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| 26 September 2022 |

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| Reply form for the Consultation Paper on market outages |
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| Date: 26 September 2022 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on market outages published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type <ESMA\_QUESTION\_OUTA\_0> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses 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.

**Naming protocol**

In order to facilitate the handling of stakeholders’ responses please save your document using the following format:

ESMA\_CP\_OUTA\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_CP\_OUTA\_ESMA\_REPLYFORM or

ESMA\_CP\_OUTA\_ANNEX1

***Deadline***

Responses must reach us by 16 December 2022.

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

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that 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 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 headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

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| Name of the company / organisation | Electronic Debt Markets Association (EDMA) |
| 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\_CP\_OUTA\_1>

Electronic Debt Markets Association (EDMA) supports ESMA’s view that non-equity trading on EU trading venues is less affected by outages, including fixed income markets, with trading more naturally moving to alternative platforms. Therefore, for the reasons outlined below, EDMA is opposed to the extension of this guidance to fixed income trading venues. This would add additional regulations to the sector with no upside for fixed income trading, while introducing uncertainty around the scope of requirements.

ESMA acknowledges in paragraph 56 that “non-equity instruments trading appears less affected by an outage, regardless of the trading venue … trading in the concerned non-equity instruments more naturally moves to alternative platforms and hence it seems to have less of an impact than those that occur on equity markets.” For this reason, it is not clear that any guidance is needed for fixed income. It should be limited to markets where ESMA has identified a clear market failure, not arbitrarily applied across asset classes.

In EDMA’s view, the scope of the guidance applicable to fixed income is not clear from the consultation paper. For example, there is a risk that a 30-minute notice period before restarting trading and requiring re-opening auctions would be applied to fixed income . Additionally, the relevant scope of Outage Plans for non-equities is unclear, as these provision include overlapping text on communications more broadly. EDMA believes these provisions would be inappropriate and potentially disruptive for fixed income markets.

EDMA would also note that there are already extensive provisions in MiFID II, notably Article 11(5) of RTS 7, which appear to address ESMA’s objective on communications. It would be better for ESMA to wait for the forthcoming application of DORA and, in particular, Article 13 with reference to information and communication procedures in case of an IT incident, to avoid the introduction of overlapping and potentially conflicting requirements.

This guidance stems from [ESMA’s report on algorithmic trading.](https://www.esma.europa.eu/sites/default/files/library/esma70-156-4572_mifid_ii_final_report_on_algorithmic_trading.pdf) This report included several recommendations that would be far more beneficial for bond markets than introducing additional regulations around market outages, such as introducing an exemption from RTS 8 market-making agreements for Primary Dealers.

About EDMA

EDMA represents the common interests of companies whose primary business is the operation of regulated and registered electronic fixed income trading venues (multilateral trading facilities and regulated markets) in the UK and Europe. EDMA seeks to foster and promote liquid, transparent, safe, and fair markets and to act as a voice and a source of consultation between the members in their roles as operators of such venues. EDMA projects collective views on regulatory matters and market structure topics to governments, policy makers and regulators for the benefit of the electronic fixed income markets. Our 6 members are: BGC Fenics, Bloomberg, BrokerTec, MarketAxess, MTS and Tradeweb. More information can be found at [www.edmae.org](http://www.edmae.org).

<ESMA\_COMMENT\_CP\_OUTA \_1>

1. : Do you agree with the main communication principles identified above?

<ESMA\_QUESTION\_OUTA\_1>

In the context of fixed income trading venues, EDMA strongly disagrees that there is a need for additional regulations on market outages. As noted by ESMA, fixed income market structure is entirely different and these additional regulations are simply not required to improve outcomes for investors and users of fixed income trading venues. EDMA notes that, throughout the consultation, text reference is made to protocols and conventions not used extensively in fixed income markets, e.g. ‘closing auctions’, without any acknowledgement that related proposals are specific to particular asset classes, e.g. equities.

<ESMA\_QUESTION\_OUTA\_1>

1. : To promote harmonisation, should the guidance include a template on what trading venues’ communication notices should include?

<ESMA\_QUESTION\_OUTA\_2>

In the context of fixed income trading venues, EDMA strongly disagrees that there is a need for additional regulations on market outages. We refer to our introductory remarks and our answer to Question 1.

<ESMA\_QUESTION\_OUTA\_2>

1. : Do you agree that trading venues should have a maximum of one-hour to provide clarity on the status of the orders during an outage? If not, what would be an appropriate timeframe in your view and why?

<ESMA\_QUESTION\_OUTA\_3>

In the context of fixed income trading venues, EDMA strongly disagrees that there is a need for additional regulations on market outages. We refer to our introductory remarks and our answer to Question 1.

<ESMA\_QUESTION\_OUTA\_3>

1. : Do you think the possibility to require trading venues to offer an order book purge should be considered in the guidance? If yes, should ESMA provide further guidance on when the integrity of the orders has been largely compromised?

<ESMA\_QUESTION\_OUTA\_4>

In the context of fixed income trading venues, EDMA strongly disagrees that there is a need for additional regulations on market outages. We refer to our introductory remarks and our answer to Question 1.

<ESMA\_QUESTION\_OUTA\_4>

1. : What is your view with regards to the conditions under which a trading venue should reopen trading?

<ESMA\_QUESTION\_OUTA\_5>

In the context of fixed income trading venues, EDMA strongly disagrees that there is a need for additional regulations on market outages. We refer to our introductory remarks and our answer to Question 1.

Given that end users have a plethora of alternative trading venues available to them trading the same financial securities, there is already appropriate (commercial) pressure on trading venues to reopen as quickly as it is safe to do so.

<ESMA\_QUESTION\_OUTA\_5>

1. : What is your view in relation to the closing auction being affected and the procedures that trading venues should have in place to minimise disruption?

<ESMA\_QUESTION\_OUTA\_6>

Closing auctions do not exist or function on fixed income trading venues. Therefore, it is not relevant to comment on this question; nor should any related proposals for change to market outage regulations be taken forward in fixed income.

<ESMA\_QUESTION\_OUTA\_6>

1. : Do you agree not to mandate trading venues to have an alternative trading venue capable of running the closing auction for them? If not, please explain.

<ESMA\_QUESTION\_OUTA\_7>

Closing auctions do not exist or function on fixed income trading venues. Therefore, it is not relevant to comment on this question; nor should any related proposals for change to market outage regulations be taken forward in fixed income.

<ESMA\_QUESTION\_OUTA\_7>

1. : Do you agree that trading venues should have a cut off time (30 minutes before the normal schedule) to inform market participants on whether or not they intend to hold a closing auction?

<ESMA\_QUESTION\_OUTA\_8>

Closing auctions do not exist or function on fixed income trading venues. Therefore, it is not relevant to comment on this question; nor should any related proposals for change to market outage regulations be taken forward in fixed income.

<ESMA\_QUESTION\_OUTA\_8>

1. : Do you agree that the use of the last traded price is an appropriate solution in those cases that a trading venue cannot run the closing auction? If not, what alternative would you propose?

<ESMA\_QUESTION\_OUTA\_9>

Closing auctions do not exist or function on fixed income trading venues. Therefore, it is not relevant to comment on this question; nor should any related proposals for change to market outage regulations be taken forward in fixed income.

<ESMA\_QUESTION\_OUTA\_9>

1. : Is the lack of a reference price an issue in an outage context? If so, please provide details.

<ESMA\_QUESTION\_OUTA\_10>

Reference prices from the so-called ‘primary exchange’ of the financial instrument do not exist for fixed income instruments. Therefore, it is not relevant to comment on this question; nor should any related proposals for change to market outage regulations be taken forward in fixed income.

<ESMA\_QUESTION\_OUTA\_10>

1. : Do you agree with the proposed approach for non-equity instruments? Do you agree that provisions on par. 37-39 can be exempted for those trading venues that do not provide CLOB?

<ESMA\_QUESTION\_OUTA\_11>

EDMA agrees that the fixed income trading venue structure is entirely different to that described for mainly Equity CLOB-driven trading venues We strongly disagree that, despite this fundamental and relevant difference, ESMA still intend to apply the same proposals to change market outage regulations for fixed income trading venues.

<ESMA\_QUESTION\_OUTA\_11>

1. : Is there any particular issue relating to trading of non-equity instruments that should be taken into account in the case of an outage? Where possible please differentiate between bonds and derivatives.

<ESMA\_QUESTION\_OUTA\_12>

If the predominant form of trading venue execution occurs using an RFQ protocol in a particular financial instrument, then authorities can be assured that usually natural alternative trading venues exist to service any investor flows impacted during a market outage incident at any one fixed income trading venue.

<ESMA\_QUESTION\_OUTA\_12>

<ESMA\_QUESTION\_OUTA\_0>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_OUTA\_0>

1. : Is there a direct link/connection between an outage on an equity primary market and those derivatives that have these instruments as underlyings?

<ESMA\_QUESTION\_OUTA\_13>

Any direct link or connection that exists is dependent on several factors, including the type of derivative contract, whether the underlying instrument is listed on multiple exchanges and the nature of the outage.

<ESMA\_QUESTION\_OUTA\_13>

1. : In your view is there any further element ESMA should consider in the proposed guidance?

<ESMA\_QUESTION\_OUTA\_14>

No. However, EDMA repeats that, in the context of fixed income trading venues, there is no need for additional regulations on market outages.

<ESMA\_QUESTION\_OUTA\_14>