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ESMA CONSULTATION PAPER MiFID II/MiFIR

REVIEW REPORT ON ALGORITHMIC TRADING

AMAFI contribution

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities.

AMAFI welcomes the opportunity to respond to this consultation paper (hereafter the CP) on algorithmic trading.

Before answering the specific questions raised in the CP, AMAFI would like to highlight the following general comments.

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GENERAL COMMENTS

AMAFI welcomes ESMA's review report on algorithmic trading. The report suggests a comprehensive review of the regulatory framework for algorithmic trading and comes forward with several interesting proposals, notably regarding the definitions and the organisational requirements for investment firms and trading venues alike. The last part of the consultation suggests broadening the scope of proposals into tick size, market making, speedbumps and trade feeds.

AMAFI's assessment of the MiFID II regulatory framework for algorithmic trading, HFT and DEA is positive, as we believe it addresses efficiently the growing role of technology in trading activities so far.

However, and as stated in the answers to the consultation paper's questions, we take issue with the cross-asset approach followed by the report and more globally by the regulatory framework. AMAFI would like to acknowledge the specificity of the non-equity markets that we feel are not reflected enough in the approach taken by ESMA.

Regarding the proposals related to the tick size regime, AMAFI is not in favour of expanding it to all ETFs. While we consider that the last provisions introduced into the MiFID II / MiFIR framework to expand the application of the tick size regime to SIs were reasonable, we would like to alert ESMA against the consequences of ever expanding the mandatory tick size regime.

Finally, on topics related to the MiFID II market making framework, speedbumps and asymmetry of public and private feeds, we are not in favour of further regulation. We rather support an industry-initiated set of best practices instead to tackle some of the issues identified in ESMA's report.

ANSWERS

Q1: What is your overall assessment of the MiFID II framework for algorithmic trading, HFT and DEA?

AMAFI believes that the MiFID II framework for algorithmic trading, HFT and DEA addressed the main identified implications of the increased use and evolution of trading technology.

However, the cross-asset approach of the framework fails to deliver an adapted framework for non-equity instruments. Some of the proposals further submitted by ESMA in the consultation paper are consistent with this initial approach and will fail to acknowledge the specificity of non-equity markets with respect to the requirements related to the use of algorithmic trading, HFT and DEA.

Q2: In your views, are there risks other than the one mentioned in MiFID II or impacts on market structure developments due to market electronification algorithmic trading that would deserve further regulatory attention? Please elaborate.

AMAFI believes that the risks identified in recital (62) of MiFID II are still as relevant. Delegated regulation 2017/589 contains enough provisions to address market and credit risks arising from the use of algorithmic trading.

Q3: Do you consider that the potential risks attached to algorithmic trading should also be given consideration in other trading areas? Please elaborate.

AMAFI considers that the potential risks attached to algorithmic trading are specific to electronic trading taking place in trading venues, in line with article 17 of MiFID II. With respect to other types of electronic trading, i.e. trades undertaken through a systematic internaliser or OTC, AMAFI considers that the potential risks pertaining to orderly trading or overloading of the systems of trading venues are not relevant. However, other types of risk can be identified. For example, indirect risks on the price formation mechanism, or risks related to the solvency of the market participants engaging in those trades. We believe that the risks related to the price discovery process could be addressed by the MIFID II framework. Nevertheless, it is important that these risks are assessed prior to any envisaged extension of the MiFID II framework for algorithmic trading. As for the risks related to the solvency of counterparties, the MiFID II framework is not adapted to address them.

Q4: Do you agree with this analysis? If not, please explain why.

AMAFI is of the view that DEA clients should not have to seek authorisation as EU investment firms. We believe that such a requirement would undermine fair competition. The DEA provider is responsible for carrying out risk controls (Article 17 MiFID II) and due diligence on its clients (RTS 6). We believe that the current framework remains appropriate for mitigating the potential risks involving DEA and algorithmic trading.

Furthermore, we agree with ESMA's proposal not to require EU firms to be authorised as investment firms solely for principal trading activity. We also support ESMA's approach on the appropriate requirements and controls to which the DEA provider is submitted.

Finally, we think that a clarification should specify that the definition of algorithmic trading in MiFID II should apply to the trading activity taking place directly on the relevant trading venue.

Q5: Did you encounter any specific issue with the definition of HFT? Do you consider that the definition should be amended? Do you have any suggestion to replace the high message intraday rates with other criteria or amend the thresholds currently set in Level 2? Please elaborate and provide data supporting your response where available.

AMAFI considers that the definition of HFT introduced by Article 4(1)(40) of MiFID II relies on misleading quantitative criteria and thus captures an excessive number of trades. These criteria are set out in the level 2 definition of “high message intraday rate” introduced by article 19(1) of delegated regulation 2017/565. AMAFI suggests replacing these quantitative criteria with a qualitative definition for the purpose of eliminating the inevitable bias resulting from the setting of quantitative thresholds. For example, ESMA should widen the current HFT definition to include all the trading firms covered by the algorithm trading framework. Indeed, HFT should not only apply to proprietary trading firms, but to all trading firms conducting algorithm trading, as they all behave in the same manner.

Q6: Based on your experience, is sub-delegation of DMA access a frequent practice? In which circumstances? Which benefits does it provide to the DEA user and to the subdelegatees? Are you aware of sub delegation arrangements in the context of Sponsored access? If so, please elaborate.

AMAFI is not aware of the frequency-levels at which sub-delegation of DMA, nor is it aware of sub-delegation arrangements in the context of sponsored access.

Q7: (for DEA Tier 1clients) Do you sub-delegate direct electronic access? If so, are your Tier 2 clients typically regulated entities/investment firms? Are they EU-based or thirdcountry based?

AMAFI is not in a position to answer this question.

Q8: Do you agree with this analysis? If not, please explain why. Do you consider that further clarification is needed in this area? If so, what would you suggest?

AMAFI agrees with ESMA’s analysis. We believe that the trading conditions do not meet the criteria set in Level 2 MiFID II requirements to qualify on-line brokerage as providing retail investors with DEA.

Q9: Do you agree with ESMA’s proposal? If so, do you consider that the requirements considered above relevant? Should there be additional ones? If you disagree with ESMA’s proposal, please explain why.

AMAFI considers that the potential risks identified from OTC algorithmic trading should be submitted to a meaningful assessment. It is also important to operate a clear distinction between risks related to the disruption or potential chain reactions in the market, and those representing a risk for the SI itself. AMAFI’s understanding is that the MiFID II framework is only competent to address the former category of risks.

In addition, AMAFI is not in line with the distinction operated in ESMA’s consultation paper between SIs and smaller investment firms trading OTC. We believe that any potential controls applying to OTC automated trading should take into consideration the specificity of OTC trading. For this reason, we are opposed to an extension of the requirements imposed on trading venues to SIs.

Should OTC automated trading be submitted to new control requirements, AMAFI believes that they should differ from those applied to on-venue trading and that they should apply irrelevant of the size of the investment firm trading OTC.

Q10: Do you agree with ESMA’s proposals above? Please elaborate.

AMAFI agrees with ESMA’s proposal to delete the exception to the exemption from authorisation as investment firm for persons having DEA to a trading venue. However, AMAFI considers that the definition of sub-delegation in article 21(4) of delegated regulation 2017/589 is sufficiently clear and that there is no need to introduce sub-delegation in the level 1 definition of DEA.

On requiring DEA providers to disclose the names and number of entities provided with DEA access, we disagree with this provision as it will result in additional complexity in data management for no tangible benefit relative to the status quo. As for introducing a provision requiring DEA providers to seek authorisation as investment firms or credit institutions in article 1 of MiFID II, we believe that such a step is not necessary, as DEA providers are already subject to that requirement.

Finally, AMAFI agrees with ESMA's proposal to remove the obligation for DEA clients to be authorised as investment firms. We nevertheless oppose the proposal to require third-country firms to seek authorisation as investment firms when they qualify as HFT firms on an EU trading venue.

Q12: Do you see merit in ESMA developing a template for notifications to NCAs under Articles 17(2) and 17(5) of MiFID II? If not, please justify your position.

AMAFI rather welcomes this initiative as the creation of an ESMA validated template will provide members with greater security in the development of their NCAs notification processes. Indeed, investment firms (IFs) will no longer have to establish their own notification format, thus avoiding any risk of non-compliance on this point.

In addition, harmonised notification would facilitate the notification work of investment firms within the EU. Indeed, a single notification could be sufficient for all the IF's trading venues based in EU (*i.e.* transmission mechanism between NCAs: see Q14). Furthermore, this initiative would allow for automatization of the filling in of the different notifications to NCAs. Thus, it can be recommended that NCAs establish protocols to specify the required information and its granularity with no ambiguity, for a given type of financial instruments and algorithms.

However, the required level of information should not be too granular (on the financial instruments for example, remaining at the level of the class of instrument is sufficient). The implementation of this template in the internal procedures of IFs should not require the implementation of means and therefore costs that are disproportionate to the security advantage it confers. In addition, it should be stressed that the template developed by ESMA shall not include any statements that go beyond the regulatory requirements already in force (namely at the local NCAs level).

Q13: Do you agree that it would be useful to clarify that notifications should be done 'without undue delay'?

AMAFI considers that the nature of the notification in question does not require it to be subject to a strict time limit (unlike transaction reporting for example). To add such a delay would be too prescriptive and would risk undermining the very substance of the notifications.

AMAFI therefore believes that ESMA's proposed clarification is unnecessary.

However, if clarifications were to be provided by ESMA, AMAFI would consider useful to clarify that where a firm makes a an algorithmic available to another firm that is not a member of a trading venue, the latter is not responsible for notifying the algorithm (only the former is).

Q14: Do you agree with ESMA's approach for the exchange of information between NCAs? If not, please justify your position.

This question concerns more the NCAs' relations than the investment firm organizational requirements. However, we would agree with ESMA's approach in that matter.

Q15: What is your view on clarifying the definition of algorithmic trading? If you deem it beneficial to refine the definition and account for further types of algorithms or algorithmic trading strategies, please provide your suggestion as well as underlying rationale.

AMAFI believes that the current definition of algorithmic trading is sufficiently clear and does not need further clarification.

Q16: Do you think there should be specific requirements for different type of algorithms or algorithmic trading strategies in RTS 6? Please explain.

AMAFI considers that the algorithmic trading regime is already sufficiently complex that it is not necessary to establish a classification of the different types of algorithms involving specific requirements and therefore multiple regimes.

Either the algorithm falls within the definition (as seen above) and is subject to the general regime, or it is excluded, and the regulation does not apply.

Imposing such a classification on IFs would overlook the fact that algorithm technology is very fluid and innovation in this area may be relatively frequent. Thus, it would require IFs to review the classification of their tools internally with each innovation.

Q17: What is your experience with testing environments? Are they used frequently? If not, why? Do you see a need for any improvements?

Overall, the testing environments are adequate.

Some areas for improvement would be desirable, namely, to ensure that order groups are well profiled, that market data is properly applied, and that the right attack tactics are applied. To achieve this objective, it would be relevant to encourage trading venues to develop miniature production environments. This is sometimes not available for some instruments and test periods may be too short in the event of major changes in the markets.

In addition, in the case of the use of an unregulated supplier (on this point, see Q15), it may be difficult to ensure that the latter carries out the necessary tests to verify the algorithms supplied (despite the contractualisation of the obligation). The IF also faces difficulties because of the protections imposed by intellectual property which prevent it from accessing the algorithm data to fully carry out the tests. This point deserves clarification from ESMA.

Q18: Do you agree that the definition of "disorderly trading conditions" should be clarified? If yes, how would you define such trading conditions?

According to AMAFI, there is no need to further clarify the definition at the risk of restricting investment firms' freedom of action. Either way, the definition proposed by ESMA seems to be unnecessary for understanding the expression. In fact, the compromising of "*the maintenance of a fair, orderly and transparent execution of order*" is not very clear and does not give a real added value to the expression "*disorderly trading conditions*".

Q19: Do you agree that ESMA should provide additional guidance on the expectations concerning the checks and testing to be done, in particular for testing on disorderly trading conditions?

AMAFI considers that the procedures put in place by investment firms for checks and testing are already sufficiently well developed and effective. They do not therefore feel the need for additional guidance produced by ESMA.

Moreover, it is preferable to retain a sufficient degree of latitude regarding the definition of tests. The development of a minimum set of tests may be too prescriptive.

More generally, we would recommend leaving with the investment firms the discretion to identify the elements that should be tested against disorderly trading conditions, depending on the characteristics of the algorithms and the asset classes that are quoted on or traded by the mean of the algorithms.

Q20: Would you agree that it could be beneficial if ESMA develops a prescribed format for the self-assessment foreseen in Article 9 of RTS 6?

We do not see it beneficial to develop a prescribed format for the self-assessment given the multidimensional realities of the algorithms, by type and by asset classes. We would recommend leaving with the investment firms the discretion to define their own format for the self-assessment of the algorithms that they are using.

As a matter of fact, Article 9 of RTS 6 refers to an annex listing the different criteria that can be considered by the IF in its self-evaluation process. AMAFI considers this list to be merely indicative, as the purpose of the annex is only to provide details on how to apply Article 9: the criteria set out are to be taken into account only if they are relevant.

Thus, due to the indicative nature of this list, implying a certain flexibility in the use of self-assessment criteria, a prescribed format would be too prescriptive.

Q21: Do you agree with the changes proposed to the self-assessment of Article 9 of RTS 6?

Overall, AMAFI welcomes these proposals, in particular the two years (instead of annual) one. AMAFI wishes to outline that investment firms are already carrying out a proper due diligence assessment that goes beyond a simple statement of compliance.

However, AMAFI is more nuanced regarding information on the testing environment. This should not result in a very detailed statement that is too difficult for investment firms to implement (especially given the diversity of algorithms and instruments concerned).

Finally, it should not be a formal submission of the notification to the NCA, but rather making it available if the latter wishes to obtain more precise information.

Q22: Would you propose any other targeted legislative amendments to RTS 6? Please include a detailed explanation of the proposed amendment and of the underlying issue that this amendment would aim to tackle.

AMAFI considers that it must be possible to take into account the operational reality that some investment firms with algorithmic trading activities are not members of the market. However, some regulatory obligations (*e.g.* the obligation to notify the competent supervisory authority of the trading platform or the real-time monitoring obligation) can only be fulfilled when the IF is directly connected and therefore a member of the trading platform on which the algorithmic executions are carried out. IFs that are not market members will therefore, in order to meet the regulatory requirements, have to rely on the market member IF that could be the provider of the algorithm.

Here the issue is confined to RTS 6, so consideration should be given to the compatibility of Article 16 of that text with the fact that some IFs are not market members.

Non-market member IFs cannot be expected to take remedial action with the same speed as market member IFs can: "*as soon as possible after an alert has been generated*". The market member is better able to react quickly. In addition, the 5-second delay between the alert and the event requires that the real-time alert be generated by an automated tool that few non-market member IFs typically have. In any event, only the member IF is in a position to carry out "*an orderly withdrawal from the market*". However, the responsibility for real-time monitoring incumbent on member IFs does not exempt non-member IFs from implementing such monitoring, even if it cannot be equivalent to the monitoring to be carried out by the member IFs.

It is therefore incumbent on non-member IF to put in place an internal organisation that ensures that those responsible for real-time monitoring "*shall respond to operational and regulatory issues in a timely manner and shall initiate remedial action where necessary*". This internal organisation must lead to the identification of the persons in charge of such monitoring within the IF and that these persons can rely on their broker, a market member IF.

Like the market member IF, the non-member IF must also define the governance of the real-time monitoring system (*i.e.* plan how problems are managed and how corrective measures are defined and implemented). Finally, as indicated above, the "independent risk control function" set up for the purpose of ensuring the resilience of algorithmic trading activities, referred to in Article 16.2, may be assumed by the trader's line manager who uses the trading algorithms.

Therefore, article 16 of RTS 6 shall be amended to integrate the non-member IF issue. A proposition for an amendment as below:

Proposed amendment: Article 16.6: "*If the investment firm is not a member of the relevant market, the real-time monitoring shall be adapted to its capacities provided that the latter takes all necessary measures to fulfil its obligations by relying on a market member*".

Q23: Do you agree with ESMA's proposal to harmonise and create a clear structure for the performance of the self-assessment?

We believe that ESMA's proposal to *"ensure that trading venues not only assess their compliance with article 48 of MiFID II, but also with all requirements of RTS 7"* is vague and opens the possibility to the establishment of a very detailed reporting mechanism that could represent a real burden for trading venues and might create redundancies. While we believe AMAFI agrees with the need for a clear and harmonised structure for the performance of the self-assessment. However, we believe that the guidance provided in the Annex to RTS 7 represents a sufficient base for the establishment of a harmonised format for self-assessment.

As for investment firms, we believe that trading venues can continue to perform their self-assessment on the basis of the indicative list provided in the Annex to RTS 7.

Q24: Do you agree with limiting the self-assessment to every two years and to require trading venues to share it with their relevant NCA?

AMAFI is in favour of keeping the self-assessment on an annual basis, since most of the required procedures are already performed by trading venues on a regular basis. In addition, feedback from AMAFI members indicates that some NCAs already ask trading venues to share their self-assessment.

Q25: Do you agree with ESMA's analysis about the overlapping requirements between RTS 6 and 7? Are those overlaps considered beneficial, should they be removed or are there any gaps? Are there any further points that should be clarified?

AMAFI is not against a simplification of the requirements to remove overlaps between RTS 6 and 7. However, AMAFI's position on such a provision will depend on ESMA's proposals having looked into the duplicated responsibilities that could be attributed to the investment firms and those that belong with the trading venues. Only then with a proposal on that basis can AMAFI have a formal position regarding the removal of the identified overlaps.

Q26: What is your view with regards to the testing of algorithms requirements? Do you agree that more robust testing scenarios should be set?

Overall, AMAFI is of the view that trading venues cannot with any efficiency certify the behaviour of trading algorithms deployed by its trading participants. Firms engaged in algorithmic testing already validate and test their algorithms in back testing environments outside of these test environments anyway. We would then recommend ESMA to limit the scope of conformance tests (RTS 7, Article 9(1)) to "trading systems", and hence remove "algorithms". Therefore, all algorithms and trading strategies by default deployed through such applications would be consequently covered in existing conformance test protocols.

Q27: Are the testing environments available for the testing of algorithms appropriate for this purpose?

As stated in response to question 17, we believe that the testing environments are overall adequate.

Since we do not believe that substantial change should be brough to the testing requirements, this answer remains applicable.

Q28: Do you agree with ESMA's analysis that the circuit breaker mechanism achieved its objective to avoid significant disruptions to the orderliness of trading?

AMAFI agrees with ESMA's analysis on the efficiency of the circuit breaker mechanism.

Q29: Do you agree that the requirements under Article 48(5) of MiFID II complemented by RTS 7 and the guidelines on the calibration of circuit breakers and publication of trading halts under MiFID II remain appropriate? If not, what regulatory changes do you deem necessary?

We believe that the requirements set by article 48(5) of MiFID II and delegated regulation (EU) 2017/584 remain appropriate and do not require any changes.

Q30: Do you agree that the co-location services and fees structures are fair and non-discriminatory? Please elaborate.

AMAFI agrees that the co-location services and fees structures are overall fair and non-discriminatory. However, we believe that there are issues pertaining to the transparency of the presentation of fees, and to the unbundling of costs between different services provided by the trading venues.

Some AMAFI members explained that access to the fee schedules were not always accessible and that there was sometimes no distinction within the fee structure between different services offered by the trading venues. Furthermore, fee schedules are heterogenous between different trading venues, in a similar trend to that observed for the market data provision prior to the publication of ESMA's guidelines on market data obligations.

Finally, we would like to reiterate that trading venues should make sure that all market participants hosted in a colocation centre are placed at exactly the same cabling distance from the trading engine, so market participants are completely agnostic where they are based in the data centre, and nobody has a competition advantage.

Q31: Do you think that the disclosures under RTS 10 made by the trading venues are sufficient or should they be harmonised among the different entities? Please explain.

As stated in the response to question 30, AMAFI agrees that the comparability of the information provided by different venues should be enhanced, notably by harmonising the information published according to article 4 of delegated regulation (EU) 2017/573.

Q32: Do you agree with ESMA's proposal to set out the maximum OTR ratio, calibrated per asset class?

Although AMAFI agrees with the rationale behind calibrating the maximum OTR per asset class, we do not support empowering ESMA via a level 1 amendment to set out a convergent maximum OTR ratio.

We believe that such a provision would force a convergence that is not necessarily suited to the different levels of sophistication and electronification of the trading platforms, as indicated by ESMA in paragraph 205 of the consultation paper. While ESMA asks the legitimate question of the level of protection offered by such a wide range of OTR limits across EU venues, enshrining such indicators in a level 2 text and doing away with the current methodology would ignore the differences between trading venues without neutralising them.

Instead, AMAFI suggests keeping the same methodology, and amending articles 2 and 3(1) of delegated regulation (EU) 2017/566 in order to specify that the ratio of unexecuted orders to transactions has to be calculated per asset class rather than calculating and applying the same overall limit to all instruments. Article 2 already specifies that trading venues have to calculate the ratio *"for every financial instrument"* but fails to specify that there should be a distinct indicator for each asset class.

Q33: Do you agree that the maximum limits are not frequently exceeded? Please explain any potential underlying issues in this respect that should be recognised.

AMAFI agrees with ESMA's findings about the potential breaches. AMAFI members operating trading venues confirmed that the maximum limits were rarely exceeded. We do not see any other underlying issues that should be addressed in link with this topic.

Q34: Do you agree with the consequences as described of exceeding the maximum limits or should there be a more convergent approach? Please provide any comment or suggestion regarding the procedures in place by trading venues in case of a member exceeding the prescribed limit.

AMAFI thinks that there should be a more convergent methodology when a market participant exceeds the maximum limits, as there is no harmonisation today and each trading venue has its own procedure for dealing with exceeding the limits: order rejection, written notice, financial penalty or even case by case basis etc.

Trading venues should automatically fine market participants exceeding the maximum limits. Indeed, when trading firms use most of the capacity system (intentionally or unintentionally), they put the trading system at risk, and trading venues need to invest in larger capacity, which ultimately results in higher cost for the rest of the market participants.

Q35: Do you agree with the need to to improve the notification process in case of IT incidents and system outages? Beyond the notification process between NCAs and ESMA, which improvements could be done regarding communication of incidents to the public?

AMAFI is not in a position to answer this question.

Q36: Do you believe any initiative should be put forward to ensure there is more continuity on trading in case of an outage on the main market, e.g. by requiring algo traders to use more than one reference data point?

AMAFI is not in a position to answer this question.

Q37: Do you agree with the view that the tick size regime had overall a positive effect on market depth and transaction costs?

On March 2018, AMAFI had published a study on the earliest impacts of the MiFID II tick size regime on liquidity and spreads of shares[1]. Although this analysis was carried out over a short period after the entry into force of MiFID II, it had come to the conclusion that the tick size regime seemed to have a globally positive effect on the bid-offer spread for small capitalisation shares, and an increase in available liquidity.

However, it had shown that although tick sizes stopped decreasing for certain shares, they had stabilised at excessively low levels for certain categories of shares, notably middle capitalisation shares.

As for the positive effect on market depth and transaction costs, AMAFI agrees with the conclusions drawn from the studies carried out by the French and the Danish supervisors. Overall, the tick size regime had a positive effect on market depth and transaction costs.

Q38: Is there any further issue you would like to highlight regarding tick size regime?

For systematic internalisers, AMAFI was in favour of limiting the application of the tick size regime to transactions below the LIS threshold, in order to ensure a level playing field between SIs and other trading venues.

Additionally, we think we could still improve the current tick size regime by considering volumes traded across its primary market and the lit MTFs, when computing the ADNT for a stock, instead of only relying on the "most relevant market".

Q39: Do You agree with the proposal not to amend the tick size regime for third country shares? Please explain.

AMAFI members are not concerned with the current tick size regime for third country shares. We agree with ESMA's proposal not to amend it for the moment.

However, a simplified and more efficient / automatic reporting of tick-size adjustments for third-country shares should be allowed, especially in the light of the UK leaving the EU. Trading venues should be able to systematically (and not in a case by case basis) use the ADNT of the primary market (even if outside the EU), so there is a level playing field between third country trading venues and EU trading venues.

Q40: Do you agree with the proposal to widen the scope of the tick size regime to all ETFs? Would this pose challenges in your view? Please explain.

AMAFI disagrees with ESMA's proposal. We consider that the reasons evocated for the expansion of the tick size regime to all ETFs are not sufficient. First, ESMA did not provide an assessment or an approximation of the proportion of ETFs that are the source of uncertainty as to their inclusion in the scope of the current tick size regime. Second, the reasons exposed in ESMA's report are not in line with the initial purposes of the establishment of the mandatory tick size regime.

A simulation of the extension of the tick size regime to money market ETFs shows soaring increases of the tick sizes relatively to the tick size regimes currently applied by the main EU exchanges (between 5 to 20 times the current sizes), notably in Euronext and Deutsche Börse.

ESMA's proposal to extend the tick size regime to all EU traded ETFs does not seem to take into account this type of impacts or to acknowledge the risk of their occurrence and the consequences that would have on the overall trading landscape of ETF trading in the EU.

[1] *"Impact of tick size regime provided by MiFID II on the liquidity and spreads of shares"*, AMAFI / 18-16

Q41: Do you agree with the proposal not to widen the scope of the tick size regime to non-equity instruments? Please explain.

AMAFI is not responding to this question.

Q42: Do you agree with ESMA findings and assessment of the current MiFID II market making regime?

AMAFI agrees with ESMA's assessment of the current MiFID II market making regime. We believe that the current requirements of RTS 8 might be too general, and not efficient enough to create incentives for market makers.

Overall, we believe it is generally quite easy to comply with the current MiFID II market making regime, because exchanges allow "stub" quotes which facilitates too many participants to technically comply without being required to provide actual liquidity.

Q43: What do you think of ESMA proposals and suggested amendments to RTS 8? In your view, what other aspects of the market making regime require to be amended and how?

AMAFI agrees with the announced objectives ahead of ESMA's proposals, aiming at streamlining the MiFID II market making regime and making it more effective.

For that purpose, we agree with proposal a, as we believe that limiting the application of the scope of articles 1 and 2 to continuous trading order books would help focus the market making agreements and provide less broad requirements for establishing them. However, we disagree with proposal b, as we believe that broadening the obligation of having market making schemes to all instruments and types of trading systems would create an additional burden on trading venues. Furthermore, we do not see how such a provision would bring about a substantial change in the liquidity patterns of the instruments not included in the current obligation to have market making schemes.

AMAFI is not in line with proposal c. We do not believe that such incentives are best embodied by additional regulatory requirements. They are rather more efficient when initiated within the industry.
On the same topic, AMAFI would like to bring attention to the accepted market practice on liquidity contracts, which represents in our opinion a viable alternative for improving the liquidity of some shares. In the case of the French equity market, the SME segment relies heavily on liquidity contracts.

Q44: What are market participants views regarding the flexibility left in the MiFID II market making regime? Would you agree with ESMA further clarifying certain relevant concepts? If yes, which ones?

As stated in the answer to question 43, AMAFI is more in favour of a industry based approach for the harmonisation of practices between exchanges across the EU when it comes to the MiFID II market making regime.

Q45: Could you please describe how Primary Dealers agreements are designed (number of designated Primary Dealers, transparency about investment firms having signed such agreements, typical obligations contained, etc…). Do you consider that Primary Dealers should be exempted from the Article 1 of RTS 8? Do you consider that this can introduce a regulatory loophole?

AMAFI welcomes ESMA's proposal to exempt Primary Dealers from MiFID II market making agreements requirements for each trading venue on which they are active. We do not see such an exemption as the source of any regulatory loophole. AMAFI further suggests that the exemption goes beyond primary dealers and targets the EU government bond asset class as a whole.

Currently, primary dealers in EU government enter into agreements with DMOs aiming to promote liquidity and transparency in the secondary markets. In addition to these agreements, they are also submitted to the MiFID II market agreement framework, that seems to have been initially designed for equity markets.

This amplifies the regulatory confusion in which primary dealers evolve, since they need to employ more resources to monitor their compliance at the same time to the specific rules of every trading venue, their agreement with DMOs and the MiFID II market making framework. We believe that this situation is counter-productive, especially considering the redundancy of the objectives stemming from each set of rules.

Q46: Do you think that venues which introduced asymmetric speedbumps provide enough information regarding the mechanism used? If not, what additional information would be useful to disclose to market participants?

AMAFI believes that there is enough transparency from venues in the information displayed about speedbumps overall. However, there may be merit in requiring trading venues to publish standard characteristics of the speedbump mechanisms they put in place. The main information of interest would be whether the mechanism is symmetric, the targeted orders, the targeted market participants and the detail of the delivery of the public and private message.

Q47: Reflecting on those mechanisms which allow liquidity providers to provide quotes that can be filled only against retail order flow, do you think that such mechanisms are beneficial in terms of market quality? Is there any specific aspect that you think should be further taken into account, also considering the type of instruments traded? Please specify the venue of reference and the type of arrangement discussed.

AMAFI considers that such mechanisms are beneficial in terms of market quality so long as the retail investor is not disadvantaged in comparison to the institutional investor.

Some exchanges offer retail quotes at or above the EBBO (European Best Bid Offer) in a model where those orders compete in the overall order book thus allowing competition and an attractive price for retail investors. Indeed, this model aims at offering the best price available on the market to the retail investor in a system that remains competitive.

This is in contrast to other models that implement solutions which allow liquidity providers to provide quotes that can be filled only against retail order flow in a construct that is only bilateral and does not have conditions around the EBBO such as the Volume Weighted best Big and Offer (VBBO) model.

In some of such models, AMAFI has observed arrangements whereby market makers do not compete on prices, and where platform fees are fully supported by the market-makers, and not by retail participants. Such arrangements are intrinsically problematic from a retail investor/best execution perspective. This model is often referred to as “payment for order flow”, as in the US these platforms often pay retail investors to trade.

In addition, it appears that within this model, retail order flow does not participate in price formation. AMAFI is of the opinion that there is merit in ensuring that the retail order flow is more price forming.

Based on the above, AMAFI would suggest that policymakers and regulators consider whether the following recommendations have merit:

At the European level, and in the context of the upcoming review of MiFID II/MiFIR:

- Firstly, adopt the proposals made by ESMA to strengthen the definition of multilateral trading, beginning with moving the definition from MiFID II to MiFIR.

- Secondly, review the provisions on hybrid trading systems enshrined in Annex 1 of both RTS 1 (equity) and RTS 2 (non-equity) to ensure there is a clear distinction between bilateral and multilateral trading.

- Thirdly, in order to deliver CMU, focus on establishing a true level playing field that underpins investor protection, particularly for retail investors via: 1) A review of the process for the authorisation of market models in the EU, including the introduction of a compulsory opinion from ESMA, mirroring the existing arrangements for transparency waivers; 2) As part of this process, pay particular attention to 'zero fee' and payment for order flows relating to cases where the broker receives free execution with a view to ensuring the Best Execution requirements are met.

At the national level, a supervisory review by NCAs of the retail order execution policies of the relevant firms under their supervision would also help to address this issue.

Q48: Do you think that venues which introduce asymmetric speedbumps should set tighter market making requirements? Please explain why and how tight those new requirements should be.

AMAFI does not support setting tighter market making requirements in venues which introduce asymmetric speedbumps. As a matter of fact, the real targeted beneficiary of the establishment of speedbumps is the final client rather than the market maker. Protecting market makers from aggressive orders leads to retail investors having access to improved quotes.

Q49: Do you agree on the conclusion that speedbumps might not be a well-suited arrangement for equity markets? If yes, do you think that such arrangements for equities should be prohibited in Level 1? Please explain.

AMAFI does not agree with ESMA's conclusion. On the contrary, we believe that speedbumps are well-suited arrangement for equity markets, and such arrangements for equities should not be prohibited.

A speedbump is precisely a useful tool to fight against latency arbitrage. Recently, there has been an increasing preoccupation with "speed traders" and with the lengths to which some are going to establish and protect their relative speed advantages. This latency arbitrage activity has definitely a negative effect on outcomes for the other market participants. That is why we think it is beneficial to the whole market and specifically end investors to curb this activity through implementation of thoughtfully designed speedbumps. It (i) reduces the indirect operational tax on end users of markets, (ii) leads to tighter pricing and deeper books for end users, (iii) reduces barriers to entry and encourages competition, and (iv) increases diversity and reduces systemic risk.

Q50: Do you think that the introduction and functioning of speedbumps should be further regulated? If yes, which specific requirements would you like to be included in EU legislation?

AMAFI believes that there is no need for further regulation of the introduction and functioning of speedbumps. As of the technical specifications that would improve the mechanism overall, we believe that such clarifications should be initiated by the trading venues rather than imposed by more detailed regulatory requirements.

Q51: Is there any specific issue you would like to highlight about speedbumps?

AMAFI does not have any other specific issue regarding speedbumps.

Q52: What are your views on the relative timing of private fill confirmations and public trade messages? If you are a trading venue, please provide in your answer an explanation of the model you have in place.

AMAFI notes that the current regulatory framework does not favour any of the two messages. Feedback from AMAFI members operating trading venues indicates that there is no clear order of preference set by trading venues. However, it was also indicated that most of the times, the private fill confirmation is received first. AMAFI is aware of the technological challenge posed by the choice to receive both messages on the same time. Trading venues cannot commit on a specific order since the margin of error is extremely tight.

However, we believe that ESMA could require trading venues to send both the public and the private messages at the same time instead, regardless of when they will be received by market participants.

If not technically possible, ESMA could require trading venues to publish the public market data before sending the private messages, rather than the contrary. Otherwise, sending private fill information to certain participants prior to disseminating on the public market data feed is not transparent and not fair, as it gives the largest firms an outsized advantage which allows them to create a dominant position that is self-fulfilling. Essentially, the exchange is giving one participant more private (non-public) information before other firms.

Q53: Do you consider information on the sequencing of these two feeds at trading venues to be easily available? If you are a trading venue, please provide a link to where this information can be found publicly.

Feedback received by AMAFI does not indicate any actual sequencing of the two concerned feeds. Consequently, there is no available information about a potential sequencing of the two feeds.

Q54: Do you think there should be any legislative amendments or policy measures in respect of these feed dynamics?

We believe that there may be merit in setting clear transparency rules regarding the dissemination of such information by trading venues. Given the technological challenges obstructing the equal reception by all market participants of both the public and private feeds, we believe that trading venues should at least ensure that both messages are sent at the exact same time. When not possible, trading venues should aim at sending public market data before private market data. But rather than introducing amendments to MiFID II regarding this topic, we believe that it would be better mitigated through a set of best practices developed within the industry.