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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 | BVI |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | Germany |

**Introduction**

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

<ESMA\_COMMENT\_ALGO\_1>

The BVI gladly takes the opportunity to present its views on the ESMAs Consultation Paper on the Algorithm Trading.

BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI’s 112 members manage assets more than 3.85 trillion euros for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI’s ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

<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>

Partial automation in trading by means of algo trading functionalities is nowadays common in asset management. In principle, we consider the existing regulations for algo trading and the criteria for delimiting the regulation of high-frequency trading as appropriate. The use of algo trading is helpful and manageable for asset management, provided that the user is able to adequately assess the underlying functions, roles and technical mechanisms of algo trading routines. <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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ALGO\_3>

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

<ESMA\_QUESTION\_ALGO\_4>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ALGO\_9>

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

<ESMA\_QUESTION\_ALGO\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ALGO\_10>

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

<ESMA\_QUESTION\_ALGO\_11>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ALGO\_26>

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

<ESMA\_QUESTION\_ALGO\_27>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Sufficient information on an outage as well as transparency with regard to the type, degree and expected duration of the restriction on trading would be desirable. Especially in volatile markets, prompt information to financial market participants and the public is necessary in order to mitigate potential spillover effects stemming from the outage and avoid straining market confidence.<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>

We would welcome an initiative in this subject. However, the scope of such initiative should not be limited to the effects but emphasize the causes of outages as the starting point when exploring measures to improve continuity of trading. Access to more than one reference data point may not solve the inherent problem of reliable price formation if the primary source of reference prices stemming from the deepest pool of liquidity for certain instruments ceases to function for a considerable period of time..<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ALGO\_37>

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

<ESMA\_QUESTION\_ALGO\_38>

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<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT 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>