FIA EPTA response to the Consultation Paper by ESMA on MiFID II/MiFIR review report on Algorithmic Trading

12 March 2021

Introduction and executive summary

The FIA European Principal Traders Association (FIA EPTA) appreciates the opportunity to provide feedback to the European Securities and Markets Authority (ESMA) on the consultation on the impact of the requirements under MiFID II/MiFIR regarding algorithmic trading, including high-frequency algorithmic trading.

FIA EPTA represents 30 independent European Principal Trading Firms (PTFs) which deal on own account, using their own money for their own risk, to provide liquidity and immediate risk-transfer in exchange-traded and centrally-cleared markets for a wide range of financial instruments, including shares, options, futures, bonds and ETFs.

Our members are independent market makers and providers of liquidity and risk transfer on trading venues and end-investors across Europe. Market making and liquidity provision (also referred to as principal trading or dealing on own account) is a distinct activity that is undertaken by non-systemic investment firms rather than banks, in a highly dispersed and varied ecosystem of independent Principal Trading Firms. These firms operate in an innovative and competitive fashion leading to a vibrant, dynamic and diverse ecosystem which massively reduces interconnectedness and increases substitutability. This fundamentally reduces systemic risk whilst improving market quality and lowering costs for retail and institutional investors alike.

FIA EPTA members appreciate ESMA's consideration of our comments and suggested solutions and stand ready to provide any further input as required.

Algorithmic Trading / HFT Definitions

- We believe MiFID II's definition of algorithmic trading is appropriate and reasonable, and the regulatory obligations stemming from the definition are appropriate and reasonable. We believe the definition of DEA remains suitable.
- We believe a definition of HFT is not necessary for regulatory purposes but has created a stable framework. Any HFT definition should be objective and non-discriminatory, measurable, and based on the affirmative actions of all market participants rather than elements outside their control.
- We agree with ESMA that persons having DEA access to only deal on own account (DEA "users") should no longer need to be authorised as investment firms; we do not believe an authorisation requirement needs to be extended to 3rd country HFTs. This is because DEA providers ensure 3rd country clients (of whatever sort) are subject to the same organizational requirements as EU firms. Further, extra-territoriality of MiFID II risks adverse 'retaliatory' effects for EU firms by other global jurisdictions.
- We agree there is merit in extending the definition of algorithmic trading to trading in financial instruments OTC by SIs - where quotes are electronically executable similar to activity on a trading venue – however, we believe there is probably no issue in practice, as most investment firms (already subject to RTS 6) likely hold all business lines to the same compliance standard.

Organisational requirements for investment firms – Application of RTS 6

- We are of the view that the current definition of algorithmic trading and the requirements on firms set out in RTS 6 are suitable and appropriate. We do not see the need for further refinement in terms of definitions or additional requirements or guidance relating to regulatory expectations concerning the checks and testing of algorithmic trading systems.
- We are of the view that the current stress testing requirements set out in Article 10 of RTS 6 are too prescriptive and somewhat artificial as a substantive stress test. Non-systemic Investment firms should be required to ensure their algorithmic trading systems are able to withstand increased order flows and market stresses; however, it should be up to investment firms themselves to determine the most appropriate tests to ensure this is the case to achieve the same regulatory outcome.
- Non- systemic Investment firms have embedded procedures and processes in place to satisfy the self-assessment requirements set out in RTS 6. As a result, the bar to changing how firms are required to carry out this self-assessment should be set high.

Organisational requirements for venues and resilience, circuitbreakers, monitoring of venue rules

- RTS7 and Testing
  - We believe in general that RTS 7 and the infrastructure to support it is fit for purpose.
  - We support ESMA's proposals to limit the administrative burden while increasing the standards for self-assessments by reducing the frequency of the RTS 7 self-assessment to once every two years while also establishing minimum standards for the self-assessments and requiring trading venues to share the self-assessment with their NCAs.

- We believe that the current framework for testing algos and the venue-run test environments are fit for purpose and would not benefit from prescribed scenarios. We do believe there is room for improvement for some trading venues' test environments.

- Circuit Breakers
  - We believe that the circuit breaker mechanism in equity and equity-related products is fit for purpose and aids - along with the continuous provision of liquidity by market makers - in avoiding significant disruptions to the orderliness of trading during volatile periods.
- Resilience
  - FIA EPTA believes that there should be industry-led initiatives put forward and implemented in order to facilitate more continuity of trading in case of a technical outage on the primary market. FIA EPTA firmly believes that such initiatives are best developed by industry practitioners and stakeholders and subject to normal commercial incentives rather than strict regulatory intervention.
  - We believe that there should be an improvement to the communication from trading venues to the market at large in the case of system or trading outages. We believe this should take the form of a set of minimum standards rather than a prescriptive format.
  - In order to achieve a truly resilient European Capital Markets Union and to ensure that industry-led resilience initiatives have the chance to succeed, FIA EPTA believes that there should be some specific, targeted regulatory intervention to
    - ensure continuity of the closing auctions if a listing venue has an outage,
    - mandate interoperability across CCPs to facilitate trading on alternative venues, and
    - ensure the implementation of a real-time, post-trade consolidated tape to reduce the reliance on primary markets' data feeds.

Co-location services

- We believe that trading venues should guarantee that access to the matching engine is fair to all participants in colocation, i.e. cross-connects, connecting participants' cabinets to the matching engine and participants' cabinets to meet-me-rooms must be latency equalised, in order to ensure that no locations in the data centre have an intrinsic latency advantage.
- When it comes to the pricing of current and new co-location services trading venues should have a cost-based pricing approach for co-location charges.
- ESMA should ensure that trading venues guarantee a fair and competitive environment to vendors offering services in their data centre. As an example, a trading venue must not use its direct or indirect control over its data centres to provide a latency advance to its services or those of a select vendor(s),

OTR

- OTRs when strictly implemented can create a substantial impediment to liquidity provision and lead to a reduction or complete removal of prices in the orderbook during times of stress.
- Trading venues should have greater degree of flexibility in deciding what are appropriate OTR thresholds for their venue as they are best placed to understand the point at which the system is put under stress from excessive order sending behaviour. The infrastructure at each venue varies significantly and so a one size fits all model for OTRs would not be appropriate.

- As part of RTS 9 Article 3(2), in our view this should be changed where OTRs should be monitored daily but any violations should be assessed over a month's trading and not just one trading session. Having it assessed daily leads to the possibility that legitimate liquidity provision during times of stress could be classed as violating and moving to a monthly monitoring serves to better capture systemic violations.

Tick sizes

- FIA EPTA broadly agrees with ESMA's conclusions on the benefits of the MiFID 2 tick size regime for European equities, we also support maintaining the status quo for tick sizes of third-country shares for the time being but recognise that this may be an area that needs more attention in the future.
- With regards to extending the tick size regime to all ETFs we recognise the simplification but highlight the differences in market structure for ETFs vs equities and the need to ensure granular pricing remains possible for RFQ business.

Market making

- We believe trading venues are best placed to set, monitor and manage RTS 8 market making agreements, schemes and stressed market conditions. We do not support any reduction in the trading venues discretion in defining the content of market making agreements or schemes.
- We support limiting the application of the scope of Articles 1 and 2 to continuous trading order books.
- We do not support broadening the obligations of market making schemes to all instruments and types of trading systems, nor do we support the requirement to establish monetary incentives for illiquid instruments.
- We consider that comparable quote size restrictions in RTS 8 market making agreements can reduce liquidity provision and should be removed.
- We believe access to market making schemes should be open, transparent and non-discriminatory.

Speedbumps

- It is critical that trading venues provide sufficient transparency prior to implementing a speedbump. Therefore, we recommend that ESMA and NCAs consider recommending that a more harmonized procedure with respect to the consideration and approval of exchange rule filings be adopted across the EU. This approach should (i) ensure all rule filings are made available to members and participants, (ii) require rule filings to contain basic information regarding the proposal and its consistency with relevant regulatory requirements, and (iii) provide members and participants with an opportunity to submit feedback prior to the rule filling being approved.
- We agree with ESMA that the EU equities market is not well-suited for speedbumps given its level of fragmentation (meaning that a speedbump on one venue could negatively impact fair and orderly trading and significantly discriminate against liquidity takers generally and liquidity providers on other venues).
- In our view, new regulation is not required to address speedbumps. We agree that several existing MiFID II provisions are relevant in the context of evaluating speedbump proposals, including requirements for venues to establish (a) transparent and non-discretionary rules and procedures that provide for fair and orderly trading (MiFID II Articles 47(1)(d) and 18(1)) and (b) non-discriminatory rules governing access to the facility (MiFID

II Articles 53(1) and 18(3)). We welcome additional guidance from ESMA regarding the interpretation of such existing provisions in connection with speedbump proposals in order to increase consistency across the EU.

Asymmetry of private and public feeds

- We agree that the provision of private fill confirmations before public trade messages can be used for risk management techniques. The vast majority of our members agree that this also contains valuable information beyond that of the individual trade.
- These members also have concerns that providing this information before it is made available to all market participants undermines investor confidence in the EU markets.
- We support ESMAs view that the model used by trading venues should be deterministic (with the vast majority of our membership supporting the prioritization of public trade messages) so that the sequencing of feeds is clear, consistent and predictable.
- The vast majority of our members believe level 1 and 2 regulatory amendments are needed mandating the dissemination of public trade messages to precede private fills and would urge ESMA to provide Level 3 guidance in the interim to that effect.

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(Chapter 3) Overall approach - Algorithmic trading - High-frequency trading

Question	FIA EPTA response
Q1: What is your overall assessment of the MiFID II framework for algorithmic trading, HFT and DEA?	• **Algorithmic trading** Overall, FIA EPTA believes MiFID II's definition of algorithmic trading is appropriate and reasonable.[1] FIA EPTA also believes the regulatory obligations stemming from the definition of algorithmic trading are appropriate and reasonable.[2] As we stated in 2014 responding to the MiFID II Discussion Paper[3], we observe that algorithmic trading is nearly ubiquitous in modern markets. Over the past decade as financial markets have evolved, this has only increased. Per ESMA's statistics, algorithmic trading currently comprises upwards of 80% of all trading, and we believe that percentage will only continue to grow. We agree with ESMA that the concepts and definitions introduced by MiFID II in Level 1 have provided a sound basis for addressing the risks arising from increased speed and sophistication in trading. This includes a framework that effectively manages pre-execution and post-trade risk controls and organisational requirements that ensure solid

[1] Under Article 4(1)(39) of MiFID II, algorithmic trading is defined as "*trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions*." The definition is further specified in Article 18 of Commission Delegated Regulation (EU) 2017/5653 which sets out that "[…] *a system shall be considered as having no or limited human intervention where, for any order or quote generation process or any process to optimise order-execution, an automated system makes decisions at any of the stages of initiating, generating, routing or executing orders or quotes according to pre-determined parameters*".

[2] An investment firm that uses algorithmic trading is required to comply with specific requirements, which include:

- Notification to the NCA of the Home Member State and to the NCAs of the trading venues where it deploys its algorithmic trading strategies;
- The provision of information upon request to its Home Member State NCA, and
- Compliance with organisational requirements (RTS 6).

[3] https://www.fia.org/sites/default/files/2019-05/ESMA-MAR-CP-TA-FIA-EPTA-REPLYFORM.pdf

governance within firms undertaking algorithmic trading. We believe this framework is still fit for purpose, while supporting most of the scope clarifications ESMA proposes.

- **HFT**

While FIA EPTA continues to believe a definition of HFT is not necessary for regulatory purposes, we accept that the current definition under MiFID II[4] has created a stable framework for classifying certain technological applications in trading. A complexity in seeking to define HFT is that it is applied by many participants, with different organizational and legal arrangements and, most importantly, in a number of diverse strategies. As IOSCO stated already in 2011, most major intermediaries have trading desks that adopt strategies involving HFT alongside traditional proprietary trading.[5]

We note that using HFT entails two main types of regulatory consequences under MiFID II:

1) Persons dealing on their own account using a high-frequency algorithmic trading technique fall under the scope of MiFID II and have to be authorised as investment firms.[6] The required authorisation aims at ensuring that those firms are subject to organisational requirements under MiFID II and that they are properly supervised.

With respect to the authorisation requirement, we note ESMA's data that no firm has had to become authorised solely on the basis of being HFT. This does not come as a surprise, as a person applying an HFT technique can reasonably be expected to be either a direct member or participant of a trading venue, or have DEA to a trading venue, or be a market maker, or be dealing on own account when executing client orders. That person would therefore be

[4] Article 4(1)(40) of MiFID II defines high frequency algorithmic trading technique as "*an algorithmic trading technique characterised by: (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access; (b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and (c) high message intraday rates which constitute orders, quotes or cancellations*." Article 19 of Commission Delegated Regulation (EU) 2017/565 further defines a "high message intraday rate" as the submission on average of any of the following: *"(a) at least 2 messages per second with respect to any single financial instrument traded on a trading venue; (b) at least 4 messages per second with respect to all financial instruments traded on a trading venue*"; where only messages concerning financial instruments for which there is a liquid market are to be included in the calculation.

[5] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD354.pdf

[6] Article 2(1)(d)(iii) of MiFID II.

	required under Article 2(d) of MiFID II to become authorised as an investment firm based on any of the above grounds in the first place. 2) Article 17(2) of MiFID II determines that an investment firm that engages in a HFT technique shall store in an approved form accurate and time sequenced records of all its placed orders, including cancellations of orders, executed orders and quotations on trading venues and shall make them available to the NCA upon request. FIA EPTA believes the requirement to conform to specific order recordkeeping formats and comply with more granular clock synchronization requirements is appropriate to allow regulators a sufficiently granular picture of trading activity to be able to supervise effectively. In fact, given the technological advancement in markets, we believe these requirements should properly apply, via a Level 1 change, to *all algorithmic trading* so that regulators can depend upon an accurate and detailed overview of trading activity, regardless of its source. We would encourage ESMA to include such a recommendation in its advice to the European Commission. • **DEA** FIA EPTA believes the definition of DEA remains suitable.[7] In terms of the (current) regulatory consequences attaching to DEA, when a person accesses a trading venue using DEA, the exemption from authorisation as investment firm for persons only dealing on own account is no longer available (in other words, DEA users must be authorised). Likewise, trading venues must ensure that DEA providers are authorised investment firms or credit institutions[8]. Finally, DEA providers must comply with additional organisational requirements. ESMA has proposed that persons having DEA access to only deal on own account (DEA users) would no longer need to be authorised as investment firms. FIA EPTA agrees with this proposal: we agree with ESMA that the costs of

[7] Under Article 1(41) of MiFID II, DEA refers to "an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or person or client or any connecting system provided by the member or participant or client, to transmit the orders (direct market access or DMA) and arrangements where such an infrastructure is not used by a person (sponsored access)".
[8] Article 48(7) of MiFID II.

requiring full authorisation of a person dealing on own account for the sole purpose of having DEA access, including as a Tier 1 client, outweigh the benefits expected from such authorisation.

FIA EPTA believes the integrity of EU markets should be guarded by market-facing "gatekeeper" entities, which are either the members/participants of regulated markets and MTFs or DEA providers. In the case of DEA, the DEA provider has the responsibility of ensuring its clients adhere to MiFID II requirements. In order to fulfil its responsibility, the DEA provider assesses potential customers as to whether it is appropriate to grant the customer DEA (due diligence). DEA providers must have access to information on their DEA clients, irrespective of DEA clients' jurisdiction or their authorisation status. DEA providers may not provide services to clients, including sub-delegated clients, unless all information can be made available to the Competent Authority of the trading venue for supervisory and enforcement purposes. DEA providers also ensure their clients have effective systems and controls to properly monitor trading activity and prevent trading that may create risks to the investment firm itself or that could create or contribute to a disorderly market.

ESMA has proposed two specific changes to the DEA regime, which we believe will further strengthen the "gatekeeper" role of DEA providers:

1) To amend Article 1 of MiFID II to make explicit the requirement for DEA providers to be authorised as investment firms or credit institutions, which currently is only an indirect requirement on trading venues to ensure the same under Article 48 of MiFID II;

2) To amend Article 17(5) of MiFID II to require DEA providers to provide information on the number and names of entities to which DEA access is provided, with an annual update, so that NCAs have a better understanding of the magnitude of DEA access.

We welcome both those amendments, which we believe will further support a robust "gatekeeper" framework within MiFID II, as follows:

1) <u>Trading Venues:</u>
    a. Must conduct due diligence on members of trading venues: trading venues shall set out the conditions for using its electronic order submission systems by its members[9] → ***Trading venues "guard" members/participants***.

[9] Article 48(1) MiFID II

b. Trading venues must maintain effective arrangements and procedures for the monitoring of their members and participants' compliance with its rules[10] → ***Trading venues "guard" members/participants***.
c. Trading venues shall require firms having sponsored access to be subject to at least the same pre-trade and post-trade controls used by the venue and pre-trade and post-trade controls necessary for their members to access the market[11] → ***Trading venues additionally "guard" certain DEA users***.

2) Members and Participants of Trading Venues:
   a. Persons dealing on own account who are members of or participants in a regulated market or an MTF must be authorised[12] → ***Authorisation "guards" EU members/participants***.
   b. Members and participants of regulated markets and MTFs who are not authorised must still apply all algorithmic trading provisions of Article 17(1) to (6)[13] → ***Article 17 "guards" non-authorised and/or non-EU members and participants***.[14]

3) DEA Providers:
   a. DEA Providers must be investment firms or credit institutions → ***Authorisation "guards" DEA Providers***.
   b. DEA providers establish policies and procedures to ensure that trading of DEA clients complies with the requirements applicable to providers. →***DEA Provider "guards" DEA users, whether EU or non-EU.***

- **Third-Country Firms**

We note ESMA's statement that removing the obligation for DEA clients to be authorised as investment firms would ensure an equal treatment of EU and non-EU firms. ESMA suggests addressing the remaining differences in approach between EU and third-country HFT firms by introducing a requirement for third-country firms to be

[10] Articles 31 and 54 MiFID II
[11] RTS 7
[12] Article 2(d) MiFID II
[13] Article 17 MiFID II
[14] Such members would be additionally be guarded by General Clearing Members, who must also approve clients to operate on exchange on the basis of detailed diligence on clients' risk controls, internal governance and financial safeguards.

	authorised as an investment firm when they qualify as an HFT firm on an EU trading venue. At the same time, ESMA observes that the issues raised by the treatment of third-country firms under MiFID II/MiFIR are not limited to DEA/HFT but also extend to members and participants of EU trading venues; however we note it has not focused on those two areas in the context of the consultation. FIA EPTA does not believe there are material issues of a non-level playing field between EU and non-EU firms,[15] whether with respect to DEA, HFT or members and participants of trading venues. This is because, as described above, the "gatekeeper" framework ensures the algorithmic trading provisions of MiFID II are applied across the board to all those participants, whether EU or non-EU. This framework satisfies the original purpose of subjecting high-frequency algorithmic trading firms to authorisation, which was to ensure those firms are subject to organisational requirements and are properly supervised.[16] We feel this framework is sound and achieves the regulatory goal of protecting European markets, without the unnecessary complexity of extending MiFID II extra-territorially to non-EU HFT firms. We also would caution ESMA that such an extraterritorial approach would risk draining third country liquidity from EU markets while also potentially inviting retaliatory countermeasures by third country jurisdictions which may disadvantage the third-country activities of EU headquartered investment firm groups. <u>We would strongly urge ESMA, therefore, to not further pursue its suggestions in regard to the authorisation of third country HFT firms.</u>
Q2: In your views, are there risks other than the one mentioned in MiFID II or impacts on market structure developments due to market electronification/	FIA EPTA considers that ESMA correctly states that algorithmic trading refers to a trading technology used to send orders to trading venues – and that risks associated with it stem fundamentally from the trading technology used rather than other factors (such as the type of firm engaging in it or the location from which the activity is undertaken). In this vein, we firmly believe faster algorithms (including algorithms applied in HFT) are not inherently more

[15] The only potential level playing field issue we flagged is recordkeeping: we queried whether DEA providers servicing clients applying HFT techniques are required to maintain time sequenced order records at the same level of granularity as firms dealing on own account who apply HFT techniques.

[16] Recital 63, MiFID II: "It is desirable to ensure that all high-frequency algorithmic trading firms be authorised. Such authorisation should ensure those firms are subject to organisational requirements under this Directive and that they are properly supervised. However, entities which are authorised and supervised under Union law regulating the financial sector and are exempt from this Directive, but which engage in algorithmic trading or high-frequency algorithmic trading techniques, should not be required to obtain an authorisation under this Directive and *should only be subject to the measures and controls aiming to tackle the specific risk arising from those types of trading*."

algorithmic trading that would deserve further regulatory attention? Please elaborate.	dangerous than slower algorithmic trading. We believe EU markets will be best served by focusing on sound principles applicable to all algorithmic trading and would encourage ESMA to recommend in its advice to the European Commission that organisational and reporting requirements apply equally to all types of algorithmic trading.
Q3: Do you consider that the potential risks attached to algorithmic trading should also be given consideration in other trading areas? Please elaborate.	FIA EPTA agrees with ESMA's assessment on the scope of algorithmic trading and OTC trading: that algorithmic trading refers to a trading technology used to send orders to a trading venue, and as such does not apply to overwhelmingly bilateral, infrequent, and non-systematic electronic OTC trading. We believe the potential risks that can arise from algorithmic trading, such as an increased risk of overloading trading systems, generating duplicative or erroneous orders or overreaction to market events, are less likely to manifest in such a scenario. In our view, however, while SI activity is also technically OTC, there may be merit in applying certain algorithmic trading obligations to SIs, as we explain further in our response to Question 9.
Q4: Do you agree with this analysis? If not, please explain why.	FIA EPTA agrees with ESMA's assessment that algorithmic trading refers to a trading technology used to send orders to a trading venue, and as such, properly applies to DEA, which is a manner of accessing trading venues.
Q5: 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.	As we have commented at length in response to Q1 above, while FIA EPTA does not believe a definition of HFT is necessary for regulatory purposes, we believe that the current definition under MiFID II[17] has created a stable framework for classifying certain technological applications in trading. We believe the current definition still works. However, to the extent elements in the definition (for example, the metric of 'high message intraday rate') may become obsolete due to technical advancements, we believe this can

[17] Article 4(1)(40) of MiFID II defines high frequency algorithmic trading technique as "*an algorithmic trading technique characterised by: (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access; (b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and (c) high message intraday rates which constitute orders, quotes or cancellations*." Article 19 of Commission Delegated Regulation (EU) 2017/565 further defines a "high message intraday rate" as the submission on average of any of the following: *"(a) at least 2 messages per second with respect to any single financial instrument traded on a trading venue; (b) at least 4 messages per second with respect to all financial instruments traded on a trading venue*"; where only messages concerning financial instruments for which there is a liquid market are to be included in the calculation.

	best be addressed by formulating relevant metrics to be determined from time to time with input from trading venues. Should the definition be amended, we strongly believe certain principles must apply: 1. The definition must be based on non-discriminatory and objective parameters (i.e. it should not depend on the *type* of market participant applying the technology); 2. The criteria should be measurable, so that market participants can monitor and predict whether they meet the definition; 3. The definition must be based on the affirmative actions of market participants rather than elements outside their control, so that firms are not at risk of 'immediately' but unintentionally being classified as HFT due to changes in the external environment; 4. There must be no uneven or shifting elements to the definition that can be impacted by activity of other market participants (i.e. it should not be based on 'average message rates' across a venue or 'relative speed of participants,' as these factors are constantly changing and unable to be controlled by any specific participant.
Q6: 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 subdelegates? Are you aware of sub delegation arrangements in the context of Sponsored access? If so, please elaborate.	N/a
Q7: (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 thirdcountry based?	N/a
Q8: 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?	FIA EPTA agrees with ESMA's assessment that the provision of online brokerage for retail investors does not qualify as DEA where clients do not have control over the exact fraction of a second when their orders enter the trading venue's systems.

Q9: 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.	FIA EPTA agrees with ESMA that there is merit in extending the definition of algorithmic trading to trading in financial instruments OTC by SIs - *where quotes are electronically executable similar to activity on a trading venue.*[18] While we recognise SIs are not trading venues, they can enable algorithmic executions. Where we see a gap is in the application of organisational requirements: these apply to investment firms but there is no formal requirement for these to apply to activity on the SI itself. We do not suspect there are material issues in practice, as we believe most firms compliant with relevant organisational requirements are applying those internally across all business they do. Nevertheless, given SI activity, unlike OTC trading, is frequent and systematic and SIs are eligible execution venues for the purposes of the trading obligation, we believe it is prudent to ensure quotes displayed, streamed, or sent by SIs to counterparties or clients that are electronically executable are subject to key provisions such as (i) governance arrangements for trading systems and trading algorithms, (ii) controlled deployment of algorithms (iii) kill functionality and other risks controls.
Q10: Do you agree with ESMA's proposals above? Please elaborate.	FIA EPTA agrees with ESMA's proposal to remove the obligation for DEA clients to be authorised as investment firms. We agree with ESMA that the costs of requiring full authorisation of a person dealing on own account as an investment firm for the sole purpose of having DEA access, including as a Tier 1 client, outweigh the benefits expected from such authorisation. In our view, ESMA correctly assesses that the regulatory framework can rely upon the DEA provider to safeguard market access. To this end, ESMA proposes amending Article 1 of MiFID II to make explicit the requirement for DEA providers to be authorised as investment firms or credit institutions, which currently is only an indirect requirement on trading venues to ensure the same under Article 48 of MiFID II. We agree with this change.

[18] We make this differentiation based on the same reasoning applied with respect to the scope of algorithmic trading and OTC activity: where an SI only agrees trades following manual intervention (via bilateral communication) subsequent to the SI quote publication, then the quotes streamed by the SI are not electronically executable unlike algorithmic activity on a trading venue.

	We also agree with ESMA's proposal to amend Article 17(5) of MiFID II to include the number and names of entities to which DEA access is provided, with an annual update, for greater traceability. Based on this same reasoning, we do not agree with ESMA's proposal to introduce 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. FIA EPTA does not believe there are material issues of non-level playing field between EU and non-EU firms,[19] whether with respect to DEA, HFT or members and participants of trading venues. This is because, as described in our response to Q1, the "gatekeeper" regulatory framework ensures the key algorithmic trading provisions of MiFID II are applied to all those participants, whether EU or non-EU. This framework satisfies the original purpose of subjecting high-frequency algorithmic trading firms to authorisation, which was to ensure those firms are subject to organisational requirements and are properly supervised.[20] We feel this framework is sound and achieves the regulatory goal of protecting European markets, without the unnecessary complexity of extending MiFID II extra-territorially. Likewise, we believe such extra-territoriality, if enacted, could harm EU investment firms operating on non-EU trading venues, as it would be highly likely to prompt 'retaliatory' rules in third countries. If deemed necessary, ESMA could further strengthen the "gatekeeper" framework to protect EU trading venues against disruptions caused by non-EU DEA users (including those using HFT) by imposing an explicit obligation on DEA Providers or trading venues to ensure on a contractual basis that all clients/members/participants observe relevant articles of RTS 6, through an amendment of RTS 6.

[19] The only potential level playing field issue we flagged is recordkeeping: we queried whether DEA providers servicing clients applying HFT techniques are required to maintain time sequenced order records at the same level of granularity as firms dealing on own account who apply HFT techniques.

[20] Recital 63, MiFID II: "It is desirable to ensure that all high-frequency algorithmic trading firms be authorised. Such authorisation should ensure those firms are subject to organisational requirements under this Directive and that they are properly supervised. However, entities which are authorised and supervised under Union law regulating the financial sector and are exempt from this Directive, but which engage in algorithmic trading or high-frequency algorithmic trading techniques, should not be required to obtain an authorisation under this Directive and *should only be subject to the measures and controls aiming to tackle the specific risk arising from those types of trading*."

FIA EPTA
EUROPEAN PRINCIPAL TRADERS ASSOCIATION

(Chapter 4) Organisational requirements for investment firms

Question	FIA EPTA response
Q12: 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.	FIA EPTA considers that the current procedures for notifying a firm's home competent authority and/or the competent authority of the trading venue on which the firm is engaging in algorithmic trading is not particularly onerous. That said, we do not object to the use of a specific template as long as that template is straightforward and not unduly burdensome. We also note that some competent authorities already use templates. To the extent ESMA determines to develop a template we would recommend to substantially emulate the template from BaFin which we consider to be effective and fit for purpose: Link
Q13: Do you agree that it would be useful to clarify that notifications should be done 'without undue delay'?	FIA EPTA would suspect that investment firms are making notifications in a timely fashion already and we are not aware that there is a particular concern here. We do not see a any need to clarify this obligation further.
Q14: Do you agree with ESMA's approach for the exchange of information between NCAs? If not, please justify your position.	FIA EPTA does not object to ESMA's proposed approach here.
Q15: 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.	FIA EPTA believes the definition of algorithmic trading is sufficiently clear and does not require further clarification.
Q16: Do you think there should be specific requirements for different type of algorithms or algorithmic trading strategies in RTS 6? Please explain.	FIA EPTA does not believe there should be specific requirements for different types of algorithms or algorithmic trading strategies. We believe this will increase levels of complexity and subjective judgements which would be an unnecessary addition to the RTS 6 framework.
Q17: What is your experience with testing environments? Are they used frequently? If not, why? Do you see a need for any improvements?	FIA EPTA believes the stress testing requirements which are set out in Article 10 of RTS 6 are too prescriptive and somewhat artificial as a substantive stress test. We agree that investment firms should be required to ensure their algorithmic trading systems are able to withstand increased order flows and market stresses. However, investment firms should have discretion to determine the most appropriate tests to ensure this is the case to achieve the intended regulatory outcome. Rather than including prescriptive testing requirements with unclear benefit, we consider that principles-based standards should underpin the testing regime for firms with firms being obliged to develop their own specific policies and procedures adapted for the nature, scale and complexity of their expected trading activities. We would be

	concerned if specific test scenarios were to be set by the regulator regardless of their suitability for a specific algorithm. We would reiterate that it is only the firm itself which would be able to appropriately assess whether a particular testing methodology is fit for purpose. Finally, FIA EPTA would like to highlight that firms already have a significant economic incentive to rigorously test their trading systems and algorithms without any prescriptive testing requirements. Any unintended behaviour in a trading system or algorithm results in unwanted trades which may directly result in monetary losses. Therefore, further regulatory requirements would be duplicative to natural incentives and hence unnecessarily burdensome. In addition, we note that the stress test requirements set out in Article 10 extend to areas of RTS 6 which have little to do with ensuring resilience in a market stress. For example, it includes references to Articles 13, 14, 17 and 18 which cover matters which are not directly relevant to the point of Article 10. We would suggest the stress test requirements are only applicable to Articles 12 (kill switch), 15 (pre-trade controls on order entry), Article 16 (real-time monitoring), and Article 17 (post-trade controls).
Q18: Do you agree that the definition of "disorderly trading conditions" should be clarified in accordance with the proposed definition? If no, how would you define such trading conditions?	Whilst FIA EPTA does not believe that the definition of disorderly trading requires further clarification per se, we do not object to ESMA's proposed wording.
Q19: 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?	FIA EPTA does not agree that additional guidance for testing on disorderly conditions is necessary. Investment firms already carry out extensive testing of their algorithms and systems in this regard and further prescription here is unlikely to add any material benefit.
Q20: 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?	FIA EPTA notes that ivestment firms have embedded procedures and processes in place to satisfy the self-assessment requirements set out in RTS 6. As a result, the bar to changing how firms are required to carry out this self-assessment should be set high. Investment firms would like to retain the flexibility to produce reports as they deem best based on their specific compliance systems. However, if ESMA determines that a prescribed format is required then we would suggest using the AFM's template as the precedent and ensuring that one template is prescribed for all competent authorities as firms may have regulated entities in different EU jurisdictions and so consistency of approach is important.

	The AFM template can be found here: https://www.afm.nl/en/professionals/onderwerpen/mifid-2/marktstructuur-algotrading
Q21: Do you agree with the changes proposed to the self-assessment of Article 9 of RTS 6?	FIA EPTA agrees this should be every two years. On the testing point, firms test in a great number of different ways; prescribing firms to report on each algorithm and the relevant testing environments would be unduly burdensome in our view.
Q22: 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.	In relation to the obligations set out in Article 9(2) of RTS 6, FIA EPTA would propose that it should be possible for the self-assessment report to be carried out by any independent team within the investment firm and not only by the risk management function. For example, we think the self-assessment report should be able to be developed by compliance or any other group as long as that group is separate from the trading desk and developer functions. FIA EPTA would also propose changes to the requirements set out in Article 7(1) RTS 6 which state that: *"An investment firm shall ensure that testing of compliance with the criteria laid down in Article 5(4)(a), (b) and (d) is undertaken in an environment that is separated from its production environment and that is used specifically for the testing and development of algorithmic trading systems and trading algorithms. For the purposes of the first subparagraph, a production environment shall mean an environment where algorithmic trading systems effectively operate, and comprise software and hardware used by traders, order routing to trading venues, market data, dependent databases, risk control systems, data capture, analysis systems and post trade processing systems."* We feel Article 7(1) is overly prescriptive. We would emphasises that in practice, it is difficult to fully segregate every last piece of software/hardware, dependent databases, risk control systems, data capture, or market datawhich may be used in testing, from their connection to production systems. In our view, a strict reading of this article would require two, fully duplicated environments, doubling the cost of connection for i.a., market data and hardware infrastructure. However, we understand and agree with the principle of this provision, i.e. that no testing should **impact** the production environment. We believe it should be worded accordingly and would encourage ESMA to clarify the legal text of RTS 6 in this regard. Finally, we are aware that the proposals put forward by the Commission in relation to digital operational resilience (also referred to as DORA) currently foresee an amended scope of RTS 6 to ensure there is no overlap with the new cross-sectoral requirements. ESMA has flagged the possibility of making some targeted amendments to RTS 6 and 7 already prior to any review associated with the DORA proposals. Without further information on what these targeted changes might be, it is challenging to provide a holistic response to our views on RTS 6. However, we would

	urge ESMA to carefully consider any amendments to the RTS 6 framework that could result in additional, disproportionate burdens for firms already subject to appropriate and detailed obligations. We note that MiFID II has already identified algorithmic trading firms as a special type of investment firm subject to specific requirements for ICT risk management and cybersecurity. For example, while the generic outsourcing rules for investment firms (art. 16(5) of MiFID II) do not have any further Level 2 or 3 requirements attached to them (https://www.esma.europa.eu/databases-library/interactive-single-rulebook/clone-mifid-ii/article-16-0), by contrast, Article 4 of RTS 6 clarifies that for algorithmic trading firms, in the case of outsourcing, the detailed organisational requirements of RTS 6 continue to apply in full. RTS 6 already applies a highly detailed outsourcing regime to algorithmic trading firms. This also comes back in the self-assessment criteria in RTS 6 as per Art 9(1) (see also specifically points 1(i) and 3(g) of Annex 1).

(Chapter 5) Organisational requirements for trading venues

Question	**FIA EPTA response**
Q23: Do you agree with ESMA's proposal to harmonise and create a clear structure for the performance of the self-assessment?	FIA EPTA supports ESMA's view that the RTS 7 self-assessment should entail "a proper due diligence assessment" and that it "should be more ambitious than a statement of compliance". We believe comparability and quality of self-assessments may be improved by setting more granular and minimum requirements for the self-assessment. We do, however, believe that imposing a prescribed format is not proportionate - particularly not to those trading venues which are already performing the self-assessment as intended by the legislator.
Q24: Do you agree with limiting the self-assessment to every two years and to require trading venues to share it with their relevant NCA?	FIA EPTA is supportive of ESMA reducing the frequency of the RTS 7 self-assessment to once every two years and to require trading venues to share it with their relevant NCA.
Q25: 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	In general, FIA EPTA agrees with ESMA's analysis and is supportive of identifying any uncertainty caused by overlap between RTS 6 and RTS 7 requirements. It would indeed be helpful to remove these overlaps and establish where responsibility rests on the trading venue and/or on the investment firm. That said, FIA EPTA does not feel that there is significant overlap or unclarity as the requirements stand today.

or are there any gaps? Are there any further points that should be clarified?	
Q26: What is your view with regards to the testing of algorithms requirements? Do you agree that more robust testing scenarios should be set?	FIA EPTA does not believe that ESMA should provide specific test scenarios. The diversity of trading systems and algorithms in the market is large and changes at a more rapid pace than regulatory change cycles. Therefore, we do not believe that additional granular requirements would provide greater clarity nor would it help in preventing disorderly trading conditions. Additionally, we would have concerns that if specific test scenarios would be set by the regulator these would become a de facto set of requirements to follow for every test regardless of their suitability for a given algorithm. In our view, it would be better for ESMA toprovide, if so desired, principles-based standards for testing rather than specific scenarios. In addition, we consider trading venues can improve their test environments and the scenarios they provide in these environments as outlined in our response to Question 27. Finally, FIA EPTA would like to highlight that firms already have a significant economic incentive to rigorously test their trading systems and algorithms without any prescriptive tests. Any unintended behavior in a trading system or algorithm results in unwanted trades which may directly result in monetary losses. Therefore, further regulatory action would be duplicative to natural incentives for firms and unnecessarily burdensome.
Q27: Are the testing environments available for the testing of algorithms appropriate for this purpose?	At a high level, FIA EPTA considers the testing environments that trading venues provide their members do facilitate appropriate testing of algorithms, especially when used in conjunction with internal testing suites. That said, FIA EPTA notes that the quality of testing environments does vary significantly across trading venues. We believe that trading venues could make improvements to their algorithm testing environments in order to facilitate better testing, particularly in regard to accurately reflecting the current and future production environments. We believe these improvements could be made for the areas set out below and would encourage ESMA to clarify the requirements in RTS 7 to reflect this. We also refer in this regard to our response to Question 35. <u>1. Access to and configuration of test environments</u> • Testing environments should always be available during business hours on every business day. We note that currently some venue testing environments close on certain days at certain times. • There should be stable access with regard to connections and logins. We note that currently some venues create new logins repeatedly which is burdensome and creates a disincentive for firms to use the test environments. Additionally, such a system does not reflect the production environment set up with its stable connectivity.

	• Trading venues should communicate when the static setup in their test environments is being changed (e.g., for clearing accounts) so that participants can make appropriate changes to their test scripts prior to testing rather than discovering that there are issues which may result in lengthy investigations as to the source of negative testing results. 2. Better mirroring of production environment • Trading venues should provide more production-like testing environments including providing reference data, market data, functionality and behaviour, real symbols and controls such as price collars and reference prices as well as reliable test/simulation market data. This would increase the realism of the testing and hence be supportive of orderly markets. We note further that any deviations from the production environment require specific coding changes to facilitate testing, which makes the tests less reliable, increasing the scope for error, while unnecessarily causing additional workload. • Testing environments should be monitored to ensure they remain in a normal trading state and mimic a trading day rather than frequently changing in status. • Trading venues should have both a "next" and a "production-matching" environment (technically a legal requirement under MiFID II). When there is a new release upcoming, venues should run two test environments, one reflecting the current production environment and one the upcoming new release environment. 3. Segregation of test environments • Test environments should be set up so that different participants can use them simultaneously without influencing each other. This could be achieved by, for instance, allocating specific symbols to individual participants. • Testing environments should be clearly segregated from production to prevent any inadvertent testing in production. To further minimise this risk, trading venues should minimise or eliminate deliberate testing in production such as weekend dress rehearsals. These production tests increase the chance of test cases being inadvertently performed during actual production trading and force participants to make significant changes to their production systems to accommodate only one venue being open, increasing the risk of outages in the following trading session. 4. Provision of test scenarios and ability to create specific cases • Automated testing of unsolicited events, including order and trade cancellation, as well as negative test cases covering error handling, should be made available as automated test cases on dedicated

	symbols, with one test case per symbol. Alternatively, an API allowing specific test scenarios to be controlled by the participant is preferred to assisted testing. • Trading venues should provide fills for passive orders on a subset of symbols via an automated trading User Acceptance Test (UAT) trading engine. Venues should provide passive orders on a set of symbols via an automated trading UAT trading engine. Venues should also inject orders and generally provide market data in the test environment. 5. <u>Charges</u> • FIA EPTA finally notes that some trading venues charge for access to and/or usage of their test environments. Because the usage of these environments is mandated by regulation and the exchanges themselves, and good usage contributes to orderly trading, FIA EPTA believes that such charges should be eliminated, and furthermore that such costs should not be indirectly passed on to members through other charges.
Q28: Do you agree with ESMA's analysis that the circuit breaker mechanism achieved its objective to avoid significant disruptions to the orderliness of trading?	In equity markets (including equity ETDs), FIA EPTA does agree that the circuit breaker mechanism achieved its objectives and aided – along with i.a., the continuous provision of liquidity by market makers -- in avoiding significant disruptions to the orderliness of trading during the COVID-19 related market turbulence in March 2020 in particular. Furthermore, the circuit breaker mechanism was far more effective in aiding the orderliness of equity trading than other measures (such as short selling bans) that were enacted at the same time with nominally the same goal.
Q29: 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?	FIA EPTA believes that whilethe circuit breaker mechanism is in general effective and fit for purpose for equity markets (including equity ETDs), some targeted improvements to the mechanism should be made on certain trading venues. Namely: • Circuit breaker parameterisation for certain venues can be very complicated and it can be hard to understand or know which parameters apply to which instruments in which contexts. Trading venues should make this parameterisation as simple and consistent as possible given their individual market characteristics. • On some venues, circuit breaker halts can last for unknown extended periods of time and there appears to be no set criteria to trigger re-opening. FIA EPTA members have in some cases phoned the venues to ask them to re-open the stock which was then done, suggesting there is neither an automatic process nor a defined procedure for re-opening trading after a halt. We believe the market is better served by all venues following an automated and transparent process for the un-halting of stocks.

	On some venues, certain orders or order types are rejected in stocks that have approached a limit but are not yet in a halted state. It is unclear whether these rejections were due to circuit breaker limits having been reached or for another reason. Again, FIA EPTA believes the market is better served by all venues following an automated and transparent process for entering a halt and that all details about if and when orders will be rejected when entering that period should be made clear.
Q30: Do you agree that the co-location services and fees structures are fair and nondiscriminatory? Please elaborate.	FIA EPTA believes that venues should guarantee that access to the matching engine is fair to all participants in colocation, i.e. cross-connects, connecting participants' cabinets to the matching engine and participants' cabinets to meet-me-rooms must be latency equalised, in order to ensure that no locations in the data centre have an intrinsic latency advantage. Tolerance on equidistant cables should be minimised to ensure fairness and equal access. Alongside this, ESMA should ensure that venues guarantee a fair and competitive environment to vendors offering services in the data centre. As an example, a venue must not use its direct or indirect control over its data centres to provide a latency advance to its services or those of a select vendor(s), for example limiting access to the rooftop for wireless connectivity. We believe that venues should have a cost-based pricing approach in relation to colocation charges. Exchanges should not use their monopolistic advantage as owner of the data centre to charge unreasonable rates for co-location services and the rates should reflect the costs to provide those services and the supply and demand to allow for equitable access. Exchanges should communicate in a transparent fashion and in a timely manner their plans to migrate to a new data centre. Venues should open a consultation period allowing co-located customers to provide feedback and include an impact assessment of the cost of the move on market participants and open a consultation period allowing members to provide feedback. In case of a migration, access to the new data center should be made available as early as possible to support participants in their preparation efforts. Fees should also be predicable and stable when it comes to co-location services. In relation to trading fees, venues should be free to determine the best trading tariff and commercial terms under the principles and requirements set by the regulation. Venues should not be limited in their commercial decisions unless there are regulatory or prudential reasons requiring that.

Q31: Do you think that the disclosures under RTS 10 made by the trading venues are sufficient or should they be harmonised among the different entities? Please explain.	N/a
Q32: Do you agree with ESMA's proposal to set out the maximum OTR ratio, calibrated per asset class?	FIA EPTA strongly believes that ESMA should not introduce a market wide OTR ratio per asset class. There is a wide range of variability in the types of trading activity on each venue in Europe and we are concerned that having a one-size-fits-all OTR regime would detrimentally affect liquidity provision in these asset classes. OTRs when implemented in a very strict fashion can inhibit liquidity provision especially in times of stress. Hence, we do not believe it is in the best interest of the market for ESMA to implement additional restrictions. Further, consider venues should decide what are appropriate OTR thresholds for their products. Each venue is best placed to determine what are reasonable OTR thresholds that maintain orderly trading as well as providing stability in their matching engines. Venues should have the flexibility to determine the requirements and what would classify as a violation. For example, venues should be allowed the flexibility to determine if OTRs should be monitored daily or monthly and or if they should be applied across an instrument grouping. In FIA EPTA'sopinion, it is in each venue's own interest to set appropriate OTR limits tailored to their market to ensure system stability. Under the current requirements, FIA EPTA members would welcome greater transparency and data be provided to trading participants on their OTR score at each venue to ensure all steps can be taken by firms to monitor their performance and take appropriate steps where necessary.
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.	FIA EPTA agrees that these limits are not frequently exceeded. However, we would not view this as an example of any failures in the current OTR requirements prescribed by the Level 2 regime. OTR requirements are strictly monitored by trading participants and, as a result, there have been limited breaches. This proves that appropriate algorithm testing and monitoring by participants is in place. Alongside this trading venue systems are resilient and have proven to be able to cope with high message loads. FIA EPTA is not aware of any system failures because of high message loads which is a good sign and further shows that the existing OTR limits are working well.
Q34: Do you agree with the consequences as described of exceeding the maximum limits or should there be a more convergent approach? Please provide any	FIA EPTA considers that before determining any potential consequences of a violation, there should be greater clarity regarding what classifies as a violation in the first place . RTS 9 Article 3(2) describes how OTRs are to be monitored during each trading session to determine if the trading activity of a member or participant exceeded any OTR

comment or suggestion regarding the procedures in place by trading venues in case of a member exceeding the prescribed limit.	thresholds. In our view, OTR scores should be monitored per trading session. However any violations should be determined over the course of one month of trading. Monitoring and enforcing potential violations daily creates an inflexiblepolicy which is not conducive to effective liquidity provision during times of stress. It should be noted that certain venues' OTR models for market making are not flexible in adapting to periods of higher volatility (when OTRs are higher as well) and as a result of daily enforcement in such a situation, market makers would be forced to withdraw their quotes due to concerns around breaching OTR thresholds. Monthly monitoring of OTR violations, by contrast, would capture instances where there were systemic violations by a firm to the detriment of the market while not capturing genuine liquidity provision during stressed market periods. Finally, as given in FIA EPTA's response to Question 43, venues would need to be more accommodating in allowing quoting outside standard market making parameters during times of stress as these obligations are appropriate only during normal trading conditions.
Q35: Do you agree with the need to 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?	Further to our response to Question 27, FIA EPTA believes that there should be improvement in the communication from trading venues to the market at large in the case of system or trading outages. The trading outages in 2020 (as well as those that occurred previously) highlighted varied communication protocols and standards across trading venues, which further exacerbate the disruption to the market caused by the outage in the first place. We believe that the need for these communication improvements continues to grow as European exchanges continue to consolidate. This consolidation leads to more widespread effects of an outage, as single trading systems operate on many markets simultaneously. FIA EPTA does not believe that there should be one prescriptive format for communication but rather that there should be a set of minimum standards in place for all trading venues for handling and communicating a trading outage that would include at least the six principles set out below. FIA EPTA would encourage ESMA to include such principles based standards in any further adaptation of RTS 7.

	1. A crisis management team should be established at each trading venue. This crisis management team would be responsible for communications around outages to all stakeholders as well as maintaining the venue's crisis playbook. 2. All trading venues should develop and publish a playbook for what will occur if or when an outage takes place. The playbook should clearly identify the mechanisms and locations (websites, protocols) for dissemination of information to stakeholders regarding the outage as well as what information these channels will include and in what format, in addition to the protocols to be followed for identifying, diagnosing and resolving issues and halting and restarting trading. 3. All communications regarding the ongoing health of a venue's trading system and details about possible outages should be made publicly and be available to all interested parties in a central location, for instance on a defined webpage. o This should be updated on a fixed schedule, for instance every 30 minutes, giving a status update, even if the update is "no update". o Any planned re-opening times should be published on this central location. 4. Communications regarding market status should also be in a machine readable format, ideally available on trading venue connectivity and market data protocols, so that trading systems can automatically incorporate these notifications into their functioning, if relevant. o At a minimum, any market statuses, instrument prices, outstanding order statuses, and trade feeds published by trading venues on their execution or market data feeds must be accurate and consistent during an outage. 5. Trading venues must be proactive and clear in their communications, giving stakeholders as much detail as is known, as soon as it is known, without speculation. o This would include providing a file confirming all valid trades that have occurred during that trading sessions up to the point of disruption to ensure there is no ambiguity on trade executions. Venues should first share a public trade file via their website and as mentioned above this should be defined in the disruption playbook. o Alongside this, each member who traded during that session should receive a private trade file outlining their own files ahead of the market reopening. o Providing clear communications on the time where no further valid executions can occur and that the outstanding orders have been removed is also important.

	6. Trading venues should provide all stakeholders and members with a comprehensive post-mortem analysis and follow up points after any major incident, which should include disclosure of the root cause and the steps taken to rectify and prevent recurrence. These communication standards should be applied to cases where an incident affects trading as well as cases where it does not but could have had a large impact. Additionally, FIA EPTA would like to highlight the conflict of interest inherent in ESMA's emphasis on "the importance of trading to resume within or close to two hours to minimize disruptions and not affect the orderliness of trading." While FIA EPTA recognises the spirit of the aim to resume trading as rapidly as possible, the reality of IT incidents is that they take time to assess and resolve. The true nature or cause of an incident is often not apparent from its symptoms. In order to properly resolve any incident, a careful analysis must be taken, followed by an orderly fix. Only then can trading be restarted, which must also occur simultaneously with the restart of members' trading systems as well. Coordinating this properly simply takes time. FIA EPTA believes that it is in the best interests of the market and of orderly trading for the appropriate amount of time to be taken to properly resolve an incident and to restart afterward, instead of forcing trading venues to adhere to an arbitrary two hour restart deadline. Forcing haste in such matters will often lead to further issues later on, which was apparent in at least one of the exchange outages in 2020. Initial haste in restarting trading led to an additional halt later in the day, which led to a missed close and knock-on effects that lasted for multiple days. It is, therefore, far better to take the appropriate time to restart properly than to rush into a disorderly restart to meet an arbitrary deadline. We finally note that the wider market would be better served by improved resilience across the system as a whole, with true alternatives to primary listing markets (or any individual venue), rather than a specific and arbitrary focus on restart times.
Q36: 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 algorithmic traders to use more than one reference data point?	FIA EPTA believes that there should be industry-led initiatives put forward and implemented to facilitate more continuity of trading in case of a technical outage on the main market. We believe that the need for such initiatives continues to grow as European exchanges continue to consolidate. This consolidation leads to more widespread effects of an outage as single trading systems operate on many markets simultaneously.

	Despite our general preference for industry-led solutions, in this case, in order to achieve a truly resilient European Capital Markets Union and to ensure that such industry-led initiatives have the chance to succeed, FIA EPTA believes that there should still be some specific, targeted regulatory intervention. FIA EPTA suggests the following for the consideration by ESMA: • Setting a requirement for certain minimum standards of communication in terms of timeliness and clarity from trading venues in case of outages to all stakeholders. These minimum standards, and an associated clear and structured playbook for reopening, would give the certainty needed for market participants and other venues to alter their behavior in a controlled manner. • Along with this regulators should remove the pressure for trading venues to re-open in a certain arbitrary, fixed time period, instead allowing operators and their members to take the necessary amount of time needed to solve the underlying issues and reopen in an orderly, controlled fashion. We would note that trading venues also have a natural economic incentive to re-open as safely as possible so prescribing this in a granular fashion is unnecessary. • Ensuring that the closing auction – and the critically important settlement price that results from the closing auction – is performed and generated every day. Regulators must act here because the closing auction is a monopoly and the settlement price it produces is of critical importance to the orderly functioning of the entire European equity, equity-like, and equity derivatives markets, as well as to index and benchmark providers. This could be achieved in a number of ways, for instance: ○ Implementing a regulatory defined secondary venue for handling the closing auction in case of a primary listing outage that occurs or is still occurring within a set period prior to the close. This will ensure the continuity of settlement prices. Such a secondary venue could be an alternate primary listing market or an MTF which is the second most relevant market in terms of liquidity following the primary listing market. ○ Holding primary listing markets to a higher resilience and continuity standard specifically for the closing auctions, for instance ensuring they have complete redundancy and failover in place for these auctions, in recognition of the monopoly status they enjoy in respect to the auction. • Ensuring that post trade systems are fully interoperable, so that post-trade processes do not pose a challenge for participants to route flow to alternative venues, especially in the case of a closing auction occurring on an alternate venue.

	• Implementation of a real-time post-trade consolidated tape, which could then replace the primary market / most relevant market as the benchmark reference used by trading participants across venues and would not be reliant upon anyone trading venue operating. FIA EPTA believes that these regulatory interventions are necessary in order to enable industry innovation and improvement to the continuity of trading in case of a primary market outage and at the same time they will ensure that any such outage, while still being by its nature disruptive, will not lead to excessive systemic disorder in the wider capital markets but instead can be contained to the venue on which the outage occurred.

(Chapter 6) Tick size, market making, asymmetric speedbumps, and trade feeds

Question	FIA EPTA response
Q37: Do you agree with the view that the tick size regime had overall a positive effect on market depth and transaction costs?	FIA EPTA supports a well-calibrated tick size regime that balances the need for sufficient granularity to ensure spreads are not artificially tick constrained while maintaining a healthy level of liquidity at the touch, ie the best bid and offer. We note that larger tick sizes tend to increase the importance of time priority/queue position while smaller tick sizes tend to increase competition for price priority. Each of these has positives and negatives, for example larger tick sizes will encourage greater liquidity as liquidity providers compete to place orders with higher time priority but can have the downside of higher transaction costs for liquidity takers (i.e., there is wider spread than needed). Meanwhile, smaller tick sizes directly reduce the costs for liquidity takers but tend to come with smaller volumes available at touch and can sometimes lead to increased transaction costs for larger orders. Small tick sizes can also lead to flickering of the BBO as market making algorithms react and compete with each other to post with the highest price/time priority. It is important, therefore, that the tick size regime balances these two outcomes ensuring maximum benefit for the market and an appropriate balance between those looking to supply liquidity and those looking to take liquidity.

	Overall, FIA EPTA members feel that the tick size regime introduced in MiFID II for EU equities markets can be classified as a success, and while not perfect has resulted in a reasonable balance between the need for tick sizes to be granular enough to ensure that transaction costs are low while supporting healthy liquidity at the touch.
Q38: Is there any further issue you would like to highlight regarding tick size regime?	N/a
Q39: Do You agree with the proposal not to amend the tick size regime for third country shares? Please explain.	FIA EPTA tentatively supports the proposal to not amend the tick size regime at this time recognising the complexity of the situation and difficultly in calibrating a suitable regime given the large universe of instruments available to trade within the EU. FIA EPTA would, however, urge ESMA to keep this topic under review particularly in light of the evolution of the post-Brexit European market environment and any future equivalence decisions between the EU and the UK. In light of the high degree of interconnectedness between the UK, Swiss and EU equities markets, FIA EPTA would consider it ideal to ultimately have a single tick size regime across the greater European trading area to encourage liquidity and to avoid damaging competition driven by regulatory arbitrage in regard to the tick size regime. In addition, for those third-country shares where the home market is less connected to the EU, but which are still popular with EU investors, such as U.S. stocks, FIA EPTA members consider that there may be merit in removing these instruments from the MiFID tick size regime completely, giving trading venues the flexibility to set tick sizes in line with the main third-country markets and encouraging the growth of trading in these instruments on EU venues during core EU trading hours while the respective home markets are closed.
Q40: 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.	While there are pros and cons to the extension of the tick size regime to all ETFs, FIA EPTA's view is that this change would be unlikely to lead to the same effects in the ETF market that have been observed in the equities markets, nor is it likely to significantly further the general regulatory objective to bring more ETF trading onto multilateral systems, and in fact it has the potential to do the opposite. While EU equity markets are actively traded on trading venue order books, the EU ETF market predominantly uses the 'Request for Quote' (RFQ) trading model as a method of risk transfer, a significant percentage of which is already traded on Multilateral Trading Facility (MTF) platforms, or through investors sourcing multiple quotes from Systematic Internalisers. For as long as investors choose to execute ETFs via the RFQ model, we do not believe that order book depth is a material consideration in the pricing of ETF quotes, and so believe the benefits seen in the equities market would not currently manifest themselves in the ETF market.

	We agree that widening the scope of the tick size regime to all ETFs would simplify the identification of in-scope instruments for investors and ETF liquidity providers alike. However, we strongly believe that maintaining price competition between liquidity providers is key to the RFQ model, and we believe this to be in the best interest of end investors. – Our concern being that less granularity in price will likely reduce competition and will cost the end investor more in terms of crossing the spread. Further, we have concerns around implementing a less granular ETF tick size regime only in the EU which would only be applicable to trading venues and Systematic Internalisers, bringing the risk of tick size divergence with other jurisdictions, and/or OTC trading, and which may lead to liquidity being pushed out or away from these EU execution venues. We, therefore, support a solution that would ensure that the granularity of ETF pricing is maintained at a level that is consistent with good investor outcomes, and which allows the ETF market in the EU to continue to grow and develop. With this in mind, we strongly urge ESMA to consider whether applying a 'one size fits all' approach to ETFs is in fact appropriate and in the best interests of the growth of the EU ETF market. We find this to be particularly important, not only given the differing liquidity profiles applicable to ETFs themselves, but in particular given the differing liquidity profiles and post trade transparency regimes associated with the asset class' underlying available ETFs (for example, fixed income instruments vs. equity instruments).
Q41: Do you agree with the proposal not to widen the scope of the tick size regime to non-equity instruments? Please explain.	FIA EPTA agrees with ESMA's conclusion to not widen the tick size regime to include non-equity instruments. Given the nature of these markets, we do not see that there would be a benefit and given the large universe of instruments that such a regime would potentially cover we would anticipate the administrative challenge in calibrating and maintaining any regime would be significant.
Q42: Do you agree with ESMA findings and assessment of the current MiFID II market making regime?	MiFID II recognises the "importance of liquidity provision to the orderly and efficient functioning of the markets" and FIA EPTA's members are very strongly committed to efficiently providing liquidity to markets and end investors on a continuous basis. FIA EPTA agrees with ESMA's finding that EU markets did not experience a significant liquidity issue during the Covid-19 crisis in March 2020, and our own experience is that principal trading firms continued to operate as liquidity providers throughout that volatile period. FIA EPTA members provide liquidity to markets when it is prudent to do so notwithstanding the presence of incentives or RTS 8 mandated market making agreements.

	To the extent that the wider market and Competent Authorities find the RTS 8 market making agreements useful in identifying and monitoring liquidity providers, and on the basis that this information is not already available from other liquidity provision agreements, FIA EPTA believes that trading venues are best placed to set, monitor and manage the RTS 8 market making process. FIA EPTA believes that trading venues are best placed to assess the market making needs of their own markets so we do not support the proposal to broaden the obligation of market making schemes to all instruments and types of trading systems, nor do we support the proposal to require the establishment of monetary incentives for illiquid instruments and SME growth market segments. ESMA notes that trading venues judged the impact of incentives (schemes) to be very limited in March 2020. Trading venues have a natural incentive to attract liquidity, but forcing them to provide schemes and related incentives where they do not judge it prudent to do so might increase risk or lead to less liquid instruments being delisted. In this context, FIA EPTA supports the proposal to limit the application of the scope of Articles 1 and 2 to continuous trading order books as a useful clarification.
Q43: 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?	We note that the the RTS 8 market making regime currently leaves a certain degree of discretion to trading venues to define the content of the market making agreements (e.g., what constitutes a "competitive price") or of their market making scheme. Regarding the latter, the relevant provision in Level 1 refers to schemes ensuring "sufficient number of investment firm" participation in such agreements (Article 48(2)(b) of MiFID II) and calls for taking into account "the nature and scale of trading" when establishing those schemes of incentives (Article 48(12)(f) of MiFID II). Similarly, the provisions in RTS 8 are not too prescriptive, leaving leeway to trading venues to design their incentives or qualify volatility episodes as "stressed market conditions". While discretion is beneficial to allow trading venues to adapt the rules to the nature and scale of their activity, it also limits the convergent application of the rules and, to a certain extent, their effectiveness. ESMA in this context wonders whether certain concepts and provisions should be further clarified and in particular those mentioned in the preceding paragraph. FIA EPTA believes that comparable quote size restrictions in RTS 8 market making agreements may unduly reduce liquidity provision and would request ESMA to remove this restriction. Whilst the threshold requirement for comparable quote sizes can be used to identify participants in scope of RTS 8 market making agreements, the current

	requirement for a registered market maker to maintain two-way quotes of comparable size is being interpreted differently by trading venues across the EU and in some cases prohibits or penalises market makers who are providing more liquidity on one side of the market while still maintaining a two-sided quote above the minimum size obligation. Such quote size imbalances are a normal part of market making activity and reflect market makers responding to supply and demand as well as managing their own inventory and market risk; we do not believe it is in the spirit of the legislation to prevent such liquidity provision. At least one trading venue has removed the ongoing comparable quote size requirements once both sides are above a specific size, and that approach is working well so a wider adoption of this approach would be welcome. FIA EPTA recognizes the benefits of allowing trading venues to adapt the application of RTS 8 market making agreements and schemes to the nature and scale of their activity and markets. We also find that divergent practices across trading venues can make the current registration and monitoring obligations on market makers unduly complex. We note that the practical implementation of the market making registration requirements by trading venues is varied. Certain venues have introduced significantly complex administrative procedures for registering and de-registering as a market maker and there are also cases with wide variations in approach across trading venues within the same exchange group. FIA EPTA believes that trading venues are best placed to set, monitor and manage the RTS 8 market making agreement process. The responsibility for monitoring if a participant has met a threshold, or ceased to meet a threshold, and then registering or de-registering the participant, should rest with the trading venues. This monitoring process should be automated, with member firms able to query their own registration status and history in real time. As mentioned in our response to Question 42, FIA EPTA believes trading venues are best placed to assess the market making requirements of their own markets and so it does not support any reduction in the discretion left to trading venues in defining the content of market making agreements or schemes. FIA EPTA further believes that trading venues are best placed to define their own “stressed market conditions” insofar as the definitions should be based on clear and transparent objective statistical methodology. FIA EPTA members found that in the March 2020 periods of volatility it was difficult to anticipate if a specific trading venue would call its market stressed, and this uncertainty may have resulted in reduced liquidity provision in some instances.
Q44: What are market participants views regarding the flexibility left in the MiFID II market making regime?	FIA EPTA considers it to be key that access to market making schemes should be open, transparent, and non-discriminatory. However, we have observed issues with trading venues restricting access to market making schemes

Would you agree with ESMA further clarifying certain relevant concepts? If yes, which ones?	and not making details of these schemes or the corresponding incentives or requirements readily available to all interested market participants. We note further that certain trading venues have tended to favour incumbent firms and prevent access to a market making scheme unless an existing participant ceases to participate in it. We believe that such behaviour restricts competition in EU capital markets and is not in the interest of end-investors, who are disadvantaged if additional and/or more efficient firms are precluded from participating in relevant market making schemes. We believe such practices conflict with the requirements for fair and non-discriminatory market making schemes laid down in Article 7 of RTS 8. Also relevant in this context are the requirements for non-discriminatory fee structures as laid down in Article 48(9) MiFID II and further specified in RTS 10, which notes in its Recital 5 that "[t]rading venues should … use objective criteria when determining rebates, incentives and disincentives", which should encompass any incentives provided for in market making schemes. We would welcome additional supervisory attention to ensure that trading venues' market making schemes and associated incentives are made available to firms based on their performance against each scheme's objective criteria and that access should be transparent and non-discriminatory, and should not be restricted, therefore, based on historical factors or prior participation. FIA EPTA does not recognise ESMA's distinction between "high speed market makers" and "liquidity providers that operate on the basis of an established inventory and maintain overnight positions". Nonetheless we support trading venues having the flexibility to design and innovate market making agreements and incentive programs suitable for their markets, and recognise, as trading venues do, that there are broader concepts than just market making, different types of programs such as liquidity provision or non-passive market making also have a role to play in improving markets.
Q45: 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?	FIA EPTA observes that there remain serious market structure deficiencies in the non-equity market in Europe. Not least of which is that many of these markets still operate on a closed basis with for example investment firms who are not Primary Dealers unable to participate directly, preventing them from competition and increasing liquidity and transparency. The root cause of these problems relates to persistent shortcomings in the pre- and post-trade transparency regime as well as restrictions applied at trading venues, or indirectly by Treasury Debt Management Offices rather than issues with market making agreements or conflicting contracts.

	We do explicitly not support a potential exemption of Primary Dealers from Article 1 of RTS 8 as the reasons given for the exemption do not just apply to Primary Dealers, they also apply to FIA EPTA members: that RTS 8 obligations can duplicate requirements of voluntarily signed liquidity provision agreements, that the distinctions between the various obligations can be confusing and that the comparable size requirement imposes an unnecessary restriction. As mentioned in our answer to question 43 we do support the removal of the comparable quote size requirement from RTS 8 market making agreements as in some cases it prohibits or penalises market makers who are providing more liquidity on one side of the market while still maintaining a two-sided quote above the minimum size obligation. Such quote size imbalances are a normal part of market making activity and reflect market makers responding to supply and demand as well as managing their own inventory and market risk; we do not believe it is in the spirit of the legislation to prevent such liquidity provision.
Q46: 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?	As with trading venue rule proposals generally, FIA EPTA considers it to be critical that trading venues provide sufficient transparency prior to implementing a speedbump. This should include making available as part of the rule filing: 1. The reason for the proposal; 2. Comprehensive details regarding the proposed operation of the speedbump (e.g., the types of orders/market participants that will be subject to the speedbump, the length of the speedbump (including why that specific length was chosen), and the affected instruments); 3. An analysis setting forth how the proposal is consistent with relevant regulatory requirements (including MiFID II); and 4. Objective metrics established in advance that will be used to evaluate the impact of the speedbump in light of the identified rationale for the proposal (e.g., traded volume, average spreads, and average quoted size). Furthermore, if the proposal is designated as a pilot program to collect data regarding the actual impact of the speedbump, it is critical that robust control and test groups are established (isolated from other market structure changes that could impact the observed results) and the length of the pilot is clearly specified such that results are evaluated at the conclusion of the pilot without automatically extending or expanding its scope. Unfortunately, trading venues are not currently required to provide participants with a sufficient level of transparency regarding new rule proposals. Therefore, we recommend that ESMA and NCAs consider recommending that a

	more harmonised procedure with respect to the consideration and approval of exchange rule filings be adopted across the EU. This approach should: (i) ensure all rule filings are made available to members and participants, (ii) require rule filings to contain basic information regarding the proposal and its consistency with relevant regulatory requirements, and (iii) provide members and participants with an opportunity to submit feedback prior to the rule filling being approved. This would create a much more transparent process for both market participants and regulators, allowing important market structure changes to be scrutinised prior to implementation.
Q47: 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.	FIA EPTA notes that separate mechanisms designed to allow liquidity providers to only trade against retail order flow could fragment trading and have the potential to be detrimental to market quality. It is our belief that the handling of retail order flow should happen in a fair and transparent manner where all exchange members can choose to compete to allow for efficient pricing. FIA EPTA would in particular highlight situations where retail order flow is segregated in a captive manner and is not able to intact with other liquidity in a competitive environment. As a trend this is perhaps becoming more pronounced with an increase in the general level of retail participation in EU financial markets combined with the advent of low-cost (or purportedly "free") retail brokers within the EU, and is an area that deserves regulatory scrutiny to ensure that MiFID investor protection standards are being met. In relation to structured products, for instance, some regional exchanges in Germany operate with a single market maker model where there is one market maker, who is typically the issuer of the affiliated warrants, to provide liquidity in the order book. These products tend to have a very high retail participation and depending on the venue infrastructure some have various last look and speed advantages for the issuer. Research undertaken by FIA EPTA[21] found that participants who traded warrants in such markets were worse off when compared to the equivalent listed products traded in a truly multilateral fashion. In this regard, we believe that the interests of retail participants are best served within the central limit order book where there is the ability for any member to compete and interact with this order flow in a non-discriminatory manner as it will lead to superior pricing for retail investors.

[21] https://www.fia.org/resources/higher-cost-higher-risk

	As with other types of trading venue rule proposals, participants should be provided sufficient transparency prior to venues implementing these types of mechanisms and we recommend that a more harmonised procedure with respect to the consideration and approval of exchange rule filings be adopted across the EU.
Q48: 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.	In FIA EPTA's view, market making requirements should be set at the discretion of each trading venue. To the extent a trading venue proposes to implement a speedbump, it should set forth in its rule filing whether it is also proposing to amend any market making requirements.
Q49: 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.	FIA EPTA agrees that the evaluation of a speedbump proposal must take into account the asset class for which it is proposed. We also agree that the EU equities market is not well-suited for speedbumps given its level of fragmentation (meaning that a speedbump on one venue could negatively impact fair and orderly trading and significantly discriminate against liquidity takers generally and liquidity providers on other venues). It is important to note that speedbumps may not solely impact the asset class in which they are implemented, but also related asset classes. For example, if a speedbump implemented in the EU equities market negatively impacts the ability of market makers to hedge, then liquidity provision in related asset classes such as ETFs may also be affected. However, irrespective of our views regarding the suitability of speedbumps for the EU equities market, we do not recommend that an express prohibition be added to Level 1. Instead, we recommend that ESMA and NCAs focus on ensuring that sufficient transparency is provided regarding trading venue rule proposals generally, including an analysis of the proposal's consistency with current regulatory requirements. We recommend that a more harmonised procedure with respect to the consideration and approval of exchange rule filings be adopted across the EU in this regard.
Q50: 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?	In FIA EPTA's view, new regulation is not required. We agree that several existing MiFID II provisions are relevant in the context of evaluating speedbump proposals, including requirements for venues to establish: (a) transparent and non-discretionary rules and procedures that provide for fair and orderly trading (MiFID II Articles 47(1)(d) and 18(1)); and (b) non-discriminatory rules governing access to the facility (MiFID II Articles 53(1) and 18(3)). We would welcome additional guidance from ESMA regarding the interpretation of such existing provisions in connection with speedbump proposals in order to increase consistency across the EU. In addition, we note that any such guidance should also consider other mechanisms implemented by trading venues can have similar effects in practice as speedbumps, and should be evaluated in a consistent manner. For example, mechanisms that prevent certain types of market participants from being able to fully interact on the venue or grant

	them more limited trading privileges than other members. As examples, such mechanisms include (1) certain venues where "retail flow" is only allowed to interact with a limited number of liquidity providers without competition, or (2) where certain venues only permit specific members to trade against resting orders. In general, denying firms full access to all available liquidity on a venue where material volumes are traded can negatively impact market efficiency, price discovery, and competition.
Q51: Is there any specific issue you would like to highlight about speedbumps?	N/a
Q52: 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.	FIA EPTA members agree that the existence of latency in a 'private first' model provides market makers with the opportunity to hedge their positions, and to manage and cancel quotes in correlated symbols, which are both risk management techniques. However, a vast majority of FIA EPTA members agree that private fill confirmation can also be used to infer (tradeable) information beyond that of the single passive order that traded. For instance, if the order is two ticks deep, a fill confirmation means the two best price levels traded. These members believe existence of this information negatively impacts investor perception because the information is made available to two individual counterparties (both the buyer and the seller) before the entire marketplace. This has caused many FIA EPTA members to bilaterally recommend to exchanges over the last year(s) to ensure public trade messages are published to the market before private fill confirmations. This is also the view shared by the vast majority FIA EPTA members to ensure investor confidence in EU markets. FIA EPTA believes it is trading venues' responsibility to ensure that all aspects of their operational and surveillance systems support their ability to operate a fair and orderly market that protects the level playing field among trading participants. We believe trading venues should also improve the governance and transparency around the architecture of their systems and any changes or upgrades that have a material impact on matching engine functionality and the market model. Such information should be provided in plain language that is accessible to all relevant stakeholders, not just exchange members or trade participants. Transparency is essential to investors' confidence that exchange trading environments are fair for all participants.

	FIA EPTA members agree with ESMA that the model used by trading venues should be deterministic (with the vast majority of our membership supporting the prioritization of public trade messages) so that the sequencing of feeds is clear, consistent and predictable with transparency provided by trading venues to all market participants.
Q53: 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.	No, FIA EPTA does not consider that information on the sequencing of these two feeds at trading venues is easily or readily available. In order to determine whether a trading venue is running a 'private first' model, our members have had to request detailed information from individual trading venues and in some cases it has taken a significant amount of time for those individual venues to provide statistics on the data feed timing differentials. FIA EPTA would welcome guidance from ESMA specifically requiring trading venues to make public the details of the sequencing design of these data feeds and historic statistics to demonstrate periodically this is occurring in practice. FIA EPTA would, also, like to point out that there are a small number of EU trading venues who do actively provide details on the model they use, however, these venues are exclusively those who have already migrated to a 'public first' model.
Q54: Do you think there should be any legislative amendments or policy measures in respect of these feed dynamics?	Yes, all but one FIA EPTA member recommend mandating the dissemination of trades in the public market data to precede private fills, in as close to all cases as technically possible. These members have the following additional observations and recommendations. As noted above, these members believe it is trading venues' responsibility to ensure that all aspects of their operational and surveillance systems support their ability to operate a fair and orderly market that protects the level playing field among members/trading participants. In this regard, we would suggest to ESMA the following principles-based amendments which in our view would provide a framework within which exchanges could further determine the detailed implementation of solutions to 'public first' data models. The vast majority of FIA EPTA members would recommend the following principle-based provision be introduced to Art. 48 MiFID II: ***Member States shall require regulated markets to ensure its market data services are transparent, fair and non-discriminatory. In particular, Member States shall require that regulated markets adhere to a***

	deterministic trade feed distribution model, whereby public trade messages are provided at the same time or ahead of private fill confirmations in accordance with a de minimis level of tolerance. We believe this principle is already supported by RTS 10 (CDR (EU)2017/573)), which provides, in its Art. 1, rules regarding fair and non-discriminatory co-location services, including requirements regarding providing access (emphasis added): "**under the same conditions**, including as regards space, power, cooling, cable length, **access to data**, market connectivity, technical support, and **messaging types**". (Art. 1(2)). These FIA EPTA members believe that, in order to address the uncertainty pertaining to this point on asymmetry, ESMA should clarify further in the recitals to RTS 10 that 'access to data' in this context includes the dissemination of trades in public market data to precede private fill confirmations. Within the above we acknowledge that de minimis violations of a 'public first' principle are inevitable given the given the current operational design of existing exchange infrastructures i.e. a small percentage of private fills will still be inadvertently provided before the public trade even in a 'public first' model. We also emphasise that the exact implementation of feed models should be at the discretion of venues, as they are in the best position to determine their technology architecture. Finally, we would like to clarify to ESMA that the appropriate point to evaluate if an exchange publishes market data first is in co-location at the point where the (equalized) market data and order entry wires physically terminate at the customer's rack. In case an exchange offers multiple types of order entry / market data connectivity in co-location, only the fastest type is relevant. A vast majority of FIA EPTA members believes that feed models should be evaluated on a continuous basis in terms of design, market impact and in line with the MiFID II amendments as we have set out above. Results from these periodic evaluations should be provided both to NCAs and members/ participants of the trading venues in order to ensure full transparency. In the interim, we would urge ESMA to provide Level 3 guidance clarifying these matters to the same effect.
