

Milan, 3rd October 2011

Prot. 68/11

MFE/lm

ESMA – European
Securities and Markets
Authority
103 Rue de Grenelle
75007 – Paris
France

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

ASSOSIM¹ welcomes the opportunity to comment on the **Consultation Paper (CP) on systems and controls in a highly automated trading environment² for trading platforms, investment firms and competent authorities** and, acknowledging the work that the European Securities and Markets Authority is carrying out to set the ground for an harmonized and clear understanding of the high frequency trading (HFT) issue, is pleased to provide the following observations.

Preliminary Remarks

Assosim wishes to outline some general issues³ before answering to the CP questions. Firstly, Assosim shares ESMA's view regarding the choice of setting organizational requirements for trading platforms and investment firms without putting in place any restriction on HFT, given that there is not a clear understanding of its effects. Nevertheless, we believe that the proposed requirements should be addressed only to

¹ ASSOSIM (*Associazione Italiana Intermediari Mobiliari*) is the Italian Association of Financial Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. ASSOSIM has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the Investment Services Industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the total trading volume.

² High frequency trading is an important part of it.

³ Part of those rose out during a meeting held in Consob (the Italian Surveillance Authority).

ASSOSIM

high frequency traders. In fact, measures generically applicable to “market access” risk to be costly and redundant for trading activities carried out in a traditional manner, that are properly monitored yet. Therefore, the proposed requirements should apply only to investment firms that operate as high frequency traders or that have high frequency traders as clients. In order to adopt such targeted intervention, a more specific definition of high frequency trading is required. To this regard, it would be useful to have some indicators as reference (*e.g.* frequency parameters).

In addition, in order to safeguard the level playing field at European level, Assosim sustains the intention of adopting the guidelines in the current regulatory framework, but on condition that ESMA cancels those measures that imply higher costs for intermediaries without being particularly effective. We do refer to the provision according to which the compliance function must access, as close to real time as possible, the order feed and should have at the same time systems in place that allow the automatic monitoring of such feed. In addition, we do not support the statement expressed into the Guidelines no. 4 “explanatory notes” according to which investment firms should duplicate and mirror the vast majority of controls done by trading platforms: this activity would only bring higher cost without valuable benefits. Should the above request not be granted, Assosim would then prefer that the guidelines entry into force after the MiFID 2 adoption.

Assosim supports the need of calibrating the organizational measures to the nature, size and scale of the high frequency trading business carried out by the investment firm (proportionate arrangements) while the current text refers to the principle of proportionality only for some requirements.

Furthermore, stricter requirements should be provided for investment firms offering Sponsored Access - SA - to high frequency traders, adopting, instead, a lighter regime for Direct Market Access - DMA - because of the lower risks it implies.

At the same time, Assosim deems appropriate to bring to ESMA attention that some aspects (due diligence activity towards clients who use SA or DMA, trading model evaluation, staff skills, to name a few) need to be further qualified to allow appropriate and precise answers. Anyhow, guidelines should point out and suggest measures to be adopted so as to be compliant with the relevant disciplines but they should do not define quantitative thresholds.

Moreover, Assosim strongly believes that ESMA should provide a set of rules that safeguard market making and liquidity providing activities too. In this regard, on one side it is important considering that due to the high frequency trading strategies the risks these operators could bear might increase considerably with the effect of widening spreads and drying liquidity from the market. On the other side, ESMA should

ASSOSIM

explicitly state that market making and liquidity providing are out of the scope of any high frequency trading discipline and excluded from HFT definition.

* * *

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?

Assosim sustains the intention of adopting the guidelines in the current regulatory framework but on condition that ESMA cancels those measures that imply higher costs for intermediaries without being particularly effective (see Q13). Furthermore, the guidelines should apply only to high frequency trading. In fact, measures generically applicable to “market access” risk to be costly and redundant for trading activities carried out in a traditional manner, that are properly monitored yet. In order to adopt such targeted intervention, a more specific definition of high frequency trading is required. In particular, it could be necessary providing some reference indicators so as to limit the phenomenon.

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

Yes, we think that the proposed guidelines cover all relevant aspects.

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

We believe that is of the utmost importance to give a full application to the principle of proportionality, so excluding from the scope of such guidelines those markets that are not involved in high frequency trading activities (*i.e.* some bond markets).

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

We do not have additional comments.

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

ASSOSIM

Yes, we think that the proposed guidelines cover all relevant aspects.

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?

We suggest to better detail the meaning of “necessary skills and expertise” and of “appropriate knowledge” for the staff managing the electronic trading system and the trading algorithms, clarifying if the investment firm personnel must undertake a specific examination or if the adequacy of skills and expertise has to be evaluated and certified by the intermediary itself.

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

We think that ESMA should explicitly state that market making and liquidity providing are out of the scope of any high frequency trading discipline and excluded from HFT definition.

Furthermore, we are concerned about the costs an investment firms should bear for the trading algorithm tests with particular reference to the need of adapting these tests to the specific strategy the algorithm will be used for by each client.

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?

Yes, we think that the proposed guidelines cover all relevant aspects.

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?

No, we believe that there are not areas that require more details.

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

No, we do not have additional comments.

ASSOSIM

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?

Yes, we think that the proposed guidelines cover all relevant aspects.

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?

No, there are not areas where we 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?

Assosim is of the view that ESMA should cancel those measures that imply higher costs for intermediaries without being particularly effective. We do refer to the provision according to which the compliance function must access, as close to real time as possible, the order feed and should have at the same time systems in place that allow the automatic monitoring of such feed. To this regard, we ask how a control carried out “as close to real time as possible” on a large number of data could really work. In addition, we do not support the statement expressed into the Guidelines no. 4 “explanatory notes” according to which investment firms should duplicate and mirror the vast majority of controls done by trading platforms: this activity would only bring higher costs without valuable benefits.

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

No, there are not areas where we believe it would be helpful to have more details.

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

No, we do not have additional comments.

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?

No, there are not areas where we believe it would be helpful to have more detail.

ASSOSIM

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

No, we do not have additional comments.

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?

Yes, they do.

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?

We think that further details should be provided with reference to the due diligence activity on clients to which DMA/SA are offered. Moreover, it should be better clarified the guidelines applicability to trading activities carried out by retail clients through DMA. If this is the case, then the organisational requirements should be further declined so as to calibrate them on the basis of the nature of the clients – retail vs professional.

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?

No, we do not have additional comments.

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

We strongly support that stricter requirements shall be provided for investment firms offering SA to high frequency traders, adopting, instead, a lighter regime for DMA because of the lower risks it implies.

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?

No, there are not areas where we believe it would be helpful to have more detail.

ASSOSIM

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?

Yes, we think that the proposed guidelines are consistent with the Rule 15c3-5.

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

No, we do not have additional comments.

Q25: Does the explanatory text provided in addition to the guidelines (see Annex VII to this CP) help market participants to better understand the purpose and meaning of the guidelines? Should it therefore be retained in the final set of guidelines?

Yes, we believe that the explanatory text helps to better understand the guidelines and should be retained in the final set.

We remain at your disposal for any further information or clarification.

Yours faithfully,

Il Segretario Generale
Gianluigi Gugliotta

