guidelines.

Should you have additional questions or comments, please do not hesitate to contact us.

Kind regards,

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The European Association of Public Banks (EAPB) represents the interests of 35 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.

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