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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.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**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 | Börse Stuttgart |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Germany |

**Introduction**

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

<ESMA\_COMMENT\_ALGO\_1>

Börse Stuttgart is one of Germany’s leading floor-based exchanges and a first choice of retail

investors. Investors can trade equities, securitised derivatives, bonds, ETFs and investment

funds while benefiting from top-quality execution at the best prices. Börse Stuttgart leads the

German market for exchange-based trading in corporate bonds and is number one in Europe

in the securitised derivatives segment. In 2020, Börse Stuttgart recorded a total trading volume of around EUR 111 billion across all asset classes, making it Europe’s tenth largest exchange.

Börse Stuttgart welcomes the possibility to respond to the ESMA Consultation on the Algorithmic Trading. In general, Börse Stuttgart agrees with the framework for algorithmic trading provided in MiFID II. However, in addition to our answers to the ESMA’s specific questions on the provisions, Börse Stuttgart would like to highlight the following issues: First, we think that RTS 8 should remain unchanged as it takes into account the different trading models in the EU. A possible extension of RTS 8 provisions to all trading models would go beyond the goal of regulating specific trading strategies such as algorithmic trading. Second, we are of the opinion that regulations on algorithmic trading should also be extended to SIs in order to take equal account of all risks and to ensure a level playing field. Finally, any regulatory changes should always take into account that trading venues are still given sufficient flexibility for implementation that takes into account the different landscape of trading venues.

<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>

Börse Stuttgart generally agrees with the MiFID II framework for algorithmic trading, albeit with reservations and proposals in answers to subsequent questions. In particular, we have major concerns about ESMA's proposed amendments to in RTS 8. We do not support the proposal to expand the obligation to have market making schemes for all instruments and types of trading, as it is mentioned in ESMA’s proposed amendment in paragraph 313 b). In our view, trading venues should have discretion to asses for which instruments and markets such schemes are suitable and can help to increase liquidity. Thus, Börse Stuttgart in general recommends to remove the obligation for trading venues to offer market making schemes, as these have proven to be ineffective, especially in situations of market stress.

Furthermore, we would like to add that despite the different trading models and the tailored regulation that the MIFID II framework allows, the same activities must also be subject to the same regulations. Risks associated with algorithmic trading are in our view not limited to trading venues. Malfunctioning algorithms can in principle lead to potential disorderly markets, irrespective of the trading platform. Algorithms and algorithmic trading are used on SI platforms just as they are in the trading venue environment. Therefore, it is absolutely necessary for algorithmic trading provisions to be applied equally to all execution venues, including SIs. This can limit potential contagion effects from SIs to other market participants, which in turn contributes to greater stability of the financial system as a whole.

It is important to us that the different trading systems and models continue to be taken into account in practice. In those areas where there is room for flexibility in implementation, such as in the testing of algorithms, the flexibility should be retained so that tailored implementation of the regulations for the different trading models continues to be possible. Apart from the issues mentioned above, we do not see any fundamental need for adjustments in the regulatory framework on algorithmic trading.

<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>

Börse Stuttgart does not see any further additions beyond the points mentioned in the answer to question Q1.

<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>

Börse Stuttgart agrees with ESMA's proposal to extend the definition of algorithmic trading to trading in financial instruments by Systemic Internalisers (SI) and in selectively applying some of the requirements currently set out in level 2. In paragraph 24 and 60, ESMA identifies the risks associated with algorithmic trading.  These risks are in our view not limited to trading venues. Malfunctioning algorithms can in principle lead to potential disorderly markets, irrespective of the trading platform. Algorithms and algorithmic trading are used on SI platforms just as they are in the trading venue environment. Under MiFD II, even HFT single-dealer platforms with a significant market share have emerged on which HFTs conduct bilateral trading as dealer.[[1]](#footnote-2) Therefore, it is absolutely necessary for algorithmic trading provisions to be applied equally to all execution venues, including SIs. This can limit potential contagion effects from SIs to other market participants, which in turn contributes to greater stability of the financial system as a whole.

Gomber, Peter, and Martin Haferkorn. “High-Frequency-Trading: High-Frequency-Trading Technologies and Their Implications for Electronic Securities Trading.” Business and Information Systems Engineering 5, no. 2 (April 2013): 97–99. https://doi.org/10.1007/s12599-013-0255-7; Aramian, Fatemeh, and Lars Nordén. “High-Frequency Traders and Single-Dealer Platforms”. Available at SSRN: https://ssrn.com/abstract=3738608.

<ESMA\_QUESTION\_ALGO\_3>

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

<ESMA\_QUESTION\_ALGO\_4>

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<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>

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<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>

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<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>

TYPE YOUR TEXT HERE

<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>

Börse Stuttgart agrees with ESMA’s analysis that online brokers cannot be considered as having DEA access and that retail clients are not considered to perform investment activities on a professional basis and are therefore not required to seek authorisation as investment firms.

<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>

Börse Stuttgart believes that the definition of algorithmic trading should also apply to Systemic Internalisers (SI) and trading venues irrespectively. Given the role that SIs play in equity markets as illustrated by recent research and by ESMA[[2]](#footnote-3), we consider it necessary to address the risks attached to OTC algorithmic trading at the SI level, especially from an investor protection point of view. Investors need the trust that effective risk controls are in place.

Specifically, we believe that the application of RTS 6 requirements to investment firms engaged in algorithmic trading in trading venues should be extended to all investment firms with algorithmic OTC trading to ensure a level playing field.

These requirements include (i) general organisational requirements (including procedures for the development, deployment and subsequent updates of trading algorithms, solving of problems identified when monitoring algorithms, separation of tasks and responsibilities of trading desks from risk control and compliance), (ii) staff with sufficient knowledge of algorithmic trading and strategies, (iii) responsibility when outsourcing IT and procurement (responsibility towards obligations when outsourcing or procuring software or hardware used in algorithmic trading), (iv) management of material changes in algorithmic trading, (v) business continuity arrangements for algorithmic trading systems, and (vi) real-time monitoring of algorithmic trading activity.

2 ESMA. “ESMA Annual Statistical Report - EU Securities Markets.” Paris, 2020. See also research on HFT in the OTC space: Gomber, Peter, and Martin Haferkorn. “High-Frequency-Trading: High-Frequency-Trading Technologies and Their Implications for Electronic Securities Trading.” Business and Information Systems Engineering 5, no. 2 (April 2013): 97–99. <https://doi.org/10.1007/s12599-013-0255-7>. Aramian, Fatemeh, and Lars L. Nordén. “High-Frequency Traders and Single-Dealer Platforms.” SSRN Electronic Journal. Elsevier BV, January 7, 2020. https://doi.org/10.2139/ssrn.3738608.

<ESMA\_QUESTION\_ALGO\_9>

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

<ESMA\_QUESTION\_ALGO\_10>

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<ESMA\_QUESTION\_ALGO\_10>

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

<ESMA\_QUESTION\_ALGO\_11>

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<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>

As part of the implementation of the MiFID II provisions, Börse Stuttgart developed a notification template in coordination with the national competent authorities (“Börsenaufsichtsbehörde” and BaFin), which the participants at Börse Stuttgart use for the purpose of notifications. In addition, provisions regarding the deadlines of the reporting process have been defined in our exchange rules and regulations. However, these provisions are trading venue specific and an investment firm usually engages in algorithmic trading at various trading venues in different member states. In this respect, we consider it to be helpful from a practical point of view to establish a standardised formal reporting process at the European level. Nevertheless, to the level of detail of such notifications, we would like to highlight that the information outlined under point 84 of the consultation paper appears sufficient.

<ESMA\_QUESTION\_ALGO\_12>

<ESMA\_QUESTION\_ALGO\_0>

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<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>

As stated in the response to Q12, Börse Stuttgart agrees that there could be merit in establishing a standardised formal reporting process at the European level, including a clarification of notifications to be done ‘without undue delay’.

<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>

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<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>

Börse Stuttgart believes that it could be useful to differentiate algorithms according to their level of complexity. However, such an approach should be taken with caution. Conceptual ambiguity could be countered by creating a list of examples from which it is clear what is to be understood as algorithmic trading and what is not.

<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>

Beside the issues raised in the previous question, Börse Stuttgart has no further points to add.

<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>

Börse Stuttgart considers a test environment that accurately reflects the production environment to be extremely important. In terms of RTS 6 and 7, test environments are implemented at Börse Stuttgart. These are regularly used before each software update and regularly for both functional and non-functional tests before any software is used productively. It is important to Börse Stuttgart to be ensured that a test environment is available for each system participating in trading, which reflects the production status as closely as possible. Apart from that, we do not see any need for further adjustments.

<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>

Börse Stuttgart agrees that a clarification of “disorderly trading conditions” would be beneficial. We believe that this term should refer to a market situation where the maintenance of a fair, orderly, and transparent execution of trades is compromised. We do not see a need for a level 1 change and support including a consistent definition of the term across RTS 6, RTS 7, and RTS 8.

<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>

Börse Stuttgart sees no further need for additional guidance on the expectations concerning the checks and testing to be done. Börse Stuttgart's implemented mechanisms based on MiFID II regulations have ensured, among other things, that there were no outages to report in turbulent market environments, e.g., in March 2020. Thus, the provisions in MiFID II and RTS 6+7 have proven to be sufficient to implement suitable test procedures and test scenarios in order to ensure a proper functioning of algorithms and algorithmic systems in disorderly trading conditions. We do not believe that additional guidance on the expectations concerning the checks and testing to be done is necessary. The needs for testing facilities are very heterogeneous depending on an investment firm’s trading behaviour. Pre-defined expectations on testing and checks might not cover the heterogeneity of algorithms and strategies applied by market participants.

<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>

Börse Stuttgart does not see the need for a prescribed format for the self-assessment foreseen in Article 9 of RTS 6. We believe that Annex I to RTS 6 is a sufficient basis for orientation with regard to the preparation of the 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>

Börse Stuttgart considers the current practice around the preparation and content of the self-assessment as sufficient and sees no need for further changes.

<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>

Börse Stuttgart sees no further need for additional 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>

Börse Stuttgart agrees with ESMA’s analysis stated in paragraph 142 in the consultation paper that the self-assessment has achieved its purpose and remains appropriate to be undertaken by trading venues. We believe that the current format and approach to performing self-assessment is aligned with the relevant NCAs and has worked well. Nevertheless, at this point we would like to highlight that should a harmonised structure be implemented in the future, additional operational and compliance-related burdens should be avoided and that trading venues should be given enough time to implement any new approaches.

<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>

Börse Stuttgart supports the proposal by ESMA to limit the self-assessment to every two years. We are in ongoing communication with the NCAs not only on the self-assessment, but also on the issues associated with the RTS 7. Thus, it makes sense to continue sharing our self-assessment.

<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>

From Börse Stuttgart’s perspective, the provisions of these two RTS do not overlap. Rather, in our view, they are closely linked and complement each other. While RTS 6 sets out the requirements for investment firms with regard to the performance of the testing procedures, RTS 7 regulates the corresponding requirements for trading venues for the performance of the testing procedures. In this respect, the provisions are a set of related obligations both for investment firms that engage in algorithmic trading and for trading venues whose trading systems allow algorithmic trading. However, in order to ensure consistency between these provisions, as well as to facilitate a comprehensive overview of the respective responsibilities by the market actors subject to these obligations, it is desirable to further align these provisions, in particular also with regard to the wording and responsibilities. However, we want to emphasize that testing and soundness checks of algorithms should reside with the investment firms that deploy the algorithms. Trading venues cannot with any efficiency validate or certify the behaviour of trading algorithms deployed by their trading participants.

<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>

Börse Stuttgart does not see the need to further clarify testing scenarios. We believe that the current requirements are sufficient. Participants of trading venues are very heterogeneous due to their individual business models and trading strategies applied. Thus, a pre-defined testing approach would not reflect this heterogeneity. Trading venues already account for this heterogeneity by providing simulation environments so participants can address their individual test cases.   
Moreover, we would like to highlight that the testing requirements for algorithms that are most of the time deployed by participants on multiple trading venues will not, by itself, enable markets to get a higher level of security. Pre-trade risk management at the level of participants, and to some extent trading venues, is more efficient to prevent incidents by offering to the market the tools to monitor and react in real-time to issues arising out of algorithmic trading

<ESMA\_QUESTION\_ALGO\_26>

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

<ESMA\_QUESTION\_ALGO\_27>

Börse Stuttgart believes that testing environments are appropriate. Taking into account the heterogeneous needs of market participants, trading venues provide simulation environments so participants can address their individual test cases in a realistic trading environment.

<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>

Börse Stuttgart supports ESMA’s analysis that “trading venues proved to be broadly resilient, despite the surge in trading activity, message traffic and market movements. Circuit breakers were widely and efficiently used and trading capacity was tested by volumes reaching all-time highs, with few operational issues.” Hence, they achieved the objective of protecting markets against episodes of extreme volatility affecting particular instruments or the whole market.

<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>

Börse Stuttgart agrees that the current MiFID II requirements on Level 1 to Level 3 are adequate and sufficient and would recommend not changing them. The regulatory set-up, combining a comprehensive legal framework and market operators’ discretion on the actual design of the mechanisms, results in a market environment that effectively contributes to ensuring price quality and financial stability. Thus, we do not think that further requirements are necessary. We do not support the proposal of interlinking markets, requiring trading venues to halt or constrain trading in case of significant price moves on related markets. Price dynamics within an order book must always be considered from the perspective of the individual trading venue. Trading dynamics on one trading venue do not necessarily have repercussions on other trading venues.

<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>

Börse Stuttgart agrees that, as per Article 48 of MiFID II and RTS 10, co-location services and fees are transparent, fair, and non-discriminatory. This requirement should also apply to third-party service vendors and proprietary trading platforms since these enable the operator (which, at the same time, routes client orders and deals on own account) to benefit from advantageous proximity to its server, without giving the same possibility to the other participants active on the platform.

<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>

Börse Stuttgart generally agrees with the compliance assessment of fee structures and related disclosures by the trading venues conducted by ESMA and NCAs.

We do not believe that harmonisation among different entities would be required. Rather trading venues should have some discretion for individual descriptions of services and related fees as they might offer different services.

<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>

Börse Stuttgart welcomes ESMA’s efforts to ensure a consistent level of protection across trading venues. However, we see pitfalls in an approach where a one-size-fits-all approach is set for OTR per asset class. We believe that the maximum allowed OTR should be based on an assessment related to trading venue and member’s system capacity, latency problems, excessive market data flows, etc. to safeguard orderly and sound trading activity.

Any OTR must ensure the highest level of market integrity and must be relevant to the instrument that is being traded. Each trading venue must be allowed to set the OTR per instrument based on its knowledge of the local market and trading data in order to ensure that the ratios are relevant and kept up to date. Any methodology to calculate these ratios must take into consideration the specific type of instrument as well as other market specifics, such as the liquidity of the platform. The ratio does not have to be the same, even for the same financial instruments, on all the platforms where the instrument is traded, considering that each market has its own characteristics. Therefore, Börse Stuttgart believes that the determination of maximum OTR ratios should remain within the responsibility of each trading venue.

<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>

Börse Stuttgart can confirm that maximum limits are not frequently exceeded. However, there are a few issues we would like to refer to here. For example, there are frequently misleading or false alerts triggered due to the predefined calculation method of the OTR. It appears that the OTR is a little over-sensitive here. We think there could be merit to introduce a “de minimis” limit rule for order events at this point. Moreover, in our opinion, it is not necessary to calculate the OTR based on volume in addition to the number-based calculation method. This often leads to false alerts as well.

<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>

Börse Stuttgart agrees with the described consequences in paragraphs 210 and 211 in the consultation paper. At Börse Stuttgart, in the event of breaching the maximum limits, our on-venue surveillance office (“Handelsüberwachungsstelle”) contacts the trading participant in order to advise on the issue and to discuss a possible solution. If the situation persists, the participant receives a written notice and a fine may be applied. This approach has proven to be very suitable in practice so far. Therefore, in our opinion, the process and the possibilities of sanctioning the trading participants in case of breach is so in good order. We see no need for change here and advocate that the trading venues should continue to have the option of prosecuting breaches at their own discretion.

<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>

In line with the MiFID II/MiFIR requirements, Börse Stuttgart has established well-functioning procedures of communication to customers and notification to our NCAs in the case of IT incidents and outages. We believe that the current notification process has been in place for many years and has worked well so far. Changing the approach to create a centralized reporting structure – although it seemingly has the merit of more uniformity – might nevertheless introduce issues due to lack of familiarity and understanding of local markets. We think that any proposal should carefully consider the possible impact on the local market, taking also into account the difference between trading venues. Thus, we do not believe that there is a need for streamlining the notification procedures from trading venues to NCAs and ESMA via additional guidance.

<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>

Börse Stuttgart does not see the need for the proposed initiative. As there is a close to 100% system performance of main markets, we do not see a reason for concern for the price formation process. We would rather be cautious of any unforeseen consequences of requiring algorithmic traders to use more than one reference data point. By forcing algorithmic traders to include different sources of information, the underlying assumption is that regulated markets, other venues and potentially SIs are set on the same level in terms of price formation and information and can easily switch from on to the other. We consider declines in trading following outages as being strongly linked to the importance of the price formation process. Despite being able to move trading on alternative venues, the low confidence of traders in the price formation on alternative venues may deter them from moving on to those markets during the outage period. The height of volatility in the COVID-19 crisis is a good example of the importance of transparent markets and the flight to execution quality in the event of market turmoil. It proved once more that there was a need by investors to trade on regulated markets when looking at the migration of volumes from dark, SI, and OTC trading to lit regulated markets.

There is evidence that significant drops in trading occur when there are volatility interruptions on trading venues. At Börse Stuttgart, our trading systems are reliable, monitored in real-time, well-dimensioned, and scalable to the order flow’s needs. Following Articles 47 and 48 of MiFID II, we have in place effective systems, procedures, and arrangements to ensure that our systems are resilient and ensure orderly trading under conditions of market stress. While price formation occurs across a range of venues, those alternative venues do not make investments in the full range of activities necessary to contribute to the core price formation process, but rather use the data that is provided by trading venues to run their own commercial business models. We think that it is crucial that regulators and policymakers take the range of price formation delivered by trading venues into consideration.

<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>

Börse Stuttgart does not agree with ESMA’s observation, that the tick size regime had overall a positive effect on market depth and transaction cost. As Börse Stuttgart caters the need for retail investors and MiFID II as well as CMU aims at strengthening retail investor participation, we are particularly committed to ensure that retail investors enjoy the best trading conditions. As we pointed out in our white paper[[3]](#footnote-4) last year on the tick size regime, our own experience indicates something different than stated in ESMA’s referred studies conducted by FSA and AMF. The recalibrated tick-size regime has led to an increase in the bid-ask spread. On a wide range of equities, we see an increase in spreads and therefore of transaction costs when comparing Q4/2017 spreads with Q4/2020 spreads. This, in turn, resulted in more than half of the shares tradable on Börse Stuttgart becoming more expensive for the retail investor. But not only that - it also resulted in a significant loss of liquidity. For illiquid equities, we see too large tick sizes which are counterproductive to forming a liquid order book when reflecting liquidity from different markets into one order book and therefore causing high price jumps. Thus, we see the tick size regime has to be reassessed in order to offset the impediments for retail investors.

3 see <https://www.boerse-stuttgart.de/de-de/gruppe-boerse-stuttgart/pressemitteilungen/2002_whitepaper-ticksize/>

<ESMA\_QUESTION\_ALGO\_37>

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

<ESMA\_QUESTION\_ALGO\_38>

Börse Stuttgart would like to point out the following issues where we would like see a need for improvement:

First, a once-a-year calculation of the liquidity of a share does not reflect current trading developments, i.e. if an equity comes into focus due to new investment story events, the “old” tick size does not reflect the current event-driven liquidity and therefore has a negative impact on price determination and liquidity in the order book. Furthermore, the synchronization of updates to tick sizes is rather uncoordinated. For instance, updates are often delayed or reflected later on different exchanges and, thus, cause an unlevel playing field between trading venues.

Second, it is our observation that RTS 11 is not applied uniformly across trading venues. This is a situation that results from technical issues as well as differing interpretations of the regulation across national jurisdictions. Due to the complexity of the regime, and the fact that it is based on the FITRS database which still contains errors, trading venues need to make daily adjustments to their systems, regularly question information published, and spend a significant amount of resources ensuring that all trading venues apply the same values for the average daily number of transactions for the determination of the tick sizes. It is necessary, especially now that SIs are also subject to the tick size regime, that ESMA engages with trading venues to take their input and clarify some points in the interpretation of the regulation at Level 3 and that technical issues are solved as quickly as possible. We would like to underline as well that not respecting the tick size regime creates competitive distortion which, even if temporary, should be avoided.

Third, whereas a tick size regime might in some cases help to bundle the liquidity and reduce the order costs on a fully electronic exchange, it is rather counterproductive for other auction driven exchanges. An exclusion of the tick size regime for price determined in an auction might be a better solution here as an auction itself already reduces transaction costs to a reasonable level.

<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>

Due to the furthermore existing disadvantages for retail investors trading on EU trading venues and the furthermore existing unlevel playing field between third country and EU trading venues, Börse Stuttgart wants to encourage ESMA again to an amendment of the tick size regime for third country shares. We believe that the tick size regime should be treated analogous to the share trading obligation (STO). In its public statement from May 2019 ESMA clarified the share trading obligation laid down in Article 23 MiFIR in light of Brexit. Whereas EU27 shares (ISINs with a EU27 or EEA country code) are within the scope of the STO, others – in particular GB ISINs – would fall outside the scope of the STO. A similar approach can be applied to the requirements under the tick size regime. The tick size regime should only cover EU27 shares with a EU27 ISIN. Third country shares, that are traded on EU trading venues, would remain outside the scope. Consequently, retail investors would be able to trade these shares to similar prices compared to the share’s home markets. In addition, EU trading venues would be able to compete with trading venues outside the EU as third country shares would not be affected by larger spreads and higher costs due to the tick size calibrations. In this way, trading volume on EU trading venues could be ensured.

Nevertheless, Börse Stuttgart considers this only to be a short- to mid-term solution to the problem of too highly calibrated tick sizes. We find that a reassessment of the tick size regime is necessary, in order to offset the impediments for retail investor participation caused by large spreads and thus higher trading costs for – in particular third country – shares.

<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>

Börse Stuttgart supports ESMA’s proposal to extend the scope of application of the tick size regime to all ETFs traded in the EU. Currently, the situation is quite unsatisfactory as the correct application of the tick size regime for ETFs is difficult to reach as the necessary check for the constituents of each single ETF is impossible to check and to track. The current framework has led to different tick sizes on various exchanges and therefore created an unlevel playing field, as no single list is provided, which determines whether an ETF is subject to the tick size regime or not. Furthermore, some exchanges have extended their range of tick size bands to include more differential bands which also causes technical difficulties for data providers and other trading venues to level the playing field. The widening of the tick size regime is therefore necessary. We would also like to add that against the background of the regulators to move liquidity from OTC to trading venues in order to create more transparency, the tick size regime should be applied to systematic internalisers as well. the regime also urgently needs to be applied to systemic internalisers in order to maintain a level playing field.

<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>

Börse Stuttgart agrees with ESMA’s proposal not to extend the tick size regime to non-equity instruments. We find this extension unnecessary considering the particular characteristics of these instruments and the microstructure of the different markets in which they may be traded, making it difficult to apply standardised measures such as the tick size.

<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>

Börse Stuttgart agrees with ESMA’s analysis that the MiFID II/MiFIR market making regime has fulfilled its purpose, which is to contribute to clarity and to a more stringent framework. Thus, we see no further necessity to amendments of relevant provisions in MiFID II/MiFIR and RTS 8.

<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>

Börse Stuttgart strongly disagrees with the proposal to expand the obligation to have market making schemes for all instrument and types of trading systems. First, we note that the Proposals in paragraph 313 a) and b) contradict each other. 313 a) says that the application of the scope of articles 1 and 2 should be limited to continuous trading order books whereas 313 b) states that the obligation to have market making schemes should be broadened to all types of trading systems. There’s confusion because to requirements to have a market making agreement and a market making scheme depend on each other. We see no merit in splitting both provisions. Second, we do not support the proposal to expand the obligation to have market making schemes for all instruments and types of trading, as it is mentioned in ESMA’s proposed amendment in paragraph 313 b). In our view, trading venues should have discretion to asses for which instruments and markets such schemes are suitable and can help to increase liquidity.

<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>

As stated by ESMA, discretion is beneficial to allow trading venues to adapt the rules to the nature and scale of their activity and consequently be proportional. Thus, the discretion to define the market making agreement and scheme should remain with the trading venues. Börse Stuttgart does not see the necessity for further clarification here.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ALGO\_50>

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

<ESMA\_QUESTION\_ALGO\_51>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ALGO\_54>

1. [↑](#footnote-ref-2)
2. [↑](#footnote-ref-3)
3. [↑](#footnote-ref-4)