ESMA'S CONSULTATION

SYSTEMS AND CONTROLS IN A HIGHLY AUTOMATED ENVIRONMENT FOR TRADING PLATFORMS, INVESTMENT FIRMS AND COMPETENT AUTHORITIES

RESPONSE TO THE

PUBLIC CONSULTATION

OCTOBER 3, 2011

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I. EXECUTIVE SUMMARY

A brief summary of our main positions on the questions posed by ESMA is provided below:

1. NYSE Euronext understands that this consultation proposes the potential adoption of Guidelines at the European level (through ESMA) and will also serve, if adopted, as an interpretation tool for existing legislation (ex. such as the Market Abuse Directive);

2. NYSE Euronext agrees in principle with most of the proposed Guidelines as they would provide greater clarity and greater consistency throughout Europe; although in some instances NYSE Euronext is concerned that the Guidelines are overly prescriptive and should instead be principle-based, in recognition that the described arrangements for meeting the principles will need to be tailored to the characteristics of different financial instruments and market structures;

3. NYSE Euronext believes that highly automated trading has to be analysed in light of the benefits and risks it brings to the financial markets;

4. NYSE Euronext believes that it is crucial to insure that Regulated Markets and Multilateral Trading Facilities be subject to the same organisational requirements in terms of their trading systems, as well as in respect to the promotion of fair and orderly trading, the prevention of market abuse, and the provision of services such as Direct Market Access and Sponsored Access;

5. NYSE Euronext supports the proposed Guidelines on organisational requirements for trading platforms and investment firms to:

i) Promote fair and orderly trading in a highly automated trading environment; and

ii) Prevent market abuse and market manipulation in this same environment.

6. NYSE Euronext believes that highly automated trading, which includes high frequency trading is not abusive by nature and is subject to all current Market Abusive Directive requirements and that it is important to make the distinction between HFT (a legitimate activity supported by technology) and the conduct involving abusive or fraudulent trading strategies or behaviours. As such, NYSE Euronext believes that highly automated trading/HFT is a valuable activity that should not be curbed but whose risks could be mitigated in a more consistent and systematic manner across Europe.

II. GENERAL COMMENTS BY NYSE EURONEXT

This document contains the views of NYSE Euronext with regard to ESMA's Public Consultation on the draft Guidelines on Systems and Controls in a Highly Automated Trading Environment for Trading Platforms, Investment Firms and Competent Authorities (hereafter "**ESMA Draft Guidelines"**).

NYSE Euronext welcomes the opportunity to comment on legislative policy and orientations on systems and controls in highly automated environment for trading platforms, investment firms and competent authorities.

NYSE Euronext believes that, prior to any regulation of this activity, highly automated trading, which includes, high frequency trading (hereafter "**HFT**") has to be analysed in light of the benefits and risks it brings to the financial markets. The emergence of highly automated trading has been driven by the increasing fragmentation of the European trading landscape, favoured by the opening to competition of the operation of trading platforms under MiFID. In this context, and as demonstrated by a recent study commissioned by the UK Government[1], highly automated trading contributes to making the prices of the same financial instruments more coherent across trading venues, and therefore to improving the efficiency of the price formation process in the short-term. Highly automated trading and specifically HFT increases the liquidity of the European financial markets and results in lower spreads. As such, NYSE Euronext believes that highly automated trading/HFT is a valuable activity that should not be curbed but whose risks could be mitigated in a more consistent and systematic manner across Europe.

NYSE Euronext believes that the proposed ESMA Draft Guidelines will provide greater clarity for trading platforms and investment firms on the expectations of competent authorities and will provide for greater consistency of approach by different competent authorities across Europe, notably in the area pertaining to high frequency trading and other forms of highly automated trading.

As a platform operator, NYSE Euronext believes that it is crucial to ensure that Regulated Markets (hereafter "**RMs**") and multilateral trading facilities (hereafter "**MTFs**") are subject to the exact same organisational requirements in respect of their trading systems, as well as in respect of the promotion of fair and orderly trading, the prevention of market abuse, and the provision of services such as direct market access and sponsored access.

[1]UK Government Office for Science, Foresight, The Future of Computer Trading in Financial Markets, 2011

The remainder of this paper sets out NYSE Euronext's responses to the specific questions which are contained in the ESMA consultation paper on the Draft Guidelines. For ease of reference, the questions from the consultation paper have been reproduced below (in bold type) and are followed in each case by NYSE Euronext's response (in normal type).

Q1: Do you agree with ESMA that it is appropriate to introduce guidelines already before the review of MiFID covering organisational arrangements for trading platforms and investment firms in relation to highly automated trading, including the provision of DMA/SA?

NYSE Euronext believes that it is appropriate to introduce guidelines before the review of MiFID covering organisational arrangements for trading platforms and investment firms in relation to highly automated trading, including the provision of DMA/SA. NYSE Euronext believes that in order to avoid any unlevel playing field, the most important issue is that these guidelines are applied in a uniform way across all jurisdictions and to all market participants and pertaining to all orders.

NYSE Euronext notes that the proposed ESMA Draft Guidelines are presented under the existing legal framework provided by MiFID[2] and the Market Abuse Directive (hereafter "MAD")[3]. These two directives are currently under review and the Commission has committed to making proposals to amend them in the course of 2011. The revisions of these two Directives are expected to have a profound impact both on market microstructures and on the prevention and mitigation of market abuse. However, because these revisions will be implemented in a few years, it appears appropriate, in the meantime, to adopt more technical standards to adapt to the current changes in the European financial markets. In addition, the content of the guidelines appear to be well-suited in assessing the potential risks posed by evolving technological developments, in particular automated trading.

III. ORGANISATIONAL REQUIREMENTS FOR TRADING PLATFORMS AND INVESTMENT FIRMS IN A HIGHLY AUTOMATED TRADING ENVIRONMENT

a) TRADING PLATFORMS

[2] MiFid, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments Directive, OJ L 145 of 30.04.2004).
3 Market Abuse Directive, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation, OJ L 96 of 12.04.2003).

Q2: Do you think that the draft guidelines adequately capture all the relevant points relating to the operation of trading platforms' electronic trading systems?

NYSE Euronext supports the proposed guidelines in respect to the organisational requirements for RMs' and MTFs' electronic trading systems.

It is the normal course of business, and in its commercial interests for a trading platform to adapt to the technological innovation of its members and to build market confidence through rigorous testing of its systems. However, and along the lines of the suggested guidelines, it is important to ensure that RMs and MTFs bear the same obligations in order to ensure a level playing field. The requirements regarding the governance of the trading systems, business continuity arrangements, compliance with existing regulations, real-time monitoring of the trading systems, staff training should be identical for both types of platforms.

For example and in addition to many other aspects of organizational requirements, NYSE Euronext has in place a control framework that is broadly based, amongst others, on three pillars aimed at maintaining an orderly market. These include prevention, detection and investigation. MiFID, MAD, ESMA standards and, amongst other, the Euronext Rulebooks provide the basic minimum requirements for the monitoring of trading and enforcement of rules by NYSE Euronext. In this context NYSE Euronext has developed a market monitoring capability through which it:

- Oversees trading in order to identify breaches of the rules, disorderly trading conditions or conduct that may involve market abuse;

- Reports to the relevant national regulator breaches of rules or of legal obligations relating to market integrity; and

- Monitors compliance with and enforces the Euronext Rulebooks.

NYSE Euronext has a control framework and would expect all trading venues including MTFs and RMs to have the same.

Q3: Are there areas where it would be helpful to have more detail on the organisational requirements applying to trading platforms' electronic trading systems?

NYSE Euronext believes that stricter requirements regarding the prevention of conflicts of interests should be required.

RMs are required to prevent conflicts of interests between their owners or operators and the sound functioning of the market, while investment firms are required to prevent conflicts of interests between themselves and their clients.

When a single firm combines activities such as (i) the operation of a multilateral facility; (ii) the provision of client flow to that facility; (iii) the provision of own account flow to that facility; (iv) the monitoring of the market integrity of the same platform; (v) is a shareholder in that platform, and (vi) operates automatic routing arrangements between its internal systems and those of the platform, potential conflicts of interest have to be monitored very closely.

Furthermore, MTFs, whether operated by an investment firm or market operator, must abide by at least the same level of obligations pertaining to conflict of interest and be required to have in place specific arrangements to identify and manage them. In addition, they should have arrangements and systems in place to identify and mitigate risks to their operations for the sound management of the technical operations of the system (including effective contingency arrangements to deal with risks of system disruptions).

In an environment where execution venues are chosen by investment firms, and where these investment firms are also shareholders of MTFs, full transparency and disclosure should apply in order to avoid conflicts of interest. We would suggest that:

- Platform operators acting as active market participants shall publicly disclose on a monthly basis the volumes routed to their platforms; and
- User-owned MTFs shall publicly disclose on a regular basis the number of investigations conducted and sanctions taken on the platform.

Q4: Do you have additional comments on the draft guidelines on organisational requirements for trading platforms' electronic trading systems?

Please refer to answer provided under question 3.

b) INVESTMENT FIRMS

Q5: Do you think that the draft guidelines adequately capture all the relevant points related to the operation of trading algorithms?

Q6: Are there areas where it would be helpful to have more detail in the guidelines applying to the organisational requirements for investment firms' electronic trading systems?

Q7: Do you have additional comments on the draft guidelines relating to organisational requirements for investment firms' electronic trading systems?

IIII. DRAFT GUIDELINES ON ORGANISATIONAL REQUIREMENTS FOR TRADING PLATFORMS AND INVESTMENT FIRMS TO PROMOTE FAIR AND ORDERLY MARKETS IN A HIGHLY AUTOMATED TRADING ENVIRONMENT

a) TRADING PLATFORMS

Q8: Do the draft guidelines on organisational requirements for trading platforms to promote fair and orderly trading offer a sufficiently comprehensive list of the necessary controls on order entry?

NYSE Euronext has the following comments relating to the proposed guidelines pertaining to the promotion of fair and orderly markets in a highly automated trading environment. NYSE Euronext globally agrees on the necessity of having a list of the controls on order entry provided in the suggested guidelines. However, NYSE Euronext believes it not necessary to include some of the following controls outlined below. NYSE Euronext also believes that these guidelines extend to all trading venues including MTFs and execution venues**.**

i) Membership authorisation:

In terms of membership authorisation and standards pertaining to the knowledge of persons within members/participants and users that will be using the order entry systems, NYSE Euronext requires standards in terms of risk controls and compliance directly from its clients. This is done in accordance with the Euronext Rulebook and following its Notice 2.0 pertaining to the registration of Authorised Representatives ("'AR") and Responsible Persons ("RP") for NYSE Euronext Securities Markets. These rules require that members nominate as an RP a person "having the competence' and assuring that their trading activity is managed by a person of the competence and suitability of any person conducting business"[4].

[4] The detailed guidelines under Guideline 3 (page 100 of ESMA's Draft Guidelines) state that the rules and procedures of regulated markets and MTFs should include "standards covering the knowledge of persons within members/participants and users that will be using order entry systems". Furthermore, the commentary on the detailed guidelines observes that trading platforms "should set requirements governing the knowledge of employees of members/participants or users who enter orders into their systems" (page 102 of the Consultation Document). Whilst NYSE Euronext agrees that the rules and

NYSE Euronext believes that it is not necessary to require trading venues to have "standards covering the knowledge of persons within members/participants and users that will be using order entry systems". Some national regulators (for example the French AMF) have adopted certification mechanisms, but this is not the case of all national regulators which renders the adoption of similar standards by different trading venues particularly difficult.

ii) Risk controls and circuit breakers

NYSE Euronext believes it is essential for the integrity of markets that trading venues, including both RMs and MTFs, have in place strong and active price formation risk controls. Transferable securities traded on multiple venues should have identical circuit breaker rules. In fragmented markets, market-wide circuit breakers and limit-up/limit-down rules are critical to re-aggregating liquidity in highly volatile periods and preventing price dislocations in the new high-speed trading world where liquidity can be fleeting and order books can quickly empty. If the rules are not the same, trading could continue on certain platforms without adequate price controls. This type of cross platform arbitrage could lead in turn to sharp price deviations such as those observed on 6 May 2010 in the United States.

Whilst the detailed guidelines on page 100 of the Consultation Document are non-prescriptive in recognition that the controls used for different types of products must be tailored according to product characteristics and market structure, the commentary on the detailed guidelines (on page 101) is prescriptive and implies that circuit breakers are the most appropriate form of control for all products. NYSE Euronext suggests that the commentary be made consistent with the detailed guidance and that circuit breakers are referred to as an example of one form of control which is appropriate for some products such as transferable securities (as noted above), whilst recognising that other mechanisms are equally valid for the other products.

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procedures of trading venues should contain overarching requirements for member firms to ensure that their staff are adequately trained and suitable for the role they are undertaking on the market, it is not appropriate or desirable for trading venues to establish detailed requirements in relation to the staff of member firms. This is because the open architecture nature of modern trading systems means that member firms provide their own workstations and develop or source their own front-end trading application software though which they submit orders to the market. As such, it is the member firms that must, as a matter of necessity, devise or source their own tailored training programmes for their staff. Given the variety of front-ends and trading application software which member firms may use, the market operator is not in a position to set meaningful training and knowledge standards. Instead, member firms are expected to liaise with their software suppliers to ensure that the relevant staff perceive appropriate practical training for the member firm's chosen trading applications. NYSE Euronext encourages ESMA to reflect these considerations in the drafting of the Draft Guidelines.

iii) Examples of NYSE Euronext's order entry mechanisms

By way of example of the types of controls that can be put in place by trading venues, NYSE Euronext operates several order entry mechanisms in order to closely monitor all orders and transactions. For example, NYSE Euronext has the authority to temporarily halt trading in any security or set a limit on price fluctuations if it is deemed to be in the interest of the market. Trading may be halted in several ways. These are the sort of controls that NYSE Euronext would expect other trading venues to offer for transferable securities:

- A trading suspension, on behalf of issuers or regulators, is executed by the Exchange with an official notice; and

- A trading reservation, or temporary halts for when it is momentarily impossible to match buy and sell orders within the allowed range.

Dynamic price limits, are operated by many exchanges in respect of listed futures and options. Unlike transferable securities, such products are issued by a specific exchange or a central clearing agency. Dynamic price limits operate to ensure a continuous price formation process and to minimise the scope for price dislocation or substantive errors in the pricing of orders submitted to the trade matching engine. Indeed, dynamic price limits generally and frequently protect member firms and the market as a whole from keying errors in respect of price that inevitably occur from time to time in an automated market.

In order to ensure effective and practical market management, NYSE Euronext has processes and tools in place aiming at maintaining a stable trading environment and ensuring that all its systems are performing as expected. This can include, in the case of NYSE Euronext, a market surveillance system through which alerts are designed and put in place, some of which are near real-time. However, the level of investment required in that field for proper monitoring is an important component of these orderly functioning market requirements.

Q9: Are there any areas of the draft guidelines on organisational requirements for trading platforms to promote fair and orderly trading where you believe it would be helpful to have more detail?

Please refer to answer provided under question 8.

Q10: Do you have additional comments on the draft guidelines on organisational requirements for trading platforms to promote fair and orderly trading?

Please refer to answer provided under question 8 and 9.

b) INVESTMENT FIRMS

Q11: Do the draft guidelines on organisational requirements for investment firms to promote fair and orderly trading offer a sufficiently comprehensive list of the necessary controls on order entry?

Q12: Are there any areas of the draft guidelines on organisational requirements for investment firms to promote fair and orderly trading where you believe it would be helpful to have more detail?

Q13: Do you have additional comments on the draft guidelines on organisational requirements for investment firms to promote fair and orderly trading?

IV. DRAFT GUIDELINES ON ORGANISATIONAL REQUIREMENTS FOR TRADING PLATFORMS AND INVESTMENT FIRMS TO PREVENT MARKET MANIPULATION IN A HIGHLY AUTOMATED TRADING ENVIRONMENT

a) TRADING PLATFORMS

Q14. Are there any areas of the draft guidelines for trading platforms on organisational requirements for regulated markets and MTFs to prevent market manipulation where it would be useful to have extra detail?

NYSE Euronext would like to highlight the need to distinguish between HFT (a legitimate activity supported by technology) and the conduct involving abusive or fraudulent trading strategies or behaviours. HFT is not abusive by nature and is subject to all current MAD requirements.

i) Level of requirements

NYSE Euronext agrees with the suggested guidelines and believes it is crucial to ensure that trading platforms have adequate monitoring systems and reporting mechanisms, together with sufficiently trained staff which are used in order to help identify and prevent market abuse. The requirements should be identical for RMs and MTFs.

- *Surveillance performed under MAD*

  Market operators such as NYSE Euronext also perform an important surveillance function in detecting violations of MAD. This is achieved through:
  - Running post-trade reports in order to detect manipulations that cannot be detected in real time;
  - Running reports further to companies' announcements to detect if insider trading took place before the public announcement, and
  - Investigating market members based on suspicious alerts received. Examples include pump and dump, trash and cash, insider dealing.

- *Market monitoring for disorderly conduct: real-time market monitoring*

  Real-time monitoring encompasses:
  1) Prevention, which in turn comprises two aspects:
  a. Real-time monitoring of the markets in order to prevent any market manipulation (intentional market event): automated systems screen order books and pre-trade data (examples include wash trades, improper matching orders, marking the close); and
  b. Mechanisms embedded in the market structure (such as static collars) in order to prevent abnormal situations (unintentional market event).

  2) Detection, *corresponding* to real-time surveillance of the market, to detect events that cannot be detected in advance, through the screening of pre-and post-trade data. Events can be either:
  a. Intentional (such as manipulation and market abuse), or
  b. Unintentional events, such as unusual situations (for example aberrant orders or loss of control of a high frequency trading engine) and technical issues.

ii) Differences in requirements applied to RMs and MTFs

NYSE Euronext believes that, prior to the revision of MiFID and MAD, ESMA's guidelines should aim at harmonising as far as possible the surveillance requirements for RMs and MTFs. All MTFs and RMs should have identical scope of oversight and obligations in terms of the depth of their investigations. The manner in which they are implemented should be harmonised across the Member States. Identical standards for market integrity, both real time and non-real time should apply to MTFs and RMs[5] and

[5] Under the current regulatory framework, although both RMs and MTFs maintain real time surveillance functions, only RMs are required to manage non-real time market integrity functions to investigate market

surveillance standards should not be used as a competitive tool at the expense of investor protection. As such the proportionality principle should not apply

If we compare the explicit organisational requirements in MiFID for trading bluechip companies on MTFs and RMs (carrying out similar activities and of a similar size), it is clear that while both RMs and MTFs must have transparent rules on access, the rules are much more stringent for RMs than for MTFs as the former must additionally[6]:

- Have non-discriminatory rules regarding access and membership;
- Provide for direct and remote participation;
- Inform home regulators when planning to provide access to foreign participants; and
- Provide a list of their members to the regulator(s).

iii) Market abuse and market manipulation

While HFT has to be differentiated from the implementation of abusive strategies and/or behaviours, NYSE Euronext believes that all trading venues should have the ability to identify and mitigate the risks of market manipulation posed by certain strategies which are technically capable of being implemented by HFT.

It is not unusual for HFT firms[7] to employ more than one algorithmic model when trading a particular financial instrument. Whilst these models run independently of each other, and are based on different trading decisions, it is inevitable that from time to time these models will submit orders which coincidentally match with each other. This type of activity would not ordinarily be viewed as abusive. However, if the conflicting algorithms match against each other and the intent of the executing firms is to cause price or volume aberrations, then such activity could be construed as abusive on the basis that it creates false and misleading impressions as to price/volume. It is evident, therefore, that the interaction of algorithmic models ran by the same HFT firm has the potential to raise supervisory concerns. This must be judged on a case-by-case basis: the judgement on whether it constitutes market manipulation will depend on a number of

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abuse. Such functions permit the price formation process on RMs to be more secure, benefiting investors and regulators.

[6] These described differences were identified in our response to the Mifid consultation submitted to the EU on February 22, 2011.

[7] These HFT Firms may be part of the same business aggregation unit but may use different algorithmic models.

factors and both the *actus reus* and the *mens rea* come into account. This cannot be detected correctly simply by monitoring order entry records, rather it is the uncovering of the motive in the investigation that helps to identify the act.

iv) Examples of potential market abuse

NYSE Euronext considers that the draft guidelines provided by ESMA on organisational requirements for trading platforms to prevent market abuse (and, in particular market manipulation) are helpful and provide the requisite level of detail. However, NYSE Euronext would like to comment on paragraph 38 and in particular the strategies ESMA has identified which, if carried out, are likely to constitute market abuse.

Whilst NYSE Euronext firmly supports ESMA in issuing non-exhaustive guidance setting out conduct or practices which might amount to market abuse, it would question whether a number of the offences as described under paragraph 38 in the Consultation document would indeed necessarily amount to market abuse. In certain cases, ESMA has applied an overly broad definition which could capture both legitimate and illegitimate trading practices. NYSE Euronext therefore considers that ESMA should provide additional guidance on these strategies and / or amend the draft guidelines to ensure that only illegitimate trading practices are captured.

NYSE Euronext considers quote stuffing to be abusive in nature in circumstances where it involves the submission of virtual and fleeting orders which do not expose the perpetrator to genuine market risks. Any such strategy that is designed to give a false and misleading impression through quote stuffing should be considered abusive. However, in the consultation document, ESMA has not made any reference to virtual orders and fleeting orders in its description of quote stuffing. This is in contrast to the description that ESMA used in its micro-structure questionnaire. NYSE Euronext considers that the deleted text should be re-instated as it provides specific context and clarity as to what types of behaviour should be captured. Without the deleted text, NYSE Euronext considers the draft guidelines to be over-broad and ambiguous.

Conversely, momentum ignition strategies are not necessarily abusive in nature. Each case must be assessed against a range of factors when determining whether the actual behaviour constitutes market manipulation.

For momentum ignition, factors it is important to consider may include (1) whether the activity leads to significant changes in the price of the financial instrument, particularly compared to the “normal” trading range of the financial instrument, (2) whether the transactions lead to a change in beneficial ownership or risk, (3) whether the activity is concentrated within a short time period and leads to a price change which is subsequently reversed and (4) whether the activity is conducted at around a specific time when reference prices and settlement prices are calculated with that activity having an effect on the prices.

NYSE Euronext does not consider that momentum ignition strategies are necessarily abusive in nature. It considers that each case must be judged against a range of factors when determining whether the actual behaviour constitutes market manipulation.

Such factors may include whether the activity leads to significant changes in the price of the financial instrument, particularly compared to the "normal" trading range of the financial instrument, whether the transactions lead to a change in beneficial ownership or risk, whether the activity is concentrated within a short time period and leads to a price change which is subsequently reversed and whether the activity is conducted at around a specific time when reference prices and settlement prices are calculated with that activity having an effect on the prices[8].

In relation to ping orders, NYSE Euronext considers that the draft guidelines are overly-broad and ambiguous and may discourage legitimate forms of trading activity.

An example would be the submission of a small order at the touch price (thereby placing the market participant on risk) where the specific intention is to generate interest in a particular contract. Not only does such behaviour facilitate price discovery, which, for example, is one of the central roles of a derivatives market, but it can also help to improve the liquidity and efficiency of markets.

In contrast to the draft guidelines on ping orders, NYSE Euronext believes that the draft guidelines on order layering and spoofing are sufficiently detailed so as not to capture legitimate trading activity.

Q15. Do you have additional comments on the draft guidelines on organisational requirements for RMs and MTFs to prevent market manipulation?

All the requirements above refer only to single trading venue monitoring. However, the issue of cross-platform market abuse needs to be addressed. An order or a trade taken

[8] Taking the above non-exhaustive factors into account an example of when a momentum ignition strategy would be considered market manipulation is where the transactions which start or exacerbate the trend are executed between parties acting in collusion such that in effect there is no transfer of beneficial ownership or market risk (i.e. the transactions constitute wash trades). Another example is where the objective of submitting "aggressive orders" is to move the price of the financial instrument at a time which is relevant to the calculation of the settlement price of a related option contract such that the perpetrator makes a profit (or avoids a loss) on the options position that they holds

in isolation could be perfectly non-abusive however taken in light of other orders on other platforms the same order or trade could constitute a real case of market abuse.

Considering that each trading venue is only responsible for the prevention and detection of potential market abuse cases on its own platform, when only the competent authority has the ability to monitor and detect potential cross-platform abuses in one jurisdiction, efficient market integrity in Europe would require that all venues be monitored through a uniform system. It is important that the coordination be well monitored to insure that the cross-market system is efficient and does not create any unlevel playing field. NYSE Euronext is supportive of a pan-European uniform and centralized system.

Furthermore, the market operator or investment firms operating a RM or MTF could be the first level of detection and prevention of potential market abuse, with these activities run by 'independent' persons within the market operator or investment firm. A second level of surveillance should be centralised at the European level, either through ESMA or a relevant EU body. The number of cases identified through all platforms should be made public regularly. Presently, the Competent Authority, mostly national regulators, is the one with the highest power to enforce and sanction market participants or end-investors in cases of market manipulation in all cases of trading including on the OTC market.

As stated in our response to the EC MiFID consultation[9,] this type of trading strategy is simply arbitrage between marketplaces given the common set of transparent market information and it may occur at high or low speeds. Trading strategies, as with all things over-time, improve in their effectiveness with technology. That said, it is not the trading strategy of arbitrage that is new, rather it is the need for a comprehensive view of all activity, for the purpose of MAD which is key to ensuring investor protection across fragmented order books in the EU.

b) INVESTMENT FIRMS

Q16: Are there any areas of the draft guidelines on organisational requirements to deal with market manipulation for investment firms where you believe it would be helpful to have more detail?

Q17: Do you have additional comments on the draft guidelines relating to organisational requirements to deal with market manipulation for investment firms?

[9] Ibid., note 6.

Please refer to our responses under question 2 and 7 as a strict regulation of conflicts of interests is necessary to prevent market manipulation in all situations.

V. ORGANISATIONAL REQUIREMENTS FOR DIRECT MARKET ACCESS AND SPONSORED ACCESS

a) *TRADING PLATFORMS*

Q18: Do the draft guidelines on organisational requirements for trading platforms whose members/participants or users offer DMA/SA deal adequately with the differences between DMA and SA?

NYSE Euronext believes that it is important to differentiate clearly between the concepts of Direct Market Access and of Sponsored Access. Financial, regulatory and risk management controls put in place have to be different depending on the access. This is especially true in the case of Direct Market Access as the trading venue does not have control over this activity since a customer's DMA flow first passes through the relevant member broker's systems (and is therefore already subject to financial and regulatory controls and checks of its own). Moreover, the member broker remains financially responsible for business conduct in this way. It is, therefore, not necessary for the market operator to pre-approve the use of DMA by each member broker.

NYSE Euronext has in place strict requirements in terms of Sponsored Access, including strong risk controls[10].

Q19: Are there any areas of the draft guidelines on organisational requirements for trading platforms whose members/participants or users offer DMA/SA where you believe it would be helpful to have more detail?

Please refer to answer under question 18.

Q20: Do you have additional comments on the draft guidelines relating to organisational requirements for trading platforms whose members/participants or users provide DMA/SA?

Please refer to answer under question 18.

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[10] Please refer to NYSE Euronext's requirement and process for Sponsored Access in Euronext Rulebook and Notice N8-01.

b) INVESTMENT FIRMS

Q21: Do the draft guidelines on organisational requirements for investment firms providing DMA/SA deal adequately with the differences between DMA and SA?

Q22: Are there any areas of the draft guidelines on organisational requirements for investment firms providing DMA/SA where you believe it would be helpful to have more detail?

Q23: Do you believe that there is sufficient consistency between the draft guidelines on organisational requirements for investment firms providing DMA/SA and the SEC's Rule 15c3-5 to provide an effective framework for tackling relevant risks in crossborder activity and without imposing excessive costs on groups active in both the EEA and the US?

Q24: Do you have additional comments on the draft guidelines on organisational requirements for investment firms providing DMA/SA?