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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 | European Federation of Energy Traders (EFET) |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Europe |

**Introduction**

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

<ESMA\_COMMENT\_ALGO\_1>

TYPE YOUR TEXT HERE

<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>

The overall framework seems to work well in general, but needs further calibration in order to provide more clarity for market participants regarding the scope/ its application. In our view, the current regulatory framework does not adequately take into consideration the different levels of complexity and risks that can characterize different types of algorithms and automated trading solutions adopted.

Furthermore, it fails to adequately address the use of the proportionality principle. While it is accepted that investment firms (and non-investment firms) should comply with fundamental regulatory requirements and high level obligations that are appropriate for all firms, the flexibility to apply the details of those provisions in a proportionate manner (e.g. adequate and effective risk-controls) that are best suited to the particular nature, scale and complexity of the specific activity in algorithmic trading could be better clarified.

<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>

EFET has not observed so far additional commodity markets specific issues which deserve further regulatory attention.

<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>

EFET agrees with ESMA´s estimation that the risks attached to algorithmic trading on trading venues are specifically pertinent to regulated markets. We do not see the same risks emerging on the OTC markets or that those OTC markets would benefit from the additional application of algorithmic trading.

<ESMA\_QUESTION\_ALGO\_3>

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

<ESMA\_QUESTION\_ALGO\_4>

EFET agrees with ESMA´s analysis, as it otherwise would create an unlevel playing field in favour of clients of DEA providers.

<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>

EFET does not think that the definition should be amended, but we consider that the thresholds are set too low and that the culmination threshold, where a company trades in multiple financial instruments, puts them at competitive disadvantage, given that many providers are collocating. We think that the single individual threshold should be increased, and the cumulative threshold should be removed.

<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>

EFET thinks that the definition in article 20 of CDR (EU) 2017/565 which clarifies that a person is not considered to have DEA when that person “cannot exercise discretion regarding the exact fraction of a second of order entry and the lifetime of the order within that time frame” is sufficient. We further agree that clients of online brokers and other market participants do not have control over the exact fraction of a second when their orders enter the trading venue’s systems and therefore cannot be considered as having DEA access.

<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>

EFET does not think that the extension to the regime to the OTC market is useful, as it would mean that the whole system would need to be re-calibrated.

<ESMA\_QUESTION\_ALGO\_9>

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

<ESMA\_QUESTION\_ALGO\_10>

EFET is supportive of the proposal to remove the obligation for DEA clients to be authorised as investment firms as this ensures an equal treatment of EU and non-EU firms.

<ESMA\_QUESTION\_ALGO\_10>

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

<ESMA\_QUESTION\_ALGO\_11>

EFET considers that ESMA ought not to develop a template. The current regime works well and each NCA can determine what level of detail it requires.

<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>

EFET does not see merit. The notification process to the NCAs works sufficiently well and using a template could potentially impose additional burdens to the process.

<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>

EFET disagrees that it would be useful to clarify that notifications should 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>

EFET believes that the definition provided in Article 4(1)(39) of MIFID II Directive describes algorithmic trading well and should be maintained, and the principle of proportionality be strengthened. Any attempt to make this more specific or granular would lead to different applications in different member states.

<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>

RTS 6 set-out the legal framework and principles for governance and compliance and EFET believes that the specific algorithm and trading strategies each firm (at its own discretion) should be decisive for the specified requirements. A differentiated approach imposing specific requirements for some types algorithms could lead to legal uncertainty likely to stifle innovation.

<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>

If firms are obligated to test strategies on trading venues, then the venues permitting algorithmic trading ought to be obligated to provide testing environments.

<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>

EFET welcomes the general proposal made by ESMA in the consultation paper about the introduction of a harmonized definition that could contribute to a more accurate and improved testing, as well as providing a level playing field for market participants carrying out algo trading. However, such definitions should not be based on undefined terms, but rather provide the variety of "real life scenarios"/ practical examples what behaviours/ actions on the trading venues are considered as “disorderly trading”.

<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>

EFET does not believe that it is possible to develop comprehensive guidance for checks and testing due to the complexity that may occur in the market. Such guidance will inevitably be incomplete and not appropriate for all markets and would cause confusion. Consequently, it is suggested that ESMA should not provide such guidance.

<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>

EFET considers that a well-consulted principles-based format for the self-assessment would ensure a consistent approach and standards across the European markets. Furthermore, it would provide legal certainty to the market participants, if applied proportionately. In this regard, we want to highlight that the AFM applies the principle of proportionality in such a fashion that each market participant, irrespective of size and undertaking, can conduct 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>

EFET recognises ESMA’s consideration, but we think that the self-assessment should be provided to NCAs upon request. We consider that it should be left to the discretion of NCAs to decide, while planning supervisory activities, when to request such self-assessments for review, taking into account for example the type and complexity of the algo or the number of algos deployed by the market participant (i.e. applying a proportional and risk-based approach). In our view, the introduction of a general obligation to provide such self-assessment to NCAs for review would be burdensome for market participants, even if the self-assessment would have to be provided “only” every 2 years and questioning whether such changes would increase the quality of such self-assessment.

We note that the current regulatory regime requires the risk management function to draw up a validation report (after having involved technical staff), that the compliance function shall be informed of any deficiencies identified in such report. The report shall be audited by the internal audit function and approved by senior management, which is why, in our view, it provides sufficient safeguards to ensure the quality of the self-assessment.

<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>

EFET welcomes limiting the self-assessment to every two years, but consider that the self-assessment should be provided to the NCAs upon request. We also find that is should be left to the discretion of the NCAs to decide, when planning supervisory activities, to request such self-assessments for review.

<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>

EFET considers that it would be helpful to clarify that venues are responsible for ensuring their members have carried out the required conformance testing. This would ensure no ambiguity and would place the onus on trading venues to identify what is appropriate.

<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>

A well-established testing environment at exchange level would be of great benefit to the market and would allow firms to test their products in the right environment.

<ESMA\_QUESTION\_ALGO\_26>

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

<ESMA\_QUESTION\_ALGO\_27>

Please note our answer at Q26.

<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>

EFET considers that the regulation of Order-Transaction-Ratios is counter-productive to the stated regulatory intention of increasing liquidity and market efficiency and would need, if applied, be supported with specific guidance to clarify the expected actions on market participants. Neither a trading venue nor a market maker can manufacture transactions at a specified rate because transaction requires two parties to agree. We want to highlight that price transparency improves when a larger number of products have tighter bid-ask markets. Liquidity, as measured by the cost per unit of transaction, increases when bid-ask spread decreases. A reduction in mandated order-to-transaction ratio has two direct impacts on the market:

a) market-makers must reduce the number of orders that they send because this is the only quantity that they can control;

b) for a market maker, to reduce the number of orders while ensuring that his orders are economically viable, he/she must increase the bid-offer spread between those orders.

Therefore, any limitation on OTR is destructive to a tight, liquid, efficient, transparent market.

If trading venues and regulators want to provide good incentives for participants to become registered market makers, they should state that restrictions on OTR apply to all HFTs that are not registered market makers.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>