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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 | Nasdaq |
| Activity | Regulated markets/Exchanges/Trading Systems |
| 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>

While we generally agree with the framework, albeit with reservations and proposals in answers to subsequent questions, we are concerned and urge ESMA to consider the level playing field aspects post Brexit. European trading venues now have a significant portion of trading volume originating from third countries, often by way of DMA provided by EU affiliate firms of the third country firms. In this situation, the framework will only apply to a portion of the market and hence potentially contribute to an unlevel playing field between EU investment firms and third country firms. Similarly, should there be any form of equivalence decision, we underline the importance of a framework for supervisory cooperation which can ensure full equivalence in the implementation and enforcement of the rules, thereby providing a level playing field.

<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>

There are a number of risks which are important to take into account from a broad perspective, where microstructural aspects including those linked to algorithmic trading, HFT and DEA, are part of the broader picture. One is that trading volumes in systematic internalisers have been rising. It needs to be ensured that these volumes only represent bilateral trading, as is the intention with the MiFID framework. Further, SIs should be reserved to cater for market participants who need to execute larger transactions. Smaller transactions should be executed on the more transparent venues, ensuring equal treatment of all participants, and in the most transparent environment. In our view, there is otherwise a risk that volumes that should normally contribute to price formation on multilateral and transparent venues is moved to a darker space.

<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>

In this context we note that the interaction between various types of execution needs to be considered also as regards algorithmic tradig. Especially the interaction between activities on the multilateral venues and OTC, including on the SIs, should be part of the broader focus when analysing risks. As algorithms and HFT strategies can be deployed by multiple types of market participants, across the whole range of the market, any policy measures should also apply to all, taking a functional rather than an institutional approach.

<ESMA\_QUESTION\_ALGO\_3>

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

<ESMA\_QUESTION\_ALGO\_4>

It is natural that the DEA provider as well as any HFT is within the MiFID II algorithmic trading framework as they both need MiFID II investment firm license. On the contrary the DEA clients (especially in the proposed landscape, where Tier 1 clients do not need to be MiFID II investment firms) do not equally naturally fall under the algorithmic trading framework. Therefore it might be more reasonable to place the requirements relating to the DEA client with the DEA provider.<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>

The static thresholds of 4 and 2 messages per second for principal activity in liquid instruments does not state to only include algorithmic orders. That was clarified in a Q&A. For clarity, this should ideally be part of the calculation definition of the static thresholds.

The static thresholds are acceptable to us as a definition but they fail to distinguish between different types of algorithmic activity, e.g. between market maker and arbitrage strategies where the first may be passive liquidity provision and the latter may be liquidity taking. Additionally, execution algorithms such as VWAP strategies, if traded in principal capacity, becomes included in HFT scope when seen in isolation would rarely be seen as HFT. An alternative approach could be to determine HFT classification per algorithm id and possibly make considerations to liquidity providing algorithms.<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>

To our understanding it is relatively frequent, partly as intra firm arrangements. Brexit is believed to have extended the use of DEA sub delegation further. With that said, we have no insight into DEA sub delegation arrangements of trading participants other than provisions in the trading rules. We permit sub delegation of Sponsored Access on our trading venues and the requirements are stipulated in our rules, but we have no knowledge of actual sub delegation arrangements.

DEA provision to third country firms is currently subject to different national approaches among the EU member states. We would prefer to have a harmonized framework for DEA provision to third country firms across EU to create a level playing field and predictability for third country firms.<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>

Although an exchange may not be the primary target of this question, we still note that we question the reasoning behind § 47 around “… technically be in possession of the trading code …”. The DEA client is never in possession of the trading code of the DEA provider, it is either appended by the DEA provider in the case of DMA or by the trading venue for Sponsored Access.

<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>

Yes, for clients categorized as retail clients under MiFID II, the due diligence procedure shall ensure that statutory investor protection and know-your-client requirements are met, that the service provided is suitable for the client and that the client is reasonably informed of the terms of the services and the applicable rules and restrictions with regards to it.

We agree that online brokerage clients should not be in scope for the DEA definition. We would further argue that only Sponsored Access clients can exercise full discretion of order entry and have equivalent direct access to trading venue systems as participants of Trading Venues. We would hence argue for ESMA to consider removing DMA, i.e. where a client accesses trading venues through a DMA provider’s infrastructure and systems, from the definition and scope of DEA. This would have the additional benefit that the definition would be crystal clear, i.e. DEA would mean connecting directly to the trading system of a trading venue.

In the markets operated by Nasdaq in the Nordics, we observe a relatvely large proportion of retail volumes, in particular on the growth markets. This is proof of a relatively well developed equity culture, which contributes significantly to a well functioning capital market where companies can access capital and grow. We welcome ESMA's and NCAs' continues attention to the need to faciliate further retail investor participation in capital markets.

<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>

Yes we agree SIs should be under certain obligations related to algorithmic trading, and we agree with the selected areas as proposed by ESMA. Definitions should apply to trading venues and SIs irrespectively. There is also a case to apply the same rules to firms engaging in algorithmic trading OTC, in order to provide a level playing field. We also take this opportunity to underline the importance of enforcement of existing rules.

<ESMA\_QUESTION\_ALGO\_9>

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

<ESMA\_QUESTION\_ALGO\_10>

We appreciate ESMA's efforts to adress third country issues and to ensure a level playing field. These are crucial tasks in order for the EU capital markets to develop and serve customers as efficiently as possible. The intention to amend existing rules in a direction which facilitates supervision and enforcement is also supported. Rules which cannot be enforced are of very limited use and can even be damaging.

In terms of ensuring a third country level playing field, we support the proposal to remove the obligation for DEA clients to be authorised as investment firms. We believe that the requirement of the establishment of a branch and authorisation in the country of the trading venue for DEA Tier 1 clients dealing on own account, can have a negative impact on the trading and hence on the liquidity of national products.

In the consultation document there is a proposal to amend the definition of DEA in Article 4(1)(39) to include DEA sub-delegation, the referred article point is assumed to mean 4(1)(41). The question may be asked whether only Tier 2 clients should be considered DEA users for the purposes of MiFID II obligations relating to DEA, or should also further subdelegation be taken into account. The obligations in relation to the DEA should be on the DEA provider. Where the DEA provider allows subdelegation of the DEA, they should assure the appropriate due-diligence and control framework is also applied to any subdelegation.

A proposal is also, in order to further ensure harmonised implementation across the EU, to require that DEA providers shall be authorised as investment firms or credit institutions. The proposal to spell out in Article 1 of MiFID II and not only be indirectly provided for through an obligation on trading venues under Article 48 of MiFID II, can be supported by Nasdaq and can for its part further ensure harmonised implementation across the EU.

ESMA suggests addressing the remaining unlevel playing field between EU and third-country HFT firms by introducing a requirement for third-country firms to be authorised as an investment firm when they qualify as an HFT firm on an EU trading venue. In situations where a DEA provider considers providing DEA for HFT it should be the DEA providers' responsibility to ensure that such requirement is complied with, as they manage that client relationship directly.

We fully support excluding DEA clients only trading on own account that do not qualify as HFT from requirement to be registered as an investment firm.

With regards to § 70, can third country firms that provide HFT be authorized as investment firms? Does it require an EU branch? Does it essentially prohibit HFT trading from third countries?

<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>

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<ESMA\_QUESTION\_ALGO\_12>

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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>

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<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>

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>

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<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>

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<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>

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<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>

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<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>

Yes we agree that harmonization and clear structure could be beneficial and foster the concergence amonst jurisdictions. We however also take the opportynity to mention that trading venues have made significant efforts to create and improve the current processes, so we propose sufficient phase-in periods and we also encourage any further development to be as simple as possible for all involved participants to manage, not least in terms of format.

<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>

As the annual assessment is, as also recognised by the consultation paper, somewhat burdensome, a bi-annual assessment seems appropriate.

The NCAs should retain the possibility to request the self-assessment to be performed more frequently only in limited cases, such as for such parts where the trading venue has either encountered compliance issues or in case trading venue introduces material changes to the existing framework and therefore a more frequent assessment would be deemed necessary and justified.

Requirements for the trading venue to keep a record of the self-assessment for at least five years has been considered to be adequate and NCAs have had and will going forward maintain the possibility to request the self-assessment. Therefore we see only limited value in adding the administrative burden for the trading venues by adding requirement to submit the self-assessment. If something should be submitted to the NCAs it should be limited to the information on the possible findings such as deviations and remarks relating to the 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>

We welcome ESMA's attention to avoiding overlapping requirements and to achieve a simplified and clearer regulatory framework in this regard.

Yes, we do think that there are overlapping requirements in RTS 6 and 7, in some cases for benefit while in some cases unnecessary and not fulfilling of purpose. We believe that the trading venue’s primary tools and ability to curb or prevent disorderly trading is through use of appropriate price collars and mechanisms to manage volatility, whereas the ability to test and certify soundness 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 its trading participants.

As such we think that the scope of conformance tests in RTS 7 article 9 and in particular 9 (1.b) should be limited to “trading systems”, and hence remove “algorithms” and “trading strategies”. We fully support the purpose of conformance testing, but only where it fills a purpose to test the interaction of an application that interfaces the trading system of a trading venue to validate that it meets the format requirements and rules of engagements of the trading venue and its rules. All algorithms and trading strategies are by default deployed through such applications and are consequently covered in existing conformance test protocols.

<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>

We believe 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 at the level of trading venues, is more efficient to prevent incidents, as this provides the more efficient tools to monitor and react in real-time to issues arising out of algorithmic trading.

As stated in the answer to Q25, we think that the responsibility to verify and test algorithms before deployment should reside with the investment firms and that trading venues have little or no role in that verification beyond what it facilitates today. Nasdaq offers its members and ISVs a complete production replica test environment to test its applications and algorithms and conducts conformance testing of interfacing applications to ensure that it meets the syntax and semantics requirements of the trading venue. Beyond that, we do not believe that trading venues can play any material role pre-deployment of algorithms.

<ESMA\_QUESTION\_ALGO\_26>

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

<ESMA\_QUESTION\_ALGO\_27>

To our understanding, most firms engaged in algorithmic testing validate and test their algorithms in back testing environments outside of the trading venue’s test environments. With that said, as stated in the answer to Q26, Nasdaq offers full production replica test environments to facilitate algorithmic and any other type of testing by trading participants and ISVs.

<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>

Yes. Even under the extreme pressure witnessed during the start of the Covid-19 pandemic around March 2020, the mechanism proved functional and allowed us as a trading venue to get through this period in a very satisfactory manner.

<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>

Yes we gree with ESMA. Regulatory requirements are appropriate and no changes are necessary.

<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>

Yes. We also believe that Article 48 of MiFID II and RTS 10 should apply to third-party service vendors and proprietary trading platforms. These platforms 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>

They are sufficient.

<ESMA\_QUESTION\_ALGO\_31>

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

<ESMA\_QUESTION\_ALGO\_32>

Nasdaq welcomes ESMAs efforts to ensure consistent level of protection across trading venues. However, we see many pitfalls in an approach where a one-size-fits-all regime is set for OTR per asset class. There is a huge a variety of different types and set-ups for instruments that fall within the same asset class. Each of these requires a trading venue specific consideration, in order to find appropriate maximum levels.

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.

Each trading venue must be allowed to set the OTR per instrument based on its knowledge of the local market and trading data. This will ensure that the ratios are relevant and kept up to date. Also, this is because 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. We believe 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.

A comment as regards the methodology for OTR calculation: It appears that there are different interpretations of CDR 2017/566 Annex (RTS 9) on how certain types of order modifications are counted. For cases when original order volume is reduced, it appears some venues treat this as 1 order, and others treat it as two. Until these type of discrepancies are resolved, a common approach as proposed by ESMA, might lead to unlevel playing field.

<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>

In the context of varying levels of maximum thresholds set by various trading venues as the results collected by ESMA shows, it is difficult to draw any conclusions based on responses ESMA will receive.

With reference to second part of ESMA’s question, we see some underlying issues in the current OTR regime. Those relate to the counting methodology as pointed out in reply to Q32, as well as calculation of ratio in volume terms. We find that volume of orders not to further load the trading system; tracking ratio on number terms would be sufficient.

<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>

Nasdaq is of opinion that trading venues should continue to be able to assess and set appropriate actions based on their market and asset class specifics.

<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>

We support a more harmonised reportig process which should improve efficiency and swiftly adress incidents. This should be achievable via cooperation within the current structures of ESMA, and building on what has already been put in place and which indeed works satisfactorily in some respects, rather than adding a centralised structure.

The currently diverging approaches to incident reporting requirements are an unnecessary impediment to reaching the goal of keeping the sector resilient. An incident with cross-border aspects must be reported to different entities, via different formats, with different deadlines. This process is time-consuming and takes attention away from the critical situation at hand.

As a general comment in this context, we also welcome the European Commission's recent proposal for a Regulation on Digital Operational Resilience for the Financial Sector (DORA). We hope this will lead to a higher level of cooperation between Member States which will increase the efficiency and efficacy of the overall ecosystem resilience.

When it comes to understanding potential merits of streamlined procedures and guidelines with regards to trading venues' notification of distrubances, we underline that notifying NCA's and market participants in connection with disturbances is of the highest priority to us as a trading venue already today. Any proposed "template" or guidance must not create additional overhead or complexity, or it will risk being counterproductive.

<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>

No. As a general comment however, we note that the observations described by ESMA confirms the importance of a robust price-forming process. Declines in trading following outages are linked to the importance of price formation. Policy measures should aim at ensuring a price formation process which is as efficient and reliable as possible. For this reason, measures should be taken to even further ensure that enough proportion of trading takes place at the transparent, surveilled and multilateral venues which offers fair and non-discriminatory access to all participants, i.e. on the regulated markets and the MTFs. In this context, we would caution against requiring algorithmic traders to use more than one reference data point.

<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>

In general yes. However, we note that the MiFID II tick size model has not fully resulted in the desired outcome for the Nordic order books, as the aim was to increase tick sizes, while the net effect in fact has been lower ticks.

We would also encourage further analysis across markets, by national supervisors in cooperation, and we would welcome coordination by ESMA. We note that some studies are indeed done, but comprehensive conclusions can only be drawn from analysing the whole market on a multinational basis.

We would also mention that there are benefits of allowing venues a certain flexibility in setting tick sizes especially for SME shares.

<ESMA\_QUESTION\_ALGO\_37>

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

<ESMA\_QUESTION\_ALGO\_38>

As a general comment, we would welcome more attention given to strengthened enforcement of the tick size regime overall, ensuring that it is fully implemented. Especially now that SIs are also subject to the tick size regime, we propose that ESMA engages with trading venues and clarifies some points in the interpretation of the regulation at Level 3, and also that technical issues are solved as quickly as possible.

RTS 11 could be applied in a more harmonised way. There seems to be technical issues as well as differing interpretations. Due to the complexity of the regime, and the fact that it is based on the FITRS database which still contains errors, we spend significant resources working with this regime, and still discrepancies in tick sizes appear and lead to an unlevel playing field. When there are clear errors, we routinely inform our NCA of how we solve it. Such situations cause unnecessary work for the industry as well as the authorities as well as the overall functioning of the market.

A few points to note:

1. The most relevant market in terms of liquidity (MRMTL) can only be a trading venue, as per Article 4 of RTS 1. We are however aware that there are examples where SIs have been selected as MRMTL by ESMA. Further data checks seem necessary to avoid this.
2. The first day of trading entered by trading venues must be a correct date and checked by ESMA, in order to avoid mistakes which have occurred. Missing ADNT estimate on IPO dates is an issue. In accordance with level 3 Q&A, highest liquidity band should be used when EST is not available. Especially in smaller companies' IPOs, this leads to unclear and strange quoting and orderbook composition until the ADNT estimate becomes available. Similarly, the responsibility and administrative process around setting tick size in conjunction with IPOs and corporate events causes problems.

We would also take this opportunity to draw ESMA's attention to the fact that the Level 3 Guidelines in respect to frequent batch auctions, for example, are applied differently across EU jurisdictions. Some NCAs have forbidden midpoint order pegging as opposed to other jurisdictions where the Level 3 guidelines have not been applied. This distorts the market to the benefit of some players. We suggest moving the Level 3 measures to Level 2 to avoid competition distortions.

<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>

Yes, agree.

<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>

Yes, agree.

<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>

We see a case for ESMA to contribute to a more harmonised application of the regime across all jurisdictions. We have observed divergences relating to for instance securitised derivatives, comparable size and daily monitoring. Such divergences are disturbing the level pleying field.

<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>

Again we underline the case for ESMA to contribute to a more harmonised application of the already existing regime across all jurisdictions. The more new requirements are added while different regulatory interpretations exist, this will further widen the gap between different practices. Until these type of discrepancies are resolved, new requirements should not be added as this might lead to unlevel playing field. Hence, we strongly disagree with the ESMA proposals.

<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>

We welcome ESMA’s efforts to strive for convergent application of the rules. We support addressing the practice where different interpretations of current rules do exist. However, there are elements in market making regulations where we see the benefits of flexibility for trading venue being able to set their own parameters, e.g spread and size.

Where ESMA should address existing discrepancies are areas like comparable size, where different interpretations seem to be accepted by different NCAs.

Concepts related to market conditions, i.e. stressed market conditions and exceptional circumstances, could benefit from addition of clarity of definitions, to ensure consistent interpretation. We have received recurring feedback from market makers about trading venues in some jurisdictions allowing market making exemptions outside of the exhaustive list of exceptional circumstances.

<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>

Asymmetric speedbumps can, under certain circumstances, help level the playing field by protecting passive liquidity strategies against latency arbitrage. They might be suited for certain types of financial instruments for which pricing is derived from an underlying.

In contrast, the information signals on which equity pricing is based, are more difficult to define, and the application of speedbumps on a venue could increase order flow fragmentation.

With asymmetric speedbumps, the liquidity you see might not be the liquidity you get, as it could happen that market makers post more competitive quotes to attract liquidity, and use the time delay to subsequently cancel or modify them. This setup may grant advantages to liquidity providers countering the obligations of market makers and increasing the risk of fading liquidity during stressed conditions. Liquidity takers could also be exposed to adverse selection and potential trade at stale prices.

There is also a misperception that high‐frequency traders are speculators who move markets to extremes. In fact, the vast majority of HFT involves looking for very small arbitrage opportunities, as between futures and cash markets or between the prices of exchange-traded funds and their net asset values. These actions increase market efficiency by tightening bid‐ask spreads and reducing transaction costs for all market

<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>