

ESMA Consultation paper: Guidelines on systems and controls in a highly automated trading environment for trading platforms, investment firms and competent authorities

Comments from Crédit Agricole Cheuvreux

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**CA Cheuvreux has 14 offices worldwide: Amsterdam, Athens, Boston, Frankfurt, Istanbul, London, Madrid, Milan, New York, Paris, Stockholm, San Francisco, Tokyo and Zurich*

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?

A) Draft guidelines on electronic trading systems for trading platforms and investment firms

a) Trading platforms

Guideline 1: Organisational requirements for regulated markets' and multilateral trading facilities' electronic trading systems

General guideline

1. A regulated market's or multilateral trading facility's electronic trading system (or systems) should enable it to comply with its obligations under MiFID and other relevant Union and national law taking into account technological advancements and trends in the use of technology by its members/ participants or users and, in particular, should enable it to ensure continuity and regularity in the performance of the market (or markets) operated by it.

Detailed guidelines

2. In following the general guideline regulated markets and multilateral trading facilities should at least:
 - develop, procure (including outsourcing) and monitor their electronic trading systems through a governance process that embeds compliance and risk management principles and involves a clear process for accountability, communication of information and sign-off for initial deployment, subsequent updates and resolution of problems identified through monitoring;
 - have electronic trading systems with sufficient capacity to accommodate reasonably foreseeable volumes of messaging and that are scalable to allow for capacity to be easily and rapidly increased in order to respond to rising message flow and emergency conditions that might threaten their proper operation, in particular through controls on message flows through a 'normal activity/ maximum IT capacity' ratio;
 - have effective business continuity arrangements in relation to their electronic trading systems covering such matters as:
 - governance for the development and deployment of the arrangements;

- consideration of an adequate range of possible scenarios related to the operation of their electronic trading systems which require specific continuity arrangements;
 - the backing up of business (including compliance) critical data that flows through their electronic trading systems;
 - the procedures for moving to and operating the electronic trading system from a back-up site;
 - staff training on the operation of the arrangements and individuals' roles within them; and
 - an ongoing programme for the testing, evaluation and review of the arrangements including procedures for modification of the arrangements in light of the results of that programme.
- prior to deploying an electronic trading system, and prior to deploying updates to an electronic trading system, make use of clearly delineated development and testing methodologies to seek to ensure that, amongst other things, the operation of the electronic trading system is compatible with the regulated market's and multilateral trading facility's obligations under MiFID and other relevant Union or national law, that compliance and risk management controls embedded in the systems work as intended (including generating error reports automatically) and that the electronic trading system can continue to work effectively in stressed market conditions;
 - monitor in real time their electronic trading systems, deal adequately with problems identified as soon as reasonably possible in order of priority and be able when necessary to adjust or shut down the electronic trading system in an orderly manner;
 - periodically review and evaluate the governance, accountability and sign-off framework, the electronic trading systems and their business continuity arrangements so as to ensure their continued appropriateness and act on the basis of these reviews and evaluations to remedy deficiencies;
 - have procedures and arrangements for physical and electronic security designed to protect electronic trading systems from misuse or unauthorized access and to ensure the integrity of the data that is part of or passes through the systems; and
 - have procedures and arrangements to ensure they employ sufficient number of staff with the necessary skills and expertise to manage their electronic trading systems, including staff with appropriate knowledge of relevant systems, the monitoring and testing of such systems and the sort of trading that will be undertaken by members/participants of the regulated market or users of the multilateral trading facility.
3. Regulated markets and multilateral trading facilities should keep records in relation to their electronic trading systems covering at least the matters referred to in paragraph 2.

4. Regulated markets and multilateral trading facilities should inform competent authorities about significant incidents that may affect the sound management of the technical operations of the system.

Cheuvreux believes that issues should be addressed as soon as possible, and we welcome ESMA's efforts to act within its current capabilities. All structural issues will not be resolved, but these guidelines clearly represent a step forward.

Cheuvreux would like ESMA to make a clear differentiation for platforms that import the reference price from another venue. Stoppage of the matching engine from such a platform would not be critical for the market structure, hence the requirements from the regulators should be lighter in terms of capacity and scalability.

Cheuvreux expects ESMA to provide a realistic transitional period for the efficient and effective implementation of these requirements in order to take into account their potential technical and operational impact.

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

See our comments above.

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

Cheuvreux does not see the need for any additional guidelines at this stage.

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

Cheuvreux does not have any additional comments.

b) Investment firms

Guideline 2: Organizational requirements for investment firms' electronic trading systems (including trading algorithms)

General guideline

1. Investment firms' electronic trading systems, including trading algorithms, should enable the firm to comply with its obligations under MiFID and other relevant Union and national laws as well as the rules of the regulated markets and multilateral trading facilities to which it sends orders in order to ensure continuity and regularity in the performance of its investment services and activities in a highly automated trading environment.

Detailed guidelines

2. In following the general guideline, investment firms should at least:
- develop, procure (including outsourcing) and monitor their electronic trading systems, including trading algorithms, through a governance process that embeds compliance and risk management principles and involves a clear process for accountability, communication of information and signoff for initial deployment, subsequent updates and resolution of problems identified through monitoring;
 - have electronic trading systems with sufficient capacity to accommodate reasonably foreseeable volumes of messaging and that are scalable to allow for capacity to be easily and rapidly increased in response to rising message flow, in particular through ongoing monitoring and controls on message flows through a 'normal activity/maximum IT capacity' ratio;
 - have effective business continuity arrangements in relation to their electronic trading systems covering such matters as:
 - governance for the development and deployment of the arrangements;
 - consideration of an adequate range of possible scenarios related to the operation of their electronic trading systems which require specific continuity arrangements;
 - the backing up of business (including compliance) critical data that flows through their electronic trading systems;
 - the procedures for moving to and operating the electronic trading system from a back-up site;
 - staff training on the operation of the arrangements and individuals' roles within them; and
 - an ongoing programme for the testing, evaluation and review of the arrangements including procedures for modification of the arrangements in light of the results of that programme.
 - prior to deploying an electronic trading system, or a trading algorithm, and prior to deploying updates, make use of clearly delineated development and testing methodologies to seek to ensure that, amongst other things, the operation of the electronic trading system or trading algorithm is compatible with the investment firm's obligations under MiFID and other relevant Union and national laws as well as the rules of the trading platforms they use, that the compliance and risk management controls embedded in the system or algorithm work as intended (including generating error reports automatically) and that the electronic trading system or algorithm can continue to work effectively in stressed market conditions;
 - adapt trading algorithm tests (including tests outside live trading environments) to the strategy the firm will use the algorithm for (including the markets to which it will send orders and their structure) and ensure they are commensurate with the risks that this strategy may pose to the

- investment firm as well as to the fair and orderly functioning of the markets operated by the trading platforms the firm uses;
- roll out the deployment of trading algorithms in a live environment in a controlled fashion;
 - monitor in real time their electronic trading systems, including trading algorithms, deal adequately with problems identified as soon as reasonably possible in order of priority and be able when necessary to adjust or immediately shut down their electronic trading system or trading algorithm in an orderly manner;
 - periodically review and evaluate the governance, accountability and sign-off framework for electronic trading systems and trading algorithms, the trading systems and algorithms themselves and their business continuity arrangements so as to ensure their continued appropriateness and act on the basis of these reviews and evaluations to remedy deficiencies;
 - have procedures and arrangements for physical and electronic security designed to protect electronic trading systems and trading algorithms from misuse or unauthorised access and to ensure the integrity of the data that is part of or passes through the systems and algorithms; and
 - have procedures and arrangements for ensuring that they employ sufficient staff with the necessary skills and expertise to manage their electronic trading systems and trading algorithms, including staff who have appropriate knowledge of relevant IT systems and algorithms, the monitoring and testing of such systems and algorithms, and knowledge of the sort of trading strategies that the firm deploys through its trading systems and algorithms.
3. Investment firms should keep adequate records of their electronic trading systems (and trading algorithms) including at least the matters covered in paragraph 2.
 4. Investment firms should keep competent authorities informed of major incidents that may affect the sound management of the technical operations of their electronic trading systems and algorithms.

Explanatory notes

(...)

Testing. The purpose of testing is to ensure that an algorithm works as intended from the technical, regulatory and commercial point of view. In the responses to our questionnaire the following sorts of test were mentioned by investment firms using trading algorithms:

- performance simulations/back testing;
- off-line testing within an exchange testing environment;
- review of output of strategy (in terms of profit and loss) and market impact (what one firm referred to as 'post-trade analytics');
- small-scale live testing (including reconciliation with simulation testing).

This last point emphasises the importance of the need for investment firms to be cautious when putting an algorithm (and any update to an algorithm) into production. There is the possibility that in a live environment the algorithm might not perform in quite the same way as in testing. Therefore it is sensible that it is initially used in a restricted way with, for example, limits being placed on the number of financial instruments being traded, the value and number of orders, and

the number of markets to which orders are sent. It should also be the case that algorithms are adapted to the markets (and the structure of those markets) in which they are intended to be used and are only deployed in those markets unless further testing is undertaken to understand how they will operate in other markets.

Some trading platforms currently do not authorise live testing, even on a small scale. ESMA should require trading platforms to authorise such small-scale live testing.

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

Cheuvreux considers these guidelines to be appropriate and relevant. Regarding live testing, please see our comments above.

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?.

Cheuvreux does not see the need for any additional guidelines at this stage.

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

Cheuvreux does not have any additional comments.

B) 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

Guideline 3: Organisational requirements for regulated markets and multilateral trading facilities to promote fair and orderly trading in a highly automated trading environment

General guideline

1. Regulated markets' and multilateral trading facilities' rules and procedures for fair and orderly trading should be appropriate to an increasingly automated trading environment and the nature and scale of trading on their markets, including the types of members and participants and their trading strategies.

Detailed guidelines

2. In following the general guideline, the rules and procedures of regulated markets and multilateral trading facilities should at least include:

- the ability to prevent in whole or in part the access of a member or participant to the trading facility and to cancel, amend or correct a transaction;
- arrangements to prevent the excessive flooding of the order book at any one moment in time, notably through limits per participant on order entry capacity;
- arrangements to prevent capacity limits from being breached through a mechanism for slowing down order flow from members/participants and users which restricts the number of messages of any individual member/participant or user within a set timeframe in the event that there is a danger of capacity limits being reached;

Cheuvreux believes it should be the market structure itself that regulates the volumes of messaging sent to the order book. This would be much more cost effective and would prevent any unnecessary race to the bottom between trading platforms. As explained in our previous answer to ESMA consultation and in our *Navigating Liquidity* publications, the perfect lever would be the regulation of tick size. Regulators should have the right to impose a single tick size per security across all EEA trading platforms, naturally generating a reduction in messaging volume on stocks across all trading platforms.

- arrangements to constrain trading or halt trading in individual or multiple financial instruments when necessary, on both an automatic and discretionary basis, to maintain an orderly market. This may include automatic rejection of orders which are outside of certain set volume and price thresholds;

Cheuvreux believes that platform-based circuit breakers should be mandatory. The circuit breakers should be harmonised across Europe and based on “volatility interruptions”. The circuit breakers should be put in place in order to prevent an order being sent to the market that changes the price of the financial instrument by more than a given percentage of the reference price or the previous quote. These circuit breakers should be based on rules, not guidelines, in order to avoid differences in interpretation.

- standardised testing to ensure that the systems that members and participants are using to access the venue have a minimum level of functionality that is compatible with fair and orderly trading on the venue;
- minimum requirements for members’ and participants’ pre- and post-trade controls (including controls to ensure that there is no unauthorised access to trading systems) to ensure that there is orderly trading on the venue, in particular requirements for filtering order price and quantity (this requirement is without prejudice to the primary responsibility of members/participants or users to implement their own pre- and post-trade controls);

Cheuvreux agrees with this guideline but considers that these requirements should be harmonised at the European level. In the MiFID environment, where investment firms trade on various trading venues, harmonisation of the requirements for members and participants is necessary in order to reduce costs and risks in an area where completion of one child order within one trading venue is just one step.

Regarding price filtering, every trading platform that does not import its price from another venue should continually provide members and participants with the reference price for all stocks it lists. This is a precondition for efficient order price filtering by members and participants (especially in the case of corporate actions with a substantial impact on price, such as a split or reverse split). Most markets already provide such data. The reference price would be the calculation base for the circuit breakers.

- standards covering the knowledge of persons within members/participants and users that will be using order entry systems;

Cheuvreux supports the creation of a harmonised and single training programme/exam /certification for traders across Europe that would allow them to deal on any trading platform. ESMA should be the coordinator of this project. This would be more efficient in terms of cost and time for all participants and trading platforms.

- where applicable, clear organisational requirements for members or participants who are not credit institutions or investment firms, including requirements on the monitoring of trading against the rules of the venue and the management of risk; and

Cheuvreux fully agrees with this guideline, which is necessary before the implementation of the new MiFID provisions. MiFID must be amended in order to have every entity involved in highly automated trading regulated and supervised.

Non-EEA credit institutions or investment firms regulated in an equivalent country should benefit from the credit institutions or investment firms exemption.

- the ability to obtain information from a member/participant or user to facilitate monitoring of their compliance with the rules and procedures of the regulated market or multilateral trading facility relating to organisational requirements and trading controls.

3. Regulated markets and multilateral trading facilities should keep adequate records of the matters covered by paragraph 2.

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?

Please see our answers above. Cheuvreux believes that the proposed guidelines should be modified in order to achieve better consistency within Europe in critical areas such as circuit breakers, training policy and requirements for members. Cheuvreux believes

that the tick size should be defined on a stock-by-stock basis using factors such as liquidity and volatility. The optimal definition of tick size would allow the market micro-structure to be adjusted, instead of relying only on order flow management and controls.

Failure to adjust the market micro-structure would put all market participants in a situation where the level of investment required to satisfy the various obligations will not be possible based only on the revenues generated by the activity itself. This would result in a reduction in competition through activity being concentrated among the participants able to subsidise it by other activities.

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?

Cheuvreux does not see the need for any additional guidelines at this stage.

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

Cheuvreux does not have any additional comments.

b) Investment firms

Guideline 4: Organisational requirements for investment firms to promote fair and orderly trading in a highly automated trading environment

General guideline

1. Investment firms should have adequate policies and procedures to ensure that their highly automated trading activities on regulated markets and multilateral trading facilities comply with their regulatory requirements under MiFID and other relevant Union and national laws and, in particular, manage the risks relating to those trading activities

Detailed guidelines

2. In following the general guideline, investment firms' electronic trading systems should automatically block or cancel orders:
 - that do not meet set price or size parameters (differentiated as necessary for different financial instruments), either on an order-by-order basis or over a specified period of time, or because orders appear to be duplicative;

Cheuvreux considers that the minimum requirement must be calibrated at the same level as the circuit breakers (on a harmonised basis at the European level) set up by the regulators and enforced by all trading venues.

As already stated, regarding price filtering, every platform that does not import its price from another venue should continually provide members and participants with a reference price for every instrument it trades.

- if the client does not have adequate funds or holdings of, or access to, the relevant financial instrument to complete the transaction;

Brokers are pure intermediaries and are not custodians of their clients' assets. On an order-per-order basis, brokers cannot have a vision of their clients' positions or current treasury, hence they cannot be held responsible for any pre-trade check regarding clients' funds or holdings.

- if they are for a financial instrument that a trader does not have permission to trade;
 - where they would be inconsistent with a firm's obligations under MiFID, such as the client order handling rules, or other relevant Union or national legislation, or under the rules of the RM or MTF to which the order is to be sent (including rules relating to fair and orderly trading); and
 - where they risk compromising the firm's own risk management and/or capital adequacy thresholds, applied as necessary and appropriate to exposures to individual clients or financial instruments or groups of clients or financial instruments, exposures of individual traders, trading desks or the investment firm as a whole.
3. Investment firms should have procedures and arrangements for dealing with orders which have been automatically blocked by the firm's pre-trade controls but which the investment firm wishes to submit. These procedures and arrangements should make compliance and risk management staff, as necessary, aware of when controls are being overridden and require their approval for the overriding of these controls.

Pre-trade controls must be put in place by firms on risk levels that are defined together by the business line, compliance and risk management teams. In defining these controls, different levels can be put in place, and it must be the firm's responsibility to set the level at which a warning occurs or a trade is blocked and, if blocked, who is authorised to allow the trade to go through. This may, in some cases, be staff from compliance or risk management, but the approval of compliance and risk management staff in every situation would be impractical, especially in smaller entities.

4. Investment firms should ensure that employees involved in order entry have adequate training on order entry procedures, including complying with requirements imposed by RMs and MTFs, before they are allowed to use order entry systems.

As stated above, Cheuvreux supports the creation of a harmonised and single training programme/exam/certification for traders across Europe. ESMA should recommend the trading platforms set up a common training programme sanctioned by a single and common exam body established in coordination with ESMA.

5. Investment firms should ensure that compliance staff has a feed of the firm's orders in as close to real time as possible and have systems for monitoring those orders.

Compliance staff should have access to a firm's orders in real time in order to be able to manage specific trading issues, but they should not be responsible for overall real-time monitoring. Indeed, real-time order monitoring by Compliance staff would be impractical. Real-time supervision of automated trading is already under the responsibility of the Front Office staff. Conversely, Compliance or Permanent Control staff should ensure that such supervision is performed correctly by the Front Office (second level of control). To achieve this control, Cheuvreux considers that an ex post system would be the most appropriate and sufficient.

6. Investment firms should ensure that they have control of messaging traffic to individual trading platforms to avoid overcrowding the systems of the trading platform.
7. Investment firms should manage the operational risks in electronic trading through appropriate and proportionate governance arrangements, internal controls and internal reporting systems.
8. Investment firms should keep adequate records of the matters covered by paragraphs 2 to 7. For investment firms' records to be adequate, they should be sufficiently detailed so as to allow competent authorities to appropriately supervise and monitor investment firms' trading activities, and assess the conformity of these activities with MiFID, MAD and any other relevant European and national legislation.

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?

Please refer to our answers above.

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?

Cheuvreux does not see the need for any additional guidelines at this stage.

Q 13 Do you have additional comments on the draft guidelines on organisational requirements for investment firms to promote fair and orderly trading?

Cheuvreux does not have any additional comments.

C) Draft guidelines on organisational requirements for trading platforms and investment firms to prevent market manipulation in a highly automated trading environment

a) Trading platforms

Guideline 5: Organisational requirements for regulated markets and MTFs to prevent market abuse (in particular market manipulation) in a highly automated trading environment

General guideline

1. Regulated markets and multilateral trading facilities should have effective arrangements and procedures which enable them to identify conduct by their members/participants and users that may involve market abuse (in particular market manipulation) in a highly automated trading environment.

Detailed guidelines

2. In following the general guideline, the arrangements and procedures of regulated markets and multilateral trading facilities which seek to prevent and identify conduct by their members/participants and users that may involve market abuse and in particular market manipulation in a highly automated trading environment should at least include:
 - having adequate systems (including automated alert systems on transactions and orders) with sufficient capacity to accommodate high frequency generation of orders and transactions and low latency transmission, in order to monitor, using a sufficient level of time granularity, orders entered and transactions undertaken by members/participants and users and any behaviour which may involve market abuse (in particular market manipulation) and with the ability to trace backwards transactions undertaken by members/participants and users as well as orders entered/cancelled which may involve market manipulation;
 - having in place clear procedures for ensuring that conduct that may involve market abuse and in particular market manipulation is reported to the relevant competent authority (or authorities) without delay in accordance with the requirements under Articles 26(2) and 43(2) of MiFID and Article 6(9) of MAD;

- having sufficient staff with the understanding and skill to monitor trading activity in a highly automated trading environment and identify behaviour giving rise to suspicions of market abuse; and
- conducting periodic reviews and internal audits of procedures and arrangements to prevent and identify instances of conduct that may involve market abuse

3. Regulated markets and multilateral trading facilities should keep adequate records of the matters covered by paragraph 2.

Q14 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?

Cheuvreux does not see the need for any additional guidelines at this stage.

Q15: Do you have additional comments on the draft guidelines on organisational requirements for trading platforms to promote fair and orderly trading?

Cheuvreux does not have any additional comments.

b) Investment firms

Guideline 6: Organisational requirements for investment firms to prevent market abuse (in particular market manipulation) in a highly automated trading environment

General guideline

1. Investment firms should have policies and procedures in place to minimise the risk that their highly automated trading activity gives rise to market abuse (in particular market manipulation). The policies and procedures should take into account the highly automated trading environment and the nature, scale and complexity of the firm's trading activity in this respect and the nature and range of investment services and activities that the firm undertakes.

Detailed guidelines

2. In following the general guideline the policies and procedures of investment firms engaging in highly automated trading activities should at least include:
 - procedures to seek to ensure that staff exercising the compliance function has sufficient understanding, skill and authority to challenge staff responsible for trading when the trading activity gives rise to suspicions of market abuse (in particular market manipulation);

- initial and regular refresher training on what constitutes market abuse (in particular market manipulation) for all individuals involved in executing orders on behalf of clients and dealing on own account ;
 - monitoring the activities of individuals/algorithms trading on behalf of the firm and the trading activities of clients, taking account of orders submitted, modified and cancelled as well as transactions executed, and adequate systems in place (including automated alert systems), using a sufficient level of time granularity, to flag any behaviour likely to give rise to suspicions of market abuse (in particular market manipulation);
 - adequate arrangements to identify transactions and orders that require a Suspicious Transaction Report (STR) to competent authorities in relation to market abuse (in particular market manipulation) and to make those reports without delay;
 - periodic reviews and internal audits of procedures and arrangements to prevent and identify instances of conduct that may involve market abuse; and
 - frequently reviewed arrangements governing the access of staff to trading systems.
3. Investment firms should keep adequate records of the arrangements and procedures to identify conduct that may involve market abuse covering the matters set out in paragraph 2.

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?

Cheuvreux does not see the need for any additional guidelines at this stage.

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

Cheuvreux does not have any additional comments.

D) Guidelines on direct market access and sponsored access

a) Trading platforms

Guideline 7: Organisational requirements for RMs and MTFs whose members/participants and users provide direct market access/sponsored access

General guideline

1. Regulated markets and multilateral trading facilities should have rules and procedures which seek to ensure that, where they allow members/participants or users to provide direct market access/sponsored access, the provision of direct market access/sponsored access is compatible with fair and orderly trading and arrangements aimed at preventing and detecting market manipulation.

Detailed guidelines

2. In following the general guideline, regulated markets and multilateral trading facilities should set out whether or not it is permissible for their members/participants or users to offer direct market access and/or sponsored access. Where they allow members or participants to offer direct market access and/or sponsored access their rules and procedures should at least:
 - make clear that the member/participant or user is responsible for all orders entered under its trading codes;
 - require the member/participant or user to have adequate systems and controls to ensure that the provision of direct market access/sponsored access does not adversely affect compliance with the rules of the regulated market or multilateral trading facility, lead to disorderly trading or facilitate conduct that may involve market abuse;
 - require the member/participant or user to conduct due diligence on any client to which it provides direct market access/sponsored access;

If the client is regulated in an EEA country or in a country with equivalent rules, member/participant or user should be able to consider such a client to be reliable and should not have to perform any specific diligence except if the member/participant has adverse information regarding its trading activity or behaviour regarding such a client.

- allow the regulated market or multilateral trading facility to refuse a request from a member/ participant or user to allow a client to be provided with sponsored access where the regulated market or multilateral trading facility is not satisfied that this would be consistent with its rules and procedures for fair and orderly trading;
- allow the regulated market or multilateral trading facility to suspend or withdraw the sponsored access after it has been granted where the regulated market or multilateral trading facility is not satisfied that continued access would be consistent with its rules and procedures for fair and orderly trading; and
- have the ability to stop orders from a person trading through sponsored access separately from the orders of the member or participant sponsoring that person's access.

3. Regulated markets and multilateral trading facilities should keep adequate records of the matters covered in paragraph 2.

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?

Please refer to our answer above. Furthermore, Cheuvreux does not believe these draft guidelines differentiate sufficiently between DMA and SA. The risk profiles associated with these two different types of access are different for both investment firms and trading platforms. Cheuvreux would prefer that SA be prohibited. If authorised, SA systems and controls should be significantly more stringent than for DMA.

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?

Cheuvreux does not see the need for any additional guidelines at this stage.

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

Cheuvreux does not have any additional comments.

b) Investment firms

Guideline 8: Organisational requirements for investment firms that provide direct market access and/or sponsored access

General guideline

1. Investment firms offering direct market access/sponsored access to clients ('direct market access/sponsored access clients') are responsible for the trading of those clients and should establish adequate policies and procedures to ensure the trading of those clients complies with the rules and procedures of the relevant regulated markets and multilateral trading facilities to which the orders of such clients are submitted and enables the investment firm to meet its obligations under MiFID and other relevant Union and national law.

Detailed guidelines

2. In following the general guideline above, the policies and procedures covering the activities of direct market access/sponsored access clients should at least include:
 - criteria, differentiated as necessary between direct market access and sponsored access, which a client has to meet in order to be suitable for direct market access/sponsored access covering such issues as the training and competency of individuals entering orders, access controls over order entry, allocation of responsibility for dealing with actions and errors and financial standing of the direct market access/sponsored access client;
 - assessment, periodically reviewed if the person is accepted as a direct market access/sponsored access client of prospective clients against the criteria for direct market access/sponsored access clients and clear procedures for signing off on the acceptance of direct market access/sponsored access clients;
 - an assessment, periodically reviewed, of the trading activities of direct market access/sponsored access clients to assess the potential market wide impact of the orders that are likely to be sent to the relevant regulated markets and multilateral trading facilities;
 - appropriate credit thresholds for each client, reviewed on a regular basis, for which an investment firm provides direct market access/sponsored access, which will include an overall credit threshold and potentially credit thresholds in relation to specific financial instruments based on appropriate due diligence as to the direct market access/sponsored access client's financial condition, trading patterns and order entry history;
 - pre-trade controls on the orders of direct market access/sponsored access clients of the sort covered in paragraph 2 of Guideline 4 on organisational requirements for investment firms to promote fair and orderly trading in a highly automated trading environment;
 - clarity that the investment firm should solely be entitled to modify the parameters of the pre-trade controls (the direct market access/sponsored access client should not be able to do so);
 - a real-time feed of orders entered and trading done by a direct market access/sponsored access client which separately identifies those orders and trades from the orders and trades of other clients and proprietary trades of the firm to enable the investment firm to check that direct market access/sponsored access clients' trading is compatible with the rules of relevant regulated markets and multilateral trading facilities and to help

identify conduct that may involve market abuse, in particular, market manipulation;

- the ability to immediately halt trading by individual direct market access/sponsored access clients; And
- documentation of the rights and obligations of both parties in relation to the direct market access/ sponsored access service.

3. Investment firms should keep adequate records of the matters covered in paragraph 2.
4. Investment firms offering direct market access/sponsored access can use pre- and post-trade controls which are proprietary controls of the investment firm, controls bought in from a vendor, controls provided by an outsourcer or controls offered by the venue itself (they should not be the controls of the direct market access/sponsored access client). However, in each of these circumstances the investment firm remains responsible for the effectiveness of the controls and has to be solely responsible for setting the key parameters.

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

Please refer to our response to Q18 above.

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?

Cheuvreux does not see the need for any additional guidelines at this stage.

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?

Please refer to our response to Q18 above.