

Thank you for the opportunity to provide comments on the above referenced consultation. BATS Chi-X Europe has a keen interest in promoting robust market surveillance. By way of background BATS Chi-X Europe is the largest European equities exchange by market share and value traded and represents the combination in 2011 of the two leading pan-European multilateral trading facilities (MTFs), BATS Europe and Chi-X Europe.

Based in London, BATS Chi-X Europe supports competition and drives innovation in the European equities markets. BATS Chi-X Europe offers trading in more than 1,800 of the most liquid equities across 25 indices and 15 major European markets, as well as ETFs, ETCs and international depositary receipts. In addition, BATS Chi-X Europe's innovative smart order routing service allows cost-effective access to other MTFs and 13 primary exchanges. BATS Chi-X Europe trading participants receive world-class support including sophisticated technical port services with real-time monitoring of latency, trading activity, network connectivity and risk management.

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Specification of the indicators of market manipulation laid down in Annex I of MAR (Article 8(5) of MAR)

Q42: In your view, what other ways exist to measure order cancellations?

A general point to make is that a high order to cancellation rate in itself should not necessarily be considered as an indicator of potential market abuse.

The two methods proposed are the two recognised ways of measuring cancellation rates. However, for effective monitoring of this behaviour, the numbers of orders submitted and cancelled, the liquidity of the tradable instrument, the nature of regular trading behaviour in that instrument or related instruments, the volumes traded, the previous trading behaviour of the member, and any benefitting trade advantage should all be considered along with the cancellation rates, however they are calculated.

Q43: What indicators are the most pertinent to detect cross-venue or cross-product manipulation and which would cover the greatest number of situations?

All of those indicators that involve the submission of transactions, orders or other price information without a clear intention to trade on the venue on which they are entered should be seen as signs of potential cross venue or cross market abuse. It would be unhelpful to describe any indicator in particular as being more pertinent than any other. Surveillance activity should take into account all of the indicators listed in Annex IV. With regards to cross venue manipulation of equity markets, we believe a consolidated tape providing further transparency would improve detection. Cross market and cross asset abuse, albeit detectable from a price transparency point can only be investigated thoroughly by the regulator who has full counterparty transparency via transaction reports across venues and for OTC activity.

Q44: Are there other indicators/signals of market manipulation that should usefully be added to this list appearing in Annex IV?

The list appears to be comprehensive

Q45: Which of the indicators of manipulative behaviour manipulation in an automated environment listed in Annex IV would you consider to be the most difficult to detect? Are there other indicators/signals of market that should be added to the list? Please explain.

If the manipulative trading activity is being conducted on a single platform the indicators described are readily detectable using automated surveillance software. Any abuse taking place should therefore also be detectable. However, when looking at a fragmented market these activities are harder to detect, for example when one platform is being used to potentially manipulate the trading behaviour/price of another.

Q46: From what moment does an inflow of orders become difficult to analyse and thus potentially constitute an indicator of quote stuffing?

Trading firms and platforms need to ensure that their surveillance systems have the capacity to handle the volume of information associated with expected trading activity, including monitoring for possible abuse scenarios. Platforms should consider imposing upper limits at the order entry level or retain the ability to throttle incoming order rates to ensure that they have adequate systems' capacity to deal with quote stuffing. If a firm or venue has invested in sufficient surveillance capacity and appropriate order entry management then they should not reach a point where an inflow of orders becomes difficult to analyse.

Q47: What tools should be used or developed in order to allow for a better detection of the indicators of manipulative behaviour in an automated trading environment?

There are many software surveillance systems available commercially that provide the ability to detect the indicator of manipulative behaviour in an automated trading environment using sophisticated automated alerting functionality. These systems are effective at the single firm or venue level. However, for effective cross venue and cross asset monitoring, regulators should also have the ability to use these systems and be in a position to reconstruct order books from all venues trading a particular instrument, including full counterparty transparency.

Suspicious Transaction and Order Reports (Article 11 of MAR)

Q60: Do you agree with this analysis? Do you have any additional views on reporting suspicious orders which have not been executed?

Yes. Suspicious orders as well as executed transactions should result in reports being submitted. However, in order to avoid over reporting, it would be sensible to allow venues some flexibility so that they can undertake pattern analysis or sampling of behaviour over a period of time rather than report each individual suspicious order/trade. This should also provide better quality evidence of potential abusive behaviour.

Q61: Do you agree that the above approach to timing of STR reporting strikes the right balance in practice?

It is important for entities to have sufficient time to collate good quality data before submitting STRs to competent authorities. This might include analysing historic data; or looking at trading activity over a short period of time rather than just as a one off event. In

addition, entities need to go through internal controls and sign off procedures. Therefore, we believe that interpretation of “without delay” should allow for this. We agree with the proposed maximum 2 week time limit with the possibility of providing further information where required. We agree that it is in the competent authority’s interest that the reports are adequately detailed, however, it is also important that the competent authority provides feedback on the quality and usefulness of the reports they receive. A standard template, as alluded to in the document, indicating required content would be of benefit to all platforms.

Q62: Do you agree that institutions should generally base their decision on what they see and not make unreasonable presumption unless there is good reason to do so?

Yes. As a market operator our detection and any decision to make a STR, is based on what is conducted on our platform. However, during the investigation information such as the previous trading history of the member, other market platforms’ trading activity (high/low/volume etc.) and any publicly disclosed information are all considered and documented prior to referral.

Q63: Do you have any views on what those reasons could be?

It may be appropriate to make reasonable presumptions based on looking at cross venue activity or the timing of public announcements - i.e. insider dealing on one platform taking the profit on another. However, these presumptions should be clearly flagged as such within any referral submitted.

Q64: Do you have a view on whether entities subject to the reporting obligation of Article 11 should or shouldn’t be subject to a requirement to establish automated surveillance systems and, if so, which firms? What features as a minimum should such systems cover?

The requirement or otherwise for an automated surveillance system will depend on the size of the firm’s business, but clearly above a certain level of activity meaningful surveillance will be practically impossible without an automated system.

Minimum features again will depend on the activity undertaken, however, alerts looking at: price, volume, risk should be included as a minimum.

Q65: Do you consider that trading venues should be required to have an IT system allowing ex post reading and analysis of the order book? If not, please explain.

Yes

Q66: Do you have views on the level of training that should be provided to staff to effectively detect and report suspicious orders and transactions?

As a market operator, the focus of such training needs to be on the surveillance staff as there is no “front office” in the way that there is at a bank/broker. Nevertheless, all staff will receive training on joining and on a variety of topics on an ongoing basis. All surveillance/compliance/market operations staff should receive full training and reach the required level of competence prior to passing any probationary period.

Q67: Do you agree with the proposed information to be included in, and the overall layout of the STRs?

Yes, with additional information being made explicit that details of any publicly disclosed information are reported, along with any other venue/asset class information deemed

necessary.

Q68: Do you agree that ESMA should substantially revise existing STR templates and develop a common electronic template? Do you have any views on what ESMA should consider when developing these templates?

As a market operator we do not currently use an STR template. If an STR template covering both firms and platforms is to be designed and used it is essential that consideration of how market operators currently report is considered.

A common template that can be submitted electronically will certainly assist in information sharing between regulators, as all jurisdictions will be reporting in the same fashion. This will support the principal that suspicions can be efficiently raised with an entity's home competent authority and that information sharing can then be managed between regulators.

Q69: Do you agree with ESMA's view for a five year record-keeping requirement, and that this should also apply to decisions regarding "near misses"?

Yes