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| Reply form for the Consultation Paper on the Algorithim Trading |

**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **12/03/2021.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_ALGO\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_ALGO\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_FOTF\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on Algorithmic Trading”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

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**Who should read this paper**

This document will be of interest to (i) alternative investment fund managers, UCITS management companies, EUSEF managers and/or EuVECA managers and their trade associations, (ii) distributors of UCITS, alternative investment funds, EuSEFs and EuVECAs, as well as (iii) institutional and retail investors investing into UCITS, alternative investment funds, EuSEFs and/or EuVECAs and their associations..

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | ACI - Financial Markets Association |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | International |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_ALGO\_1>

ACI FMA´s response to ESMA’s consultation paper on the “MiFID II/MiFIR review report on Algorithmic Trading”

ACI - Financial Markets Association (ACI FMA) is a leading global trade association representing the interests of the professional wholesale financial markets community. Established in 1955, ACI FMA is focused on enhancing best market practice and supporting Market Participants to adhere to principles of ethical conduct. [www.acifma.com](http://www.acifma.com)

ACI FMA welcomes the opportunity to respond to ESMA’s consultation paper on the “MiFID II/MiFIR review report on Algorithmic trading”, which we hope ESMA will find thought-provoking, useful and informative. This response has been produced through the collaboration of the ACI FX Committee and the ACI Regulatory Working Group whose memberships encompass buy-side and sell-side investment firms, trading venues, and software and technology providers. While ACI members are engaged in financial trading or sales environments, in the global wholesale financial markets, representing a variety of asset classes including foreign exchange, interest rate products and other securities, banknotes, precious metals and commodities and derivatives from both a buy and sell-side perspective; the majority of the members are predominantly engaged in the FX Markets. Therefore, unless otherwise specified, ACI FMA’s responses to this consultation concerning Algorithmic trading, direct market access or high-frequency trading, etc. apply to the FX Markets. Additionally, while we acknowledge the comprehensive nature of the consultation questionnaire and will endeavour to respond accordingly, ACI FMA proposes to respond to the questions, which we believe have the most pertinence for the FX asset class, in particular, FX Derivatives, which are MiFID II financial instruments, while representing the broad spectrum of our members’ views.

The scope of MiFID II

In responding to this consultation, ACI FMA would like to affirm that the FX Market has a set of global principles specific to the market ecology laid out in the “FX Global Code” since May 2017. The foreign exchange is the largest financial market in the world with a daily volume of $ 6.6 trillion, according to the 2019 Triennial Central Bank Survey of FX and OTC derivatives markets, trading in the United Kingdom accounted for 43.1% of the total, making it by far the most important centre for foreign exchange trading globally. Although the “FX Global Code” does not impose legal or regulatory obligations, it does align with the typically OTC and ‘real-economy’ nature of the Market Participants. There is a concern that MiFID II with a strong alignment to the equity and exchange markets actually weakens the FX Market by setting standards that are typical of other markets. We strongly suggest that any legal or regulatory obligations for a market should be solidly aligned to avoid unintended consequences on a functioning market. Additionally, while the intention of regulating Algorithmic trading may be the risk mitigation to preclude market destabilisation or disruption, ACI FMA confirms that the bi-lateral nature of the FX transaction model does not fit the Algorithmic trading execution definition and doesn’t currently carry the same systemic risk or disruption potential as equity markets.

Furthermore, we would also draw ESMA’s attention to information requests and guidance to Market Participants by other trade organisations (IA) and international FX Committees (BIS) (GFXC) with regard to features, requirements, systems and controls for Algorithmic trading. The GFXC is currently engaging with all the Central Banks and Market Participants in a review of the 2017 FX Global Code with a particular intention of reviewing and expounding upon guidance on Algorithmic trading systems, controls and market conventions. The results of the FX Global Code review are intended for publication in Summer 2021. These endeavours are, in our opinion, good measures to further inform Market Participants and to ensure that products e.g. FX SPOT, not regarded as MiFID II financial instruments, are operated and effected in the FX Algorithmic space with the highest regard for transparency, fairness and good conduct for the benefit of stable markets. ACI FMA is fully supportive of such measures and a number of our members have and are still participating, supporting and informing such committees e.g. GFXC in the development and the upcoming review of the FX Global Code. Nevertheless, subsequent to previous and recent ESMA consultations (e.g. November 2019 - MAR refit), there has been significant financial markets ‘speculation’ regarding the potential for the extension of the scope of MiFID II to include products, which are currently included in the definition of a MiFID II Financial Instrument. We would encourage ESMA to consider the consequences on the rules for Algorithmic trading if additional products were in the scope and, the consequences for the markets which are not included today. A widening of the scope of EU regu-lations has already been suggested in relation to MAR, where it was proposed to include SpotFX.

Please be fully aware that the “FX Global Code” is the only code that covers the Global FX Markets.

<ESMA\_COMMENT\_ALGO\_1>

**Questions**

1. : What is your overall assessment of the MiFID II framework for algorithmic trading, HFT and DEA?

<ESMA\_QUESTION\_ALGO\_1>

Financial markets have evolved over the past decade as new trading technologies have led to significant changes. Additionally, automation resulting from sophisticated Algorithmic trading has many benefits but also inherent risks. Therefore, it is logical that ESMA via an update or refitting of MiFID II (regarding Algorithmic trading, DEA, HFT) should effectively seek to keep pace with technological developments, aiming to address potential risks resulting from the increased use of technology, including Algorithmic trading, HFT or DEA. Nevertheless, ACI FMA would concur that since Algorithmic trading and HFT are extremely inclusive categories, mixing any proposed applicability of solutions on a cross-asset class basis may generate more issues than resolution. One size does not fit all! ACI FMA would propose a need to differentiate the activity by asset class as different aspects may or may not be applicable in certain markets. Furthermore, with regard to the delineation/categorization of ‘Algorithmic trading’ and HFT, ACI FMA would advocate a more comprehensive definition of ‘Market making Algos’ and an ‘Execution Algo’ in the FX context. Therefore, we would advocate that there is not enough depth or precision in definition, much less differentiation or treatment of the algorithm used for proprietary trading versus the algorithm used for client execution. While appreciating the Regulators' desire for transparency and market stability, the RFQ process is a bi-lateral arrangement between the client and the financial institution and unless the client is solely reliant on the one institution, any deviation or mispricing does not have a market destabilising impact.

Furthermore, in reviewing the consultation questions, ACI FMA would propose as previously mentioned in the opening statement, this question and the majority of questions in this consultation have a strong connotation of equity and exchange markets and are really not applicable to the FX market instruments, regardless of whether the products are included in the MiFID II definition of a Financial Instrument.

<ESMA\_QUESTION\_ALGO\_1>

1. : In your views, are there risks other than the one mentioned in MiFID II or impacts on market structure developments due to market electronification/ algorithmic trading that would deserve further regulatory attention? Please elaborate.

<ESMA\_QUESTION\_ALGO\_2>

While Recital (62) of MiFID II notes that trading technology also gives rise to a number of potential risks such as an increased risk of the trading venue system overload through large order volumes, Algorithmic risk of generated duplicative/erroneous orders, system malfunction leading to disorderly markets, volatility and risk of market abuse behaviours through market overreaction, unlike equity markets, which are mainly trading ‘on the back’ of orders, the FX Market is still primarily trading on a disclosed / principal based basis. This transaction model does not fit the Algorithmic trading execution definition and doesn’t currently carry the same systemic risk or disruption potential for MiFID FX instruments. Nevertheless, according to a recent study by (BIS) the Bank for International Settlements (30th October 2020), the growing popularity of execution algorithms (EA) is resulting in thinner foreign exchange markets and undermines the ability of the market to absorb shocks but is not affecting adversely liquidity. Access to EAs also contributes to the ongoing changes in market structure, and with increasing scale of use, may give rise to new risks and challenges that warrant close monitoring. Therefore, Market Participants must continue to develop skills and tools and data access to enable appropriate evaluation of the risks and opportunities of this evolving FX Market. A further on-going consideration is the prevalence and risk of cyber-crime.

<ESMA\_QUESTION\_ALGO\_2>

1. : Do you consider that the potential risks attached to algorithmic trading should also be given consideration in other trading areas? Please elaborate.

<ESMA\_QUESTION\_ALGO\_3>

ACI FMA proposes that such consideration should only be applied in as far as any potential risks prevalent in the Algorithmic trading environment might arise within an OTC automated trading environment and thereby be mollified through the application of defined risk mitigation obligations.

<ESMA\_QUESTION\_ALGO\_3>

1. : Do you agree with this analysis? If not, please explain why.

<ESMA\_QUESTION\_ALGO\_4>

Please see Q 15 response.

<ESMA\_QUESTION\_ALGO\_4>

1. : Did you encounter any specific issue with the definition of HFT? Do you consider that the definition should be amended? Do you have any suggestion to replace the high message intraday rates with other criteria or amend the thresholds currently set in Level 2? Please elaborate and provide data supporting your response where available.

<ESMA\_QUESTION\_ALGO\_5>

High-frequency trading is defined as an Algorithmic trading technique with specific characteristics, including high message intraday rates which constitute orders, quotes or cancellations. Criteria that define high message intraday rates are based on absolute quantitative thresholds that evidence the high frequency related trading activity of firms to competent authorities. In the calculation of high intraday message rates are included exclusively messages submitted for the purpose of dealing on own account and not on behalf of clients and messages for financial instruments for which there is a liquid market which is intertwined with the implementation of high-frequency Algorithmic trading strategies. Pursuant to the current provisions a high message intraday rate is defined as the submission on average of at least 2 messages per second for a single Financial Instrument on a trading venue or at least 4 messages per second with respect to all Financial Instruments. However, the extensive use of high-frequency Algorithmic trading or the ever-increasing speed of execution available to Market Participants might render an essential amendment to the thresholds and increase the number of messages per second currently set. In the context of the FX Markets, one needs to take into consideration that any market making activities in FX Derivatives/MiFID II Financial instruments will fall into the HFT categorisation and that these ‘systems ‘are/form an extension of the FX Spot activity.

<ESMA\_QUESTION\_ALGO\_5>

1. : Based on your experience, is sub-delegation of DMA access a frequent practice? In which circumstances? Which benefits does it provide to the DEA user and to the sub-delegatees? Are you aware of sub delegation arrangements in the context of Sponsored access? If so, please elaborate.

<ESMA\_QUESTION\_ALGO\_6>

N/A

<ESMA\_QUESTION\_ALGO\_6>

1. : (for DEA Tier 1clients) Do you sub-delegate direct electronic access? If so, are your Tier 2 clients typically regulated entities/investment firms? Are they EU-based or third country based?

<ESMA\_QUESTION\_ALGO\_7>

N/A

<ESMA\_QUESTION\_ALGO\_7>

1. : Do you agree with this analysis? If not, please explain why. Do you consider that further clarification is needed in this area? If so, what would you suggest?

<ESMA\_QUESTION\_ALGO\_8>

N/A

<ESMA\_QUESTION\_ALGO\_8>

1. : Do you agree with ESMA’s proposal? If so, do you consider that the requirements considered above relevant? Should there be additional ones? If you disagree with ESMA’s proposal, please explain why.

<ESMA\_QUESTION\_ALGO\_9>

In reviewing this question, we would regard it as covering two topics:

1) Coverage of non-EU Algorithmic trading / HFT / DEA.

2) Extension to OTC

ACI FMA would propose that MiFID II has generally provided a sound basis for addressing the potential risks arising from increased speed and sophistication in trading, which are prominent in multilateral trading venues. ESMA proposes amendments to the legal framework that are required to address non-level playing field issues. A harmonized EU regime should apply to EU and non-EU firms that have currently a competitive advantage since EU high frequency trading firms have to be authorized as an investment firm in the EU and are subject to a strict regulatory framework, while non-EU firms are only subject to the applicable national regime.

The definition of Algorithmic trading should be refined to differentiate between proprietary Algorithmic trading and bi-lateral customer execution in OTC financial instruments and due to the increasing role played by systematic internalisers as execution venues, ESMA’s proposals generally aim at providing a simplified and more efficient framework for SIs, applying selectively some of the key requirements at SI level for OTC Algorithmic trading to minimize the risks arising. However, ACI FMA is of the opinion that SI should not be included under the definition of Algorithmic trading unless the SI is actively market making on a venue. Counterparties trade with SIs, not on them.

Therefore, we would not concur with any Level 1 amendments in relation to SIs.

Furthermore, as previously mentioned this question has a strong connotation of equity and exchange markets and thus suggests this question’s scope is not really applicable or appropriate to the FX Markets which is global, OTC, predominantly bi-lateral, RFQ oriented and principles driven.

<ESMA\_QUESTION\_ALGO\_9>

1. : Do you agree with ESMA’s proposals above? Please elaborate.

<ESMA\_QUESTION\_ALGO\_10>

ACI FMA supports ESMA's proposal to not maintain the authorisation requirements for clients of firms that provide direct electronic access. Investment firms that provide for DEA are already authorised and supervised themselves, and not maintaining this authorisation requirement could increase liquidity in the European markets. Although ACI FMA also supports maintaining the existing regime that requires authorisation for members of trading venues that provide DEA to clients but is not immediately supportive of including a definition of sub-DEA, thus requirements firms further down the chain to apply for authorisation. This could undermine the liquidity of the European markets. Such authorisation requirements would also not be necessary, in ACI FMA’s view, because the provider of DEA is already required to have in place effective systems and controls to ensure a proper assessment and review of the activities of the client using DEA. The focus should be on the supervision of trading on EU trading venues and that the relevant rules are adhered to and enforced, which requires supervision of the entry points to the markets. This could be either direct participation or DEA. That does not require (sub-) users of DEA further down the chain to be authorised.

<ESMA\_QUESTION\_ALGO\_10>

1. : Do you agree with ESMA’s proposal? Please elaborate.

<ESMA\_QUESTION\_ALGO\_11>

See above Q 10.

<ESMA\_QUESTION\_ALGO\_11>

1. : Do you see merit in ESMA developing a template for notifications to NCAs under Articles 17(2) and 17(5) of MiFID II? If not, please justify your position.

<ESMA\_QUESTION\_ALGO\_12>

ESMA has proposed developing notification templates within RTS 6 that investment firms would use, for the purpose of Articles 17(2) and 17(5) of MiFID II, to notify the NCAs of their home Member State and the NCAs of the trading venue at which they engage in Algorithmic trading. Therefore, ACI FMA would support the development of a template for notification to NCAs which contributes to greater harmonisation and is efficient for investment firms that need to notify more than one competent authority.

<ESMA\_QUESTION\_ALGO\_12>

<ESMA\_QUESTION\_ALGO\_0>

See other answers

<ESMA\_QUESTION\_ALGO\_0>

1. : Do you agree that it would be useful to clarify that notifications should be done ‘without undue delay’?

<ESMA\_QUESTION\_ALGO\_13>

No. ACI FMA would be supportive of a more concrete timeline instead of a rather vague definition as 'without undue delay'. Should 'without undue delay' be adopted, ACI FMA would, in this instance, welcome further guidance as to what types of situations are still 'without undue delay' and when such a requirement would be violated.

<ESMA\_QUESTION\_ALGO\_13>

1. : Do you agree with ESMA’s approach for the exchange of information between NCAs? If not, please justify your position.

<ESMA\_QUESTION\_ALGO\_14>

While ESMA does not acknowledge a need to develop any template for the exchange of information between NCAs, it stands ready to make a proposal to facilitate the exchange of information, should there be a need in the future. In any case, the abovementioned template could also serve as a basis for sharing information with other NCAs in the case of cross-border requests for information.

ACI FMA acknowledges the importance of the exchange of information between NCAs whenever required but proposes that the exact format should be determined by discussion and consensus between ESMA and the NCAs.

<ESMA\_QUESTION\_ALGO\_14>

1. : What is your view on clarifying the definition of algorithmic trading? If you deem it beneficial to refine the definition and account for further types of algorithms or algorithmic trading strategies, please provide your suggestion as well as underlying rationale.

<ESMA\_QUESTION\_ALGO\_15>

ESMA has provided guidance through Q&As on the definition of Algorithms (Article 18 of the Commission Delegated Regulation (EU) 2017/565) clarifying for instance that the use of algorithms that only serve to inform a trader of a particular investment opportunity is not considered as Algorithmic trading, provided that the execution is not algorithmic. Therefore, one type of algorithm, which is excluded, is statistical that detects profitable trading opportunities based on the statistical analysis of historical time series data. The Algorithmic trading definition excludes investment decision algorithms and refers exclusively to the algorithmic execution that is characterized by an extremely high rate and speed of trade order executions, which can pose risks having substantial impact on the orderly functioning of the market. The definition could be further refined and possibly diversify the types of algorithms, accounting for simple Algorithmic trading strategies that have a limited market impact and should be subject to less strict requirements.

ACI FMA would suggest that the Algorithmic trading definition could be less inclusive. In FX there is a clear distinction between ‘algo providers’ and ‘algo user (client)' for auto-execution onto liquidity services. ACI FMA proposes that it may be more sensible to gear the regulation towards the algo technology providers for this type of execution rather than the 'algo users'. Currently, there is no distinction between ‘algo user or algo providers’ in the regulation. Because of this, the regulation could bring ‘algo users’ into scope when clearly the focus should be on the algo technology providers. Furthermore, the focus/definition of ‘Algorithmic trading’ should encapsulate any component that is programmed with logic to place orders on an external market, including SORs facilitating placement logic (slicing/repegging/holding).

<ESMA\_QUESTION\_ALGO\_15>

1. : Do you think there should be specific requirements for different type of algorithms or algorithmic trading strategies in RTS 6? Please explain.

<ESMA\_QUESTION\_ALGO\_16>

RTS6 specifies the organizational requirements for investment firms that engage in Algorithmic trading. The requirements should be different depending on the type of algorithms. Algorithms that detect exclusively trading opportunities or investment ideas provided that the execution is not algorithmic should not be in scope and subject to strict system and risk controls. The same applies to simple Algorithmic trading strategies that could be excluded from the scope of provisions governing Algorithmic trading due to the relatively moderate market impact. The organizational and testing requirements pertinent to Algorithmic trading leading to order execution should be based on the potential impact that those algorithms may have on the overall fair and orderly functioning of the market. ACI FMA proposes that only ‘Algorithmic’ systems’ that place orders on exchange should be in scope.

<ESMA\_QUESTION\_ALGO\_16>

1. : What is your experience with testing environments? Are they used frequently? If not, why? Do you see a need for any improvements?

<ESMA\_QUESTION\_ALGO\_17>

With regard to Q 17-19, ACI FMA would reference RTS 7, as well as the FCA rule book referring to the EU Market Abuse Regulation (MAR 7A.3) Requirements for Algorithmic trading (<https://www.handbook.fca.org.uk/handbook/MAR/7A/3.html>) and the BOE/PRA Supervisory statement on Algorithmic trading June 2018, which prescribe the governance, algorithm approval process, testing and deployment, Inventories and documentation, risk management and other systems and controls functions. The BOE/PRA supervisory statement applies to firms that engage in Algorithmic trading and are subject to the rules in the Algorithmic Trading Part of the PRA Rulebook and Commission Delegated Regulation (EU) 2017/589. It also applies to all Algorithmic trading activities of a firm including in respect of unregulated financial instruments such as Spot foreign exchange (FX).

ACI FMA would propose that testing environments are used frequently in our experience and are vital prior to implementation into a live environment - the testing environment must mirror the live environment 100 %. They must be used regularly/frequently to ensure the proper functioning of the existing trading environment especially after a change to the trading environment (e.g. implementation of a new function /change of an existing one/divestment of an existing one) and must be tailored to the Algorithmic trading environment.

Testing environments should be used by a dedicated testing team, which performs tests according to the requirements stated. It can be problematic if tests are only performed by developers (developer in test) - i.e. the same person who writes the code according to the requirements - as they interpret the requirement. Furthermore, as the PRA/BOE prescribes this should be done by a competent team that was not involved in the development (including implementation) of the algorithmic code. Good practice would also support that controls regarding frequency of testing should be validated by compliance or a regulatory control team.

<ESMA\_QUESTION\_ALGO\_17>

1. : Do you agree that the definition of “disorderly trading conditions” should be clarified? If yes, how would you define such trading conditions?

<ESMA\_QUESTION\_ALGO\_18>

The FCA Handbook, in accordance with article 48(1),(4) and (6) of [MiFID](https://www.handbook.fca.org.uk/handbook/glossary/G1975.html), [MiFID RTS 7](https://www.handbook.fca.org.uk/handbook/glossary/G3567m.html), [MiFID RTS 9](https://www.handbook.fca.org.uk/handbook/glossary/G3569m.html), and [MiFID RTS 11](https://www.handbook.fca.org.uk/handbook/glossary/G3571m.html) prescribes under MAR 5.3A 2 Systems and controls for Algorithmic trading. This requires that a firm’s systems and controls must ensure that [Algorithmic trading](https://www.handbook.fca.org.uk/handbook/glossary/G3552a.html) systems cannot create or contribute to disorderly trading conditions on a trading venue and that any disorderly trading conditions which do arise from the use of [Algorithmic trading](https://www.handbook.fca.org.uk/handbook/glossary/G3552a.html) systems are capable of being managed.

ACI FMA would propose that precise definitions of disorderly trading are appropriate as, although there is some correlation between the MAR behavioural risks, which can contribute to disorderly markets, and the risks ‘flagged’ under the FCA FX remediation process, some risks are only applicable to the equity or exchange-traded markets. With regard to Algorithmic trading and disorderly trading events not necessarily related to Market Abuse, ACI FMA would propose the following risks: System outages, trading venue disconnection or outage, inability to access the system, orders stuck in the system, which cannot be executed or deleted.

<ESMA\_QUESTION\_ALGO\_18>

1. : Do you agree that ESMA should provide additional guidance on the expectations concerning the checks and testing to be done, in particular for testing on disorderly trading conditions?

<ESMA\_QUESTION\_ALGO\_19>

As mentioned, the Regulators have prescribed systems, check and controls for testing of Algorithmic (trading) systems. However, ACI FMA does believe that Markets Participants should provide ESMA with information/practical examples concerning the checks and testing to be done to facilitate collation and further discussion. Nevertheless, hitherto printed regulation and guidance only mention stress testing/conformance testing /general methodology and testing and behavioural testing. Whereas it must be ensured that after the implementation of an algorithm/algorithms into an existing testing environment, regression testing must be performed as extensively as possible to check whether the existing environment is not affected adversely by the implementation(s). This HAS to be done in the testing environment that mirrors the live environment 100 % prior to implementation into the live environment. Therefore, ACI FMA would propose that ESMA should provide additional guidance on the expectations concerning the checks and testing to be done, in particular for testing on disorderly trading conditions. However, as mentioned previously, ’One size does not fit all’ and we would advocate recognition and differentiation of the requirements of OTC, most particularly the FX Markets in this respect.

<ESMA\_QUESTION\_ALGO\_19>

1. : Would you agree that it could be beneficial if ESMA develops a prescribed format for the self-assessment foreseen in Article 9 of RTS 6?

<ESMA\_QUESTION\_ALGO\_20>

Please refer to Q 19 response. Additionally, ’One size does not fit all’ and we would advocate recognition and differentiation of the requirements of OTC, most particularly the FX Markets in this respect. Furthermore, ACI FMA would not support an over-prescriptive format for self-assessment.

<ESMA\_QUESTION\_ALGO\_20>

1. : Do you agree with the changes proposed to the self-assessment of Article 9 of RTS 6?

<ESMA\_QUESTION\_ALGO\_21>

ACI FMA believes that investment firms should, as part of their compliance with risk mitigation systems and controls perform self–assessments and the relevant NCA should be prepared to request the provision of such self-assessments. However, we would not concur with ESMA prescriptive bi-annual self-assessment requirements; although the BoE/PRA Supervisory statement on Algorithmic trading June 2018 does prescribe under 5.2 that the inventories and documentation referred to in paragraph 5.1 should be reviewed at least annually and updated if necessary and are available to the PRA on request.

<ESMA\_QUESTION\_ALGO\_21>

1. : Would you propose any other targeted legislative amendments to RTS 6? Please include a detailed explanation of the proposed amendment and of the underlying issue that this amendment would aim to tackle.

<ESMA\_QUESTION\_ALGO\_22>

ACI FMA would not propose any other targeted legislative amendments to RTS 6.

<ESMA\_QUESTION\_ALGO\_22>

1. : Do you agree with ESMA’s proposal to harmonize and create a clear structure for the performance of the self-assessment?

<ESMA\_QUESTION\_ALGO\_23>

No. ACI FMA would not concur that a harmonisation and clarification regarding a clear structure for the performance of self-assessment would be useful.

<ESMA\_QUESTION\_ALGO\_23>

1. : Do you agree with limiting the self-assessment to every two years and to require trading venues to share it with their relevant NCA?

<ESMA\_QUESTION\_ALGO\_24>

No. ACI FMA would not agree. We would advocate that submissions of self-assessments should be on a pertinent NCA request basis, as is prescribed, for example in the BoE/PRA Supervisory statement on Algorithmic Trading June 2018, rather than as an additional, burdensome regulatory reporting requirement.

<ESMA\_QUESTION\_ALGO\_24>

1. : Do you agree with ESMA’s analysis about the overlapping requirements between RTS 6 and 7? Are those overlaps considered beneficial, should they be removed or are there any gaps? Are there any further points that should be clarified?

<ESMA\_QUESTION\_ALGO\_25>

ACI FMA regards the overlapping requirements between RTS 6 and 7 as beneficial and should not be removed.

<ESMA\_QUESTION\_ALGO\_25>

1. : What is your view with regards to the testing of algorithms requirements? Do you agree that more robust testing scenarios should be set?

<ESMA\_QUESTION\_ALGO\_26>

Please refer to ACI FMA responses to Q 17-19.

<ESMA\_QUESTION\_ALGO\_26>

1. : Are the testing environments available for the testing of algorithms appropriate for this purpose?

<ESMA\_QUESTION\_ALGO\_27>

Please refer to ACI FMA responses to Q 17-19.

<ESMA\_QUESTION\_ALGO\_27>

1. : Do you agree with ESMA’s analysis that the circuit breaker mechanism achieved its objective to avoid significant disruptions to the orderliness of trading?

<ESMA\_QUESTION\_ALGO\_28>

As previously mentioned, this question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_28>

1. : Do you agree that the requirements under Article 48(5) of MiFID II complemented by RTS 7 and the guidelines on the calibration of circuit breakers and publication of trading halts under MiFID II remain appropriate? If not, what regulatory changes do you deem necessary?

<ESMA\_QUESTION\_ALGO\_29>

N/A

<ESMA\_QUESTION\_ALGO\_29>

1. : Do you agree that the co-location services and fees structures are fair and non-discriminatory? Please elaborate.

<ESMA\_QUESTION\_ALGO\_30>

As previously mentioned in the opening statement, this question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments. However, we would comment that the co-location services and fees structures appear fair and non-discriminatory.

<ESMA\_QUESTION\_ALGO\_30>

1. : Do you think that the disclosures under RTS 10 made by the trading venues are sufficient or should they be harmonized among the different entities? Please explain.

<ESMA\_QUESTION\_ALGO\_31>

ACI FMA regards disclosures under RTS 10 made by the trading venues as sufficient.

<ESMA\_QUESTION\_ALGO\_31>

1. : Do you agree with ESMA’s proposal to set out the maximum OTR ratio, calibrated per asset class?

<ESMA\_QUESTION\_ALGO\_32>

No, ACI FMA would not concur with the proposal to introduce a level 1 amendment to set out RTS for the maximum OTR ratio, calibrated per asset class. This is neither necessary nor appropriate for the FX asset class.

<ESMA\_QUESTION\_ALGO\_32>

1. Q33: Do you agree that the maximum limits are not frequently exceeded? Please explain any potential underlying issues in this respect that should be recognised.

<ESMA\_QUESTION\_ALGO\_33>

N/A

<ESMA\_QUESTION\_ALGO\_33>

1. : Do you agree with the consequences as described of exceeding the maximum limits or should there be a more convergent approach? Please provide any comment or suggestion regarding the procedures in place by trading venues in case of a member exceeding the prescribed limit.

<ESMA\_QUESTION\_ALGO\_34>

ACI FMA would see no value in a more convergent approach, current procedures are adequate.

<ESMA\_QUESTION\_ALGO\_34>

1. : Do you agree with the need to improve the notification process in case of IT incidents and system outages? Beyond the notification process between NCAs and ESMA, which improvements could be done regarding communication of incidents to the public?

<ESMA\_QUESTION\_ALGO\_35>

MiFID II and MiFIR ensure fairer, safer and more efficient markets and facilitate greater transparency for all participants. Algorithmic trading and high-frequency trading having as inherent characteristic the extremely high rate and speed of trade order executions render imperative the imminent notification of market participants of a system disruption or outage that can cause disorderly market conditions and pose a risk to the stability and liquidity of the foreign exchange market.

ACI FMA, having polled our diverse membership, can confirm that customer communication from an FX Fintech/Platform/Venue perspective, particularly regarding incidents and outage, are a priority responsibility and are viewed as good compliance with market practice, systems and controls as well as a competitive, timely advantage of service. Public notifications are not really applicable to OTC markets. Therefore, ACI FMA regards the current notification process as sufficient.

Furthermore, we would see no value in any Regulator imposing themselves between the platform, venue and Market Participant or customer. One consideration would be a mechanism, which would facilitate Market Participants to subscribe to notifications and that those notifications come in a timely fashion.

Finally, any imposition should be proportionate and not establish a regulatory moat or barbican for the dominant players.

<ESMA\_QUESTION\_ALGO\_35>

1. : Do you believe any initiative should be put forward to ensure there is more continuity on trading in case of an outage on the main market, e.g. by requiring algo traders to use more than one reference data point?

<ESMA\_QUESTION\_ALGO\_36>

If an outage suspends trading on the main market, it is important to be able to migrate to another trading venue for the use of reference data points to ensure that market liquidity is not affected, since the simultaneous suspension of Algorithmic trading by numerous market participants could result in high volatility and a drastic reduction in market liquidity. Nevertheless, having conferred with both FX Fintech members and active algo trading market participants, ACI FMA agrees with the potential for concern but disagrees with a mandatory, regulatory requirement to use more than one reference data point.

From an FX Fintech/Platform/Venue perspective: Innovation is a key driver of daily activities and a competitive advantage. The engineering trade-off between a rich, robust, fast service delivered to a particular cost point is fundamental to individual companies positioning in a competitive marketplace. ACI FMA does not see any value in a Regulator imposing design constraints on innovation. Finally, any imposition would need to be proportionate and not establish a regulatory moat or barbican for the dominant players. We would propose that Market Participant ‘Algorithmic traders’ are agile and adaptive with regard to seeking/accessing liquidity. Further consideration must be the cost/benefit analysis, which seems very limited. Cost: set-up reference points, monitoring/governance.

<ESMA\_QUESTION\_ALGO\_36>

1. : Do you agree with the view that the tick size regime had overall a positive effect on market depth and transaction costs?

<ESMA\_QUESTION\_ALGO\_37>

As previously mentioned, this question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_37>

1. : Is there any further issue you would like to highlight regarding tick size regime?

<ESMA\_QUESTION\_ALGO\_38>

As previously mentioned, this question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_38>

1. : Do You agree with the proposal not to amend the tick size regime for third country shares? Please explain.

<ESMA\_QUESTION\_ALGO\_39>

As previously mentioned, this question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_39>

1. : Do you agree with the proposal to widen the scope of the tick size regime to all ETFs? Would this pose challenges in your view? Please explain.

<ESMA\_QUESTION\_ALGO\_40>

As previously mentioned, this question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_40>

1. : Do you agree with the proposal not to widen the scope of the tick size regime to non-equity instruments? Please explain.

<ESMA\_QUESTION\_ALGO\_41>

This question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_41>

1. : Do you agree with ESMA findings and assessment of the current MiFID II market making regime?

<ESMA\_QUESTION\_ALGO\_42>

ACI FMA would propose that more clarity is required with regard to the current MiFID II market making regime. While applicability to the FX asset class is not as relevant, we cannot concur that more predictability with regard to the provision of liquidity has been attained.

<ESMA\_QUESTION\_ALGO\_42>

1. : What do you think of ESMA proposals and suggested amendments to RTS 8? In your view, what other aspects of the market making regime require to be amended and how?

<ESMA\_QUESTION\_ALGO\_43>

With reference to the response to Q 42, ACI FMA would propose that clarification regarding the assertions of the text before Q42 is necessary i.e. “broaden to all instruments” before further amendments are made. This question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_43>

1. : What are market participants views regarding the flexibility left in the MiFID II market making regime? Would you agree with ESMA further clarifying certain relevant concepts? If yes, which ones?

<ESMA\_QUESTION\_ALGO\_44>

ACI FMA would concur with ESMA’s statement that ‘discretion is beneficial to allow trading venues to adapt the rules to the nature and scale of their activity.

<ESMA\_QUESTION\_ALGO\_44>

1. : Could you please describe how Primary Dealers agreements are designed (number of designated Primary Dealers, transparency about investment firms having signed such agreements, typical obligations contained, etc…). Do you consider that Primary Dealers should be exempted from the Article 1 of RTS 8? Do you consider that this can introduce a regulatory loophole?

<ESMA\_QUESTION\_ALGO\_45>

N/A for the FX markets.

<ESMA\_QUESTION\_ALGO\_45>

1. : Do you think that venues which introduced asymmetric speedbumps provide enough information regarding the mechanism used? If not, what additional information would be useful to disclose to market participants?

<ESMA\_QUESTION\_ALGO\_46>

This question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_46>

1. : Reflecting on those mechanisms which allow liquidity providers to provide quotes that can be filled only against retail order flow, do you think that such mechanisms are beneficial in terms of market quality? Is there any specific aspect that you think should be further taken into account, also considering the type of instruments traded? Please specify the venue of reference and the type of arrangement discussed.

<ESMA\_QUESTION\_ALGO\_47>

This question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_47>

1. : Do you think that venues which introduce asymmetric speedbumps should set tighter market making requirements? Please explain why and how tight those new requirements should be.

<ESMA\_QUESTION\_ALGO\_48>

This question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_48>

1. : Do you agree on the conclusion that speedbumps might not be a well-suited arrangement for equity markets? If yes, do you think that such arrangements for equities should be prohibited in Level 1? Please explain.

<ESMA\_QUESTION\_ALGO\_49>

This question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_49>

1. : Do you think that the introduction and functioning of speedbumps should be further regulated? If yes, which specific requirements would you like to be included in EU legislation?

<ESMA\_QUESTION\_ALGO\_50>

This question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_50>

1. : Is there any specific issue you would like to highlight about speedbumps?

<ESMA\_QUESTION\_ALGO\_51>

This question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_51>

1. : What are your views on the relative timing of private fill confirmations and public trade messages? If you are a trading venue, please provide in your answer an explanation of the model you have in place.

<ESMA\_QUESTION\_ALGO\_52>

This question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_52>

1. : Do you consider information on the sequencing of these two feeds at trading venues to be easily available? If you are a trading venue, please provide a link to where this information can be found publicly.

<ESMA\_QUESTION\_ALGO\_53>

This question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_53>

1. : Do you think there should be any legislative amendments or policy measures in respect of these feed dynamics?

<ESMA\_QUESTION\_ALGO\_54>

This question has a strong connotation of equity and exchange markets and thus suggests this question’s scope be limited to non-FX instruments.

<ESMA\_QUESTION\_ALGO\_54>