

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Discussion Paper on the Guidelines on specific notions under MiFID II related to the management body of market operators and data reporting services providers, published on the ESMA website.

Instructions

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

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_MIFID_GTH_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider.

Naming protocol

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

ESMA_MiFID_GTH_NAMEOFCOMPANY_NAMEOFDOCUMENT.

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

ESMA_MiFID_GTH_ESMA_REPLYFORM or

ESMA_MiFID_GTH_ESMA_ANNEX1

Deadline

Responses must reach us by **06 December 2016**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input/Consultations'.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Legal notice'.

Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_MIFID_GTH_0 >

1. General

The Federation of European Securities Exchanges (FESE) represents 35 exchanges in equities, bonds, derivatives and commodities through 20 Full Members from 29 countries, as well as 1 Affiliate Member and 1 Observer Member.

FESE is a keen defender of the Internal Market and many of its members have become multi-jurisdictional exchanges, providing market access across multiple investor communities. FESE represents public Regulated Markets. Regulated Markets provide both institutional and retail investors with transparent and neutral price-formation. Securities admitted to trading on our markets have to comply with stringent initial and ongoing disclosure requirements and accounting and auditing standards imposed by EU laws. At the end of 2015, FESE members had 9,201 companies listed on their markets, of which 6% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,299 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers.

FESE is registered in the European Union Transparency Register with number 71488206456-23.

2. Views on the trading halts

2.1. General

In light of the increased speed and of the technological advancements in financial markets, we believe that safeguard mechanisms are fundamental in preventing or limiting the occurrence of extraordinary volatility events or the so-called "flash crashes" in equity markets. Over the past years, and in many cases prior to MiFID I implementation, many European trading venues have successfully implemented safeguard mechanisms. Thanks to these measures, today venues contribute more effectively to ensuring financial stability and the protection of European investors.

2.2. Need for flexibility

Regarding the proposed guidelines, we agree with ESMA that a one-size-fits-all model for all trading halts would not be suitable. We share the approach that the proposed guidelines should be sufficiently broad to encompass all types of trading halts and avoid recommending specific and quantitative parameters. We explicitly welcome ESMA's intention not to propose an alignment between the trigger parameters of the different correlated instruments as Art. 48.5 MiFID II does not provide for such a coordination of parameters. In our view, regulated markets applying the provisions of Article 48.5 MiFID II through volatility interruptions fully comply with the underlying objectives of the Directive to improving price continuity and ensuring price quality. Moreover, Level 2 of the regulation (RTS 7, Article 19) confirmed that trading venues shall have the flexibility with regards to the mechanisms they implement. Level 3 regulation via the Guidelines would violate Level 2 regulation if it were to be more prescriptive. We consider that the current rules provide precise enough guiding principles while still allowing for different approaches in line with the different needs of trading venues. We therefore consider that there is no need to provide more specific coordination or to align the parameters of the different venues or to recommend specific parameters. Furthermore, we fully support the approach taken to not require trading venues to make public the parameters they apply for trading halts and mechanisms to constrain trading.

3. Concerns with certain guidelines

However, FESE has some concerns and we would like to highlight that we do not believe that the proposals sufficiently address the wording in the Level 1, Art 48 (5) which distinguishes between halting and constraining of trading. From the point of view of FESE members, the volatility interruption and other similar circuit breaker type mechanism that we have in place are distinct from the mechanism to halt trading which is usually a manually-invoked process for an undefined period of time. We believe that both mechanisms are valid and required for different circumstances and we propose to consider the distinction between different circuit breaker mechanisms as described by the World Federation of

Exchanges (WFE) in a recent study.¹ By treating volatility interruptions and trading halts similarly, both concepts are jeopardised in a detrimental manner. We therefore urge ESMA to distinguish between the two in its guidance to ensure an appropriate and consistent application across all trading venues. We note that trading venues must be able to halt or constrain trading in case of significant price moves on related markets but are not obliged to do so. We welcome this decision but want to stress out the fact that trading venues shall not have to monitor trading activity on other venues, neither must have in place systems to halt or constrain trading in case of significant price moves on related markets (cf. paragraph 34).

Finally, trading venues avail of a number of mechanisms; and their discretion should not be limited by overly strict regulatory prescriptions when it comes to the functional design, application and interplay of these measures. These safety mechanisms and other safeguards operated by trading venues have proven their positive contribution to market stability during highly volatile and stressed market phases, for example in the aftermath of the UK Brexit vote. Trading venues as well as national competent authorities are granted discretion when it comes to the design and functionality of mechanisms to protect the price discovery process and to avoid significant disruptions to the orderliness of trading. Thus, the diversity of safety measures is a clearly intended policy decision by European legislators.

< ESMA_COMMENT_MIFID_GTH_0 >

¹ World Federation of Exchanges, Circuit Breakers – A survey among International Trading Venues, 2016 (study conducted in collaboration with the e-Finance Lab, Goethe University Frankfurt) available at <https://www.world-exchanges.org/home/index.php/files/18/Studies%20-%20Reports/356/WFE%20Survey%20on%20Circuit%20Breakers.pdf>

Q1. Would you consider these factors discussed above to be useful? Could you identify any additional element to be factored in?

<ESMA_QUESTION_MIFID_GTH_1>

FESE supports ESMA's approach to leverage the existing mechanisms that are in place and operating successfully. However, we recommend that as well as calibration of the parameters of trading halts, market operators should be able to maintain adaptability in regards to trading halts for certain instruments and certain trading modes where such measures would prove being unjustified or even detrimental to the efficient market functioning. For this reason, it is important to guarantee the following points:

- **Discretion:** market operators need to have the necessary degrees of freedom to decide if and how to apply mechanisms to manage volatility.
- **Different markets:** there are certain market models and trading phases where volatility interruptions are not meaningful, for example opening auctions and markets where specialists provide quotes and the order book is therefore safeguarded by expert intervention.
- **Liquidity:** market operators have established business practices to effectively prevent erratic price changes; "flash crashes" are addressed by applying volatility interruptions on the most liquid financial instruments only. The parametrization and application of volatility interruptions on illiquid or non-linear (e.g. options) products neither provide benefit to nor address these instruments correctly. As price continuity and price ranges are highly dependent on time of trading activity, volatility interruptions are best applied to instruments that have this interplay of characteristics, which illiquid instruments are lacking.

FESE would welcome some additional guidance within a number of the factors already proposed:

- **Volatility Profile:** We believe it would be helpful for ESMA to also clarify that the list provided in the second paragraph should not be considered to be exhaustive and that a trading venue should be able to take into account other factors which it considers to be relevant. Also, when calibrating the volatility parameter, FESE members agree to take into consideration the number of times the mechanism was used in the previous years, but only on their respective platforms, not in the platforms of other trading venues.
- **External References:** Our assumption is that trading venues are expected to consider external references only where that information is freely and publicly available such as on the public pages of a trading venues website. We would welcome ESMA clarifying this in the final Guidelines. We would like to highlight our concern with ESMA's view in paragraph 34 i that a corollary of the requirement in Art 48(5) would be an obligation on Trading Venues to monitor activity on other markets. We believe that this would go far beyond the Level 1 text and therefore welcome the fact that this view has not been included in the draft Guidelines.

We are extremely concerned with the following points:

- **Lack of distinction between halts and volatility interruption mechanisms:** while a halt is usually manually triggered and for an undefined period of time, a mechanism to constrain trading is usually triggered automatically by significant price movements and has a very short duration of usually only a few minutes. The underlying cause of these events can vary significantly from market wide political events such as Brexit, to instrument specific events due to company announcements, to even more granular specific price events occurring on a single venue. These venue and instrument specific events could be due to the specific liquidity & depth on that market; the type of members' activity, or even due to a fat finger error, particularly in illiquid instruments. In such cases, the volatility mechanism is triggered to enable the market to react, which includes enabling the member that submitted the triggering order to delete it. A suspension of trading in that instrument by other NCAs, potentially across all EU trading

venues, would be extremely detrimental to investors completely cutting off their access to the security, and in all likelihood creating additional artificial volatility in that stock. If the stock were also available for trading on a non-EU venue, it would result in non-EU venues being favoured by investors. In practical terms and again given the short timeframe of most volatility mechanisms, the suspension would in fact only be invoked once continuous trading had resumed on the relevant market. We therefore are concerned with ESMA's consideration that such situations would trigger an EU wide regulatory suspension in that security. If ESMA intends to provide guidance to the NCAs on how to deal with such situation, then we believe this requires a full consultation and also a far more granular approach which addresses a variety of possible scenarios with suggested action tailored for each. We therefore request that this suggestion or expectation that a regulatory suspension be invoked from a volatility mechanism be removed from the final Guidelines to be published by ESMA.

- **Order imbalances:** the observation of order imbalances should be taken out of the list of relevant factors. Indeed, if there is a structural overhang in either direction, it is likely the case that market expectations / valuations change for a fundamental reason and trading should not be constrained in order to allow for efficient processing of information. Where a situation of an unbalanced order book contributes to excess volatility and disorderly trading conditions, the imbalance must stem from uninformed or erroneous trading activity. If at all, this can only be distinguished in hindsight and therefore order imbalances are not a suitable factor for preventive means to manage volatility

Based on this premise, we largely share ESMA's view and consider most of the factors that ESMA proposes to take into account for the parameterization as meaningful. Those factors are already appropriately reflected in the calibration of the trigger parameters for the safety mechanisms of FESE members. We would nevertheless advise not to include all parameters in future regulations, as some of them might be misleading or highly correlated and therefore redundant.

Overall, we recommend that for clarity reasons, in the final legal guidelines, all factors should be generally mentioned whereas specific examples as formulated in the proposed guidelines by ESMA should be left aside, as some are misleading or have limited applicability for certain instrument types.

<ESMA_QUESTION_MIFID_GTH_1>

Q2. Do you consider that the Guidelines regarding calibration of volatility parameters should also apply to mechanisms to reject erroneous orders (i.e. order price / volume collars) and that ESMA should propose Guidelines on this issue at its own initiative?

<ESMA_QUESTION_MIFID_GTH_2>

No, FESE does not believe that ESMA should propose Guidelines on its own initiative given the information is already covered by RTS 7.

In particular, we strongly recommend that ESMA does not propose additional guidelines on the calibration of other pre-trade checks. ESMA should not avail of the legal mandate to develop such additional guidelines for the calibration of pre-trade checks, and we would also like to emphasize that according to Art. 48.13 MiFID II, ESMA's mandate to develop guidelines on the appropriate calibration applies to trading halts only and therefore does not cover volatility interruptions. Neither the Directive itself nor the implementing measures on Level 2 do assign the task to ESMA to develop respective measures for mechanisms to constrain trading. Following our argumentation in the introductory comments regarding the distinction between measures to halt trading and to constrain trading, trigger parameters for volatility interruptions should not fall into the scope of ESMA's mandate. In addition, only for trading halts, trading venues are obliged to report the parameters of calibration to the National Competent Authority (and to ESMA in a subsequent step).

The Directive clearly distinguishes between mechanisms where ESMA is given an active task to calibrate parameters, e.g. trading halts, and those mechanisms where legislators deliberately decided to abstain from doing so. For trading venues that apply a range of safeguarding mechanisms to ensure

orderly exchange trading, efficient price discovery and prevention of excess volatility (volatility interruptions, pre-trade price checks, trading suspensions, maximum quote spreads, market order matching range etc.), it is crucial to have the necessary degrees of freedom regarding the application and parameterization of these mechanisms in order to ensure a meaningful and effective interplay.

<ESMA_QUESTION_MIFID_GTH_2>

Q3. Is there any other aspect which should be considered in these Guidelines so as to prevent market-wide volatility events given the current structure of European markets?

<ESMA_QUESTION_MIFID_GTH_3>

FESE does not see a need for additional regulations on mechanisms to prevent excess volatility. We would also like to take the opportunity to highlight that the market structure in Europe already differentiates it from the US and by its nature makes market-wide volatility events less susceptible to the same flash crash events that occurred in the US. As an example, the extreme volatility seen on the morning of 24th June, but which varied to a certain degree across markets and across instruments, was managed successfully with each venue applying its own volatility mechanism without any market-wide issue occurring.

<ESMA_QUESTION_MIFID_GTH_3>

Q4. Do you consider that the proposed order and trade feed reporting standard for trading status will contribute to facilitate a correct identification of trading halts across Europe? Do you foresee any drawback on it?

<ESMA_QUESTION_MIFID_GTH_4>

FESE thinks this unified data (trading halts communication) is already available via vendors and we consider it does not provide further information or add any value to market participants. In particular, we do not believe that the proposal will facilitate a correct identification of trading halts across Europe for the following reasons:

- Firstly, it does not take into account the distinction between halting and constraining trading (ref Art 48), and
- Secondly, it does not take into account the differences in the underlying mechanisms across venues, through which market participants are already aware of how to identify such situations.

For these reasons, we believe that the proposal will actually cause confusion as it will not enable venues to communicate such events specifically or with sufficient granularity where required.

<ESMA_QUESTION_MIFID_GTH_4>

Q5. Would you prefer a further degree of granularity in the information provided as described in the text under paragraphs 46 and 47? Please elaborate in case you consider necessary further granularity but you disagree with the proposed approach.

<ESMA_QUESTION_MIFID_GTH_5>

We do not support the proposed approach and we believe that no further granularity is needed. We understand that a certain level of granularity is useful, but the provided information should be relevant for market participants. We agree that the distinction between volatility interruptions occurring during continuous trading and auctions is informative, as well as the switch from volatility interruption to extended volatility interruption. However, we do not see the purpose of counting how often the trading halt has been extended, since the trading status of the instrument is factually unchanged in case of an extension.

<ESMA_QUESTION_MIFID_GTH_5>

Q6. Is the code proposed above (i.e. “VH”) appropriate, or should another code be used? Please elaborate in case you consider that another code should be used.

<ESMA_QUESTION_MIFID_GTH_6>

FESE considers that mandating a single pan-European approach to detailed technical requirements will only disrupt current work on MIFID II preparation. Critically, some Exchanges already have in place technical requirements which go beyond the ESMA proposals and should not find themselves in a position of being required to remove them to revert to the ESMA baseline proposals – even more so when those technical requirements have already been subject to local regulatory approval.

We would like to make ESMA aware of the fact that some of FESE members use the industry standard FIX protocol to communicate market data (including the current trading states of the financial instruments tradable on the respective markets) in our systems and to trading participants. For example, in case of a volatility interruption, a FIX message in a numerical format (namely “208” in this case) is disseminated and it is only translated on the recipient’s side. We recommend to carefully weigh up the costs and benefits of a potential amendment of an established industry standard.

<ESMA_QUESTION_MIFID_GTH_6>

Q7. Do you agree with the reporting template proposed?

<ESMA_QUESTION_MIFID_GTH_7>

FESE reiterates that mandating a single pan-European approach to detailed technical requirements will only disrupt current work on MIFID II preparation. Critically, some Exchanges already have in place technical requirements which go beyond the ESMA proposals and should not find themselves in a position of being required to remove them to revert to the ESMA baseline proposals – even more so when those technical requirements have already been subject to local regulatory approval.

In order to take account of the various mechanisms and thresholds set, FESE requests that ESMA adjusts the template to enable the thresholds to be reported in absolute terms (e.g. euro cents) in addition to percentage terms. Otherwise, FESE requests that ESMA stipulates how an absolute threshold should be converted to a % threshold. For example, if the threshold is set at 2 cents, how should this be converted to a % number.

We also welcome the proposed approach of ESMA for updates to be provided annually unless a material change is introduced.

ESMA proposes that the annual report shall contain all parameters used on January 1 of the respective year. We suggest to refer to the first trading day of the year instead, which is usually not January 1.

<ESMA_QUESTION_MIFID_GTH_7>

Q8. Are there any other items that should be included in the template?

<ESMA_QUESTION_MIFID_GTH_8>

FESE reiterates that mandating a single pan-European approach to detailed technical requirements will only disrupt current work on MIFID II preparation. Critically, some Exchanges already have in place technical requirements which go beyond the ESMA proposals and should not find themselves in a position of being required to remove them to revert to the ESMA baseline proposals – even more so when those technical requirements have already been subject to local regulatory approval.

<ESMA_QUESTION_MIFID_GTH_8>

Q9. Please provide any views with respect to the costs and benefits identified in the relevant annex.

<ESMA_QUESTION_MIFID_GTH_9>

FESE thinks that market wide coordination among different markets would imply high costs, as it would be needed to increase human resources to make the research, new market data licenses and this would bring a lack of benefits or they would be very limited.

FESE agrees that the additional costs to trading venues should be minimal provided that the trading venues are expected to source external reference information for the purpose of its parameter calibration where that information is freely and publicly available i.e. trading venues must not be expected to subscribe to the datafeed of each venue where a security is or may be multi-listed or a related instrument e.g. a future is listed.

<ESMA_QUESTION_MIFID_GTH_9>