



European Securities and
Markets Authority

Automated Trading Guidelines

ESMA peer review among National Competent Authorities

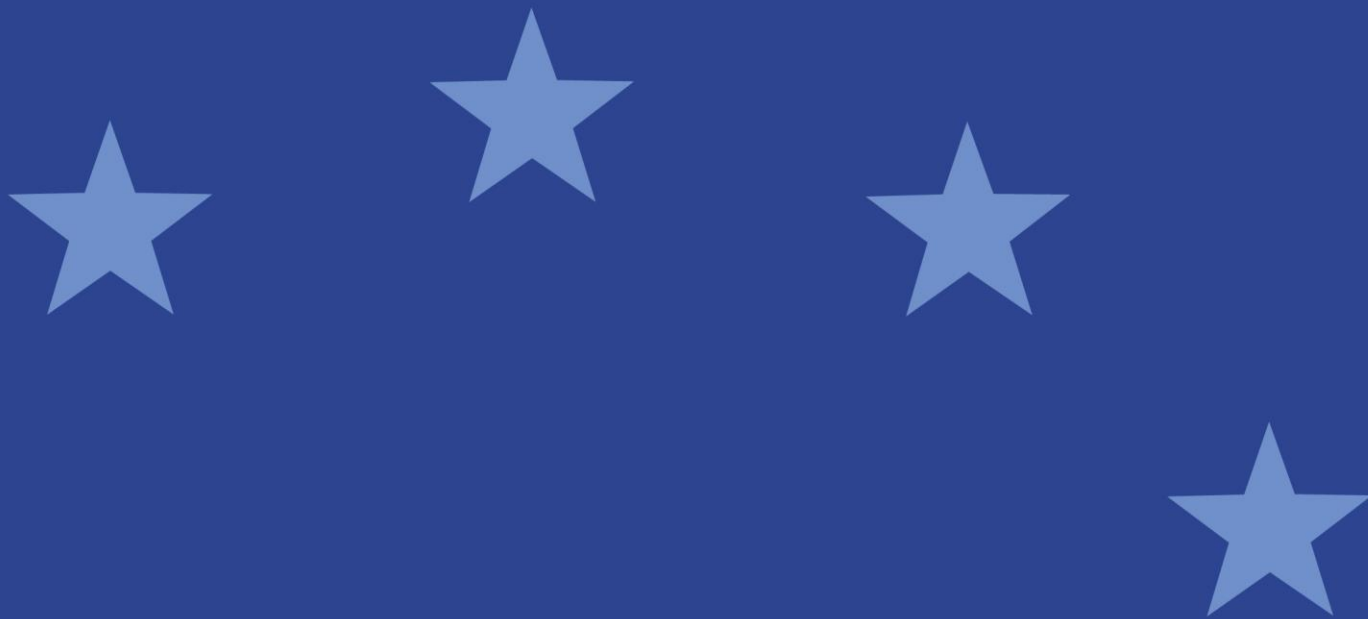


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Acronyms used

<i>Competent Authorities</i>	Competent authorities designated under Article 48 of MiFID
<i>Direct Market Access (DMA)</i>	An arrangement through which an investment firm that is a member/participant or user of a trading platform permits specified clients (including eligible counterparties) to transmit orders electronically to the investment firm's internal electronic trading systems for automatic onward transmission under the investment firm's trading ID to a specified trading platform.
<i>ESMA</i>	European Securities and Markets Authority
<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010, p.84.
<i>Financial Market Participants</i>	A person as defined in Article 4(1) of the ESMA Regulation: "...means any person in relation to whom a requirement in the legislation referred to in Article 1(2) [which includes MiFID and MAD and their respective implementing measures] or a national law implementing such legislation applies"
<i>Guidelines</i>	ESMA Guidelines on systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities (ESMA 2012/122).
<i>Market Abuse Directive (MAD)</i>	Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ L 96, 12.4.2003, p.16. Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EC and 93/6/EC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145, 30.4.2001, p.1
<i>MiFID</i>	
<i>MiFID II</i>	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2001/61/EU

<i>MiFIR</i>	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 Commission.
<i>MiFID Implementing Directive</i>	Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ L 241, 2.9.2006, p.26.
<i>Sponsored Access (SA)</i>	An arrangement through which an investment firm that is a member/participant or user of a trading platform permits specified clients (including eligible counterparties) to transmit orders electronically and directly to a specified trading platform under the investment firm's trading ID without the orders being routed through the investment firm's internal electronic trading systems.
<i>Suspicious Transaction Report (STR)</i>	Reports to competent authorities required under Article 6(9) of MAD where a person professionally arranging transactions reasonably suspects that a transaction might constitute insider dealing or market manipulation.
<i>Trading Algorithm</i>	Computer software operating on the basis of key parameters set by an investment firm or a client of an investment firm that generates orders to be submitted to trading platforms automatically in response to market information.
<i>Trading Platform</i>	A regulated market (RM) or multilateral trading facility (MTF).

Country codes and acronyms of Competent Authorities

AT	Austria	Finanzmarktaufsicht	FMA
BE	Belgium	Financial Services and Markets Authority	FSMA
BG	Bulgaria	Financial Supervision Commission	FSC
CY	Cyprus	Cyprus Securities and Exchanges Commission	CySEC
CZ	Czech Republic	Czech National Bank	CNB
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht Hessisches Ministerium für Wirtschaft, Energie, Verkehr und Landesentwicklung	BaFIN Hessen
DK	Denmark	Finanstilsynet	Finanstilsynet
EE	Estonia	Estonian Financial Supervision Authority	EFSA
EL	Greece	Capital Market Commission	HCMC
ES		Comisión Nacional del Mercado de Valores (CNMV)	CNMV
FI	Finland	Finanssivalvonta	FIN-FSA
FR	France	Autorité des Marchés Financiers (AMF)	AMF
HU	Hungary	Magyar Nemzeti Bank	MNB
IE	Ireland	Central Bank of Ireland	CBol
IS	Iceland	Financial Supervisory Authority	FME
IT	Italy	Commissione Nazionale per le Società e la Borsa	Consob
LI	Liechtenstein	Finanzmarktaufsicht Liechtenstein	FMA
LT	Lithuania	Lietuvos Bankas	LB
LU		Commission de Surveillance du Secteur Financier (CSSF)	CSSF
LV	Latvia	Financial and Capital Markets Commission	FCMC
MT	Malta	Malta Financial Services Authority (MFSA)	MFSA
NL	Netherlands	Autoriteit Financiële Markten	AFM
NO	Norway	Finanstilsynet	Finanstilsynet
PL	Poland	Komisja Nadzoru Finansowego (KNF) / Polish Financial Supervision Authority (PFSA)	KNF
PT	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM

RO	Romania	Financial Supervision Authority	FSA
SE	Sweden	Finansinspektionen	Finans- inspektionen
SI	Slovenia	Securities Market Agency	SMA
SK	Slovakia	National Bank of Slovakia	NBS
UK	United Kingdom	Financial Conduct Authority	FCA

1. Executive Summary

Trading Platforms (TPs), which have automated trading members, have been the focus of increased attention in recent years. ESMA therefore decided in 2013 to conduct a peer review on the Guidelines on systems and controls in an automated trading environment for trading platforms, ESMA 2012/122 (the Guidelines). This Executive Summary presents the main findings of the review and focuses (where not otherwise stated) on the twelve Competent Authorities (CAs) whose TPs experience the most significant automated trading volumes.

Preliminarily, it is observed that all 30 participating EEA CAs have incorporated the Guidelines in their legal framework and all except three in their supervisory framework. The assessment team considers that in preparation for market developments and implementation of the MiFID2/MiFIR regime, those CAs that have not already done so should consider incorporating the Guidelines in their supervisory framework (see annex 1e).

The overall conclusion reached by the assessment team in relation to the four Guidelines under review is that the CAs from BE, DE, DK, ES, FR, FI, IE, IT, NL, PT, SE, UK have achieved a good level of supervisory convergence in accordance with the proportionality approach applied to this review. A few recommendations however are made to four CAs so they might further improve their level of convergence in the application of supervisory practices regarding the Guidelines on market integrity supervision under Guideline 3 and suspicious transactions reported by TPs or enhancements to CAs' own detection systems under Guideline 5.

The legal instruments used by each CA for incorporation of the Guidelines vary from the use of binding legal instruments to the inclusion of such rules in the CAs' official hand/rule book (see annex 1c). CAs that have not used legally binding instruments have stated that they can enforce the Guidelines because of the legal anchors that are MIFID and MAD.

The assessment team noted that the terms "on-site visits" and "on-site inspections" were used interchangeably by individual CAs. As there are no commonly agreed definitions of these actions, the assessment team considers that for the purpose of this report:

- "on-site visits" include a visit to the TP's premises, where operating procedures, plans or similar are discussed and challenged by the CA. An on-site visit can also include the presentation by a TP of its alert system.
- "on-site inspections" may be compared to an auditor's audit of an inventory in a company, where it is not sufficient to look at the inventory list in the company registers, rather it is expected that sample tests are taken to verify if the inventory list is complete. On-site inspections in relation to a TP include a check as to whether the TP systems and procedures work in practice by for example following live cases,

reviewing a sufficient number of incident records or testing alerts as well as the actual functioning and handling of those incidents and alerts by the TP's staff.

Good Practices

This peer review has found the following good practices used by CAs which form a sound source of inspiration for other CAs taking into account the importance of automated trading in their markets.

The following **governance** related good practices were observed:

- Establishing TPs' boards' awareness of IT and Business Continuity Programmes (BCP) testing and how escalation and reporting lines work in practice;
- Participating as observers during BCP testing conducted by TPs under their jurisdiction and testing that the TP's backup site is fully operational;
- Inclusion of a specific section of the Guidelines in the compliance report to be delivered to the CA as part of the TP's annual audit report;
- Conducting an in-depth review of TPs' members following a desk based review of both regulated and non-regulated TP members, with particular emphasis on due diligence and controls.

The following **IT-related** good practices were observed:

- Requesting TPs under their jurisdiction to follow international IT-standards, including e.g. governance and security standards that are either audited by a third party and/or challenged by the CAs themselves;
- Having specific staff employed either as part of the infrastructure supervision or as experts with IT-knowledge and experience in order to be able to challenge TPs' procedures and systems;
- Participating in domestic programs on cybersecurity which include the main TPs under their jurisdiction;
- Exercising supervisory pressure on TPs to have board members with up-to-date IT-expertise. This may also serve to keep the TPs' boards informed about new IT-developments that could impact the TP;
- Establishing incident databases to cross-reference information which allows a holistic view on incidents thereby revealing their significance.

The following good practices were observed regarding **fair and orderly trading, prevention of market abuse and DMA/SA**:

- Inviting TPs to carry out on-site inspections on how non-regulated members operate and on their controls;
- Challenging the calibration of the trading halts set up by the TPs in their jurisdictions;
- Issuing guidance to TPs regarding DMA/SA oversight arrangements and requiring TPs to implement a member oversight programme and conduct real time surveillance of their DMA/SA members' activity;
- Conducting a holistic review of DMA/SA arrangements including both TPs and Investment firms to establish the TPs' implementation of the Guidelines.

Main Challenges

All the participating CAs recognised that automated trading by its very nature represents significant challenges. The speed of technological developments, market fragmentation, increasing variety and numbers of financial instruments admitted to trading, increasing complexity, and the rise in data in conjunction with limited supervisory resources are areas which will determine the future focus for supervision. The growing cross-border aspect of trading also **requires a high level of cooperation among CAs**. In this regard the following challenges have been identified during the course of this review:

Market complexity

- Algorithmic trading, handling of large data bases in a fragmented market environment and IT-complexity in market infrastructures **require CAs supervising TPs to have ready access to IT-expertise** in those particular areas. This need for access to IT expertise is expected to increase due to the MIFID II requirements on HFT. Some CAs are mitigating this situation by using resources of their own IT-departments.

IT-knowledge

- **IT-knowledge is crucial for the boards of the TPs**. It is a challenge for some CAs to get the TPs to recognise the importance of appointing board members with appropriate IT-expertise. In addition, the assessment team recommends that **CAs should also consider IT expertise retained by TPs as part of their ongoing supervisory approach**.

Probing on-site inspections

- It is observed that most CAs have shown a high level of engagement with the TPs. The assessment team notes however that this situation may be a double-edged sword. On one hand, this could lead to the creation of a cooperative environment and close

collaboration between the CA and its TPs, which may ensure a high level of compliance with the applicable provisions. On the other hand, there is a risk of regulatory capture. Therefore, the assessment team encourages **CAs to use on-site inspections and/or other tools of direct supervision, to ensure that the TPs are sufficiently challenged.**

Resourcing

- Matching finite resources with the demands of an effective supervisory engagement model is also a challenge for CAs. A lack of resources within a CA could lead to fewer or less intensive on-site inspections not only on IT but also on testing how effectively TPs' systems work, in particular in the area of market abuse detection and for those systems that seek to ensure market integrity. In order to handle any such lack of resources, **CAs need to adopt a well-designed risk based analysis, of each of their TPs, in order to decide when on-site inspections should be conducted** (serious incidents, significant changes in IT or in trading systems). In less profitable market conditions, an additional challenge for CAs is to ensure TPs conduct on-site inspections themselves on how their members have established the controls provided in the Guidelines.

Testing of trading halts

- The assessment team notes that ESMA will issue guidelines on the calibration of trading halts according to Article 48 of MiFID II. Trading halts are powerful tools to reduce the impact of collapses caused by algorithmic trading. The interaction between algorithms, their development and the markets on which they trade however are constant challenges which compel CAs and TPs to remain vigilant. **CAs and TPs should not only rely on trading halts when addressing the risks connected to algorithmic trading but should also test trading algorithms against stressed trading environments as a minimum.** Additionally, the assessment team is of the opinion that ESMA could have a role as regards further technological developments in trading, either coordinating the knowledge gained by CAs through the relevant ESMA working parties or conducting more educational and functional training programmes for CAs.

Cyber crime

- Furthermore building on its on-site visits, the assessment team notes that **there are very few domestic programs for setting up a proper ring defence against cyber-attacks and also a lack of coordination with other CAs which supervise TPs that are using outsourced trading systems.** The Guidelines request TPs to establish adequate security systems. CAs the TPs or other financial institutions of which have suffered serious cyber-attacks are taking measures or participating in domestic programmes to improve cyber security which not only look at protecting data but also at procedures and communications. The assessment team considers that ESMA could have a role in coordinating this issue.

2. Introduction

1. Trading Platforms (TPs) which have automated trading members have been the focus of increased attention in recent years. In February 2012 ESMA approved the ESMA Guidelines on systems and controls in an automated trading environment for trading platforms, ESMA 2012/122¹ (the Guidelines) with the purpose of ensuring common, uniform and consistent application of the relevant provisions of MIFID and MAD as they apply to the systems and controls required for TPs and Investment Firms in an automated trading environment. The increasing reliance on automated trading has led the EU Parliament and Council to include some of the detailed guidelines in the new MIFID II, which will come into effect in January 2017.
2. On 4 July 2013, the ESMA Board of Supervisors mandated the Review Panel to conduct a peer review on the Guidelines. This peer review was to assess how the EEA Competent Authorities (CAs) had incorporated these Guidelines into their regulatory and supervisory framework. It also sought to establish how CAs ensure that TPs comply with these Guidelines and in doing so assess the level of supervisory convergence across CAs.
3. Due to the differing levels of significance of automated trading on TPs among EEA members states, the peer review was developed in three phases:
 - The first phase required all CAs to respond to a self-assessment questionnaire on how they have implemented these Guidelines in their legal and supervisory approach. Please see Section 1 in annex 3 of the self-assessment questionnaire. A high-level desk based review was then undertaken by a small group (the assessment team) composed of experts from the CAs and ESMA staff. The self-assessment questionnaire was launched on 15 December 2013 and the deadline for Members to provide the responses to the questionnaire including supporting evidence was 24 January 2014². Furthermore, CAs were asked to provide a number of clarifications and additional information supporting their responses during summer 2014.
 - The second phase focused on a group of 12 CAs which reported that automated trading was significant on the TPs they supervise. These CAs are from Belgium, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden, and the UK. These CAs subsequently completed section B of the questionnaire (Please see annex 3) indicating how they establish that TPs in their jurisdictions comply with detailed guidelines 1, 3, 5 and 7. A desk-based review of

¹ The Guidelines include four detailed guidelines (1, 3, 5 and 7) for Trading Platforms (TPs) and another four (2, 4, 6 and 8) for Investment Firms. In this regard, CAs have used articles 13, 14, 26, 30, 39 and 42 of MiFID, as further detailed under articles 5, 6, 7, 9, 13, 14, and 51 of the MIFID Implementing Directive, and article 6 of MAD, as implemented under articles 7 to 9 of the MAD Implementing Directive, as the basis to set up the supervisory framework for TPs and investment firms (IFs) that should be followed when dealing with automated trading.

² The types of evidence which may be provided include all information described in para. 61 of the peer review methodology (and not limited to the indicative list in the appendix to the methodology, see ESMA/2012/33).

each CAs' self-assessment was then conducted by the assessment team against a set of key issues which summarise the detailed guidelines and the proportionality criteria to be used.

- The third phase allowed for a more in-depth analysis, including on-site visits, of the supervisory practices and supervisory tools in place at six CAs (AFM, FMA, Hessen's CA, Finanstilsynet, Finansinspektionen and FCA). This also enabled the assessment team to look closer at potential difficulties encountered by CAs regarding the application of the Guidelines by TPs in their jurisdiction. This phase followed the new Review Panel methodology³, which states that peer reviews should be complemented by on-site visits as part of ESMA's efforts to promote higher supervisory convergence among CAs.
4. This review was carried out under the proportionality principle because of large differences in the volume of automated trading conducted across jurisdictions. Furthermore, the following information was taken into account: number of TPs under the supervision of each CA (see annex 1a) and an estimation of the trading volume channelled through automated trading systems in each CA (see annex 1b). Notwithstanding the above, it is likely that over time, automated trading will have a bigger impact across all TPs, including those where it is currently immaterial.
 5. All CAs represented in the ESMA Board of Supervisors contributed to this peer review, except Iceland due to legal constraints.
 6. The review period is from 1 June 2012 to 31 October 2013. The six on-site visits took place between 6 May and 26 June 2014.

³ http://www.esma.europa.eu/system/files/2013-1709-review_panel__methodology_publication.pdf

3. Peer Review Assessment

3.1. Conclusions

7. In light of the above-mentioned proportional approach to the review (using market size and trading volume), and according to the more granular analysis conducted on 12 CAs, to whom automated trading is relevant (BE, DE, DK, ES, FR, FI, IE, IT, NL, PT, SE, UK), the overall conclusions reached by the assessment team in relation to the four Guidelines (1, 3, 5 and 7) is that CAs have achieved a good level of supervisory convergence. The breakdown is the following:
 8. As regards **Guideline 1 on governance and IT**:
 - It is relevant to highlight that as Guideline 1 focuses on issues related to governance and IT, CAs' supervisory actions towards a TP's governance structure are not separated from the regular and on-going supervision of the TP systems and controls in other areas.
 - The overall conclusion of the assessment team is that with regard to establishing TP's compliance with Guideline 1, CAs check whether IT-issues where relevant are escalated to the TP's board of directors. In addition to the supervisory practices mentioned in the Executive Summary section, most of the CAs review TP's to establish whether the TP has clear and effective arrangements in relation to business continuity and testing of the system as well as new functionalities. It is also evident that all CAs receive incident reports either on a case by case basis or as part of an annual audit. Finally, it is clear that all CAs require the TP's under their supervision to have sufficient physical and electronic security measures. However, the assessment team is of the view that further work could be done by all CAs on assessing the threat posed by cyber-crime towards the TP's systems and controls.
 9. As regards **Guideline 3 on market integrity and non-regulated TP's members**:
 - An important tool employed by the majority of CAs to establish whether TP's apply the Guidelines is the approval and review of changes of the TP's rules. In this regard CAs assess whether all the requirements, including those detailed in Guideline 3, are included. However, it appears that on-going monitoring prompted by regular reporting by TP's, supervisory meetings and on-site inspections to check specifically whether TP's comply with Guideline 3 are carried out in a limited number of cases. It should be highlighted that most CAs use a risk-based approach in this regard. In relation to non-regulated members, CAs check whether the TP's trading rules include requirements for non-regulated members in accordance with the provisions of the Guidelines. In particular, most CAs check whether TP's require non-regulated members to fulfil the same membership requirements as regulated members and this is further verified in the course of their on-going supervision of the TP's. In addition, a

small number of CAs have also requested their TPs to conduct on-site inspections at their members on a regular basis following a risk based approach. With respect to IT-requirements, a limited number of CAs perform testing and directly check whether the systems put in place by the TPs are appropriate to ensure compliance, although most CAs stated that they require TPs to demonstrate this on an on-going basis. Real time monitoring by CAs is carried out on a limited basis.

- The overall conclusion of the assessment team is that with regard to ensuring TPs' compliance with Guideline 3, CAs have procedures in place and in general are able to request TPs to provide additional information and to go on-site to verify TP compliance in practice with the requirements under Guideline 3. The assessment team notes that some of these supervisory tools are not used regularly. A number of CAs rely on the information provided by TPs in self-assessments or at the time of approval/review of the TPs' rules, without performing additional checks to challenge and seek evidence of this information. Therefore, the assessment team considers that there is room for improvement in this regard.

10. As regards **Guideline 5 on market abuse**:

- Most of the CAs review TPs to establish whether staff in those TPs maintain and update the necessary skills for their roles. It is also evident that in many cases CAs challenge TPs to ensure that they have adequate surveillance systems. The majority of CAs have their own market monitoring systems which on a T+ basis can be used to support the CAs ability to supervise for market abuse and challenge TPs in this area.
- The overall conclusion of the assessment team is that although there are regular meetings with TPs to discuss STRs and market abuse in general, the assessment team considers that there is room for improving the application of some supervisory actions to allow the CAs to challenge and seek evidence of the quality of the STRs received from TPs.

11. As regards **Guideline 7 on Direct Market Access and Sponsored Access**:

- CAs conduct reviews of TPs' arrangements for providing and monitoring DMA/SA via desk-based reviews, while some CAs also conduct on-site interactions with TPs. It is also evident that most CAs review TPs' rule books to ensure they include the Guidelines' requirement. CAs also check TPs' compliance with the Guidelines via their authorisation processes. In addition some CAs have checked whether TPs have set up filters (pre and post trade) either at the level of the TP, the TPs' members or the TPs members' clients.
- The assessment team noted three different categories in the area of SA.
 - CAs whose TPs offer SA and have active SA participants,

- CAs whose TPs offer SA but do not have active SA participants,
- CAs whose TPs do not permit SA.
- Depending on the category of SA that is being offered, CAs are using different supervisory approaches. The conclusion on the two first categories is that the supervisory convergence is high. However, with regard to the second category the assessment team would highlight the importance for CAs to remain prepared should SA become activate in their markets.

3.2. Assessment on the level of supervisory convergence

12. As an overall finding the assessment team notes that every CA has taken measures to establish that TPs comply with the Guidelines. However it is difficult to make a distinction between the regular supervisory actions that CAs are carrying out on TPs, and specific supervision related to the Guidelines. Please note for those CAs for which the assessment team is making some recommendations, it does not imply that they have not complied with the Guidelines.

13. The overall conclusion of the assessment is that CAs are establishing whether their TPs comply with the Guidelines in an appropriate manner taking into account the relative importance of the automated trading in their jurisdictions. The assessment on the CAs regarding the convergence on supervisory practices when establishing that TPs are following the Guidelines has not found any major failures but some improvements are suggested in a few recommendations in relation to some CAs as detailed below.

14. Peer Review Assessment of Guideline 1 on governance and IT.

- The assessment team considers that all twelve CAs have achieved a good level of supervisory convergence under Guideline 1 and its outlined recommendations.

15. Peer Review Assessment of Guideline 3 on market integrity and non-regulated members of the TPs. The assessment team considers that:

- Nine CAs (BE, DE, ES FR, IE, IT, NL, PT and UK) have achieved a good level of supervisory convergence under Guideline 3 and its outlined recommendations;
- Three CAs (DK, FI and SE) could benefit from employing more tools for supervision of some aspects of this Guideline 3. The assessment team recommends that, these CAs should make more efforts to challenge TPs for instance by performing testing on IT-systems, and on-site inspections in order to establish in practice whether the TP is complying with this Guideline.

16. Peer Review Assessment of Guideline 5 on market abuse. The assessment team considers:

- Ten CAs (BE, DE, DK, IE, IT, FI, FR, NL, PT, and UK) have achieved a good level of supervisory convergence under Guideline 5 and its outlined recommendations;
- Two (ES and SE) could benefit from improvements in their level of supervisory convergence for two of the requirements of this Guideline, firstly regarding Arrangements for the Identification and Reporting of Suspicious Transactions and Orders, and secondly Reviews. It is recommended that one CA (ES) should challenge the lack of STRs sent to it from the TPs under its jurisdiction⁴. With regard to the other CA (SE), its market monitoring capabilities could be enhanced, for example by increasing the number of alerts within its monitoring system.

17. Peer Review Assessment of Guideline 7 on DMA and SA. The assessment team considers that all the twelve CAs have achieved a good level of supervisory convergence under Guideline 7 and its outlined recommendations.

3.3. Individual assessments from on-site visits

18. Six Competent Authorities were visited in the course of the work. For each of these authorities an individual report was drawn up. A summary of the findings in relation to each of these Competent Authorities is included as follows.

19. FMA (AT): The assessment team visited the FMA on 22 May 2014. The FMA supervises three TPs under the umbrella of the Vienna Stock Exchange (VSE). VSE uses a trading system provided by a third party TP supplier. The automated trading volume on VSE represents 20% of the total trading. Good practices noted include, the regular and frequent meetings between the CA and TP which shows the strict relationship between the CA and the TP, their supervisory intensity in some areas, and the mandatory annual audit report from the TP which includes a chapter on compliance with these Guidelines. Regarding the areas that the CA could improve, the following is suggested: 1) being ready to face these new supervisory responsibilities, e.g. by hiring additional staff or building up know-how; 2) conducting on-site inspections, on sample basis, to check, even physically, how TPs comply with some technical procedures regarding the Guidelines; 3) conclude the project to replace its current in-house surveillance system in order to challenge the monitoring activity carried out by the TP and improve the supervision on DMA; 4) increasing supervision with regard to how the TP conducts due diligence and on-going supervision on non-regulated members; and, 5) finally increasing the ring defence on cyber security which could include some agreement with the CA in charge of the supervision of the TP which is providing the trading system technology.

20. Hesse Competent Authority (DE): The Ministry of Economics, Energy, Transport and Regional Development of the State of Hesse is the Competent Authority (CA) for the

⁴ The Assessment Team is conscious that this review covered period between 1 June 2012 and 31 October 2013 and as such it is possible that CA's approach to the different aspects of this review and the information provided by CA's may have evolved since that date.

supervision of the Frankfurt Stock Exchange and Eurex Deutschland and their exchange EDP-systems. The assessment team visited the Competent Authority of the State of Hesse on the 6 June 2014. In general the assessment team concludes that the CA and the Trading Surveillance Office (TSO) each have experienced staff with different backgrounds and expertise. The (real time) monitoring by the TSO of any possible signs of disorderly trading, in particular at the level of a DMA ID, as well as regular members' requests about filters in place and DMA controls should be regarded as strengths. The CAs survey on the electronic filters and the CAs quarterly review of exchange applications documentation including non-regulated members' can also be considered as good practices. However, the CA may benefit from using on-site reviews on how the exchange is conducting supervision on members offering DMA and from more proactively checking the implementation by the member of appropriate risk management of its trading activities, provided the CA is legally entitled to do so. It is recommended that the CA and BaFIN should increase the frequency of their communication on the detection of suspicious transactions by the TSO. The assessment team also recommends that the CA challenges TP's reporting of IT-incidents periodically. The CA could thus benefit from a more proactive approach in the oversight of IT security, BCM testing and IT compatibility. Finally, it is also recommended that the CA could use its ability to work with other CAs, in the area of cyber security where the TP is providing trading system technology.

21. **AFM (NL):** The assessment team visited the AFM on 6 May 2014. The AFM supervises seven TPs in total comprising both cash and derivative markets. Of the seven TPs, four share the same platform technology with a further two also sharing platform technology. Both regulated markets and MTFs are subject to licensing and oversight, and operational requirements are substantially the same. The CA was visited in relation to its role as CA for Euronext in the Netherlands. The CA also plays an active role in the college of regulators supervising Euronext's cross border activities. The CA has instigated a number of good practices which feed into its evaluation of TP's compliance with the Guidelines. Such practices include the holding of round tables and other meetings with TPs to create awareness of the guidelines. For a number of its supervisory practices, the CA relies on a gap analysis performed by the TP in 2012. As this gap analysis is the baseline, the CA has advised a follow up assessment to the gap analysis, which has been initiated in May 2014. The assessment team also noted that while TP upgrades or amendments are subject to CA review, the CA has from a risk based perspective backed up by its knowledge of the TP's monitoring systems including work done in the college and on-site presentation of the TP's systems, decided not to perform specific on-site inspections focused on the TP's market monitoring or alerts systems.
22. **Finanstilsynet (NO):** The assessment team visited Finanstilsynet on 24 June 2014. Finanstilsynet supervises seven TPs in Norway among which the Oslo Stock Exchange (OSE) is the principal one. The automated trading volume on Norwegian TPs is estimated to be around 30% of the total trading volume. In general the assessment team concludes that the CA seems to be well resourced in terms of well qualified personnel with the right knowledge and expertise on matters such as IT, algorithms and source codes, which should

be regarded as strength. Also the CAs application of international standards as a benchmark at least in the area of governance of IT-aspects should be regarded as a good practice. The assessment team concluded that the CAs reviews of TPs seem to be biased towards desk-based reviews. Therefore the assessment team recommends that the CAs verification process be improved by increasing its on-site testing and evidencing of the TPs' application of the Guidelines. Also, in the view of the assessment team, the CA in some areas, such as market monitoring and real time supervision of the fair and orderly trading, seem to be highly reliant on information provided by TPs and does not seem to challenge TPs in these areas. It is recommended that the CA at least challenges TPs' reporting of incidents and suspicious transactions from time to time. Finally, the CA could benefit from taking a more pro-active supervisory approach in some areas such as market monitoring, DMA arrangements and the supervision of IT matters in order to verify compliance with the guidelines.

23. **Finansinspektionen (SE):** The assessment team visited the Swedish competent authority, Finansinspektionen (FI), on 23 June 2014. Finansinspektionen was selected due to the large volume of automated trading conducted on the Nasdaq-OMX exchange, for which it is the national CA. The assessment team found that the CA receives information on IT-related developments at the TP from a range of sources including regular supervisory meetings, incident reporting, ad hoc information from the TP, and information from market participants. The CA has conducted a useful desk-based assessment of TPs' DMA provisions which enables it to have a good overview of the current use of DMA in Sweden. The assessment team is of the view that other CAs may benefit from conducting similar reviews. The CA is also paying close attention to the issue of cyber-security, and includes new technology developments as a standing item for discussion during its regular meetings with TPs. The assessment team recommends that the CA should increase its communication with the national supervisor of the TP's parent company particularly for, but not limited to, cyber security matters. It is recommended that the CA conducts on-site inspections as part of its reviews of how TPs are conducting due diligence checks on their members who are not credit institutions or investment firms. The CA's market monitoring capabilities could also be enhanced, for example by increasing the number of alerts within its monitoring system.
24. **FCA (UK):** The assessment team visited the Financial Conduct Authority, (the FCA), on 26 June 2014. The FCA was selected in its capacity as supervisor of financial markets where automated trading is considered to be significant. The assessment team believes that the CA seems to be well resourced in terms of qualified personnel with the right knowledge and expertise. It is the view of the assessment team that the CA is proactively looking at the implications of cyber security and has implemented a number of initiatives in this area. Nevertheless, it is also recommended that the CA continues to use its ability to work with other CAs in the area of cyber security where a TP is providing trading system technology. The CA has presented what seems to be a thorough approach to the supervision of its TP's members on boarding processes and to TP's oversight of its members' (both regulated and non-regulated members) compliance with its rules. The assessment team got the impression that the CA relies (in the first instance) on desk based reviews of documents provided by the TP. The assessment team recommends that where the CA relies on documents provided by

the TP in reviewing policies and procedures of the TP, the CA could benefit from more on-site inspections to evidence and test those policies and procedures when and where necessary. The CA has its own automated market monitoring system. The CA's surveillance is focusing, amongst other things, on post-trade surveillance of transaction reports, whereas real time order book monitoring falls on the TPs. The CA can, and does on an ad-hoc basis, review historic order book information and in doing so it can merge multiple order books. The assessment team considers that the increased use of this tool could support the work that the CA is currently carrying out in this area. Finally, the CA would seem to have implemented good measures regarding the supervision of DMA and SA member access.

4. Background information for gauging proportionality criteria

25. As mentioned above, this peer review exercise included a set of questions addressed to all CAs with the aim of having a general picture of the importance of automated trading among CAs. The build-up of this overall picture of automated trading contributed to the assessment of the proportionality criteria which are crucial in this exercise.
26. The aim of this peer review was to gain an insight into the importance and levels of automated trading within jurisdictions. These two factors contributed to the assessment of the proportionality criteria, which is crucial in this exercise.
27. The first question on background information looks at the number of TPs which are under the supervision of CAs. Annex 1 provides a summary of the answers for each CA. In total, there are 194 different TPs (Regulated Markets and MTFs) in the EEA, however, this figure is higher if it is calculated taking into account the different segments inside a RM or MTFs⁵.
28. Besides DE and FI⁶, there are no other CAs who share the supervision of the TPs under their jurisdiction with other domestic bodies. There are however, a number of TPs or market operator groups who operate on a cross-border basis. The supervision of these market operators/TP groups is coordinated by way of cross jurisdictional colleges (Euronext, Nasdaq OMX). In addition, the following CAs coordinate their responsibility for supervising TPs either via a formal “Memorandum of Understanding” or a less formal “Protocol” arrangement:
- BE, FR, NL, PT, UK for Euronext group
 - DK, FI, IS, SE for Nasdaq OMX
 - UK, IT for LSE
29. The CAs that belong to those colleges coordinate the supervision of the market operator /TP group in a manner that does not dilute the individual CAs’ own responsibilities regarding the Guidelines (i.e. there is no leader for monitoring how the TP/market operator group is complying with the Guidelines).
30. Finally, the background information includes a question, the aim of which was to attempt to derive an approximate figure for the trading volumes that are channelled through automated trading systems in the EU. The responses to this question highlight to an extent the complexities and difficulties faced by the CAs’ in this area. For instance some TPs flag orders with a special ID (Identifier Code) dedicated to algorithmic orders. However, such flags in most cases only cover algorithmic trading carried out by direct trading members and

⁵ For this reason there are differences between the ESMA database on RM and MTFs and the figure presented in this report.

⁶ In DE Regional Governments have responsibilities for the supervision of TP in their jurisdictions. In the case of FI, Finanssivalvonta shares responsibilities with the Ministry of Finance.

do not cover all algorithmic trading done through Direct Market Access (“DMA”), or Sponsored Access (“SA”). Estimating the amount of High Frequency Trading (“HFT”) - proves equally challenging as at present there is no common definition of HFT. For these reasons, it is not possible to offer accurate figures. However, on the basis of the information received and ignoring the limitations of that data the estimates provided by respondents to this question range from 3.6 % to 60 % of volume.⁷

4.1. Conclusions regarding background information

31. As a first conclusion, it is observed that automated trading is monitored by most CAs. Based on the information provided by CAs in the course of this review, automated trading has reached significant levels as a percentage of total trading volume of TPs in several EEA Member States. In addition, some of the CAs that did not participate in the extended peer review did indicate that the use of automated trading in their jurisdiction is growing. In this instance further information was sought from these CAs (CZ, EL, HU and PL) and two on-site visits were undertaken (AT and NO due to the relevance of the Automated Trading in the TPs under their supervision).

4.2. Summary of the self-assessment on the whole group of EEA members on formal aspects

32. Having analysed the answers regarding how CAs have incorporated the Guidelines in their regulatory framework, and after checking the information provided, it is apparent that CAs have used different ways of incorporating the Guidelines into their regulatory framework. Several CAs have issued different legal instruments (binding instruments) such as Circulars (LU, PL), Instructions (CZ, LI), Guidelines (EE, NO). Three CAs have incorporated the Guidelines into their official hand/rule book (FI, FR – through a Position -, UK), or Executive order (RO). However in the main most CAs have incorporated the Guidelines into their regulatory framework through other instruments: circulars (BE, CY, EL⁸, LV), resolutions (IT)⁹, Policy Rule (NL)¹⁰, Recommendations (HU), Guidelines (FI¹¹, SK) or press release (AT, BG, DE - Hessen's CA -, DK, ES, LT, MT, PT, SI) or through a general statement combined with information (SE). In addition, 24 CAs have reinforced the implementation of the Guidelines in their regulatory framework through different actions as it is shown in annex 4. Finally, one CA has incorporated the guidelines in its internal procedures (HR) only. Annex 3 summarises the main comments made by CAs regarding how these Guidelines were implemented in their regulatory framework¹².

⁷ ESMA has, under the remit of the Committee for Economic and Markets Analysis – CEMA –, done research on HFT trading activity in some EU equity markets.

⁸ Enforceable

⁹ Enforceable

¹⁰ Enforceable

¹¹ FIN-FSA Guidelines are part of its official rulebook.

¹² CAs use different names for actions/instruments interchangeably. The differences in the legal capacity of those instruments (circulars/instruments/ resolutions, etc.) are due to their different legal national traditions.

33. Although there is a slight majority of members that have used soft law instruments or targeted letters to incorporate these Guidelines in their legal framework, CAs have pointed out in their answers, as long as the Guidelines have a legal hook such as MIFID and MAD, the CA can request that the TPs adhere to the Guidelines. A breach of the Guidelines would be treated as a possible breach of legislation implementing MIFID and/or MAD (CY, FI, DK, IE, IT, MT, HU, SE and SK); even though these CAs have not (and may not be able to) issued any legal, binding, instrument as a way to facilitate the transposition of the Guidelines.
34. All CAs, with the exception of IS, have announced publicly that they comply or intend to comply with the Guidelines. CAs have published their decision to comply with the Guidelines on their own website and in some instances the CA directed their regulated firms to the ESMA website. No CA has issued FAQs on these Guidelines although one (DE) has issued FAQs regarding related matters.
35. IS has outlined that they have not complied with the Guidelines due to legal constraints. In addition, three CAs have stated that they have not incorporated these Guidelines in their supervisory approach due to the lack of automated trading activity in their jurisdictions (EE, LI and LU).
36. The other 27 CAs have different ways of supervising the implementation of the Guidelines. The responses can be summarised as follows:
- **Meetings:** 13 CAs have arranged regular meetings with TPs where relevant parts of the Guidelines were discussed (AT, BE, DE, EL, ES, FR, FI, IT, NL, PT, SE, SI and UK).
 - **Internal Handbook:** 19 CAs have incorporated the Guidelines in their internal supervisory handbook or regulations including guidance for on-site visits. (AT, CY, CZ, DE, EL, ES, FI, FR, HU, IE, IT, LV, NL, PL, PT, SE, SI, SK and UK).
 - **Self-assessment analysis:** 14 CAs have launched self-assessment analysis requesting TPs to submit how they are going to compliant with the Guidelines (some self-assessments also include on-going supervision) (AT, BE, CZ, DK, EL, ES, FI, FR, IE, IT, MT, NL, PT and SE).
 - **Authorisation procedures:** 17 CAs have incorporated these Guidelines into the authorisation procedures for TPs or/and when there is an update in the trading rules, procedures or information and technology systems in any TPs under their supervision. (AT, BE, BG, CZ, DK, EL, ES, FI, FR, IT, MT, NL, PT, SK, SI, SE and UK).
 - **Real time surveillance:** Six CAs have stated that the requirements outlined in the Guidelines regarding market integrity have been incorporated into their real time surveillance system (DE, ES, IT, NL, PT and RO).

- **T+ Surveillance:** Ten CAs have stated that their T+ market abuse detection systems have also incorporated these Guidelines regarding the market abuse, (DE, DK, ES, FR, IE, IT, NL, PT, RO and UK).

37. Annex 1d summarises the key responses given by the 19 CAs that did not participate in the extended review. Taking into account this chart the assessment team has also conducted on-site visits on NO and AT. The assessment team also requested further information from CZ, EL, HU, and PL due to the fact that their markets present some limited volume in automated trading despite some having no volume at all.
38. In the case of CZ, its CA stated that the Guidelines are an inherent constituent of their supervisory procedures as the Guidelines are based on existing provisions in MiFID and MAD. The CA reviews compliance of TPs' policies and procedures through the following supervisory tools: a) initial authorisation as well as the authorisation of any changes as it is compulsory to report all changes to the CA; b) on an on-going basis through T+ surveillance and desk based reviews; and c) on-site inspections.
39. In the case of PL the CA stated that it expects that the popularity of automated trading will increase as a result of upgrades in the TP's trading systems which will enable its market participants High Performance Access. So their members seem keen to take this new opportunity to launch high-frequency trading. As a result PL's CA has stated that it is in the process of adapting new supervisory tools and IT instruments. Those initiatives are: a) developing instruments to detect HFT algorithms generating particularly high profits; and b) instruments that will analyse the overall activity of any broker (the relationships between its orders, trades and impact on the market).
40. As far as HU is concerned, the Guidelines were implemented in the form of the Hungarian Financial Supervisory Authority (HFSA)¹³ recommendations. The HFSA Recommendations were published on 15 January 2013 and its application is required as and from 1 March 2013. The HFSA Recommendations explicitly refer to the Guidelines and state that its purpose is reaching compliance with the Guidelines. HFSA Recommendations are not legally binding, however MNB checks whether supervised institutions comply with its Recommendations.
41. In relation to EL, the HCMC issued Circular 47 on 27 April 2012, which incorporates the provisions of the Guidelines. Those circulars are non-binding legal instruments that are used by the administration authorities in general in order to articulate in more details the provisions of the legislation. Circulars are also internal handbooks of the HCMC. However, since Law 3606/2007, transposing MiFID into the Hellenic legislation, gave the HCMC the mandate to issue a circular in order to clarify further Law provisions, any infringement of said Circular would be considered as breach of Law 3606/2007 per se. The HCMC requested a self-assessment from the TPs based on the requirements provided in the Guidelines. Based on

¹³ HFSA has merged with MNB as of 1 October 2013.

the outcome of their self-assessments and on a case-by-case basis the HCMC requested from the TPs to improve the provisions of their rulebook so as to be compliant with the provisions of the Guidelines (and Circular 47). During this procedure, the HCMC had also meetings with members of the staff of the TPs.

5. Summary of the self-assessment on the 12 CAs

42. This section provides a more granular analysis on how 12 CAs, to whom automated trading is relevant. (BE, DE, DK, ES, FR, FI, IE, IT, NL, PT, SE and UK) have implemented the Guidelines in their supervisory framework. More specifically this section deals with how the 12 CAs establish and monitor whether TPs are complying with the recommendations included in the Guidelines.
43. This summary is divided into five parts. Part one looks at background information, how the oversight of the Guidelines is conducted by each CA, what departments and staff are involved and the CAs' general supervisory approach; enforcement cases, record keeping; and challenges. The other four parts include an analysis of how the 12 CAs are monitoring the implementation of the four recommendations in the Guidelines concerning TPs.

5.1. Background information

44. Almost all NCAs have adjusted their staff to the supervision of automatic trading before the Guidelines were published, whilst only one CA has increased its staff because of the supervision of the Guidelines (FR). In general, the 12 CAs have market infrastructures staff that are responsible for supervising how TPs comply with the Guidelines. Several CAs (FR, IT, SE, UK) have a special unit or department in charge of the supervision of market infrastructures. In other cases the specialists are inside the Market Division (ES, NL). One CA (UK) has specialist teams outside the Market Division who provide support in relation to market surveillance, operational risk, market conduct, and legal and enforcement issues. The number of full time employee (FTE), in charge of the supervision of TPs range from 1.5 (DK) to 25 in the case of UK. Those figures relate to the number of TPs under their supervision. In addition, the staff members who are primarily in charge of this supervision, in the 12 CAs, are supported by other units inside the CAs such as Market Monitoring Division, IT Department, Legal Department, Enforcement Department, etc.
45. In DE the regional governments are the CAs in charge of the supervision of TPs in their regions. The state of Hessen accommodates the TPs with the largest volumes of automated trading. The Hessen CA has a staff of seven employees dedicated to the supervision of the TPs. This supervision is based on the activities carried out by independent bodies (although inside the TPs but which only report to the CA) called Trading Surveillance Offices (TSO). The Hessen TSO is staffed with around 20 employees. In addition the CAs and TSOs are assisted by a Disciplinary Committee in charge of the enforcement cases. BaFIN is responsible for the investigation in cases of suspected insider trading and market manipulation at the federal level. In addition, BaFIN has various competences with regard to multilateral trading facilities, securities/derivatives, financial service providers and credit institutions.
46. CAs who belong to a college for coordinating the supervision of a market operator which operates TPs over a number of jurisdictions follow a similar approach. In this case BE, FR,

NL, PT and DK, FI, SE have a similar way of conducting the supervision of the TPs subject to the college. As an example the MoU between BE, FR, NL and PT states that, these CAs have committed to consult each other on certain decisions, that includes: (i) changes to the market structure (mergers, acquisitions, closing of a market, etc.); (ii) changes in ownership and organisational structure; (iii) appointments to the board, management; (iv) changes in rules within the harmonised rule book; (v) changes to systems and controls; and (vi) significant changes to financial/human/technological resources. However, despite the exchange of views, each member of the college takes their own decision, which, could differ with other CAs in the college.

47. The different supervisory approaches adopted by the 12 CAs to ensure that TPs comply with the Guidelines can be divided into two categories: a) the more pure risk based approach model – where there is a more clear definition of factors- (UK, IE, SE, DK); and other CAs using a less formalised combination of supervisory tools. However, regardless of the approach used, in general terms, the 12 CAs are using a combination of similar supervisory tools: self-assessments (initial and/or on-going); ad-hoc or periodic meetings at several levels (board; CEO; etc.); desk based reviews; on-site inspections (desk based or physical inspection); thematic researches (individual or community (UK)); authorisation procedures of new IT facility, etc.; real time market monitoring; post-mortem mandatory reports on IT failures, if any, provided by the TPs; and incidents reporting from different sources. All the 12 CAs are able to challenge the TPs' self-assessment comparing them with other sources of information: CAs' own analysis, reports from market participants etc.
48. All 12 CAs responded that the Guidelines have been incorporated in their internal supervisory procedures. Some CAs have incorporated the Guidelines in their risk based model, while other CAs are using a less formalised combination of supervisory tools.
49. Most of the CAs commenced supervision of the Guidelines with an initial self-assessment conducted by the TPs in their jurisdiction (BE, DK, ES, FI, FR, IE, IT, NL, PT and SE). The reviews of some of those self-assessments have led to follow-up meetings, desk based reviews and on-site visits. Examples of these self- assessment requests are:
 - a joint assessment of certain aspects of the market surveillance of the TP was carried out by the Nordic CAs in 2013;
 - a questionnaire regarding Direct Access which is currently being evaluated in FI;
 - ES receives an update of the initial self-assessment on a quarterly basis, which is followed by a meeting.
50. For most CAs, on-going supervision is typically shared by the Market Infrastructure team and the Market Monitoring team. Desk-based reviews, meetings and on-site supervision are usually performed by the Market Infrastructure staff. However, enforcement action, if any, would be conducted by the Enforcement specialists of each CA. When there is a college, the inspection actions are usually coordinated or reported among the CA members of the

college. On-site visits are one of the main supervisory actions. However, there are not always clear criteria that trigger on-site visits. For example, PT has a clear set of criteria to initiate on-site inspections which includes: new products; changes in IT-facilities or regulation; the elapsed period in relation to the previous on-site inspection; and other information (glitches, etc.). Experts on IT and on systems, inside the CAs, also support the supervision activities of most CAs (ES, IE, IT, FI, FR, NL, SE, and UK).

51. All CAs have emergency procedures that can be triggered in exceptional circumstances. One CA (FI) conducts simulated crisis management situations which it states help with the implementation of emergency procedures as and when they are needed. However, abnormal situations in matters related to the Guidelines are, in general, due to IT failures. In these circumstances, CAs rely on the TP where the failure has happened to contact the CA. The contact person within TP involved in the IT failure reports the matter to their CA and in general will provide a time needed for its resolution. A detailed post-mortem report is compulsory in the two colleges (Euronext and Nasdaq OMX) and in ES. The other CAs are able to send requests for information when a failure happens in one of the TPs under their supervision. In those cases, the CAs conduct a thorough review of the failure and an in-depth analysis of the measures taken to avoid repetition. In extraordinary situations related to IT-issues and related matters, all CAs¹⁴ have the power to suspend the trading whenever needed. It is also worth mentioning that three CA takes into account possible contagion effects and how to avoid them (NL, SE, UK).
52. It is also relevant to mention that, before these Guidelines entered into force, SE, DK and FI conducted an IT-inspection on Nasdaq OMX. ES also conducted a similar exercise regarding the BME (Spanish Stock Exchange operator). Finally, the CAs that belong to the Euronext College, conduct periodic reviews of trading safeguards, pre-trade controls and on-site inspections on data centres, co- location and on the TP surveillance teams.

Internal organisation

53. With reference to the 12 CAs subject to the second phase of the peer review, it is noted:
- Six CAs stated that they have a dedicated department for market infrastructures, which, among other functions, ensures that the TPs under their jurisdictions comply with these Guidelines. For the other six CAs this function is carried out by the Markets Supervision departments. In all 12 CAs these departments are also supported by other departments, e.g. operational risk, IT, legal and enforcement.
 - It is also worth mentioning that seven out of these 12 CAs belong to two different supervisory colleges and two CAs have specific co-operation arrangements (i.e. a memorandum of understanding). The assessment team believes that such

¹⁴ In Finland the TP and the MoF have the power to suspend the trading of the whole market, Finanssivalvonta has the power to suspend the trading in individual instruments.

arrangements help promote a higher degree of supervisory convergence among those CAs.

54. The assessment team noted that the supervisory approach taken by CAs is influenced by the size and number of the TPs under their supervision. It is evident to the assessment team that the more significant the TP, the higher the likelihood of being subject to on-site inspections. If the number of TPs in a particular jurisdiction is high, the CA may perform thematic analysis.

5.1.1. Enforcements cases

55. None of the 12 CAs have sanctioned the TPs within their jurisdictions for non-compliance with the Guidelines. However, as results of meetings, on-site and on desk reviews, some CAs have requested changes in the trading rules and IT systems of the TPs under their jurisdictions. ES and NL have initiated four and nine formal requests for information respectively to their TPs, which in the end did not result in any enforcement cases. In the ES case the request related to IT-failures. IT has conducted on-site inspections in 2012 and in 2013, which did not result in any enforcement action. In the case of the UK, in relation to at least one TP where supervisory interaction identified areas of concern with respect to compliance with the Guidelines, the CA followed up with supervisory action to ensure weaknesses were addressed.

5.1.2. Record keeping

56. One of the topics that is repeated in the four following subsections is whether and how CAs ensure that TPs have a proper record keeping of their decisions and information regarding the four General Guidelines subject to this Peer Review exercise. As the CAs' responses in every question regarding record keeping are very similar for the four General Guidelines, this part summarises the responses and evidence gathered by the review.
57. Most CAs reference the legal obligation on TPs to hold information in MiFID and other relevant national laws where MIFID was implemented at national level (DK, DE, ES, IT). All respondents establish the TPs have sufficient record keeping procedures with regard to their electronic trading systems, including information about key decisions, system properties, testing methodologies, test results and periodic reviews. All CAs have stated that the TPs implementation is regularly tested by way on on-going supervisory requests for information. Furthermore CAs have stated that there have not been any problems in obtaining data in relation to such requests.
58. Further practices identified are:
- a) Three CAs (DK, DE, IT) reply that record keeping obligations are verified by external review.
 - b) Seven CAs (DE, DK, ES, FR, FI, IT and NL) indicate that they require TPs to keep adequate and orderly records of any activities related to business and internal organisation.

- c) Six CAs (DK, FI, FR, ES, IE and IT) also monitor this in the course of on-going supervision where no record keeping failures have been observed. This also includes responses to CAs requests.
- d) Three CAs (FR, IE and SE) state that they require TPs to demonstrate compliance with the guidelines by providing evidence including the underlying records.
- e) In relation to orders, cancellations and transactions, several CAs require either to have access to this information or to receive such information in real time (BE, ES and IT).
- f) One CA (UK) advises that it receives quarterly statistical returns from one TP on alerts received and reviewed, number of STRs submitted, and also cases that have not resulted in STRs.
- g) Only one respondent (PT) remarks that there is one TP (OPEX) which does not keep all records proscribed in the guideline regarding market members who provide DMA/SA.

59. Record keeping is established in all the CAs subject to this review on due to the National and European regulation.

5.1.3. Challenges

60. This subsection summarises challenges identified by the CAs as part of their implementation of the Guidelines. As many of the challenges the CAs identified in their responses general and do not specifically relate to any of the detailed guidelines they will be considered in this subsection.

61. The main challenges identified by the CAs in their responses to the questionnaire are as follows:

- a) UK mentions the number and diversity of TPs and the instruments these TPs admit to trading given the natural limit on supervisory resources.
- b) BE notes that CAs should be vigilant that short term profit motives for TPs do not hamper the long term promotion of fair and orderly market by efficient market supervision
- c) DE identified challenges in the supervision of large amounts of data which may lead to the non-identification of risks. The CA also highlighted the difficulties and challenges of obtaining and improving knowledge about market abuse methods and developing monitoring procedures accordingly. Challenges regarding the increasing volumes of HFT in markets were also mentioned by NL, IE and FR who also stress the analysis of orders (and not only transactions).

- d) The limited availability of automated surveillance tools for both TPs and CAs is also pointed out by NL and IE. ES mentions that the supervision of automated trading is by its nature technically challenging.
- e) Four CAs (ES, FR, IE and SE) mention the speed of technological development followed by the increasing demand for sufficient IT resources and skilled staff within CAs and TPs will be a significant challenge.
- f) Four CAs (BE, FR, PT and NL) mention the challenge of identifying the impact of HFT trading on the markets, due to a lack of flagging orders and trades.
- g) Three CAs (DE, ES and SE) remarked on the challenge of flexible rules and supervision, to accommodate future developments.
- h) DK and SE mentioned the increasing cross border aspect of trading and the increasing need for high level of cooperation between CAs. This challenge is expanded on by FR, SE and IT who relate the difficulties around market fragmentation and the ability to conduct cross border consolidated supervision which needs to be solved in order to achieve optimal supervision of market abuse cases.
- i) ES points out the difficulty of making a distinction between organisational requirements of a TP in broad terms and those relating to requirement stemming from the Guidelines.
- j) FR identifies a challenge in the level of detail of the TPs' rules to be published in relation to trading safeguard mechanisms, since they may favour manipulation. FR also comments on the reluctance of TPs to provide CAs with relevant information about their members/participants or users organisation and trading strategies.
- k) SE considers it challenging to predict the consequences of the technical developments combined with complexity in the strategies and functionalities which the TPs are implementing.
- l) DK is planning to pay particular attention to actions by DMA and SA users, which may not be supervised or bound by MiFID obligations; DE and ES mention the on-going uncertainty as to the scope of the AT-Guidelines given that some firms increasingly appear to offer on-line services that resemble DMA/SA to their retail clients. This point is also stressed by NL who considers that there is some uncertainty among TPs and their members/participants and users as to where responsibility for systems and controls lies.

5.2. Summary on the self-assessment regarding Guideline 1 - Organisational requirements for TPs electronic trading systems

62. Guideline 1 focuses on the Organisational Requirements for TPs electronic trading systems. The General Guideline is made up of a set of detailed guidelines which on the whole deals with the following aspects (i) Governance; (ii) Capacity and resilience; (iii) Business Continuity; (iv) Testing; (v) Monitoring and review; (vi) Security; (vii) Staffing; and (viii) recording keeping.

5.2.1 Key issues

63. On this subsection A there where identified two main groups of questions: governance and IT-issues. On governance ESMA is interested in learning from the examples of jurisdictions on how these guidelines are complied with in practice, this either by change in supervisory procedures such as a changed focus in on-site visits, desk based surveys or other types of supervisory measures. Examples of such may consist of CAs having produced internal check the box schematics, implementing or having regular on-site visits or regular quarterly or bi annual meetings with TPs, where the agenda for such meetings are TPs fulfilment of the guidelines. ESMA would very much welcome copy of agendas or description of any such procedures or planned changes in procedures. Other examples could be that a jurisdiction has been given formal notice that a TP meets its members regularly (either monthly or quarterly) to discuss among other things evolution of IT-matters and that the results of these meetings are passed up to the board of the TP on the same periodic basis.

64. Regarding IT issues ESMA is interested in how CAs verify that TPs are in compliance with the guidelines in relation to IT governance and requirements. ESMA is interested in learning from CAs procedures to gain knowledge and insight into TP's testing environment and/or requirements, knowledge of the TPs maximum capacity and average capacity as well as CAs knowledge of TPs' business continuity plans and assessment of TPs' preventive measures such as security and monitoring, examples of such could be that CAs require that TPs send them information on those IT-aspects (Contingency plans, etc.) every six or 12 months or when there is a new IT development in the TPs.

5.2.2 Analysis - General approach

65. With respect to the way CAs ensure TPs compliance with Guideline 1 and the Guidelines in general the following general practices appears:

- a) Nine CAs (BE, DK, ES, FR, FI, IT, NL, PT and SE) have issued self-assessment questionnaires to TPs regarding the governance process, capacity of the systems and business continuity.
- b) Ten CAs (BE, DK, FI, FR, IT, IE, NL, PT, SE and UK,) report that the technical expertise of TP staff is established through interviews or regular/on-going contact with technical staff at the TP. In addition some CAs seek information regarding the training programmes undertaken by the TP personnel.

- c) All CAs receive IT-incidents reports which are kept under review until the incident is resolved.

5.2.3 Governance Process

66. All respondents outline how they establish that TPs have effective arrangements and procedures in place in order to establish that TPs have a clear and formalised governance process. Specifically this requirement is not only related to automated trading, but also to the total governance process of the TP. In particular the following practices can be identified:

- a) Nine CAs (BE, DK, ES, FR, FI, IT, NL, PT and SE) have found out either through a formal self-assessment or asked TP to establish if they have clear and formalised governance processes.
- b) Four CAs (BE, FR, NL and PT) mention the TP has been asked to demonstrate the three lines of defence (business, risk & compliance and audit) have adequate staffing and the appropriate reporting lines are in place.
- c) Four CAs (ES, IE, IT and UK) replies this forms part of the authorisation process. Two CAs (IE, UK) further reply this is part of a full risk assessment of each TP as part of the ongoing supervision process. Along similar lines, three CAs (DE, DK, IT) advise that this is part of the on-going supervision process including desk based reviews and on-site inspections.
- d) One CA (IT) makes use of regular reporting obligations on TPs in order to establish such procedures are in place.
- e) One CA (IE) has the ability to interview key individuals within the TP to test whether their knowledge and skill set are appropriate.

5.2.4 Capacity

67. All respondents establish the capacity and resilience of TPs under their supervision. In particular all 12 CAs reply this is established through knowledge of TPs' scenario testing or knowledge of real life message peaks. Further to the above mentioned supervisory practices, the following specific practices are identified.

- a) Four CAs (DK, ES, FI and IT) advise that this has been established through self-assessments by the TPs.
- b) Three CAs (IE, IT, UK) report that this is part of the authorisation process of the TPs.
- c) One CA (IE) stated that the CA has an obligation to inform the CA if any issue arises with regard to this area.
- d) Two CA (ES and IT) receive information from the data vendor of the TPs which, when comparing to the CAs knowledge of system capacity, allows the CA to see

whether there are throttle situations and if so what measures the TPs are implementing.

5.2.5 Business continuity

68. All respondents advise that they have established whether TPs have systems in place to ensure business continuity. The breadth of this guideline is reflected in the different practices CAs use to establish whether TPs are compliant with the guidelines. In particular:

- a) Four CAs (BE, FR, NL and PT) have advised that the guidelines have led to the operator of the TP to recast its business continuity management arrangements.
- b) Seven CAs (BE, DK, FR, FI, IT, NL and PT) advise that they review TPs' simulations and back-up of data including TP's IT-audit plans.
- c) Five CAs (DE, FI, IE, IT and SE) advised that they review testing (including stress tests) of the TPs' business continuity plans.
- d) Four CAs (DK, ES, FI and SE) reply this has been established through a self-assessment performed by the TP
- e) Two CAs (IE and UK) reply this is reviewed as part of a full risk assessment of each TP, as part of an assessment of the TPs' operational risks.
- f) One CA (SE) has reviewed the TP's training program regarding the ability to perform critical activities from secondary premises.

5.2.6 Testing

69. All CAs establish compliance with this issue through reviewing TPs' testing procedures.. The replies also include the following practices:

- a) One CA (IT) also replies it participates in testing procedures;
- b) Four CAs (BE, FR, NL and PT) advise that the TP from time to time has been requested to update their testing procedures. The same four CAs report the testing procedures are being audited both by internal and external auditor;
- c) One CA (IE) replies the TP is under an obligation to report any significant issue arising after the deployment of new software. The TP must advise why the testing procedure failed to detect the defect in the software;
- d) One CA (SE) replies they require testing of software to include member participation if appropriate.

5.2.7 Monitoring & Review

70. All CAs indicate they have established compliance with this guideline. In particular the respondents established whether the TPs have sufficient real time monitoring of their electronic trading system as well as being able to deal adequately with problems identified. The respondents also established whether TPs periodically review and evaluate their electronic trading systems in accordance with the guidelines. The practices mentioned in this regard are the following:

- a) Six CAs (BE, DE, FR, NL, PT and SE) advise that this is part of a TPs' annual audits.
- b) Three CAs (DK, FI and SE) advise that they conducted a joint IT-inspection of the TP prior to the publication of the guidelines.
- c) Three CAs (DK, ES and FI) reply this is part of their on-going supervision along with their knowledge of the TPs' systems for monitoring of trading.
- d) Two CAs (IE, UK) reply this is reviewed as part of the overall risk assessment of the TP.
- e) Two CAs (IE, IT) advised that the TP is under an obligation to report to the CA if incidents arise.

5.2.8 Security

71. All respondents have established whether TPs' physical and electronic security measures are designed to protect their electronic trading systems from misuse or unauthorised access. The practices outlined to establish this are the following:

- a) Five CAs (DK, FI, IE, IT and SE) advised that this is established through their on-going supervision including on-site inspections.
- b) Four CAs (BE, FR, NL and PT) reply this has been established through several meetings with the personnel responsible for security measures.
- c) Four CAs (DK, ES, FI and SE) have also asked TPs to submit a self-assessment regarding this issue.
- d) Two CAs (ES, UK) advised that they have either involved their own supervisory technical staff or have the possibility to involve staff from other departments to establish compliance in this area
- e) One CA (IT) replies the TP is obliged to submit an audit plan review as well as a copy of the TP's business continuity plan and disaster recovery plans on a periodic basis.

5.2.9 Staffing

72. All respondents confirmed that they have established the TPs' procedures and arrangements regarding recruitment and training of TPs' staff. This also included the ability to assess the knowledge levels of TPs' staff. The practices identified include:

- a) Five CAs (DK, FI, IT, SE and UK) advised that this is done through their regular contact with the TPs both as part of on-going supervision and also through interaction with the staff from the TP on issues such as market abuse investigations.
- b) Six CAs (BE, FR, IE, IT, NL and PT) advise that they have already or have the ability to conduct interviews with staff of the TP. Four of these CAs (BE, FR, NL, PT) stated that they also review the expertise of the various members of the audit committee.
- c) Four CAs (DE, ES, IE and PT) indicate that they have reviewed the training program staff within the TP have to complete.

5.2.10 Technological advancements

73. The questionnaire also contained questions in regard to how a CA established that the TP keep up with major new technological advancements introduced by their members, participants and users.

- a) Five CAs (BE, FR, ES, PT and NL) replied this was essentially in the TPs own interest to be up to date as this is a competitive advantage.
- b) Four CAs (BE, FR, PT and NL) further stated the role of the CA is not so much to ensure new major technological advancement are picked up by the operator of the TP but to guarantee that these advancements do not hamper the fair and orderly running of the TP.
- c) Five CAs (DK, FI, IT, SE and UK) stated that the TPs have to update the CAs on the latest developments either on regular meetings or in the case of major changes.

5.3. Summary on the self- assessment regarding. Guideline 3 Organisational requirements for regulated markets and multilateral trading facilities to promote fair and orderly trading in an automated trading environment

74. Guideline number 3 which is related to Organisational Requirements for TPs and MTFs to promote fair and orderly trading in an Automated Trading Environment. The General Guideline is developed in a set of detailed guidelines which mainly include: (i) Requirements for members or participants who are not credit institutions or investment firms; (ii) IT compatibility; (iii) Pre- and post-trade controls; (iv) Trader access and knowledge; (v) Limits to access and intervention on transactions; (vi) Measures to cope with excessive flooding of order book; (vii) Prevention of capacity limits from being breached; (viii) Measures to

constrain or trading halts; (ix) Obtaining information from members/participants and users; (x) monitoring ;and (xi) recording keeping.

75. The analysis of the responses and evidence take into account, as it has mentioned in other sections that some TPs are part of cross border groups where supervision is carried out through supervisory colleges.

5.3.1. Key Issues

76. It is expected that the subset of Competent Authorities subject to this peer review should be able to provide information on their supervisory methods and techniques to review that the devices, procedures, IT systems and initiatives of the TPs are in line with ESMA Guideline 3. The supervision on TPs should be carried out both at authorization and on an ongoing basis, through desk-based monitoring and other supervisory tools, including on-site visits. Competent Authorities should be able to provide details on the supervisory techniques used to assess whether TPs have adopted rules (for example, Market Rules, Instructions and Technical Handbooks) and internal procedures and arrangements in relation to the following:

- transparent rules and objective criteria, including requirements for admission of members/participants or users;
- implementation of tools such as filters, circuit breakers and alarm systems on orderly trading;
- IT devices and controls;
- continuous monitoring of their own systems in order to avoid any dysfunction caused by third parties;
- periodic tests on IT systems, in particular with reference to the IT security measures implemented and planned business continuity procedures; powers to suspend/remove financial instruments from trading;
- skilled staff dedicated to the real-time monitoring of the TPs, which should have the authority to adopt the measures necessary to guarantee the orderly conduct of trading;
- record keeping for at least 5 years in relation to all the matters referred to under the detailed guidelines, including any emerged criticality.

77. It is also expected that Competent Authorities are able to provide evidence of their powers to support the application of Guideline 3. Examples are the power to require market operators to amend market rules breaching the Guidelines, intervene in cases of necessity and as a matter of urgency, or impose sanctions on TPs which do not comply with the provisions set forth in the detailed guidelines.

5.3.2. Analysis - General approach

78. With respect to the way CAs ensure TPs compliance with Guideline 3 and the Guidelines in general:

- a) Nine CAs (BE, DK, ES, FI, FR, IT, NL, PT and SE) have required TPs to do a self-assessment to demonstrate compliance with the AT-Guidelines in the light of the implementation of the Guidelines into CAs' supervisory framework;
- b) Two CAs (ES and IT) indicated that the continuous compliance to the Guidelines has been assessed by the CA by submitting follow up requests to the initial self-assessment to the TPs;
- c) One CA (UK) stated the TPs that represent the highest impact and/or probability of risks crystallising are subject to close and continuous supervision and assessment against a number of defined risk categories. These include the areas covered by the Guidelines. For lower risk TPs, supervision is conducted on a more reactive, thematic basis.
- d) One CA (UK) looks at the TPs' rules as part of authorisation process and monitors on an on-going basis as to how TPs carry out on-going monitoring of members' compliance with the rules. The CA has also issued guidance on Market Operators' oversight of member firm compliance with rules' which covers this aspect.

79. As further described in the following paragraphs, TPs in various jurisdictions adhere to the Guidelines by including requirements in their rulebooks. In this respect:

- a) Eight CAs (BE, DE, FI, FR, IE, IT, NL and PT) stated that the CAs approve TPs' rules;
- b) Six CAs (BE, FR, IE, IT, NL and PT) are responsible for approving/reviewing TPs rules and any changes hereto and have the power to require TPs to add, amend or revoke rules if it considers that those rules are not compliant;
- c) Three CAs (IE, IT and SE) state that they, on an on-going basis, ensure that TPs carry out an on-going monitoring activity of market participants' compliance with the rules;
- d) Four CAs (BE, FR, IT and NL) indicate that the CAs shall verify (or, in the case of FR, may verify), compliance to the TPs rules and relevant legislation during on-site inspections.

5.3.3. Requirements for members or participants who are not credit institutions or investment firms

80. With respect to the way CAs establish that TPs perform adequate due diligence on applications to become a member/participant or user from persons who are not credit institutions or investment firms under EU law:

- a) Nine CAs (BE, DE, ES, FR, FI, IT, NL, PT and SE) indicate that this is done by ensuring that TPs require these “unregulated” firms to fulfil the same membership requirements as “regulated” firms or by ensuring that TPs rules include specific membership requirements with respect to these “unregulated” firms;
- b) One CA (SE) indicated that these latter requirements should be stricter;
- c) Five CAs (DK, ES, FI, PT and SE) indicate that TPs procedures with respect to the on-boarding and on-going monitoring of these firms have been reviewed prior to the implementation of the Guidelines and additional information was requested from TPs in the light of the implementation of the Guidelines;
- d) Six CAs (DK, IE, IT, PT, SE and UK) indicate that TPs compliance with the Guidelines is part of regular operational risk reviews of TPs;
- e) Four CAs (BE, FR¹⁵, IE, IT) state that they perform on-site inspections which allow CAs to examine procedures and due diligence carried out by TPs with respect to these “unregulated” firms in order to ensure compliance;
- f) One CA (UK) indicated that guideline was issued which requires TPs to undertake periodic, risk-based check-ups of their members’ systems and trading controls.

81. As to the way CAs establish that TPs have organisational requirements for members or participants who are not credit institutions or investment firms:

- a) Nine CAs (BE, DE, ES, FR, FI, IE, IT, NL and PT) do this by requiring TPs to include rules regarding members/participants organisational requirements;
- b) One CA (ES) states that members shall fulfil the same requirements as for regulated entities or specific requirements set forth in the Market Regulation;
- c) Two CA (DK and IE) require TPs to provide evidence of the application of such organisational arrangements in their on-going supervision or during on-site reviews;
- d) One CA (SE) states that the CA conducts desk-based research with respect to TPs’ organisational requirements for “unregulated” members/participants.

¹⁵ In FR, during on-site visits, the CA “may” verify compliance to the Guidelines, whilst in BE and NL, the CAs “shall” do it.

- e) One CA (UK) states that this requirement is satisfied in a number of ways depending on the risk categorisation of the TP. For example the CA has issued guidance on 'Market Operators' oversight of member firm compliance with rules' which amongst other things require TPs to ensure on going oversight of the systems and controls of their members to comply with TPs' rule book.

5.3.4. IT-compatibility

82. Regarding the way CAs establish that TPs test compatibility of members'/participants' trading systems with the platform to ensure it does not pose a threat to fair and orderly trading on the platform:

- a) Nine CAs (BE, ES, FR, FI, IE, IT, NL, PT and SE) indicate that they require TPs, on an on-going basis, to demonstrate that they perform conformance/compatibility tests and/or have programs in place which seek to test compliance of external software products with TPs' rules;
- b) Two CAs (IE and IT) state that they may review TPs' testing procedures during on-site inspections;
- c) One CA (IE) states that they expect conformance/compatibility testing to be a part of the on-boarding process and to be fully documented;
- d) Four CAs (BE, FR, NL and PT), which participate in the College of Regulators of the Euronext, indicate that the opinion of Euronext Internal Audit and Risk Area is also taken into account;
- e) One CA (DE) requires participants to hold certain technical conditions including the necessary technical infrastructure;
- f) One CA (DK) states that there has been no indication that the conformance tests developed by the TPs do not comply with the Guidelines;
- g) One CA (UK) states that this is part of the overall risk assessment of the TP, having regard to the risk categorisation allocation given to the TP. For example this would be included in TPs rules, trading procedures or on boarding process and the CA will consider such arrangements as part of the authorisation process and on an ongoing basis.

5.3.5. Pre- and post-trade controls

83. As to the way CAs establish that TPs have minimum requirements for members'/participants' and users' pre- and post-trade controls on their trading activities:

- a) Five CAs (DK, FI, IE, IT and SE) indicate that this is done by requiring TPs to include rules which see to pre- and post-trade controls requirements;

- b) One CA (DE) indicates that the TPs has set forth certain conditions and tools in this respect, of which the TPs ensures compliance during their supervisory activities, and established timely reporting obligations concerning conspicuous incidents but the CA does not test the working of all these tools and mechanisms in practice;
- c) One CA (ES) mentions that their TPs have set up filters and that any incident on this matter is self-assessed by the TP and reported;
- d) Four CAs (BE, FR, NL and PT) state that the main findings and conclusions of the TPs' on-site audits of registered members shall be reported to the CAs;
- e) One CA (UK) states that this is part of the overall risk assessment of the TP, having regard to the risk categorisation allocation given to the TP. For example this would be included in TPs rules, trading procedures or on boarding process. Further, incidents are escalated to the CA.

5.3.6. Trader access and knowledge

84. With respect to the way CAs establish that TPs have standards covering the knowledge of persons within members/users who will be using order entry systems:

- a) Eight CAs (DE, DK, ES, FI, IE, IT, NL and SE) indicate that standards with respect to this requirement (i.e. minimal trading experience, knowledge of rules and regulation, financial markets knowledge etc.) are laid down in TPs' rules;
- b) One CA (DK) indicates that the TPs provide online seminars for traders;
- c) One CA (ES) indicates that operators must be authorised by the TPs and to pass an exam;
- d) One CA (UK) states that this is part of the overall risk assessment of the TP, having regard to the risk categorisation allocation given to the TP. For example standards relating to this requirement would be included in TPs' rules.

5.3.7. Limits to access and intervention on transactions

85. Regarding the way CAs establish that TPs have the ability to prevent in whole or in part the access of a member or participant to their market and to cancel, amend or correct a transaction, and the manner in which CAs establish that these rules are transparent to members and participants:

- a) Ten CAs (BE, DE, DK, FR, FI, IE, IT, NL, PT and SE) indicate that this is done by requiring TPs to include rules which see to these requirements and by requiring TPs rulebooks to be publically available;
- b) Two CAs (DK and FI) add to this that measures can be taken with respect to all trading or with respect to certain segments/members/instruments;

- c) Two CAs (IE and IT) state that they, as part of their on-going supervision of TPs, may also seek to substantiate/evidence the implementation of such rules and the public availability of these rules;
- d) One CA (ES) mentions that their TPs have set up filters and that any incident on this matter is self-assessed by the TP and reported;
- e) One CA (UK) states that this is part of the overall risk assessment of the TP, having regard to the risk categorisation allocation given to the TP. For example the CA considers TPs' ability to prevent access to their markets as part of the authorisation process and monitors any issues on an ongoing basis. The CA will also consider whether such measures are set out in the TPs' rule book or website.

5.3.8. Prevention of capacity limits from being breached

86. As to the way CAs establish that TPs have arrangements to prevent capacity limits on messages from being breached:

- a) Eight CAs (BE, FR, ES, IE, IT, NL, PT and SE) indicate that they have the ability, at the time of TP authorisation and as part of on-going supervision, to review the system specifications/market parameters issued by TPs to establish if they contain arrangements to prevent capacity limits from being breached;
- b) One CA (IT) states, that in order to ensure the smooth technical functioning and efficient use of the electronic trading support systems, TPs' rules prescribe that members/participants must observe the technical limits for order entry established on a general basis in the technical market rules. In addition TPs have also dedicated surveillance IT tools in order to monitor and where required inhibit breaches in the message's capacity limits;
- c) Four CAs (DE, DK, FI and SE) indicate that TPs have arrangements in place which should prevent capacity limits from being breached. Four CAs (BE, FR, NL and PT) which are part of the College of Regulators of Euronext, indicate that they shall validate all markets incidents and, on the basis of a report submitted by the TPs, perform a follow up on the measures implemented to prevent further incidents;
- d) One CA (UK) states that this is part of the overall risk assessment of the TP, having regard to the risk categorisation allocation given to the TP. For example the CA has the ability to review as part of the authorisation process and as part of on-going supervision whether the TPs' rules, system specifications and market parameters contain arrangements to prevent capacity limits from being breached.

5.3.9. Measures to constrain or halt trading

87. With respect to the way CAs establish that TPs have arrangements to constrain trading or to halt trading in individual or multiple financial instruments when necessary, to maintain an orderly market:

- a) Eight CAs (BE, DE, ES, FR, IE, IT, NL and PT) indicate that they require TPs to adopt and provide in their rules measures required to ensure efficient operation of the market, including as regards trading halts;
- b) Ten CAs (BE, DK, ES, FI, FR, IE, IT, NL, PT and SE) indicate that they have the ability, at the time of TP authorisation and as part of on-going supervision, to review the system specifications/market parameters issued by TPs to establish if they contain arrangements to constrain trading or to halt trading in individual or multiple financial instruments when necessary, to maintain an orderly market;
- c) Four CAs (BE, FR, NL and PT) which are part of the College of Regulators of Euronext, indicate that they review internal audits and may also request particular audits on such aspects;
- d) One CA (UK) states that this is part of the overall risk assessment of the TP, having regard to the risk categorisation allocation given to the TP. For example the CA has the ability at the time of authorisation and as part of on-going supervision to review TPs' rules, system specifications or market parameters to establish if they contain arrangements to constrain trading or impose trading halts in individual or multiple financial instruments.

88. Regarding the way CAs establish that the arrangements, with respect to measures to prevent capacity limits from being breached and measures to constrain or halt trading, are made available to members/participants and users:

- a) Ten CAs (BE, DE, ES, FR, FI, IE, IT, NL, PT and SE) indicate that these measures are incorporated in TPs rulebooks which are made publically available;
- b) Two CAs (DK, FI) indicates that the TPs offer a set of pre-trade controls which may be used by members/participants;
- c) One CA (IE) states that they require evidence from TPs that those arrangements are being made publicly available;
- d) One CA (UK) states that this is part of the overall risk assessment of the TP, having regard to the risk categorisation allocation given to the TP. For example the CA will consider whether technical specifications relating to such measures are set out in the TPs' rule book or website.

5.3.10. Obtaining information from members/participants and users

89. This subset of questions sought to explore the way CAs establish that TPs have the ability to obtain information from a member/participant or user to facilitate monitoring or compliance with the rules and procedures of the TP relating to organisational requirements and trading controls. The results can be summarised as follows:

- a) Nine CAs (BE, DE, DK, FR, FI, IE, IT, NL and PT) indicated that they only approve a TP's rules if the rules provide TPs with the ability to request the member to provide any information and the powers to sanction members;
- b) One CA (ES) stated that the TP's rules include these requirements;
- c) One CA (IT) indicated that according to TP's market rules, members/participants shall promptly notify the TPs of any circumstances of which they are aware, including technical problems with their systems, that they prejudice or might prejudice their compliance with the TP's rules;
- d) One CA (SE) stated that they review, on an on-going basis, TP's market surveillance resources and their tools to signal the necessary alarms to the CA;
- e) One CA (UK) stated that this is part of the overall risk assessment of the TP, having regard to the risk categorisation allocation given to the TP. For example the CA will consider as part of the authorisation process, whether TP's rules provide them with the ability to request information from their members.

5.3.11. Monitoring

90. The questions in this section sought to get a better understanding, as to the how CAs establish that TPs monitor their markets as close to real time as possible for possible signs of disorderly trading. It also seeks to gain an understanding as to how the CAs establish that the TP's staff responsible for this understand the functioning of the market, and have the authority to take remedial action, when necessary, to protect fair and orderly trading. The responses are summarised as follows:

- a) Ten CAs (DE, DK, ES, FI, FR, IE, IT, NL, PT and SE) indicated that this is part of the on-going supervision of TPs. These respondents also stated that they seek to evidence the ability of the TP's to monitor the market in 'real time' and 'post trade';
- b) Out of those ten CAs, one CA (SE) stated that this may involve a combination of desk based review to evidence and seven CAs (BE, FR, IE, IT, NL, PT and SE) state that this might involve on-site inspections to evidence;
- c) Nine CAs (BE, DE, DK, ES, FR, FI, IT, NL and PT) indicated that they have access to TP's real-time surveillance staff or senior management;
- d) Two CAs (DE and NL) stated that they are informed by the TPs of any conspicuous incident;
- e) Four CAs (ES, IT, NL and PT) indicated that they carry out real time monitoring of trading activity with the aim of ensuring transparency of the market, orderly conduct of trading and investors protection.

- f) One CA (UK) stated that this is part of the overall risk assessment of the TP, having regard to the risk categorisation allocation given to the TP. For example the CA considers the market monitoring arrangements of the TPs as part of the authorisation process and on an ongoing basis. The CA is able to contact TPs' real time market monitoring staff if and when necessary. Further, the CA has a Surveillance Practitioners Group where the CAs specialists liaise with market monitoring specialists from TPs to discuss and share best practice.

5.3.12. Nature and scale of trading

91. The questions in this area sought to gain an insight into how CAs establish that TPs have implemented the Guidelines with respect to the organisational requirements to promote fair and orderly trading and that those requirements that have been implemented by the TPs are appropriate to the nature and scale of trading on those markets, including the types of members, participants and users and their trading strategies. The responses are summaries below:

- a) Nine CAs (BE, DE, DK, FI, FR, IE, IT, NL and PT) indicated that they assess whether TPs rules promote fair and orderly trading and whether the rules and procedures put in place by TPs are appropriate to the nature and scale of automated trading on those TPs;
- b) Three CAs (DK, ES and FI) indicated that TPs' rules and procedures have been aligned in order to comply with the Guidelines;
- c) Four CAs (BE, FR, NL and PT) stated that they have regular contacts with the TPs in order to discuss specific issues and regular reporting obligations are established in this respect;
- d) One CA (ES) stated that they have access to the market vendor feed to assess whether mechanisms to promote fair and orderly trading work properly;
- e) One CA (IT) stated that it assesses the information received from reporting, including in connection with thematic reviews and the self-assessments, and via on-site inspections and any follow-up surveillance activities that they may trigger;
- f) One CA (SE) stated that it maps the members which conduct automated trading, estimate the volumes of the automated trading conducted on the TP and compare this with the applicable resources the TP uses to monitor the on-going trading;
- g) One CA (UK) stated that this is part of the overall risk assessment of the TP, having regard to the risk categorisation allocation given to the TP. For example the CA considers as part of authorisation process and as part of on-going supervision whether the rules and procedures put in place by TPs promote fair and orderly trading and whether they are appropriate to the nature and scale of trading on those markets;

- h) Two CAs, (IE and NL) stated that they when considering if the organisational requirements are appropriate to a firms nature, scale and complexity they may look at the nature and complexity of an instrument (IE, NL), trading volume (IE), the quantity, speed and complexity of trading on the order book of the TP (IE), the market share (NL), the qualification of trading members (NL), the presence of members using HFT techniques (NL), etc.

5.4. Summary on the self-assessment regarding: Guideline 5 Organisational Requirements for TPs to prevent Market Abuse in an Automated Trading Environment

- 92. Guideline 5 broadly cover (i) the arrangements in place to identify conduct that may involve market abuse including the skill and experience of the staff monitoring trading activity, (iii) capacity to monitor markets (iv) arrangements to identify and report STRs, (v) Review of market abuse procedures and (vi) recording keeping.
- 93. As mentioned in other sections some TPs are part of cross border groups where supervision is carried out through supervisory colleges. Therefore, some of the responses to Guideline 5 reflect the collegiate nature where appropriate.

5.4.1 Key Issues

- 94. In order to gauge the way various jurisdictions establish if a TP is compliant with this Guideline, ESMA is interested in assessing the different supervisory methods and techniques used by CAs to check if TPs have (i) skilled staff dedicated to the real-time monitoring of the market; (ii) skilled staff dedicated to T+1 monitoring of the market and compliance in charge of periodic reviews, on-site audits of members and STR reports to CAs; (iii) record-keeping of all the messages submitted by members for at least 5 years and ability to monitor unusual / suspects flows; (iv) automated alerts to detect significant number of orders, cancellations and modifications; (v) specific tools to monitor orders which may involve market abuse; (vi) dedicated tools to identify suspicious transactions and orders and report them without delay to CAs.

5.4.2 Analysis - General approach

- 95. All respondents outline how CAs establish that TPs have effective arrangements and procedures in place which enable them to identify conduct by their members that may involve market abuse. It has to be noted that this requirement is not directly linked to an automated trading environment but to the overall compliance with article 43 of MiFID. Specific examples given by respondents are set out in the paragraphs below:
 - a) Nine CAs (BE, DE, FR, IE, IT, NL, PT, SE and UK) stated that they conduct regular meetings with TPs to assess compliance. Some countries (BE, FR, NL and PT) gained comfort from meetings with TPs about market surveillance techniques

(including alerts, market abuse cases, trading safeguards) and members compliance teams within the TPs;

- b) Nine CAs (BE, ES, FI, FR, IE, IT, NL, PT and, UK (for lower risk TPs)) indicated that they have requested TPs to submit a self-assessment of compliance with Guideline. It is noted that in one CA (ES) the self-assessment was graded by TPs on scale of 1-4 (4 being maximum compliance). Three CAs (IE, IT and UK) advised that shortcomings in responses were subject to further query and review;
- c) Four CA (DE, IE, IT and UK) have stated that they have conducted on Site Reviews/ Information Gathering Exercises with TPs to ascertain compliance. While one CA (FI) advised a joint assessment with other Nordic CAs was also undertaken on certain aspects of TP market surveillance;
- d) Two CAs (IT and UK) stated that they also incorporate review of the number and quality of the STRs submitted by TPs. Poor quality may give rise to further enquiries and possible on-site inspection. In addition one CA (UK) stated that it compares STRs received from market participants and its own in-house surveillance in order to identify specific instances whereby the TP may have been missed by the TP;
- e) Two CAs (UK and IE) advised that assessment of potential TPs' compliance with the Guidelines has been incorporated into the New Applications review process. The UK also incorporates a follow up review after 12 months operation;
- f) One CA (UK) stated that it can conduct thematic peer reviews of compliance with the Guideline over a number of TPs.

5.4.3 Staffing

96. With regard to staffing all respondents indicated that they establish the skill base and experience of their TPs staff who monitor trading activity to ensure that they have the necessary skill and expertise to identify behaviour which could give rise to suspicions of market abuse.

97. In addition to the general techniques outlined in paragraph 76, above, additional practices adopted by the respondents can be summarised as follows:

- a) Eight CAs (BE, ES, FR, FI, IE, NL, PT and UK) stated that they seek information regarding training programmes for TP staff involved in market monitoring. The UK also seeks to influence training and development plans where deficiencies were identified.
- b) Six CAs (BE, FR, IE, NL, PT and UK) indicated that they incorporate specific meetings during on-site visits with TP compliance and market monitoring teams to ascertain skill base.

- c) One CA (DE) has advised that it imposed a requirement on TPs for the appointment to Head of Trading of a TP be approved by CA.
- d) One CA (FI) cites regular contact with surveillance staff at TPs as part of on-going supervisory regime.
- e) One CA (IE) stated that it includes a review of key person risk, succession planning and training within TP to ensure continuity and improvement of skill base.
- f) One CA (UK) indicated that it has established a quarterly forum of surveillance staff at TP's to promote discussion and information sharing of best practice.
- g) One CA (SE) advised that it has promoted quarterly network forums for market participants, TPs and investment firms, to promote discussion and information sharing of best practice.
- h) With regard to sanctioning non-compliance, one CA (IT) outlined an example whereby specific requirements were imposed by CA to increase market monitoring staff and/or separate monitoring functions where deficiencies were identified.

5.4.4 Monitoring

98. With regard to monitoring all respondents indicated that they establish that their TPs have systems with sufficient capacity to accommodate high frequency generation of orders, transactions and low latency transmission. In addition to the general techniques outlined above respondents have also stated that they also use the following additional practices in this regard which are summarised as follows:

- a) Six CAs (BE, ES, FR, IE, NL and PT) have stated that they have issued specific information requests to TPs on topic.
- b) Four CAs (BE, FR, NL and PT) reported that they review the adequacy of TPs inbuilt systems, controls, record keeping of orders and transactions, alerts in place for real time and post trade monitoring, circuit breakers, capacity expansion capability, etc.
- c) Two CAs (SE and FI) advised that their TP's use market leading market surveillance systems.
- d) One CA (UK) advised of a recent focused review on TPs ability to monitor HF and automated manipulative behaviours including layering and momentum ignition. The UK has also advised that as well as ensuring TPs have appropriate growth strategies in place, the CA also requires specific surveillance system issues incident reporting to CA.

5.4.5 Identification and reporting of suspicious transactions and orders

99. With regard to identification and reporting of suspicious transactions and orders all respondents indicated that they establish that their TPs have in place arrangements to identify transactions that require a Suspicious Transaction Report (STR) and that those reports are made without delay. Below is a summary of the questionnaire responses:

- a) Seven CAs (BE, DK, IE, NL, PT, FR and SE) stated that they hold specific meetings with TP's where STRs and monitoring techniques are discussed with relevant staff.
- b) Four CAs (BE, FR, NL and PT) advised that they have issued specific information requests on the development of monitoring and detection scenarios.(order book layering , variation – volatility -, volume procedures, voluntary in-house crosses , use of prohibited order types, hacking).
- c) One CA (ES) outlined that it receives a regular reporting from one TP (on derivatives) on market abuse analysis, testing and actions taken.
- d) One CA (UK) advised that it monitors the timeliness and quality of submissions and follow up where delay.
- e) One CA (SE) stated that communication takes place between TP and CA to discuss specific cases before action is taken.

5.4.6 Reviews

100. With regard to reviews all respondents indicated that they establish that their TPs conduct periodic reviews and internal audits of procedures and arrangements to prevent and identify instances of conduct that may involve market abuse. A summary of the responses to this section are outlined below:

- a) Five CAs (BE, FR, IE, NL and PT) stated that they check the audit plans of the TP to ascertain that this issue is covered.
- b) Four CAs (DE, DK, IE and SE) advised that they expect their TPs to report Market Abuse audits to the CA.
- c) Two CAs (IT and UK) have stated that they have taken action where deficiencies were identified in compliance with this guideline. One CA (IT) requested changes to be made to TP practices to strengthen processes around periodic audits as per guidelines. One other CA (UK) has direct specific reviews to be undertaken by TPs where deficiencies were identified.

5.4.7 Appropriateness of TPs arrangements on market abuse detection

101. Respondents outlined the following methodologies for considering the appropriateness of a TP's arrangements on market abuse detection:

- a) Six CAs (DK, IE, NL, PT, SE and UK) stated that they focus on the materiality/ risk categorisation of the TP in the market. Materiality can be based on characteristics such as market share of TP relative to size of the overall market, types of products traded, membership, and presence of members using HFT techniques.
- b) One CA (IT) advised that it works with the TP to develop new effective alert systems and enhancing market abuse detection abilities, developing statistical indicators that may quickly point out manipulative behaviours.
- c) One CA (FR) stated that it analyses STRs received from TPs and reviews the evolution of monitoring and detection scenarios implemented by the TPs.

5.5. Summary on the self-assessment regarding Guideline 7 - Organisational requirements for TPs whose members/participants and users provide direct market access or sponsored access.

102. Guideline 7 broadly covers i) responsibility for providing DMA/SA, ii) systems and controls requirements on members/participants who provide DMA/SA, iii) due diligence requirements, iv) rights of access, v) monitoring of orders, vi) interventions over SA, and vii) record keeping.

5.5.1 Key issues

103. ESMA acknowledges that not all TPs will allow DMA/SA, but is interested in finding out whether CAs have authorised DMA/SA or whether this has been developed by the TPs' members/participants and permitted by TPs without the need to seek approval of their CAs. Some ESMA members could comply with this general guideline if they have checked that TPs have a set of internal instructions to authorise DMA/SA that covers the detailed guidelines of this subsection D. This set of instructions could include filters and other ways to manage problems caused by DMA/SA. Nevertheless, ESMA members could have used other ways to oversee how TPs comply with these detailed guidelines. Furthermore, ESMA is interested in receiving examples of the supervision of the rules and procedures that provide DMA and/or SA to ensure fair and orderly trading in relation to:

- How TPs communicate to members/participants that they hold the ultimate responsibility for trades, including the subsidiary responsibility held for all trades using the DMA/SA provider firms' market participant ID code;
- How TPs ensure due diligence on clients to which DMA/SA is provided;
- A TP's monitoring of orders sent to a TP's system by a member/participants' SA clients;
- A TP's ability to intervene over SA for a suspected breach of the rules and procedures for fair and orderly trading and potentially carry out a review of a users' internal risk control systems in relation to DMA/SA clients;

- Reviewing that TPs keep sufficiently detailed record keeping of the policies and procedures relating to DMA/SA and any significant incidents relating to SA for at least five years.

104. ESMA also expects CAs to provide evidence of their powers to support the application of these guidelines, for example the power to require market operators to amend market rules breaching the guidelines, intervene in cases of necessity and as a matter of urgency, or impose sanctions on TPs which do not comply with the provisions set forth in the detailed guidelines.

5.5.2 Analysis - General approach

105. All 12 respondents confirmed that their TPs have been required to develop internal procedures and instructions on DMA/SA that meet the Guidelines. In respect of the way CAs ensure TPs' compliance with Guideline 7, the following practices were identified:

- Three CAs (IE, IT and UK) stated that ensuring TPs' compliance with the Guidelines is part of their ongoing supervisory processes.
- Two CAs (IE and UK) advised that they check TPs' compliance with the Guidelines at the point of authorisation.
- Eight CAs (BE, DK, ES, FI, FR, IT, NL and PT) stated that they have required TPs to conduct self-assessments.
- Seven CAs (BE, FR, IE, IT, NL, SE and UK) outlined that they conduct risk-assessments or desk-based assessments of TPs and two CAs (IT, UK) conduct on-site inspections of TPs.
- Four CAs (IE, FI, IT and SE) stated that they review TPs' rulebooks, and two CAs (IE, IT) requires TPs to submit proposed rule changes to the CA for approval.
- Two CAs (DE and IE) advised that they conduct reviews/audits of TPs, and two CAs (IE and IT) can request copies of TPs' own reviews/audits.

5.5.3 Responsibility for trades/messages

106. All respondents indicated that they have established compliance with this Guideline. The following practices were identified:

- Ten respondents (BE, DE, DK, ES, FR, FI, IT, NL, PT and SE) specifically confirmed that the TPs under their supervision articulate that members/participants and users hold ultimate responsibility for all messages and trades, including for all DMA/SA trades, in their rules and regulations;

- b) Five CAs (BE, ES, FR, NL and PT) stated that they required TPs to submit self-assessments to establish their compliance with the guideline (and all other aspects of Guideline 7);
- c) One respondent (DE) stated that this requirement is part of the regulatory framework that is approved by the CA;
- d) Four CAs (FI, IE, IT and SE) advised that they review the TPs rulebooks or other binding requirements issued by TPs to establish that they contain specific provisions with regards to members' responsibility for all messages including orders entered under their trading codes;
- e) Two CAs (IE and UK) advised that they check TPs' compliance with the guidelines via their ongoing supervisory processes;
- f) One CA (ES) stated that this responsibility is proscribed in a written agreement between the TP and member/participant or user governing DMA/SA and reviewed them. Another CA (DE) said members/participants must ensure that clients to whom they provide DMA/SA have access to the TP's trading rules.

5.5.4 Adequate systems and controls

107. All respondents indicated that they have established compliance with this Guideline. The following CA practices were identified:

- a) Ten respondents (BE, DE, DK, ES, FR, FI, IT, NL, PT and SE) confirmed that TPs require their members/participants and users who provide DMA/SA to adequately control orders by having suitable pre- and post-trade controls in place.
- b) Seven CAs (BE, FI, ES, FR, IT, NL and PT) stated that they required TPs to submit self-assessments to establish their compliance with the guideline (and all other aspects of Guideline 7);
- c) Two CAs (IE and UK) advised that they check TPs' compliance with the guideline at the point of their authorisation and via their ongoing supervisory processes. IE also states that the CA can review any work carried out by TPs to monitor their members' compliance with this provision;
- d) One CA (DK) stated that it can request information about all DMA/SA trades conducted under unique ID codes;
- e) One CA (IT) outlined that it monitors TPs' compliance via ad hoc reporting by TPs, regular meetings with TPs' managers/employees, and on-site inspections.

5.5.5 Due diligence

108. All respondents indicated that they have established compliance with this Guideline. The following CA practices were identified:

- a) Seven respondents (BE, DK, ES, FI, FR, IT and NL) confirmed that TP rules require members/participants and users to undertake due diligence on clients to which they provide DMA/SA. One additional respondent (PT) gave this answer with regards to Euronext, but said that another TP's (OPEX) rules do not require members to carry out due diligence before granting DMA as responsibility for ensuring compliance with all TP rules lies solely with the member, and therefore it is their responsibility to protect the integrity of the market regardless of the type of order that is submitted;
- b) Six CAs (BE, ES, FR, IT, NL and PT) stated that they required TPs to submit self-assessments to establish their compliance with the guideline (and all other aspects of Guideline 7);
- c) Two CAs (IE and UK) advised that they check TPs' compliance with the guideline via their ongoing supervisory processes;
- d) One CA (SE) stated that it conducts specific desk-top assessments on TPs' due diligence processes. These assessments can be followed by ad-hoc controls to establish that the processes are properly documented;
- e) Four CAs (BE, FR, NL and PT), advise that TPs conduct on-site inspections of their members/participants or users during which they check the contracts between DMA customers and the members.

5.5.6 Rights of access (sponsored access)

109. With regards to the detailed Guideline on TPs' ability to refuse a request to grant sponsored access (SA), the following observations were made:

- a) Four CAs (DE, ES, IE and IT) stated that this question is not relevant to some or all of the TPs in their jurisdictions as they do not offer SA.
- b) Seven CAs (DE, DK, FR, FI, NL, PT and SE) confirmed that TPs can refuse requests from members to provide SA where they are not satisfied with any aspect of the due diligence undertaken by the member, or where it judges that the provision of the connection would pose a risk to the orderly functioning of the market.

5.5.7 Monitoring of orders

110. With regards to the detailed Guideline on TPs' ability to monitor orders sent to their systems by members'/participants' SA clients, the following observations were made:

- a) Five CAs (BE, ES, FR, IT and IE) stated that this question is not relevant to some or all of the TPs in their jurisdiction as they do not offer SA.

- b) Five CAs (DK, FI, NL, PT and SE) stated that members/participants are required to inform the TPs of the unique user ID of the participant under which orders are entered.
- c) Two respondents (SE and UK) confirmed that TPs can monitor orders from a technical perspective but did not specify the method used for monitoring.
- d) One CA (DE) answered that all messages sent to TPs are monitored by the appropriate TSO, according to their ID code. However this does not apply to SA orders as SA is not offered by TPs.

5.5.8 Potential interventions over SA

111. With regards to the detailed guideline on TPs' ability to intervene over SA,

- a) Five CAs (DE, ES, IE, IT and PT) responded that this guideline is not relevant to some or all of the TPs in their jurisdiction as they do not offer SA.
- b) Eight respondents (BE, DK, FI, FR, NL and PT for Euronext only, SE, UK) said TPs can refuse a request to grant SA access if it is not satisfied that to do so would be consistent with its rules on fair and orderly trading. Those respondents also confirmed TPs can withdraw access if it is not satisfied that continued access would be consistent with its rules.

112. All respondents establish that they are compliant with the guideline requirement to carry out reviews of member/participants or users' internal risk control systems in relation to their DMA/SA clients. The following CAs' practices were identified:

- a) Eight CAs (BE, DK, ES, FI, FR, NL, PT and SE) stated that they required TPs to submit self-assessments to establish their compliance with the guideline
- b) Two CAs (DE and SE) advised that they carry out reviews of TPs' systems and controls. In DE, these reviews can be triggered randomly.
- c) Two CAs (IE and UK) stated that they check TPs' compliance with the guidelines via their ongoing supervisory processes. IE also stated that the CA can request copies of any reviews TPs have undertaken of its members' internal control systems in relation to DMA/SA.
- d) One CA (IT) confirmed that it can carry out on-site inspections of TPs or hold periodic conference calls or meetings with TPs to establish their compliance with this guideline.

Annex 1a – Number of trading platforms

CA	Number of Trading Platforms ¹⁶	Number of Computer Based Trading Platforms
AT	3	3
BE	7	6
BG	1	1
CY	2	2
CZ	3	3
DE	15	14
DK	5	5
EE	1	1
EL	2	2
ES	12	12
FR	10	10
FI	2	2
HR	1	1
HU	3	3
IE	2	2
IS	1	1
IT	19	19
LI	0	0
LT	1	1
LU	2	1
LV	1	1
MT	2	2
NL	7	7
NO	4	4
PL	2	2
PT	7	7
RO	7	7
SE	6	6
SI	1	1
SK	1	1
UK	57	57
TOTAL	194	192

¹⁶ This chart only shows the number of Trading Platforms that exist in the EEA and it does not include the total number of different segments inside a MTF, as per 24 January 2014.

Annex 1b – Automated trading volume

Country	Automated Trading VOLUME (*)
AT	20% cash market (minimum figure); 19% n° shares;
BE	20% and 25% of the volume traded on Belgian stocks
BG	N.A. (Negligible)
CY	N.A. (Negligible)
CZ	5%-10% cash market (hypothesis: a trade is from AT-system if it handles 1 order per 4 seconds)
DE	In the first month of flagging the activity of HFT a first and rough estimation in Eurex reached 70% of the trading volume
DK	40%; no specific figure for HFT
EE	0%
EL	7,4% (hypothesis based on the percentage of the 2 most active members in local markets)
ES	Equity 22%; derivatives 39,58% (hypothesis: 100 messages per second)
FR	40-45%
FI	51,4%
HR	N.A. (Negligible)
HU	N.A. (Negligible)
IE	From 23% to 29% depending on TP.
IS	N.A. (Negligible)
IT	Average 2013: 22,05% all MTA securities
LI	N.A. (Negligible)
LT	N.A. (Negligible); 6 members offer DMA.
LU	0%
LV	N.A. (Negligible) 3 members offer DMA
MT	N.A. (Negligible)
NL	60% cash market; 60% derivatives market
NO	30%; 13 out of 19 members use algorithms. 12 out of 19 offer DMA
PL	N.A. (Although collocation has been introduced recently, nobody is using this facility)
PT	3,6% cash market (20% in terms of orders)
RO	5% HFT; (Although 23% of trading volume is based on order routing systems);
SE	40% cash; derivatives 20%
SI	N.A. (Negligible)
SK	N.A. (Negligible)
UK	35% to 60% for cash and derivative markets in the UK (**)

(*) These figures are a rough estimation of the trading volume channelled through Automated trading systems excluding “plain smart order systems”.

(**)The estimation in the cash market captures “order flow that reflects proprietary automated trading strategies or strategies pursued via sponsored access and pure DMA.” It excludes order flow managed by a Smart Order Router or traded by “execution algorithms” such as VWAP

Annex 1c – Incorporation of the Automated Trading Guidelines

Country	WAYS USED TO INCORPORATE THE AT-GUIDELINES IN THE CAs REGULATORY FRAMEWORK
AT	Press release.
BE	Circular (Binding).
BG	Press release and declaration for compliance.
CY	Guidelines issued by CySEC (Binding)
CZ	Instruction. Central Bank instruction. (Binding)
DE	FQ&A on the Law on HFT which includes some AT-Guidelines and the TP's regulations
DK	Press release: intent to comply.
EE	ESMA AT guideline has become an EE guideline. (Binding instrument)
EL	Circular (Binding instrument).
ES	Press release and targeted letters to TPs and IFs targeted: CNMV will adopt its guidelines with the purpose to guarantee harmonization, etc of MIFID and MAD.
FR	Position (binding instruction). Those "orientations" are transposed internally in the general handbook of AMF.
FI	Issuing a guideline which is part of the Finland FSA's official rule book (Non-binding instrument).
HR	Only internal procedures.
HU	Recommendations issued by the HFSA stated that purposed /reaching compliance with the AT-Guidelines. (Non-binding instrument, but compliance is checked by MNB.)
IE	"Targeted letters; additionally; guideline is included on CBI web site regulatory requirements/guidelines pages.
IS	Non participation due to legal constraints
IT	CONSOB resolution on how to implement ESMA AT-GUIDELINES in Italy. (Non-binding but enforceable)
LI	Binding instruction: FMA issued a binding instruction that contains the list of ESMA guidelines that market participants must comply with.
LT	Press release; issued a statement that these guidelines were compulsory; "the compliance with these guidelines were compulsory since 1 May 2012".
LU	Circular CSSF12/536 (The Lux Stock Exchange is competent for the supervision and enforcement of their rule. (Binding)
LV	Reference to ESMA website
MT	Circular address to market participants; (the Circular is a kind of press release)
NL	Policy Rule. Guidelines are used in its supervision of market participants' compliance with Dutch Laws and regulations. (Non-binding but enforceable)
NO	FSA will add the guidelines applied in their practice. In NO's opinion this way of implementing has the effect of a Binding Instrument.
PL	PFSA announced that AT-Guidelines will be taken into account when interpreting the binding regulation in Poland. (Binding effect).
PT	Press release.

RO	Executive order (Binding).
SE	General statement combined with information
SI	Press release.
SK	NBS Guidelines (Non-binding as such).
UK	Multiple cross-referencing links to the Guidelines on ESMA's website have been inserted into the FCA's Handbook. (Binding)

Annex 1d – Other methods to implement

	Other methods used by CAs to implement the Guidelines such as sending specific letters to TPs, holding multi or bilateral meetings with TPs, or others.				
	Letter	Communications	Meetings	Others	ESMA Member who has conducted any of the previous actions
AT	No	Yes	Yes	Yes	X
BE	No	No	Yes	Yes	X
BG	Yes	No	Yes	No	X
CY	No	No	No	No	0
CZ	Yes	No	No	No	X
DE	Yes	No	Yes	No	X
DK	No	No	No	Yes	X
EE	No	No	No	No	X
EL	Yes	Yes	Yes	No	X
ES	Yes	Yes	Yes	No	X
FR	No	Yes	Yes	Yes	X
FI	No	No	Yes	Yes	X
HR	No	No	No	No	0
HU	No	No	No	No	0
IE	Yes	No	No	Yes	X
IS	No	No	No	No	X
IT	Yes	Yes	Yes	No	X
LI	No	No	No	Yes	X
LT	No	Yes	No	No	X
LU	No	No	No	No	0
LV	Yes	Yes	No	No	X
MT	Yes	Yes	Yes	Yes	X
NL	Yes	Yes	Yes	Yes	X
NO	No	No	No	No	0
PL	Yes	No	No	Yes	X
PT	Yes	Yes	No	Yes	X
RO	Yes	No	No	No	X
SE	No	Yes	Yes	Yes	X
SI	Yes	Yes	Yes	No	X
SK	No	Yes	No	No	X
UK	No	Yes	Yes	Yes	X
TOTAL	14	14	14	13	24

Annex 1e – CAs not included in the peer review: Summary of key responses

Country	AT Volume	Incorporation in Regulatory framework		Incorporation in Supervisory approach					
		Formal	Informal	NO	Meetings	Handbook	Self - Assessment	Authorization procedures	Real Time
AT	20%		PR		x	x	x		
BG	N.R.		PR		X			x	
CY	N.R.		C			x			
CZ	5%-10%	I				x	x		
EE	0%	G		X					
EL	7,4%	C			x	x	x	x	
HR	N.R.		IP			X			
HU	N.R.		R			x			
IS	N.R.			X					
LI	N.R.	I		X					
LT	N.R.		PR			x			
LU	0%	C		x					
LV	N.R.		C			x			
MT	N.R.		PR		X		x	x	
NO	30%	G							
PL	N.R.	C							x
RO	5%	EO							x
SI	N.R.		PR		X	x		x	
SK	N.R.		G			x		x	

N.R.: Not Relevant
PR: Press Release
C: Circular

IP: Internal procedure
R: Recommendations
G: Guidelines
EO: Executive Order
I: Instructions

Annex 2 – The Automated Trading Guidelines

Guidelines 1, 3, 5, and 7 of the Automated Trading Guidelines are included below.

Guideline 1. Organisational requirements for regulated markets' and multilateral trading facilities' electronic trading systems

Relevant legislation.

Article 39, paragraphs (b) and (c), of MiFID for regulated markets.

Article 14, paragraph (1), and Article 13, paragraphs (2), (4), (5) and (6,) of MiFID and Articles 5 to 9, Articles 13 and 14 and Article 51 of the MiFID Implementing Directive for multilateral trading facilities.

General guideline

1. A regulated market's or multilateral trading facility's electronic trading system (or systems) shall ensure that it complies with applicable obligations under MiFID and other relevant Union and national law taking into account technological advancements and trends in the use of technology by its members/participants or users. In particular, the system (or systems) should be well adapted to the business which takes place through it (or them) and is (or are) robust enough to ensure continuity and regularity in the performance of the automated market (or markets) operated by the market operator or investment firm.

Detailed guidelines

2. In following the general guideline trading platforms should at least take into account the following:

a) Governance

- The governance process is central to compliance with regulatory obligations. Trading platforms should, within their overall governance and decision-making framework, develop, procure (including outsourcing) and monitor their electronic trading systems through a clear and formalised governance process. The governance process must ensure that all of the relevant considerations including commercial, technical, risk and compliance that ought to be brought to bear in making the key decisions are given due weight. In particular, it must embed compliance and risk management principles. The governance process must also have clear lines of accountability, including procedures for the sign-off for development, initial deployment, subsequent updates and resolution of problems identified through monitoring. There should also be appropriate procedures for the communication of information.
- In the governance process compliance staff should be responsible for providing clarity about the market operator or firm's regulatory obligations and the policies and procedures that seek to ensure the use of the trading systems comply with the market operator or firm's obligations and that any failures to comply are detected. This requires compliance staff to have an understanding of the way in which the trading systems operate but not knowledge of the technical properties of the trading systems.

a) Capacity and resilience

- Regulated markets' and multilateral trading facilities' electronic trading systems should have sufficient capacity to accommodate reasonably foreseeable volumes of messaging and that are scalable to allow for capacity to be increased in order to respond to rising message flow and emergency conditions that might threaten their proper operation.

b) Business Continuity

- Trading platforms should have effective business continuity arrangements in relation to their electronic trading systems to address disruptive incidents, including but not limited to system failures. The business continuity arrangements should ensure a timely resumption of trading, including but not limited to system failures. The arrangements should cover, as appropriate, matters such as:
 - a. Governance for the development and deployment of the arrangements;
 - b. Consideration of an adequate range of possible scenarios related to the operation of their electronic trading systems which require specific continuity arrangements;
 - c. The backing up of business (including compliance) critical data that flows through their electronic trading systems;
 - d. The procedures for moving to and operating the electronic trading system from a back-up site;
 - e. Staff training on the operation of the arrangements and individuals' roles within them; and
 - f. An on-going programme for the testing, evaluation and review of the arrangements including procedures for modification of the arrangements in light of the results of that programme.

d) Testing

- Trading platforms should prior to deploying an electronic trading system, and prior to deploying updates, make use of clearly delineated development and testing methodologies. The use of these methodologies should seek to ensure that, amongst other things, the operation of the electronic trading system is compatible with the regulated market's and multilateral trading facility's obligations under MiFID and other relevant Union or national law, that compliance and risk management controls embedded in the systems work as intended (including generating error reports automatically) and that the electronic trading system can continue to work effectively in stressed market conditions.

e) Monitoring and review

- Trading platforms should monitor in real time their electronic trading systems. They should deal adequately with problems identified as soon as reasonably possible in order of priority and be able when necessary to adjust, wind down, or shut down the electronic trading system. Decisions on action to deal with problems with electronic trading systems should take due account of the need, as far as possible, for those operating trading platforms to act in an orderly manner.
- In order to ensure that trading platforms remain continually effective, the operators of these trading platforms should periodically review and evaluate their electronic trading systems, and associated process for governance, accountability and sign-off and associated business continuity arrangements. They should act on the basis of these reviews and evaluations to remedy deficiencies. The review and evaluation process should have some degree of independence which can be achieved, for example, by the involvement of internal audit or third parties.

f) Security

- Trading platforms should have procedures and arrangements for physical and electronic security designed to protect their electronic trading systems from misuse or unauthorised access and to ensure the integrity of the data that is part of or passes through the systems.

g) Staffing

- Trading platforms should have procedures and arrangements, including recruitment and training, to determine their staffing requirements and then to ensure they employ sufficient number of staff with the necessary skills and expertise to manage their electronic trading systems. This will include employing staff with knowledge of relevant electronic trading systems, the monitoring and testing of such systems and the sort of trading that will be undertaken by members/participants of

the regulated market or users of the multilateral trading facility and of the regulated markets' or multilateral trading systems' regulatory obligations.

h) Record keeping and cooperation

- Trading platforms should keep records in relation to their electronic trading systems covering at least the matters referred to in points a) to g) above. That will include information about key decisions, system properties, testing methodologies, test results and periodic reviews. The records should be sufficiently detailed to enable competent authorities to monitor compliance with relevant obligations of the trading platform. Market operators and investment firms operating multilateral trading facilities should keep the records for at least 5 years. Market operators operating regulated markets should keep them for at least as long as required by their home competent authority.
- Trading platforms should inform competent authorities, in line with the supervisory arrangements that exist in their Member State, about any significant risks that may affect the sound management of the technical operations of the system and major incidents where those risks crystallise.

Guideline 3. Organisational requirements for regulated markets and multilateral trading facilities to promote fair and orderly trading in an automated trading environment

Relevant legislation.

Article 39, paragraphs (b), (c) and (d), Article 42, and Article 43 of MiFID for regulated markets.

Article 14, paragraphs (1) and (4), Article 13, paragraphs (2), (5) and (6), Article 42, paragraph (3), and Article 26 of MiFID and Articles 13 and 14 and Article 51 of the MiFID Implementing Directive for multilateral trading facilities.

General guideline

1. Regulated markets' and multilateral trading facilities' rules and procedures for fair and orderly trading on their electronic markets should be appropriate to the nature and scale of trading on those markets, including the types of members, participants and users and their trading strategies.

Detailed guidelines

2. In following the general guideline, the rules and procedures of trading platforms should at least include:

a) Requirements for members or participants who are not credit institutions or investment firms

- Trading platforms should perform adequate due diligence on applications to become a member/participant or user from persons who are not credit institutions or investment firms under EU law.
- Trading platforms should have organisational requirements for members or participants who are not credit institutions or investment firms (taking account as necessary of the controls imposed on firms authorised outside the EEA), including requirements on the monitoring of trading against the rules of the platform and the management of risk. Trading platforms' rules should require members/participants and users who are not investment firms to follow the guidelines laid down in this paper for investment firms.

b) IT compatibility

- Trading platforms should have standardised conformance testing to ensure that the systems that members and participants are using to access the platform have a minimum level of functionality

that is compatible with the trading platforms' electronic trading system and will not pose a threat to fair and orderly trading on the platform.

c) Pre- and post-trade controls

- To ensure that there is orderly trading on the platform, trading platforms should have minimum requirements for members'/participants' and users' pre- and post-trade controls on their trading activities (including controls to ensure that there is no unauthorised access to trading systems). In particular, there should be controls on filtering order price and quantity (this requirement is without prejudice to the responsibility of members/participants or users to implement their own pre and post-trade controls).

d) Trader access and knowledge

- Trading platforms should have standards covering the knowledge of persons within members/participants and users who will be using order entry systems. participants and users who will be using order entry systems.

d) Limits to access and intervention on transactions.

- Trading platforms should have the ability to prevent in whole or in part the access of a member or participant to their markets and to cancel, amend or correct a transaction. The rules and procedures for cancelling, amending or correcting trades should be transparent to members/participants and users of the regulated market or multilateral trading facility.

e) Measures to cope with excessive flooding of the order book.

- Trading platforms should have arrangements to prevent the excessive flooding of the order book at any one moment in time, notably through limits per participant on order entry capacity.

f) Prevention of capacity limits from being breached.

- Trading platforms should have arrangements (such as throttling) to prevent capacity limits on messaging from being breached. At a minimum, the framework of those arrangements should be made available to members/participants and users.

g) Measures to constrain or halt trading.

- Trading platforms should have arrangements (for example, volatility interruptions or automatic rejection of orders which are outside of certain set volume and price thresholds) to constrain trading or to halt trading in individual or multiple financial instruments when necessary, to maintain an orderly market. At a minimum the framework of those arrangements should be made available to members/participants and users.

h) Obtaining information from members/participants and users

- Trading platforms should have the ability to obtain information from a member/participant or user to facilitate monitoring of compliance with the rules and procedures of the regulated market or multilateral trading facility relating to organisational requirements and trading controls.

j) Monitoring

- Trading platforms should, whenever the trading platform is in operation, monitor their markets as close to real time as possible for possible signs of disorderly trading. This monitoring should be conducted by staff who understands the functioning of the market. Those staff should be

accessible to the platform's home competent authority and should have the authority to take remedial action, when necessary, to protect fair and orderly trading.

k) Record keeping and co-operation

- i) Trading platforms should keep records of the matters covered by points a) to j) above, including of issues which emerge in relation to the policies and procedures mentioned. The records should be sufficiently detailed to enable a competent authority to monitor compliance with relevant obligations of trading platforms. Market operators and investment firms operating multilateral trading facilities should keep the records for at least 5 years. Market operators operating regulated markets should keep them for at least as long as required by their home competent authority.
- ii) Trading platforms should inform competent authorities, in line with the supervisory arrangements that exist in their Member State, about significant risks that may affect fair and orderly trading and major incidents where those risks crystallise.

Guideline 5. Organisational requirements for regulated markets and multilateral trading facilities to prevent market abuse (in particular market manipulation) in an automated trading environment

Relevant legislation

Article 39, paragraphs (b) and (d), and Article 43 of MiFID and Article 6, paragraphs (6) and 9, of MAD and Articles 7 to 10 of the MAD Implementing Directive 2004/72/EC for regulated markets.

Article 14, paragraph (1), Article 13, paragraphs (2), (5) and (6), and Article 26 of MiFID, Articles 5 to 9 and Article 51 of the MiFID Implementing Directive and Article 6, paragraphs (6) and (9) of MAD and Articles 7 to 10 of the MAD Implementing Directive 2004/72/EC for multilateral trading facilities.

General guideline

1. Trading platforms should have effective arrangements and procedures, taking account of the specific supervisory arrangements/regulation in their Member State, which enable them to identify conduct by their members/participants and users that may involve market abuse (in particular market manipulation) in an automated trading environment.
2. Potential cases of market manipulation that could be of particular concern in an automated trading environment include:

Ping orders – entering small orders in order to ascertain the level of hidden orders and particularly used to assess what is resting on a dark platform.

Quote stuffing- entering large numbers of orders and/or cancellations/updates to orders so as to create uncertainty for other participants, slowing down their process and to camouflage their own strategy.

Momentum ignition- entry of orders or a series of orders intended to start or exacerbate a trend, and to encourage other participants to accelerate or extend the trend in order to create an opportunity to unwind/open a position at a favourable price.

Layering and Spoofing- submitting multiple orders often away from the touch on one side of the order book with the intention of executing a trade on the other side of the order book. Once that trade has taken place, the manipulative orders will be removed.

Detailed guidelines

3. In following the general guideline, the arrangements and procedures of trading platforms which seek to prevent and identify conduct by their members/participants and users that may involve market abuse and in particular market manipulation in an automated trading environment should at least include:

a) Staffing

- Trading platforms should have sufficient staff with an understanding of regulation and trading activity and the skill to monitor trading activity in an automated trading environment and identify behaviour giving rise to suspicions of market abuse (in particular market manipulation) in case monitoring market abuse falls under their responsibility.

b) Monitoring

- Trading platforms should at least have systems (including automated alert systems on transactions and orders) with sufficient capacity to accommodate high frequency generation of orders and transactions and low latency transmission, in order to monitor, using a sufficient level of time granularity, orders entered and transactions undertaken by members/participants and users and any behaviour which may involve market abuse (in particular market manipulation, including, where the trading platform has sight of this, cross-market behaviour) and with the ability to trace backwards transactions undertaken by members/participants and users as well as orders entered/ cancelled which may involve market manipulation.

c) Arrangements for the identification and reporting of suspicious transactions and orders

- Trading platforms should have in place arrangements to identify transactions, and it is also recommended that these arrangements also cover orders¹⁷, that require an STR to competent authorities in relation to market abuse (in particular market manipulation) and to make those reports without delay (if initial enquiries are undertaken, a report should be made as soon as possible if those enquiries fail to find a satisfactory explanation for the observed behaviour).

d) Reviews

- Trading platforms should conduct periodic reviews and internal audits of procedures and arrangements to prevent and identify instances of conduct that may involve market abuse.

e) Record keeping

- Trading platforms should keep records of the matters covered by points a) to d) above, including effective audit trails regarding how each alert of possible suspicious behaviour is dealt with whether or not a report is made to the relevant competent authorities. The records should be sufficiently detailed to enable competent authorities to monitor compliance with their relevant obligations of trading platforms. Market operators and investment firms operating multilateral trading facilities should keep the records for at least 5 years. Market operators operating regulated markets should keep them for at least as long as required by their home competent authority.

Guideline 7. Organisational requirements for regulated markets and multilateral trading facilities whose members/participants and users provide direct market access/sponsored access

¹⁷ CESR's first and third set of Level 3 guidance on the implementation of the MAD, CESR has already provided guidelines on suspicious transactions reports (STR), which state: "CESR is of the view that where an unexecuted order for a transaction gives rise to a suspicion of market abuse, this suspicion is recommended, when not already legally required on a national basis, to be reported to the competent authority." The guidance also provides a standard STR report form (Sections IV and V of the May 2005 guidance (Ref : CESR/04-505b) and Section 2 of the May 2009 guidance (Ref : CESR/09-219)).

Relevant legislation

Article 39, paragraph (b)), and 43(1) of MiFID for regulated markets.

Articles 14, paragraph (1), Article 13, paragraphs (2), (5) and (6), and Article 26(1) of MiFID and Articles 5 to 9 and Article 51 of the MiFID Implementing Directive for multilateral trading facilities.

General guideline

1. Trading platforms should have rules and procedures which seek to ensure that, where they allow members/participants or users to provide direct market access/sponsored access (DMA/SA), the provision of DMA/SA is compatible with fair and orderly trading. It is important that trading platforms and their members/participants retain control of and closely monitor their systems to minimise any potential disruption caused by these third parties to avoid that trading platforms are vulnerable to either the potential misconduct or market abuse of DMA/SA clients or to their inadequate/erroneous systems.

Detailed guidelines

2. In following the general guideline, trading platforms should set out whether or not it is permissible for their members/participants or users to offer DMA and/or SA. Where they allow members or participants to offer DMA and/or SA, their rules and procedures should at least take account of the following:

a) Ultimate responsibility for messages, including orders, and eventual interventions and sanctions

- Trading platforms should make clear that the member/participant or user is solely responsible for all messages, including orders entered under its trading codes and therefore may be subject to interventions (including cutting the access of the member/participant or user to the trading platform) and sanctions for any breaches of the rules or procedures in respect of those orders.

b) Subsidiary responsibility when providing DMA/SA

- DMA/SA arrangements between trading platforms and a DMA/SA provider firm should stress that the direct market access/sponsored access provider firm remains responsible to the trading platform for all trades using their market participant ID code or any other identification.

c) Requirements for members/participants to provide DMA/SA

- As per guideline 3, trading platforms should require members/participants or users to have adequate systems and effective controls, including pre- and post-trade controls, to ensure that the provision of DMA/SA does not adversely affect compliance with the rules of the regulated market or multilateral trading facility, lead to disorderly trading or facilitate conduct that may involve market abuse. This applies equally where a member/participant or user provides DMA/SA.

d) Due diligence prior to provision of DMA/SA

- Trading platforms should require members/participants or users to conduct due diligence on clients to which they provide DMA/SA.

e) Rights of access

- Trading platforms should be able to refuse a request from a member/participant or user to allow a client to be provided with SA where the regulated market or multilateral trading facility is not satisfied

that this would be consistent with its rules and procedures for fair and orderly trading. In relation to naked SA please refer to guideline 8.

f) Monitoring of order

- Trading platforms should, as part of their obligations to monitor their markets under guideline 3, monitor orders sent to their systems by a member/participants' SA clients.

g) Potential interventions over SA

- i) Trading platforms should be able to suspend or withdraw the SA after it has been granted where the regulated market or multilateral trading facility is not satisfied that continued access would be consistent with its rules and procedures for fair and orderly trading.
- ii) Trading platforms should have the ability to stop orders from a person trading through SA separately from the orders of the member or participant sponsoring that person's access by assigning unique customer IDs to clients that are accessing the market via SA.
- iii) Trading platforms should be able to carry out, where necessary, a review of a member/participant or users' internal risk control systems in relation to their sponsored access or direct market access clients.

i) Record keeping

Trading platforms should keep records of their policies and procedures relating to DMA/SA and any significant incidents relating to SA trading. The records should be sufficiently detailed to enable competent authorities to monitor compliance with relevant obligations of trading platforms. Market operators and investment firms operating multilateral trading facilities should keep the records for at least 5 years. Market operators operating regulated markets should keep them for at least as long as required by their home competent authority.

Annex 3 – Questionnaire

Review Panel Peer Review on ESMA Guidelines on Automated Trading

Introduction

1. On July 4 2013, the ESMA Board of Supervisors approved the Review Panel mandate to conduct a peer review related to how the EEA national competent authorities have implemented the ESMA Guidelines on Automated Trading on a formal and practical basis. The revision of the formal implementation will be carried out on all the EEA national competent authorities (section 1) whereas the practical implementation (section 2) will be addressed to 12 National Competent Authorities (CAs) who have trading platforms where the penetration of automated trading is significant. Those members are the CAs of: Belgium, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden, and the UK. The work will investigate how the EEA CAs, who are represented in the ESMA Review Panel, are complying with the ESMA Guidelines on Automated Trading (the Guidelines).
2. ESMA BoS approved these Guidelines on 20 December 2011 and the translation to the official languages of the Union was released on 24 February 2012. As article 16 of the ESMA regulation states in paragraph 3, CAs communicated to ESMA their intention to comply with the Guidelines within two months after the release of the translation. Those members who had decided not to comply with the Guidelines should also have informed ESMA stating their reasons why. Only one CA out of 28 informed ESMA of its intention not to comply with the Guidelines as there are no trading platforms under its supervision. The Guidelines became effective on 1 May 2012, one month after their publication on the ESMA website.

Purpose of this document

3. In accordance with the Review Panel Methodology (ESMA/2012/33), this document sets out the peer review self- assessment questionnaire that members will fill in using the ESMA Survey IT-tool. The purpose of the questionnaire is to capture the different ways CAs have incorporated the Guidelines in their regulatory and supervisory framework as well as how they undertake monitoring of Trading Platforms (TPs) to ensure compliance with the ESMA Guidelines on Automated Trading. The questionnaire is divided into three sections, being a section on background questions, a section of questions directed to all CAs on the formal implementation and a section directed to the 12 CAs which will be subject to a more in-depth review focusing on the practical implementation of the recommendation included in the Guidelines. The Review Panel will use the information gathered by this questionnaire to elaborate its report in order to increase and facilitate the objective of supervisory convergence.
4. CAs shall provide detailed description, reasoning and evidence supporting their responses. The evidence which may be provided includes all types of information as described in paragraph 61 of the peer review methodology (including, but not limited to, the indicative list in the appendix to the methodology).

5. Peer Reviews need to assess:

- a. Whether CAs have implemented the Guidelines in their regulatory and supervisory framework
 - b. That those 12 CAs who reported their interest in participating in this revision are monitoring and supervising how Trading Platforms (TPs) under their jurisdictions are complying with the guideline.
 - c. The independence of CAs and their capacity, through the adequacy of their resources and governance arrangements, to achieve high quality supervisory outcomes and to respond to market developments,
 - d. The degree of convergence reached in the implementation of the Guidelines and in supervisory practices and the extent to which the supervisory practices achieve the objectives set out in the Guidelines,
 - e. The effectiveness and the degree of convergence reached with regard to the different ways that CAs are encouraging TPs to comply with the provisions of the Guidelines, including, if applicable, the administrative measures and sanctions imposed against persons and bodies responsible, where those provisions have not been complied with.
6. The Key Issues and Key Questions aim at enabling the Review Panel to assess how CAs actively comply with the guidelines. The Key Issues and Key Questions have been developed largely on the basis of the ESMA guidelines on Automated Trading. Following the new RP methodology (ESMA/2013/1079), Key Issues subsections show the objective criteria that the assessors' team will use to make an objective, transparent and comparative assessment¹⁸. Please be aware that there are also examples in the Key Issues subsections. Those examples are an attempt to show different ways to implement these Guidelines in their internal regulatory framework or supervisory approach but those examples are not the only ones.
7. The review period shall be from 1 June 2012 to 31 October 2013. For later developments, please use the text boxes which are included in the questionnaire (e.g. whether the effective implementation will enter into force after December 2013 or any significant development that will become effective after that date).

Instructions to fill in the questionnaire

¹⁸ Please see paragraphs 22, 25 and 33 of the RP new methodology (ESMA/2013/1079):

"In order to allow the assessment of each area above to be made in an objective, transparent and comparative manner, the questionnaire specifies for each assessment area which issues are key for its assessment and according to which objective criteria these key issues will be assessed. The definition of those criteria takes into account, as appropriate, the objectives of the topic under review and the need to strengthen the consistency and equivalence of supervisory outcomes through a uniformly high level of supervisory practices and the promotion of investor protection (Paragraph 22 new RP methodology)"

In this sense as it is stated in paragraph 25 of the new methodology, "the questionnaire is giving guidance to both the National Competent Authorities and the Assessment Group in order to allow the assessments required by the mandate to be made in an objective, transparent and comparative manner. It must therefore respect the key issues and objective criteria specified in the mandate." Finally, as it is stated in paragraph 31 of the new methodology, "all participating jurisdictions are assessed jointly and simultaneously according to the same criteria, in order to minimize the risk of uneven or biased results."

8. The key questions in section 1 are structured as yes or no questions and text boxes. After responding to the yes or no questions, please fill in the “text” box in order to provide details supporting your response (including specific cross-references to the written material and other supporting information you enclose pursuant to par. 3 above). Where necessary, open questions are included to ensure sufficiently detailed information gathering.
9. The key questions on section 2 are mostly open questions with the aim of analysing in detail how the application of the Guidelines is being supervised and to what extent they are being enforced by the 12 CAs, as well as how TPs are in fact applying them on a day-to-day basis. The purpose of this section is to assess the degree of convergence of the practices across the EU and possibly identify best practices which might be of benefit for CAs (see art. 30 of ESMA Regulation and paragraph 51 of the peer review methodology). If you wish to provide additional information on any of these subject matters, please use the “other” text box.

* * *

Background information

1. In order to provide some background on your market size and general supervisory approach, please respond to the following questions:

q1) How many Trading Platforms do you supervise? (If a TPs use more than one trading platform please specify) (Text box)

q2) How many authorised Trading Platforms are computer based (as opposed to open outcry)? (Text box)

- a. From the above figure how many TPs are order driven markets based? (Text box)
- b. How many are price driven markets based? (Text box)
- c. How many are hybrid? (Please specify which type of hybrid market)

q3) In the subject matter, do you share competences with other national authorities¹⁹? (Y/N)

- a. If yes please provide details on respective roles/ functions and means for coordination (Text box)

q4. Please provide an estimation of the trading volume carried out by Automated Trading Systems on the TPs under the supervision of your Competent Authority? What method did you use to obtain this figure? Please provide, if possible, figures on how many members of the trading platforms under your supervision offer DMA/SA, how many use trading algorithms and how many could be, generally speaking, considered HFT. (Please provide details of the number and the percentage in relation to the total number of trading platform members).

SECTION 1 – Formal implementation

¹⁹ In case the ESMA member shares competences with another domestic regulator the responses to all relevant questions should include the relevant rules and practice. The outcome of the exercise shall refer to the implementation at the level of each member. The explanatory text to the assessment shall provide sufficient explanation to make the assessment understandable.

Background information

10. ESMA Guidelines have been issued under article 16 of ESMA Regulation²⁰. Paragraph 3 of article 16²¹ states that ESMA members shall make every effort to comply with the Guidelines and in two months from the issuance ESMA members shall inform whether they comply or intend to comply with the guidelines. In the event that the ESMA member does not intend to comply with the guidelines it shall state its reasons according with the principle comply or explain.

Key issues

11. These Guidelines affect third parties (e.g. Regulated Trading, MTFs, members and users of trading venues and IT providers of electronic trading systems to market operators and investment firms). On top of that, all EEA members, except one, have declared that they comply or intend to comply with these Guidelines. Given that the Guidelines do not mention any specific text or template to be used, the CA should have made public this intention to comply with the Guidelines to market participants in one or more of the following ways:

11.1. Publishing a press release informing market participants about its commitment to comply with the Guidelines. The press release could include a link to the website where the Guidelines can be found. In addition the CA could incorporate the Guidelines in its webpage or the press release could include a link to ESMA's web site. The press release could include a request to the Trading Platforms and investment firms to comply with the guideline.

11.2. Issuing a non-binding recommendation or soft law which mirrors the Guidelines or adds to or amends the wording of the Guidelines. In addition, the non-binding instruction could be accompanied by any additional action issued by the CA in the form of letters to market participants, FAQs and others.

11.3. Issuing a binding legal instruction at the level of the CA which compels TPs and IFs to comply with the guideline. In addition, the legal instruction could be

²⁰ REGULATION (EU) No 1095/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010

²¹ The competent authorities and financial market participants shall make every effort to comply with those guidelines and recommendations.

Within 2 months of the issuance of a guideline or recommendation, each competent authority shall confirm whether it complies or intends to comply with that guideline or recommendation. In the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority, stating its reasons.

The Authority shall publish the fact that a competent authority does not comply or does not intend to comply with that guideline or recommendation. The Authority may also decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with that guideline or recommendation. The competent authority shall receive advanced notice of such publication.

If required by that guideline or recommendation, financial market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.

accompanied by any additional actions issued by the CA in the form of letters to market participants, FAQs and others.

- 11.4. Issuing by the Parliament or Government of an EEA member a specific regulation (Law, Decree, etc.) or modifying a previous one that incorporates the guideline. In addition, these regulations could be accompanied by any additional action issued by either the Government or CA in the form of letters to market participants, FAQs and others.
- 11.5. Any combination of the previous ones.
- 11.6. Any other form of implementation not included in letters a) to d).
12. In addition to the official implementation and taking into account the mandate which mentions that communication actions should also be considered, the formal implementation of the guideline should also take into account which type of communication actions ESMA members have conducted with the TPs in order to implement the guidelines (e.g. letters, meetings, recommendations, publicity questionnaires).
13. CAs should prove that texts of any kind relating to the formal implementation of the Guideline and any of their developments or amendments are consistent with the text of the original guideline. This analysis will be based on a self-declaration. However the CA should be prepared to explain to ESMA how any amendments that have been added achieve the same effect as the original text.
14. Furthermore, CAs should also demonstrate the actions undertaken to implement and apply the Guidelines during the period under review. The written evidence may include a wide range of documents (e.g. local implementing measures, guidelines and circulars issued by the regulators or CAs, internal procedures etc., or at least a link to the web pages where those documents are posted) and has to be translated at least partially into English.
15. Paragraph 10 of the Guidelines states that Competent Authorities that comply with these Guidelines should incorporate them into their supervisory practices, including where particular guidelines within the document are directed primarily at financial market participants. Furthermore the questionnaire should address this matter and questions on how CAs have incorporated the Guidelines in their internal supervisory practices.
16. Finally, as almost all CAs have communicated their intention to comply with the Guidelines it is worth asking how CAs ensure compliance with the Guidelines, with an indication of the action they are able to undertake if the recommendations of these

Guidelines are breached. Here you can find a table with ESMA members' response on their intention to comply with the guideline²².

Member State Competent authority	Complies or intends to comply
BE Belgium	Yes
BG Bulgaria	Yes
CZ Czech Republic	Yes
DK Denmark	Yes
DE Germany Hamburg Ministry for Economic Affairs, Infrastructure Transport and Innovation	Yes
Ministry of Economics, Transport and Regional Development of the State of Hesse	Yes
Ministry of Economics of Lower Saxony	Yes
Ministry of Finance of Northern Westfalia	Yes

²² As background information please find attached the report of the Chair of the SMSC to the BoS of April 2012 (3 April 2012 ESMA/2012/BS/59): **"Guidelines on systems and controls in an automated environment for trading platforms, investment firms and national competent authorities"**: on 24 February, ESMA published the official translations of the guidelines on its website, triggering the start of the two-month period for competent authorities to notify ESMA whether they intend to comply with them.

So as to facilitate the effective implementation the guidelines, at the 2nd April meeting the Standing Committee discussed the regulatory experience of implementing the guidelines. In particular, the Committee discussed the approach taken to implement the guidelines into national supervisory frameworks.

Among the preliminary conclusions, we can highlight the following points:

All the notifications received so far from national competent authorities indicate compliance with the guidelines;

Two different approaches to implementation can be identified:

- Some national competent authorities intend to undertake a "hard" implementation, via publication or incorporation of the guidelines into their official journal or handbook of directly enforceable rules and regulations;
- Some national competent authorities intend to undertake a "soft" implementation, mainly based on the publication of the guidelines on their websites and incorporation into supervisory practices. This approach is based on the fact that guidelines are simply the regulator's elaboration of MiFID and MAD that needs no further transposition beyond their publication as such guidelines.

Both approaches are considered valid as long as they lead to the same supervisory outcome, i.e. rendering the Guidelines enforceable.

There are a number of national competent authorities which have not yet decided on their approach.

Since the guidelines aim at ensuring common, uniform and consistent application of existing MiFID and MAD and provisions, we consider that both approaches are valid.

Several competent authorities report they will be taking a pro-active approach so as to make the guidelines known to market participants such as conferences, press releases, roundtables. Some plan to require self-assessment from market participants. According to the reports received, some firms have noted the challenges of being ready to meet the guidelines on 1 May (2012 sic)"

Exchange Supervisory Authority of the Saxon State (Ministry for Economic Affairs, Labor and Transport)	Yes
Ministry for Finance and Economy Baden- Wuerttemberg	Yes
Bavarian Ministry for Economic Affairs, Infrastructure Transport and Technology	Yes
Exchange Supervisory Authority Berlin (Senate Department for Economics, Technology and Research)	Yes
BaFIN	Yes
EE Estonia	Yes
IE Ireland	Yes
EL Greece	Yes
ES Spain	Yes
FR France	Yes
IT Italy	Yes
CY Cyprus	Yes
LV Latvia	Yes
LT Lithuania	Yes
LU Luxembourg	Yes
HU Hungary	Yes
MT Malta	Yes
NL Netherlands	Yes
AT Austria	Yes
PL Poland	Yes
PT Portugal	Yes
RO Romania	Yes
SI Slovenia	Yes
SK Slovakia	Yes

FI Finland	Yes
SE Sweden	Yes
UK United Kingdom Financial Services Authority	Yes

EEA EFTA State Competent authority	Complies or intends to comply
IS Iceland Fjármálaeftirlitið	No
NO Norway Finanstilsynet	Yes
LI Liechtenstein	Yes

Key Questions

q5) How has your CA incorporated the Guidelines in its regulatory framework? (Y/N; if your CA has used several ways to incorporate the Guideline please tick yes on the appropriate responses)

- a. Has your National Parliament/Government/Ministry enacted any legislation (law, amendment to a former law, Decree or any other legal act) in order to implement the Guidelines? (Y/N)
 - i. If Yes, please provide us with a link to the specific Regulation (text box; English version if available; if it is not available please provide a summary in English and make a statement that the text is consistent with the Guidelines, in any other case please explain the differences)
- b. Has your CA issued any [other] binding instructions?(Y/N)
 - i. If Yes, was that by way of:
 1. A link to the binding instruction and ESMA Guidelines on the webpage of your CA (Y/N)
 2. A link to the Guidelines on the webpage of ESMA (Y/N)
 - ii. Where you have answered yes to the above question, please provide us with a link to the binding instruction (text box; English version if available; if it is not available please provide a summary in English and make a statement that the text is consistent with the Guidelines, in any other case please explain the differences)
- c. Has your CA issued a non-binding instruction (soft law)? (Y/N)
 - i. If Yes, was that by way of:
 1. A link to the non-binding instruction and ESMA Guidelines on the webpage of your CA (Y/N)
 2. A link to the Guidelines on the webpage of ESMA (Y/N)
 - ii. Where you have answered yes to the above question, please provide us with a link to the non-binding instruction (text box; English version if available; if it is not available please provide a summary in English and make a statement that the text is consistent with the Guidelines, in any other case please explain the differences)
 - iii. Please provide a short explanation on whether the Guidelines have been implemented in your jurisdiction in such a manner that you are able to achieve compliance with the Guidelines? If yes, please explain. (Text box)
- d. Did your CA issue a press release and/or targeted letter to TPs? (Y/N)
 - i. If Yes, was that by way of:
 1. A link to the Guidelines on the webpage of your CA? (Y/N)
 2. A link to the Guidelines on the webpage of ESMA? (Y/N)
 - ii. Where you have answered yes to the above question, please provide us with a link or a copy of the press release (text box; English version if available; if it is not available please provide a summary in English and make a statement that the text is consistent with the Guidelines, in any other case please explain the differences)

- iii. Where you have sent targeted letters to TPs, please provide us with a link or a copy of one of those letters (text box; English version if available; if it is not available please provide a summary in English and make a statement that the text is consistent with the guideline, in any other case please explain the differences)
 - iv. Please provide a short explanation on whether the Guidelines have been implemented in your jurisdiction in such a manner that you are able to achieve compliance with the Guidelines? If yes, please explain. (Text box)
 - e. Has your CA implemented the Guidelines in your regulatory framework in any other way not covered above? (Y/N)
 - i. If yes, please provide a summary of the actions you have taken and provide a link to the relevant webpage (text box; English version if available; if it is not available please provide a summary in English and make a statement that the text is consistent with the Guidelines, in any other case please explain the differences.)
 - ii. Please provide a short explanation on whether the Guidelines have been implemented in your jurisdiction in such a manner that you are able to achieve compliance with the Guidelines? If yes, please explain. (Text box)
- q6) Has your CA issued FAQs on these Guidelines? (Y/N)
- a. If yes, please provide us with a link to them (text box; English version if available; if it is not available please provide a summary in English and make a statement that the text is consistent with the Guidelines, in any other case please explain the differences.)
- q7) Has your CA used any other method to implement the Guidelines such as sending specific letters to TPs, holding multi or bilateral meetings with TPs, or others? (Y/N)
- a. If yes, please specify which actions:
 - i. Letters (Y/N)
 - ii. Communications (Y/N)
 - iii. Meetings (Y/N)
 - iv. Others, please indicate which ones (Text box)
- q8) Has your CA incorporated the Guidelines into its internal supervisory approach (please answered taking into account question 4 above)? (Y/N)
- a. If Yes, please elaborate how (Text box)
 - b. If No, how is your CA planning to incorporate the Guidelines in its supervisory practices? (Text box)
- q9) Miscellaneous, if you would like to make any comments, particularly regarding your experience in implementing this Guidelines in your regulatory framework and in your internal supervisory approach, please fill in the free text box. (Text box)

SECTION 2 - PRACTICAL APPLICATION OF THE AUTOMATED TRADING GUIDELINES IN SOME JURISDICTIONS

17. The part of the questionnaire covers how the Guidelines have impacted on the supervisory practices of CAs when supervising TPs. It is addressed to the EEA members where Automated Trading has a significant presence in the daily turnover of the trading venues under their jurisdiction and where Competent Authorities have voluntarily requested to participate in this peer review. Those members are the CAs of: Belgium, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, Sweden, and the UK.
18. The questionnaire is composed of an initial group of overarching questions which deals with the global approach to the effective supervision of the guidelines, and four subsections which deal with the four guidelines applicable to TPs. Each of these sub-sections, sub-sections A to D, includes a sub-segment of background information (which incorporates the General Guideline and the detailed Guidelines), key issues (i.e. some general comments about what is expected from your answers) and finally the key questions which develop the detailed guidelines. This exercise does not include scoring or benchmarking. The subgroup will review the responses analytically and from two perspectives, the national one and the cross border one, where applicable (e.g. when several ESMA members have established a college to carry out the supervision of a TP which runs exchanges among those ESMA members). Furthermore, we expect that several questions could have a shared/common answer by several ESMA members when dealing with the same TP.
19. Please be aware that when answering the questions in the following subsections that the principle of proportionality should be taken into account so greater detail should be provided in answering questions with regard to TPs that are larger in scale and complexity.
20. In addition, ESMA members have just shown their commitment to implement these guidelines in their reports to ESMA on their intention to comply or try to comply with these guidelines. However, the exact level of implementation that each ESMA member will commit to for these particular guidelines will be significantly influenced by the nature, scale and complexity of automated trading in the TPs under their supervision. Furthermore, all the answers should take into account this situation and ESMA members are, of course, invited to consider proportionality in responding to the questionnaire.

21. Automated Trading requires a faster procedure when taking decisions at the CA level and at the TPs level in comparison to the former trading environment. Furthermore, you will find below some generic questions regarding your internal procedures/supervision to tackle two situations: a) when taking decision in a very short time is necessary to deal with any significant problem caused by Automated Trading and b) in regard to your CA on-going supervision, inspection and enforcement.
22. As many ESMA members dealt with Automated Trading environments before the ESMA Automated Trading Guidelines were approved, some of the detailed guidelines included in these Guidelines may have already been incorporated in their Regulatory Framework or internal practices. Furthermore, the adoption of these Guidelines or part of them may not have required any action by ESMA members. If this has been your case please provide details in your response.
23. Supervision of the TPs implementation and subsequent compliance with the guidelines may be achieved through different supervisory approaches which may include CAs risk assessment, organization and proportionality. In answering the questions below on the detailed guidelines, please elaborate on the specific supervisory actions that the CA takes in relation to each of the guidelines. Such specifics could be examples of desk based reviews, information as to what specific documents are required in the supervision process, etc.

Background questions

Please provide the following information on how the CA is structured internally in order to supervise, inspect and enforce (if applicable) the application of the Guidelines on Automated Trading by TPs:

q10) A general description of the department or units involved and resources applied, including personnel. Have your supervisory resources increased for this purpose? Please explain if your CA has necessitated hiring new personnel with skills to deal with the issues that Automated Trading may elicit. (Text box)

q11) A brief description of your supervisory approach, to ensure compliance with the ESMA Guidelines on Automated Trading, as well as preventive work on monitoring trading system used by TPs. (Text box)

q12) How is on-going supervision internally organised with regard to (i) supervision, (ii) inspection (interviews, on-site or desk revision, level of IT analysis, level of liaison with the experts of the TPs, etc.) and (iii) enforcement (if applicable) of the Guidelines on Automated Trading (Text box)?

q13) A brief description of your emergency procedures and how quickly your Competent Authority can react to AT issues in emergency situations.

q14) A description of the monitoring tools used for checking how TPs comply with the Guidelines, e.g. desk based reviews, on site visits, thematic work etc. (Text box)

q15) The number of supervisory actions²³ and enforcement actions (if any) your CA have taken and the aggregated outcome (i.e. number of enforcement cases initiated and finished, requests to market operators to change their IT or compliance systems...) where applicable (Text box)

²³ All sorts of measures taken by regulators so as to determine the degree of complying with the regulatory framework, ranging from specific information requests to on-site supervisory practices

SECTION 2.A: Organisational requirements for TPs electronic trading systems

Background information

Relevant legislation

Article 39, paragraphs (b) and (c), of MiFID for regulated markets. Article 14, paragraph (1), and Article 13, paragraphs (2), (4), (5) and (6,) of MiFID and Articles 5 to 9, Articles 13 and 14 and Article 51 of the MiFID Implementing Directive for multilateral trading facilities.

General guideline

24. A regulated market's or multilateral trading facility's electronic trading system (or systems) shall ensure that it complies with applicable obligations under MiFID and other relevant Union and national law taking into account technological advancements and trends in the use of technology by its members/participants or users. In particular, the system (or systems) should be well adapted to the business which takes place through it (or them) and is (or are) robust enough to ensure continuity and regularity in the performance of the automated market (or markets) operated by the market operator or investment firm.

Detailed guidelines

25. In following the general guideline trading platforms should at least take into account the following

a) Governance

- The governance process is central to compliance with regulatory obligations. Trading platforms should, within their overall governance and decision-making framework, develop, procure (including outsourcing) and monitor their electronic trading systems through a clear and formalised governance process. The governance process must ensure that all of the relevant considerations including commercial, technical, risk and compliance that ought to be brought to bear in making the key decisions are given due weight. In particular, it must embed compliance and risk management principles. The governance process must also have clear lines of accountability, including procedures for the sign-off for development, initial deployment, subsequent updates and resolution of problems identified through monitoring. There should also be appropriate procedures for the communication of information.
- In the governance process compliance staff should be responsible for providing clarity about the market operator or firm's regulatory obligations and the policies and procedures that seek to ensure the use of the trading systems comply with the market operator or firm's obligations and that any failures to comply are detected. This requires Compliance staff to have an understanding of the way in which the trading systems operate but not knowledge of the technical properties of the trading systems.

b) Capacity and resilience

- Regulated markets' and multilateral trading facilities' electronic trading systems should have sufficient capacity to accommodate reasonably foreseeable volumes of messaging and that are scalable to allow for capacity to be increased in order to respond to rising message flow and emergency conditions that might threaten their proper operation.

c) Business Continuity

- Trading platforms should have effective business continuity arrangements in relation to their electronic trading systems to address disruptive incidents, including but not limited to system failures. The business continuity arrangements should ensure a timely resumption of trading, including but not limited to system failures. The arrangements should cover, as appropriate, matters such as:
 - a. Governance for the development and deployment of the arrangements;
 - b. Consideration of an adequate range of possible scenarios related to the operation of their electronic trading systems which require specific continuity arrangements;
 - c. The backing up of business (including compliance) critical data that flows through their electronic trading systems;
 - d. The procedures for moving to and operating the electronic trading system from a back-up site;
 - e. Staff training on the operation of the arrangements and individuals' roles within them; and
 - f. An on-going programme for the testing, evaluation and review of the arrangements including procedures for modification of the arrangements in light of the results of that programme.

d) Testing

- Trading platforms should prior to deploying an electronic trading system, and prior to deploying updates, make use of clearly delineated development and testing methodologies. The use of these methodologies should seek to ensure that, amongst other things, the operation of the electronic trading system is compatible with the regulated market's and multilateral trading facility's obligations under MiFID and other relevant Union or national law, that compliance and risk management controls embedded in the systems work as intended (including generating error reports automatically) and that the electronic trading system can continue to work effectively in stressed market conditions.

e) Monitoring and review

- Trading platforms should monitor in real time their electronic trading systems. They should deal adequately with problems identified as soon as reasonably possible in order of priority and be able when necessary to adjust, wind down, or shut down the electronic trading system. Decisions on action to deal with problems with electronic trading systems should take due account of the need, as far as possible, for those operating trading platforms to act in an orderly manner.

- In order to ensure that trading platforms remain continually effective, the operators of these trading platforms should periodically review and evaluate their electronic trading systems, and associated process for governance, accountability and sign-off and associated business continuity arrangements. They should act on the basis of these reviews and evaluations to remedy deficiencies. The review and evaluation process should have some degree of independence which can be achieved, for example, by the involvement of internal audit or third parties.

f) Security

- Trading platforms should have procedures and arrangements for physical and electronic security designed to protect their electronic trading systems from misuse or unauthorised access and to ensure the integrity of the data that is part of or passes through the systems.

g) Staffing

- Trading platforms should have procedures and arrangements, including covering recruitment and training, to determine their staffing requirements and then to ensure they employ sufficient number of staff with the necessary skills and expertise to manage their electronic trading systems. This will include employing staff with knowledge of relevant electronic trading systems, the monitoring and testing of such systems and the sort of trading that will be undertaken by members/participants of the regulated market or users of the multilateral trading facility and of the regulated markets' or multilateral trading systems' regulatory obligations.

h) Record keeping and cooperation

- Trading platforms should keep records in relation to their electronic trading systems covering at least the matters referred to in points a) to g) above. That will include information about key decisions, system properties, testing methodologies, test results and periodic reviews. The records should be sufficiently detailed to enable competent authorities to monitor compliance with relevant obligations of regulated market and multilateral trading facility. Market operators and investment firms operating multilateral trading facilities should keep the records for at least 5 years. Market operators operating regulated markets should keep them for at least as long as required by their home competent authority.
- Trading platforms should inform competent authorities, in line with the supervisory arrangements that exist in their Member State, about any significant risks that may affect the sound management of the technical operations of the system and major incidents where those risks crystallise.

Key Issues

26. On this subsection A there are two main groups of questions: governance and IT issues. On governance ESMA is interested in learning from the examples of jurisdictions on how these guidelines are complied with in practice, this either by change in supervisory procedures such as a changed focus in onsite visits, desk based surveys or other types of supervisory measures. Examples of such may consist of CAs having produced internal check the box schematics, implementing or having regular on-site visits or regular quarterly or bi annual meetings with TPs, where the agenda for such meetings are TPs' fulfilment of the guidelines. ESMA would very much welcome copy of agendas or description of any such procedures or

planned changes in procedures. Other examples could be that a jurisdiction has been given formal notice that a TP meets its members regularly (either monthly or quarterly) to discuss among other things evolution of IT matters and that the results of these meetings are passed up to the board of the TP on the same periodic basis.

27. Regarding IT issues ESMA is interested in how CA verifies that TP's are in compliance with the guidelines in relation to IT governance and requirements. ESMA is interested in learning from CAs procedures to gain knowledge and insight into TP's testing environment and/or requirements, knowledge of the TP's maximum capacity and average capacity as well as CAs knowledge of TP's business continuity plans and assessment of TP's preventive measures such as security and monitoring, examples of such could be that CAs require that TPs send them information on those IT aspects (Contingency plans, etc.) every six or 12 months or when there is a new IT development in the TPs.
28. It is also expected that Competent Authorities provide evidence of their powers to support the application of Guideline 1. Examples are the power to require market operators to amend market rules breaching the Guidelines, intervene in cases of necessity and as a matter of urgency, or impose sanctions on TPs which do not comply with the provisions set forth in the detailed guidelines

Key Questions

A. Organisational requirements for TPs electronic trading systems

q16) How does your CA establish that TPs have a clear and formalised governance process? (Text box)

q17) How does your CA establish that TPs have sufficient Capacity and Resilience including a scalable system in order to respond adequately to a rise in message flow? (Text box)

q18) How does your CA establish that TPs have systems in place to ensure business continuity? (please include information as to how your CA has established that the TP's have implemented measures to maintain the functionality of the trading system and how critical data that flows through the system is backed up)(Text box)

q19) How does your CA establish that TPs have implemented adequate testing procedures? (Text box)

q20) How does your CA establish that TPs monitor and review their electronic trading systems, i.e. monitoring of the functioning of the TP's trading hardware and software, excluding TP's trading surveillance systems. (Please include in your answer if your CA is aware of the degree of independence in the TP's reviews) (Text box)

q21) How does your CA establish that TPs have sufficient security measures in place to protect their electronic trading systems? (Text box)

q22) How does your CA establish that TPs have adequate staffing including compliance staff with sufficient understanding of the functioning of the electronic trading system and TP's policies to hire and train staff adequately? (Text box)

q23) How does your CA establish that TP's keep records adequately in relation to their electronic trading systems? (please also include information on processes for communicating risks etc. with you as a CA)? (Text box)

q24) How does your CA follow TP's keep up with new major technological advancement introduced by their members, participants and users concerning all the previous arrangements (from question 16 to 23)?

q25) In your experience, regarding the Automated Trading Guidelines what are the main challenges in the supervision of organisational requirements for TP's electronic trading systems? (Text box)

SECTION 2.B: Organisational requirements for TPs to promote fair and orderly trading in an automated trading environment

Background information

Relevant legislation

Article 39, paragraphs (b), (c) and (d), Article 42, and Article 43 of MiFID for regulated markets. Article 14, paragraphs (1) and (4), Article 13, paragraphs (2), (5) and (6), Article 42, paragraph (3), and Article 26 of MiFID and Articles 13 and 14 and Article 51 of the MiFID Implementing Directive for multilateral trading facilities.

General guideline

29. Regulated markets' and multilateral trading facilities' rules and procedures for fair and orderly trading on their electronic markets should be appropriate for the nature and scale of trading on those markets, including the types of members, participants and users and their trading strategies.

Detailed guidelines

30. In following the general guideline, the rules and procedures of trading platforms should at least include:

a) Requirements for members or participants who are not credit institutions or investment firms

- Trading platforms should perform adequate due diligence on applications to become a member/participant or user from persons who are not credit institutions or investment firms under EU law.
- Trading platforms should have organisational requirements for members or participants who are not credit institutions or investment firms (taking account as necessary of the controls imposed on firms authorised outside the EEA), including requirements on the monitoring of trading against the rules of the platform and the management of risk. Trading platforms rules should require members/participants and users who are not investment firms to follow the Guidelines laid down in this paper for investment firms.

b) IT compatibility

- Trading platforms should have standardised conformance testing to ensure that the systems that members and participants are using to access the platform have a minimum level of functionality that is compatible with the trading platforms' electronic trading system and will not pose a threat to fair and orderly trading on the platform.

c) Pre- and post-trade controls

- To ensure that there is orderly trading on the platform, trading platforms should have minimum requirements for members/participants' and users pre- and post-trade controls on their trading activities (including controls to ensure that there is no unauthorised access to trading systems). In particular, there should be controls on filtering order price and quantity (this requirement is without prejudice to the responsibility of members/participants or users to implement their own pre- and post-trade controls).

d) Trader access and knowledge

- Trading platforms should have standards covering the knowledge of persons within members/participants and users who will be using order entry systems.

e) Limits to access and intervention on transactions.

- Trading platforms should have the ability to prevent in whole or in part the access of a member or participant to their markets and to cancel, amend or correct a transaction. The rules and procedures for cancelling, amending or correcting trades should be transparent to members/participants and users of the regulated market or multilateral trading facility.

f) Measures to cope with excessive flooding of the order book.

- Trading platforms should have arrangements to prevent the excessive flooding of the order book at any one moment in time, notably through limits per participant on order entry capacity.

g) Prevention of capacity limits from being breached.

- Trading platforms should have arrangements (such as throttling) to prevent capacity limits on messaging from being breached. At a minimum, the framework of those arrangements should be made available to members/participants and users.

h) Measures to constrain or halt trading.

- Trading platforms should have arrangements (for example, volatility interruptions or automatic rejection of orders which are outside of certain set volume and price thresholds) to constrain trading or to halt trading in individual or multiple financial instruments when necessary, to maintain an orderly market. At a minimum the framework of those arrangements should be made available to members/participants and users.

i) Obtaining information from members/participants and users

- Trading platforms should have the ability to obtain information from a member/participant or user to facilitate monitoring of compliance with the rules and procedures of the regulated market or multilateral trading facility relating to organisational requirements and trading controls.

j) Monitoring

- Trading platforms should, whenever the trading platform is in operation, monitor their markets as close to real time as possible for possible signs of disorderly trading. This monitoring should be conducted by staff who understands the functioning of the market. Those staff should be

accessible to the platform's home competent authority and should have the authority to take remedial action, when necessary, to protect fair and orderly trading.

k) Record keeping and co-operation

- i) Trading platforms should keep records of the matters covered by points a) to j) above, including of issues which emerge in relation to the policies and procedures mentioned. The records should be sufficiently detailed to enable a competent authority to monitor compliance with relevant obligations of trading platforms. Market operators and investment firms operating multilateral trading facilities should keep the records for at least 5 years. Market operators operating regulated markets should keep them for at least as long as required by their home competent authority.
- ii) Trading platforms should inform competent authorities, in line with the supervisory arrangements that exist in their Member State, about significant risks that may affect fair and orderly trading and major incidents where those risks crystallise.

Key issues

31. It is expected that the subset of Competent Authorities subject to this peer review will provide information on their supervisory methods and techniques to review that the devices, procedures, IT systems and initiatives of the TPs are in line with ESMA Guideline 3. The supervision on TPs should be carried out both at authorization and on an ongoing basis, through desk-based monitoring and other supervisory tools, including on-site visits. Competent Authorities should provide details on the supervisory techniques used to review that TPs have adopted rules (for example, Market Rules, Instructions and Technical Handbooks) and internal procedures and arrangements in relation to the following:

- transparent rules and objective criteria, including requirements for admission of members/participants or users;
- implementation of tools such as filters, circuit breakers and alarm systems on orderly trading;
- IT devices and controls;
- continuous monitoring of their own systems in order to avoid any dysfunction caused by third parties;
- periodic tests on IT systems, in particular with reference to the IT security measures implemented and planned business continuity procedures; powers to suspend / remove financial instruments from trading;
- skilled staff dedicated to the real-time monitoring of the TPs, which should have the authority to adopt the measures necessary to guarantee the orderly conduct of trading;
- record keeping for at least 5 years in relation to all the matters referred to under the detailed guidelines, including any emerged criticality.

32. It is also expected that Competent Authorities provide evidence of their powers to support the application of Guideline 3. Examples are the power to require market operators to amend market rules breaching the Guidelines, intervene in cases of necessity and as a matter of urgency, or impose sanctions on TPs which do not comply with the provisions set forth in the detailed guidelines

Key questions

B. Organisational requirements for TPs to promote fair and orderly trading in an automated trading environment

q26) How does your CA establish that TPs perform adequate due diligence on applications to become a member/participant or user from persons who are not credit institutions or investment firms under EU law? (Text box)

q27) How does your CA establish that TPs have organisational requirements for members or participants who are not credit institutions or investment firms? (Text box)

q28). How does your CA establish that TPs test that the trading system that their members and participants are using to access the platform is compatible and does not pose a threat to fair and orderly trading on the platform? (Text box)

q29). How does your CA establish that TPs have minimum requirements for members'/participants' and users' pre- and post-trade controls on their trading activities? (Text box)

q30) How does your CA establish that TPs have standards covering the knowledge of persons within members/users who will be using order entry systems? (Text box)

q31) How does your CA establish that TPs have the ability to prevent in whole or in part the access of a member or participant to their market and to cancel, amend or correct a transaction? And how does your CA establish that these rules are transparent to members and participants? (Text box)

q32) How does your CA establish that TPs have arrangements to prevent capacity limits on messages from being breached? (Text box)

q33) How does your CA establish that TPs have arrangements to constrain trading or to halt trading in individual or multiple financial instruments when necessary, to maintain an orderly market? (Text box)

q34) How does your CA establish that the arrangements as mentioned in q32 and q33 are made available to members/participants and users? (Text box)

q35) How does your CA establish that TPs have the ability to obtain information from a member/participant or user to facilitate monitoring or compliance with the rules and procedures of the TP relating to organisational requirements and trading controls? (Text box)

q36) How does your CA establish that TPs monitor their markets as close to real time as possible for possible signs of disorderly trading, and that this is conducted by staff who understand the functioning of the market, and have the authority to take remedial action, when necessary, to protect fair and orderly trading? Does the home CA have access to the TPs' staff? (Text box)

q37) How does your CA establish that TPs keep adequate records in relation to fair and orderly trading in an automated trading environment (please also include information on processes for communicating risks etc. to you as the CA)? (Text box)

q38) How does your CA establish that with respect to the Automated Trading Guidelines the rules and procedures put in place by TPs with regard to organisational requirements to promote fair and orderly trading are appropriate to the nature and scale of trading on those markets, including the types of members, participants and users and their trading strategies?

q39) In your experience, regarding the Automated Trading Guidelines what are the main challenges in the supervision of organisational requirements for TPs to promote fair and orderly trading in an automated environment? (Text box)

SECTION 2.C: Organisational requirements for TPs to prevent market abuse in an automated trading environment

Background information

Relevant legislation

Article 39, paragraphs (b) and (d), and Article 43 of MiFID and Article 6, paragraphs (6) and 9, of MAD and Articles 7 to 10 of the MAD Implementing Directive 2004/72/EC for regulated markets.

Article 14, paragraph (1), Article 13, paragraphs (2), (5) and (6), and Article 26 of MiFID, Articles 5 to 9 and Article 51 of the MiFID Implementing Directive and Article 6, paragraphs (6) and (9) of MAD and Articles 7 to 10 of the MAD Implementing Directive 2004/72/EC for multilateral trading facilities.

General guideline

33. Trading platforms should have effective arrangements and procedures, taking account of the specific supervisory arrangements/regulation in their Member State, which enable them to identify conduct by their members/participants and users that may involve market abuse (in particular market manipulation) in an automated trading environment.

34. Potential cases of market manipulation that could be of particular concern in an automated trading environment include:

- **Ping orders** – entering small orders in order to ascertain the level of hidden orders and particularly used to assess what is resting on a dark platform.
- **Quote stuffing**- entering large numbers of orders and/or cancellations/updates to orders so as to create uncertainty for other participants, slowing down their process and to camouflage their own strategy.
- **Momentum ignition**- entry of orders or a series of orders intended to start or exacerbate a trend, and to encourage other participants to accelerate or extend the trend in order to create an opportunity to unwind/open a position at a favourable price.
- **Layering and Spoofing**- submitting multiple orders often away from the touch on one side of the order book with the intention of executing a trade on the other side of the order book. Once that trade has taken place, the manipulative orders will be removed.

Detailed guidelines

35. In following the general guideline, the arrangements and procedures of trading platforms which seek to prevent and identify conduct by their members/participants and users that may involve market abuse and in particular market manipulation in an automated trading environment should at least include:

a) Staffing

- Trading platforms should have sufficient staff with an understanding of regulation and trading activity and the skill to monitor trading activity in an automated trading environment and identify behaviour giving rise to suspicions of market abuse (in particular market manipulation) in case monitoring market abuse falls under their responsibility.

b) Monitoring

- Trading platforms should at least have systems (including automated alert systems on transactions and orders) with sufficient capacity to accommodate high frequency generation of orders and transactions and low latency transmission, in order to monitor, using a sufficient level of time granularity, orders entered and transactions undertaken by members/participants and users and any behaviour which may involve market abuse (in particular market manipulation, including, where the trading platform has sight of this, cross-market behaviour) and with the ability to trace backwards transactions undertaken by members/participants and users as well as orders entered/cancelled which may involve market manipulation.

c) Arrangements for the identification and reporting of suspicious transactions and orders

- Trading platforms should have in place arrangements to identify transactions, and it is also recommended that these arrangements also cover orders²⁴, that require an STR to competent authorities in relation to market abuse (in particular market manipulation) and to make those reports without delay (if initial enquiries are undertaken a report should be made as soon as possible if those enquiries fail to find a satisfactory explanation for the observed behaviour).

d) Reviews

- Trading platforms should conduct periodic reviews and internal audits of procedures and arrangements to prevent and identify instances of conduct that may involve market abuse.

e) Record keeping

- Trading platforms should keep records of the matters covered by points a) to d) above, including effective audit trails regarding how each alert of possible suspicious behaviour is dealt with whether or not a report is made to the relevant competent authorities. The records should be sufficiently detailed to enable competent authorities to monitor compliance with their relevant obligations of trading platforms. Market operators and investment firms operating multilateral trading facilities should keep the records for at least 5 years. Market operators operating regulated markets should keep them for at least as long as required by their home competent authority.

Key issues

36. It is expected that the subset of ESMA members subject to this revision will respond by outlining the supervisory methods and techniques used by the CA to establish that TPs have organizational arrangements in place to prevent and detect market abuse in an automated trading environment. For example In their replies, members should outline the methods and techniques that they have used to

²⁴ CESR's first and third set of Level 3 guidance on the implementation of the MAD, CESR has already provided guidelines on suspicious transactions reports (STR), which state: "CESR is of the view that where an unexecuted order for a transaction gives rise to a suspicion of market abuse, this suspicion is recommended, when not already legally required on a national basis, to be reported to the competent authority." The guidance also provides a standard STR report form (Sections IV and V of the May 2005 guidance (Ref : CESR/04-505b) and Section 2 of the May 2009 guidance (Ref : CESR/09-219)).

establish the arrangements the TP have in place to comply with the Guideline 5 of the ESMA Guidelines on Automated Trading with respect to the following:

- Skilled staff dedicated to the real-time monitoring of the market;
- Skilled staff dedicated to T+1 monitoring of the market and compliance in charge of periodic reviews, on-site audits of members and STR reports to CAs;
- Record-keeping of all the messages submitted by members for at least 5 years and ability to monitor unusual / suspects flows;
- Automated alerts to detect significant number of orders, cancellations and modifications;
- Specific tools to monitor orders which may involve market abuse;
- Dedicated tools to identify suspicious transactions and orders and report them without delay to CAs.

37. It is also expected that Competent Authorities provide evidence of their powers to support the application of Guideline 5. Examples are the power to require market operators to amend market rules breaching the Guidelines, intervene in cases of necessity and as a matter of urgency, or impose sanctions on TPs which do not comply with the provisions set forth in the detailed guidelines

Key questions

Q40) How does your CA establish that TPs have effective arrangements and procedures in place which enable them to identify conduct by their members/participants/users that may involve market abuse in an automated trading environment? (Text box)

q41) How does your CA establish that TPs have sufficient skilled and experienced staff to monitor trading activity in an automated trading environment and identify behaviour giving rise to suspicions of market abuse? (Text box)

q42) How does your CA establish that TPs have systems with sufficient capacity to accommodate high frequency generation of orders, transactions and low latency transmission, in order to monitor orders and transactions undertaken by their members/participants/users and identify any behaviour that gives rise to the suspicion of market abuse? (Text box)

q43) How does your CA establish that TPs have in place arrangements to identify transactions that require an Suspicious Transaction Report to the relevant CAs and that those reports are made without delay? (Text box)

q43) How does your CA establish that TPs conduct periodic reviews and internal audits of procedures and arrangements to prevent and identify instances of conduct that may involve market abuse? (Text box)

q44) How does your CA establish that TPs keep sufficiently detailed records of the matters covered by points a) to d) of Guideline 5 (see above) to ensure their compliance with the relevant obligations? (Text box)

q45) How does your CA establish that with respect to the Automated Trading Guidelines the rules and procedures put in place by TPs with regard to organisational requirements to identify conducts that may involve market abuse are appropriate to the nature and scale of trading on those markets, including the types of members, participants and users and their trading strategies?

q46) In your experience, regarding the Automated Trading Guidelines what are the main challenges in the supervision of organisational requirements for TPs to identify conducts that may involve market abuse in an automated trading environment? (text box)

SECTION 2.D Organisational requirements for TPs whose members/participants and users provide direct market access or sponsored access

Background information

Relevant legislation. *Article 39, paragraph (b)), and 43(1) of MiFID for regulated markets. Articles 14, paragraph (1), Article 13, paragraphs (2), (5) and (6), and Article 26(1) of MiFID and Articles 5 to 9 and Article 51 of the MiFID Implementing Directive for multilateral trading facilities.*

General guideline

37. Trading platforms should have rules and procedures which seek to ensure that, where they allow members/participants or users to provide direct market access/sponsored access (DMA/SA), the provision of DMA/SA is compatible with fair and orderly trading. It is important that trading platforms and their members/participants retain control of and closely monitor their systems to minimise any potential disruption caused by these third parties to avoid that trading platforms are vulnerable to either the potential misconduct or market abuse of DMA/SA clients or to their inadequate/erroneous systems.

Detailed guidelines

38. In following the general guideline, trading platforms should set out whether or not it is permissible for their members/participants or users to offer DMA and/or SA. Where they allow members or participants to offer DMA and/or SA, their rules and procedures should at least take account of the following:

a) Ultimate responsibility for messages, including orders, and eventual interventions and sanctions

- Trading platforms should make clear that the member/participant or user is solely responsible for all messages, including orders entered under its trading codes and therefore may be subject to interventions (including cutting the access of the member/participant or user to the trading platform) and sanctions for any breaches of the rules or procedures in respect of those orders.

b) Subsidiary responsibility when providing DMA/SA

- DMA/SA arrangements between trading platforms and a DMA/SA provider firm should stress that the direct market access/sponsored access provider firm remains responsible to the trading platform for all trades using their market participant ID code or any other identification.

c) Requirements for members/participants to provide DMA/SA

- As per Guideline 3, trading platforms should require members/ participants or users to have adequate systems and effective controls, including pre- and post-trade controls, to ensure that the provision of DMA/SA does not adversely affect compliance with the rules of the regulated market or multilateral trading facility, lead to disorderly trading or facilitate conduct that may involve market abuse. This applies equally where a member/participant or user provides DMA/SA.

d) Due diligence prior to provision of DMA/SA

- Trading platforms should require members/participants or users to conduct due diligence on clients to which they provide DMA/SA.

e) Rights of access

- Trading platforms should be able to refuse a request from a member/participant or user to allow a client to be provided with sponsored access where the regulated market or multilateral trading facility is not satisfied that this would be consistent with its rules and procedures for fair and orderly trading. In relation to naked SA please refer to guideline 8.

f) Monitoring of orders

- Trading platforms should, as part of their obligations to monitor their markets under guideline 3, monitor orders sent to their systems by a member/participants' sponsored access clients.

g) Potential interventions over SA

- i) Trading platforms should be able to suspend or withdraw the SA after it has been granted where the regulated market or multilateral trading facility is not satisfied that continued access would be consistent with its rules and procedures for fair and orderly trading.
- ii) Trading platforms should have the ability to stop orders from a person trading through SA separately from the orders of the member or participant sponsoring that person's access by assigning unique customer IDs to clients that are accessing the market via SA.
- iii) Trading platforms should be able to carry out, where necessary, a review of a member/participant or users' internal risk control systems in relation to their sponsored access or direct market access clients.

h) Record keeping

- Trading platforms should keep records of their policies and procedures relating to DMA/SA and any significant incidents relating to SA trading. The records should be sufficiently detailed to enable competent authorities to monitor compliance with relevant obligations of trading platforms. Market operators and investment firms operating multilateral trading facilities should keep the records for at least 5 years. Market operators operating regulated markets should keep them for at least as long as required by their home competent authority.

Key issues

39. This subsection concerns TPs which allow DMA/SA, although this will not be the case in all circumstances. Therefore it seems prudent to consider whether the CAs have authorised DMA/SA or whether this has been developed by the TPs' members/participants and permitted by TPs without the need to seek approval of their CAs. Some ESMA members could comply with this general guideline if they have checked that TPs have a set of internal instructions to authorize DMA/SA that covers the detailed guidelines of this subsection D. This set of instructions could include filters and other ways to manage problems caused by DMA/SA. Nevertheless, ESMA members could have used other ways to oversee how TPs complies with these detailed guidelines. Furthermore it is expected that ESMA members

will respond by giving examples of the supervision of the rules and procedures that provide direct market access and/or sponsored access ensure fair and orderly trading in relation to:

- How Trading Platforms communicate to members/participants that they hold the ultimate responsibility of members/participants for messages and trades, including the subsidiary responsibility held for all trades using the DMA/SA provider firms' market participant ID code;
- How TPs ensure due diligence on clients to which DMA/SA is provided;
- A TP's monitoring of orders sent to a TP's system by a member/participants' sponsored access clients;
- A TP's ability to intervene over SA for a suspected breach of the rules and procedures for fair and orderly trading and potentially carry out a review of a users' internal risk control systems in relation to SA/DMA clients;
- Reviewing that TPs keep sufficiently detailed record keeping of the policies and procedures relating to DMA/SA and any significant incidents relating to SA for at least 5 years.

39 It is also expected that Competent Authorities provide evidence of their powers to support the application of Guideline 7. Examples are the power to require market operators to amend market rules breaching the Guidelines, intervene in cases of necessity and as a matter of urgency, or impose sanctions on TPs which do not comply with the provisions set forth in the detailed guidelines

Key questions

q47) How does your CA establish that TPs make clear that members/participants or user are solely responsible for all messages including orders entered under its trading codes and that are subject to interventions and sanctions for any breaches of rules and procedures in relation to those orders? (Text box)

q48) How does your CA establish that TPs request on the providers firms of the DMA/SA remain responsible to the TP for all trades using their market participant ID code or any other identification? (Text box)

q49) How does your CA establish that TPs request on their members/participants or user to have adequate systems and controls to ensure that the DMA/SA does not lead to disorderly trading or facilitate conduct that may involve market abuse? (Text box)

q50) How does your CA establish that TPs should require market participants to conduct due diligence on clients to which they provide DMA/SA? (Text box)

q51) How does your CA establish that TPs are able to refuse a request from a member/participant or user to allow a client to be provided with SA where the TPs is not satisfied that this would be consistent with its rules and procedures for fair and orderly trading? (Text box)

q52) How does your CA establish that TPs monitor orders sent to their systems by market participants' SA clients? (Text box)

q53) How does your CA establish that TPs are able to suspend or withdraw the SA after it has been granted where the TPs is not satisfied with that continued access would be consistent with its rules and procedures for fair and orderly trading? (Text box)

q54) How does your CA establish that TPs have the ability to stop orders from a person trading through SA separately from the orders of the member or participant sponsoring that person's access? (Text box)

q55) How does your CA establish that TPs carry out, where necessary, a review of a member/participant or user's internal control system in relation to their DMA/SA's clients? (Text box)

q56) How does your CA establish that the rules and procedures put in place by TPs in relation to the detailed guidelines on the organisational requirements for TPs whose member/participants and users provide direct market access or sponsored access are appropriate to the nature and scale of automated trading on those TPs, including the types of members/participants and users and their trading strategies? (Text box)

q57) How does your CA establish that TPs keep adequate records in relation to their DMA/SA and any significant incident relating to SA (please also include information on processes for communicating significant incidents, etc. to you as the CA)? (Text box)

q58) In your experience, regarding the Automated Trading Guidelines, what are the main challenges in the supervision of organisational requirements for TPs whose members/participants and users provide DMA/SA? (Text box)