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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 | The Investment Association (The IA) |
| Activity | Other Financial service providers |
| Are you representing an association? |[x]
| Country/Region | UK |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_CP\_OUTA\_1>

 The IA champions the UK-based investment management industry, supporting British savers, investors and businesses. Our 250 members manage £10 trillion of assets and the investment management industry supports 122,000 jobs. IA members operate from 640 offices across the EU and are active in every single Member state. In 2021/2022, IA members had invested more than £720bn into European equity, and we remain committed to supporting Europe’s transition to a greener and more sustainable future.

Our mission is to make investment better. Better for clients, so they achieve their financial goals. Better for companies, so they get the capital they need to grow. And better for the economy, so everyone prospers.

Our purpose is to ensure investment managers are in the best possible position to:

* Build people’s resilience to financial adversity
* Help people achieve their financial aspirations
* Enable people to maintain a decent standard of living as they grow older
* Contribute to economic growth through the efficient allocation of capital.

The money our members manage is in a wide variety of investment vehicles including authorised investment funds, pension funds and stocks and shares ISAs.

The IA is registered on the EU Transparency Register, registration number 5437826103-53.

**Executive summary**

The IA notes that throughout 2020 and 2021 there was a total of seven market outages across traing venues in Europe. One exchange outage in October 2020 lasted for three hours and effectively ceased trading in the region, and ultimately caused significant issues in closing the auction. Events like these demonstrate the market’s current inability to sustain trading when there is a market outage, operating instead on a “watch and wait basis.” Such a lack of guidance and, or standardised communication to market participants when events such as market outages occur severely impact the markets’ ability to endure such occasions.

Therefore, the IA welcomes the opportunity to respond to ESMA’s Consultation Paper on Market Outages, whilst we consider that the main communication principles identified by ESMA would help to improve market resilience, given the complexity of these issues and the number of market participants involved some more nuances are needed.

In the event of an outage, the IA recommends that exchanges and trading venues provide the following:

* Clear, structured communication, including a standardised protocol followed by all exchanges and trading venues if they experience an outage. It is our view that ideally there should be standard messaging on a global basis including universal standard flags disseminated by venues when they suffer an outage.
* Immediate halting of market data. Exchange data should be halted immediately with a clear, standardised message disseminated electronically.
* To clarify within one hour whether trades executed from the moment the problem was detected still stand, if they do not stand all orders should be cancelled.
* Standard reopening procedures. There should be a standard reopening procedure, including a communication in advance of reopening. For example, *“Exchange X will reopen in 15 minutes with an auction.”*
* In the event that the primary exchange/trading venue is experiencing technical disruptions/difficulties, an industry agreed alternative approach should be identified. The IA proposes a waterfall for dealing with market outages depending on the timing and severity, beginning a delayed auction, use of trade-at-last functionality if this is not possible, and in the event of severe outages the use of an alternative platform. Further information regarding the IA’s proposed waterfall for dealing with market outages can be found in detail in response to question 6 and 7 within this consultation paper.

Whilst these improvements can largely be solved by market participants, regulatory enforcement would guarantee their success and ensure market disruption is largely curtailed and the impact on the end investor minimised.

<ESMA\_COMMENT\_CP\_OUTA \_1>

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

<ESMA\_QUESTION\_OUTA\_1>

 The IA and its members consider that the main communication principles identified by ESMA would help to improve market resilience, given the complexity of these issues and the number of market participants involved some more nuances are needed. Moreover, before arriving at a final conclusion different parties need to consider and evaluate the options as in many instances there is not one solution only.

The IA emphasises that if there is an outage, market data should be halted immediately, and an update provided on the status of orders. This would allow investors to understand their position and the resulting impact of the market outage.

We also propose that communication needs to be both standardised and harmonised across the EU to avoid any confusion.

<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>

 The IA considers that the inclusion of a standard template outlining what trading venue communication notices should include would be beneficial.

The IA would expect the following communication from trading venues as follows:

* Clear, structured communication, including a standardised protocol followed by all exchanges and trading venues if they experience an outage. Ideally there should be standard messaging on a global basis including universal standard flags disseminated by venues when they suffer an outage.
* Immediate halting of market data. Exchange data should be halted immediately with a clear, standardised message disseminated electronically.
* Trading venues to clarify within one hour whether trades executed from the moment the problem was detected still stand, if they do not stand all orders should be cancelled.
* Standard reopening procedures. There should be a standard reopening procedure, including a communication in advance of reopening. For example, ***“Exchange X will reopen in 15 minutes with an auction.”***

However, any template developed and subsequently used by trading venues to communicate to its members the occurrence of a market outage or the experience of technical difficulties should not be so prescriptive that it restricts trading venues and exchanges from providing additional information which would be of benefit to know beyond the information requested by the template.

<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>

 IA members reiterate that as soon as a venue experiences an outage, market data should be halted so market participants know the status of their orders immediately.

We question the rationale for proposing a maximum one-hour time limit for trading venues to clarify the status of orders. This timeframe seems rather arbitrary and our members highlight that in certain instances where outages occur communication regarding the status of orders by trading venues should be much quicker than 60 minutes.

Furthermore, such a time limit poses a number of operational concerns and unintended consequences outlined below:

* for example, if there was an outage 40 minutes before closing of the market, would market participants have to wait an hour before obtaining information on the status of their order(s) and thus miss the close?
* Concerns that trading venues may wait until the end of the one-hour period before communicating with members despite being able to alert market participants sooner but choosing to wait because of the fixed time limit offered to them.

<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>

 The possibility for all orders to be removed from the order books should be included in the guidance. However, we consider that ultimately the venue itself is best placed to assess the severity of the issue and decide whether an order book purge is required.

Whether an order book purge is undertaken or not, as previously stated in our response to Q3 market participants should be informed as to the status of their executions and orders as soon as possible and this should be effectively and efficiently communicated.

<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>

 IA members consider that it would be optimal for trading venues to re-open with an auction in instances of market wide outages.

The IA and its members propose that once an exchange is ready to reopen a standard re-opening procedure is followed which includes clear communication to all participants, including a communication specifying in advance an appointed time for the reopening of the trading venue. For example, ***“Exchange X will reopen in 15 minutes with an auction.”*** IA members would also recommend in instances where possible a short pre-opening window to ensure coordination between the trading venue and market participants.

<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>

 The IA and its members stress that if the closing auction is affected by a trading venue outage in certain instances it is not feasible to simply wait for the primary exchange to re-open.

Depending on the timing and the severity of the issue the IA recommends the following ‘waterfall’ approach:

* If the primary exchange is able to run the auction as normal, but with a slight delay in timeliness this would be the preferred course of action. To wait until the primary venue can resume trading.
* Should the delay expand beyond a certain time period instead of an auction taking place, the IA suggests exploring the use of Trade-At-Last (TAL) functionality which is independent to the last traded price of the primary venue. If an alternative price where to be used, we recommend consulting with index providers on this issue.
* In instances of severe market outages/technical difficulties which see the primary exchange unable to resume normal activity beyond the normal working day, then an alternative trading venue should be in place and capable of running the closing auction on behalf of the primary auction. The criteria for identifying an alternative venue should be based on the venues’ ability to trade those instruments affected by the outage and the technical capability of the venue rather than the ownership or domicile of the alternative/back-up venue.

<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>

 It is the observation and experience of our members that the function of closing auctions is becoming increasingly more important, particularly for passive investors and thus the need for the auction to take place is extremely important in order to minimise market disruption and further increase market resilience.

 Whilst IA members can see the benefit in mandating trading venues to have an alternative trading venue capable of running the closing auction should the primary venue experience a severe outage or drastic technical difficulties. There are a number of potential issues that must be considered, for example any alternative trading venue mandated to support a primary venue may not be used to running auctions in non-listed securities, furthermore, given the alternative venue is likely to run such auctions infrequently there is a higher likelihood of system and operational issues arising given the venue is not used to facilitating such activity.

Therefore, as stated in our response to Q6, depending on the timing and the severity of the issue the IA recommends the following ‘waterfall’ approach:

* If the primary exchange is able to run the auction as normal, but with a slight delay in timeliness the preferred course of action would be to wait until the primary venue can resume trading.
* Should the delay expand beyond a certain time period, or occur close to the closing of the market, the IA suggests using the Trade-At-Last (TAL) functionality which is independent to the last traded price of the primary venue. If an alternative price where to be used, we recommend consulting with index providers on this issue.
* In instances of severe market outages/technical difficulties which see the primary exchange unable to resume normal activity beyond the normal working day, then an alternative trading venue should be in place and capable of running the closing auction on behalf of the primary auction. The criteria for identifying an alternative venue should be based on the venues’ ability to trade those instruments effected by the outage and the technical capability of the venue rather than the ownership or domicile of the alternative/back-up venue.

<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>

 Our members note that outages are often unforeseen events that can occur and so it can be difficult to accurately predict a timeframe in which they will be resolved by. Therefore, we consider it of far more value to market participants and in turn the wider trading community if trading venues have in place robust best practices to follow in the event of a market outage.

The IA recommends a standardised protocol is followed by all trading venues in the event of a market outage. Such a standardised protocol should include:

* Clear, structured communication, ideally there should be standard messaging on a global basis including universal standard flags disseminated by venues when they suffer an outage.
* Immediate halting of market data. Exchange data should be halted immediately with a clear, standardised message disseminated electronically.
* In the event that a primary exchange/trading venue is experiencing technical disruptions/difficulties, an industry agreed alternative venue needs to be identified. The criteria for agreeing this alternative should be determined based on the venues’ ability to trade those instruments effected by the outage and technical capability rather than ownership or domicile of the venue.
* The industry back-up for the closing auction should mirror the exact mechanisms of the primary auction provider.

<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>

 As stated in our response to Q7, the IA and its members reiterate that many market participants wait for the closing auction to trade and if there is no auction, there is likely to be many unexecuted orders. To avoid such a scenario occurring the IA emphasises the need for an industry agreed alternative approach in order to combat the negative impact the occurrence of a market outage can have on the market.

Depending on the timing and severity of the issue the IA suggest the following waterfall approach:

* If the primary exchange is able to run the auction as normal, but with a slight delay in timeliness this would be the preferred course of action. To wait until the primary venue can resume trading.
* Should the delay expand beyond a certain time period instead of an auction taking place, the IA suggests using the Trade-At-Last (TAL) functionality which is independent to the last traded price of the primary venue. If an alternative price were to be used, we recommend consulting with index providers on this issue.
* In instances of severe market outages/technical difficulties which see the primary exchange unable to resume normal activity beyond the normal working day, then an alternative trading venue should be in place and capable of running the closing auction on behalf of the primary auction. The criteria for identifying an alternative venue should be based on the venues’ ability to trade those instruments effected by the outage and the technical capability of the venue rather than the ownership or domicile of the alternative/back-up venue.

The IA and its members acknowledge that without a consolidated tape it may be difficult to find a reference price agreed upon by all market participants to use as a fall back in the event of a market outage preventing the closing auction from taking place.

 The IA and its members remain extremely supportive of the European Commission and ESMA’s commitment in ensuring the emergence of a consolidated tape for both equities and bonds in Europe.

A consolidated tape which includes pre-trade data for equity instruments would significantly improve the resilience of equity markets. In the event of a market outage such a tape would enable:

- Price discovery without interruption

- market participants to route orders seamlessly to alternative marketplaces

- the facilitation of an accurate reference price if a closing auction cannot take place.

A CT not only provides the best solution to manage market outages but will also install public confidence in the market, increasing the attractiveness for investors to operate within it.

Considering the above, once a consolidated tape for equities is fully functioning, the IA recommends any guidance/recommendations for establishing an alternative reference price should the primary exchange be unable to run the closing auction should be reviewed to account for the functionality of the CT which, amongst other things will be able to provide a valid, concise VWAP price.

<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>

 Yes.

Certain requirements within MiFIR such as article 4 (1) (a) which states that “***the reference price waiver (RPW) can be used when systems match orders based on a trading methodology by which the reference price of the final instrument is derived from the trading venue where that financial instrument was first admitted to trading or the most relevant market in terms of liquidity, where that reference price is widely published and is regarded by market participants as a reliable reference price”*** restricts the ability of markets to continue to function if the primary venue goes down as this is deemed the most relevant market and the market loses that reference price. Moreover, these regulatory restrictions also challenge market resilience. Therefore, in order for markets to be more efficient and resilient market participants should be able to reference alternative venues to allow trading to continue.

<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>

 IA members consider the proposed approach to be sensible and agree that trading venues that do not provide a central limit order book (CLOB) should be exempt from the following provisions:

* Indicating which orders were affected making references where possible to the time when orders were submitted.
* Indicating which orders were cancelled / executed and provide clear procedures for validating cancellations, in case validations are needed by participants.
* Indicating whether orders sent during an outage were accepted or rejected in

accordance with the procedures defined by the trading venue.

* Where the integrity of the orders has been largely compromised, offer trading

participants the removal of all orders from the order book (order book purge).

Providing information on the status of orders to members and participants should be done as soon as possible and at the latest within one hour from the notice of disruption.

communication should be provided in a machine-readable format, so that trading systems can automatically include these notifications.

In the event that it is not possible to communicate the status of orders directly from the updates published, NCA’s should require trading venues to communicate directly with their members and participants to ensure clarity on each order.

<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>

 From a fixed income, bonds perspective, we echo the observation outlined by ESMA in paragraph 56 (pg. 15-16) of this CP that outages have a particular relevance to equity instruments and that the trading of bonds is less affected by an outage regardless of the type of trading venue the outage occurs on, as trading does more naturally gravitate towards an alternative platform. Partly this is due to the vast differences in the trading landscape of equity and bond instruments.

However, members acknowledge that program trades common in ETF markets could potentially be implicated by market outages/technical difficulties which prevent trading and as a result could create liquidity issues in the fixed income space, particularly if the basket of underlying instruments includes corporate bonds.

Furthermore, we recommend that ESMA consider the impact of market outages on futures exchange markets, this includes the trading of commodity derivatives, as such contracts have expiry dates, and an outage could have implications on the ability for market participants to hedge their risk; and the trading of bond futures as an outage would most likely have significant implications on the liquidity portfolio of many government securities.

<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>

 No comment.

<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 comment.

<ESMA\_QUESTION\_OUTA\_14>