

ESMA Consultation Paper on Market Outages

AMAFI's answer

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 mainly 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 has 170 members operating in equities, fixed-income and interest rate products, as well as commodities, derivatives and structured products for both professional and retail clients. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

AMAFI welcomes the opportunity to comment on ESMA's consultation paper (hereafter the CP) on market outages.

Before answering the specific questions raised in the CP, AMAFI would like to raise a few general comments.

1. GENERAL COMMENTS

First, even though outages are quite rare in practice, and even though some provisions are already in place on how trading venues (TVs) should communicate system disruptions to their national competent authorities (NCAs), AMAFI welcomes ESMA's CP as it believes that providing conditions as to how TVs should communicate to their members and participants during an outage is of the outmost importance for the purpose of transparency and market functioning considering the disruption an outage can have on other TVs and on the market in general (*as explained by ESMA in paragraph 19*). The design of a robust mechanism allows to limit the impact an outage can have as it gives more certainty to participants.

However, for such mechanism to work effectively across Europe, AMAFI stresses the need for it to be **harmonised**, notably through the publication of a playbook of minimum principles and communication protocols (communicated by email and displayed on the venue's website). We believe it is of utmost importance to have minimum standards in place to create consistency.

Furthermore, it is important to introduce a **principle of proportionality** in ESMA's guidelines, the main issue being on major equity markets. In fact, the implementation of rules regarding market outages should not be too burdensome for small TVs with a low volume of operation such as Organised Trading Facilities (OTF) for instance.

Finally, the guidelines should clearly state that the market status is publicly available through the website and direct communication by email to the market members and that it is to be updated every 30 minutes even if there is no change on the status.

2. RESPONSE TO THE CONSULTATION

COMMUNICATION PROTOCOLS

Q1: Do you agree with the main communication principles identified above?

The communication principles provided for in ESMA's CP make sense. However, we would suggest a more stringent approach notably on the setting of the playbook introduced in the CP, which should include the ways in which the information are disseminated and the location where it is made available (particularly concerning the status of orders), the minimum notification time, the protocols for identifying and resolving outages, and requirements to have clear procedures on how to restart the trading and how to determine the market closing price in the event the market cannot reopen. TVs should also include in their playbook the need to carry out a post-mortem exercise in case of an outage, which will provide for the root causes and the steps to take to prevent the reoccurrence of such outage.

Furthermore, ESMA proposes, in point 28 of its CP, that "*NCA's should ensure that trading venues regularly and at least every two years review, test and update the outage plan, to ensure those are always up-to-date and adapted to all possible circumstances*". AMAFI believes that an annual review is more suitable, during which TVs must check their outage plan, their rulebook and see if the mechanisms put in place in case of an outage respond well to these plans. TVs must be able to demonstrate the suitability and consistency of their plans and mechanisms.

Q2: To promote harmonisation, should the guidance include a template on what trading venues' communication notices should include?

A template on what trading venues' communication notices should include could be helpful, in particular considering the need to have harmonised procedures, but only to the extent that this template is not too burdensome for small TVs. If ESMA designs such a template, it should bear in mind the different types and sizes of TVs and apply the principle of proportionality. The minimum template could include the outage status, its cause (if known at the time of the communication), its scope, a link to the venue's website and playbook, where to find the relevant information concerning the status of orders (*ESMA's CP, §37*) and the procedure for reopening the market.

Q3: Do you agree that trading venues should have a maximum of one-hour to provide clarity on the status of the orders during an outage? If not, what would be an appropriate timeframe in your view and why?

AMAFI believes that a one-hour timeframe to provide clarity on the status of orders is inappropriate and is counterproductive with the need for the market to be kept informed as quickly as possible. This is especially important for this matter considering the possibility for some participants to move on to alternative TVs. In fact, a one-hour timeframe doesn't incentivise TVs to provide the information promptly and might instead create an incentive to communicate near the expiry of the one-hour period. We would therefore suggest aligning this period with the one for the publication of the notice of disruption, meaning as soon as possible and within a maximum timeframe of thirty minutes. Nevertheless, we believe that there is a need to have a first step, where the TV would give an exact time stand (by the second) of when orders/executions are considered invalid.

Q4: Do you think the possibility to require trading venues to offer an order book purge should be considered in the guidance? If yes, should ESMA provide further guidance on when the integrity of the orders has been largely compromised?

Yes we agree with that.

Q5: What is your view with regards to the conditions under which a trading venue should reopen trading?

In its strategy for reopening, the TV must describe the different steps it is going to take for the resumption of trading (as pre-established in its playbook) and make its best effort to provide for the reopening with minimal disruption and before the expected closing time. If it is not possible, AMAFI believes reopening trading after the scheduled fixing time is not desirable (ie: reopening at 7h30 pm makes no sense). However, the time of re-opening should be clearly published and accessible to all market participants at least 30 minutes prior to reopening.

CLOSING AUCTIONS

Q6: What is your view in relation to the closing auction being affected and the procedures that trading venues should have in place to minimise disruption?

Regarding closing auctions prices, AMAFI believes that there is a need for an even stronger mechanism/robust process than the one presented in the CP with a predefined timing (in 30-minute increments for example) easily identifiable by participants and a fixed closing time (*See our answer to Q5*).

Q7: Do you agree not to mandate trading venues to have an alternative trading venue capable of running the closing auction for them? If not, please explain.

AMAFI agrees with ESMA's proposition not to mandate TVs to have an alternative TV capable of running the closing auction for them for the reasons mentioned by ESMA (*ESMA's CP, §46 & 47*).

Q8: Do you agree that trading venues should have a cut off time (30 minutes before the normal schedule) to inform market participants on whether or not they intend to hold a closing auction?

AMAFI believes that the intention or not to run the closing auction should be disclosed by the TV as soon as possible. If not possible, we insist on the need to inform the market at least 30 minutes before the normal schedule.

Q9: Do you agree that the use of the last traded price is an appropriate solution where a trading venue cannot run the closing auction? If not, what alternative would you propose?

AMAFI agrees that using the last traded price could be an appropriate option.

REFERENCE PRICE

Q10: Is the lack of a reference price an issue in an outage context? If so, please provide details.

AMAFI believes that having no reference price is a huge issue. The solution we believe is the most suitable and least disruptive would be to use the last traded price of the day.

OUTAGES ON NON-EQUITY TRADING VENUES

Q11: Do you agree with the proposed approach for non-equity instruments? Do you agree that provisions on par. 37-39 can be exempted for those trading venues that do not provide CLOB?

AMAFI agrees that outages are less relevant for non-equity venues than for equity TVs and have a lesser impact on the market. Therefore, although some principles could be set on those markets, we do

believe a proportional approach should be set where those venues would be exempted from some obligations that may create unnecessary burden and be inoperative. For instance such guidelines would not fit for voice trading systems, having in mind that this approach is already taken into account under the business continuity plan obligation.

Q12: Is there any particular issue relating to trading of non-equity instruments that should be taken into account in the case of an outage? Where possible please differentiate between bonds and derivatives.

See our response to Q.11.

Q13: Is there a direct link/connection between an outage on an equity primary market and those derivatives that have these instruments as underlyings?

AMAFI has no particular view on the subject.

Q14: In your view is there any further element ESMA should consider in the proposed guidance?

No, AMAFI considers that there is no need to add further elements in the proposed guidance.

