MAGNUSSON

MAGNUSSON: THE BALTIC SEA REGION LAW FIRM

MiFID-direktivet

8 november 2012

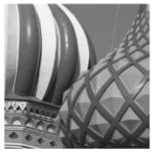
Copenhagen

Gothenburg

Helsinki

Malmö

Minsk


Moscow

Oslo

Stockholm

Riga

Tallinn

Warsaw

Bakgrund och introduktion m.m.

- Rådets direktiv 93/22/EEG av den 10 maj 1993 om investeringstjänster inom värdepappersområdet (ISD)
- Lagändringar till följd av ISD trädde i kraft den 1 januari 1996
- Bestämmelserna i ISD var dock till stor del redan genomförda genom lagen (1991:981) om värdepappersrörelse, som trädde i kraft den 1 augusti 1991.

- Minimiharmonisering av regelverket för aktörer som yrkesmässigt tillhandahåller investeringstjänster
- Baserat på grundprinciperna om en enda auktorisation och hemlandstillsyn

- Europaparlamentets och rådets direktiv 2004/39/EG av den 21 april 2004 om marknader för finansiella instrument och om ändring av rådets direktiv 85/611/EEG och 93/6/EEG och Europarlamentets och rådets direktiv 2000/12/EG samt upphävande av rådets direktiv 93/22/EEG.
- …plus ett direktiv och en förordning
- Fullharmonisering (nästan)
- Reglerna genomfördes genom lagen om värdepappersmarknaden och trädde i kraft den 1 november 2007.

MiFID II

MiFID II

- MiFID seeks to improve the competitiveness of EU financial markets by creating a single market for investment services and activities, and ensuring a high degree of harmonized protection for investors in financial instruments.
- MiFID has brought greater competition across Europe in the provision of services to investors and between trading venues. This has driven down costs for issuers and investors. It has also resulted in a higher level of investor protection
- However, MiFID also contains excessive demands for information to investors.
- A fragmentation of trading and a fragmented liquidity are some other negative consequences.

MiFID II

- MiFID is now being reviewed only five years after entry into force
- Why? European Commission:

  ”In keeping with its intended objective, MiFID has contributed to a more competitive and integrated EU financial market.

  However, recent events and market developments have demonstrated weaknesses in some of the underlying principles of MiFID, and highlighted areas needing reinforcement or revision.

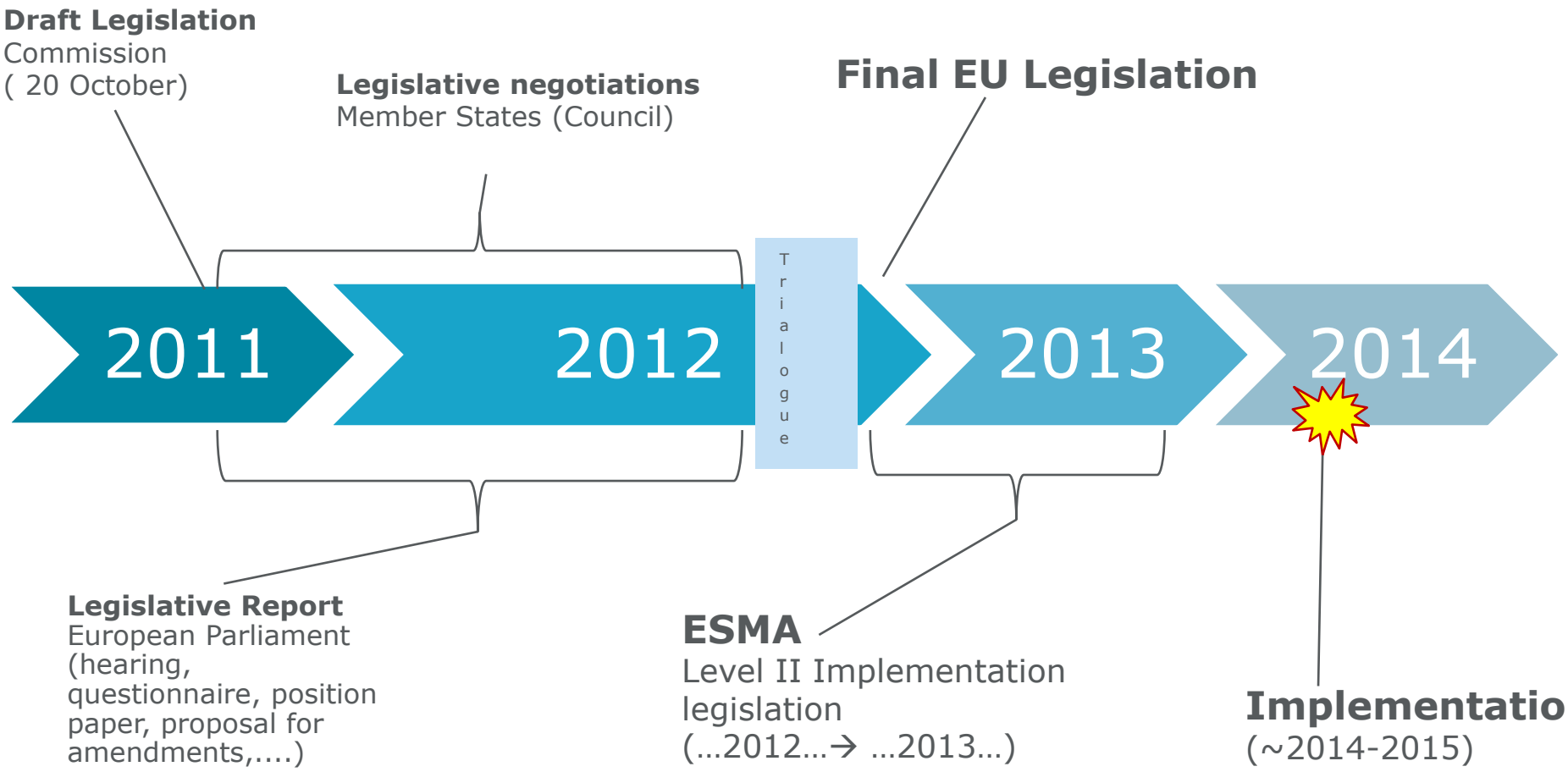
  For example it has arguably led to the development of new trading platforms and activities which fall outside of its scope and thus outside any regulations. Closing such a gap is necessary in order to bolster investor confidence and achieve all of MiFID's original objectives.

  Ensuring a more robust framework of regulation will also serve to address the more complex market reality we are now faced with, a reality which is characterised by increasing diversity in financial instruments and new methods of trading”.

MiFID II

- 20 October 2011 – a Commission proposal for amending the Level 1 MiFID directive and a new regulation was published.
- 26 October 2012 – a revised version of the proposal was voted by the European Parliament
- Next step: Three-way talks between the Parliament, the EU member states and the European Commission
- In many areas the proposal contemplates that ESMA (the European Securities Market Authority) would be given powers to prescribe technical standards

MiFID II/MiFIR EU Timeline
(indicative)



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MiFID II - Key elements of the proposal

- “More robust and efficient market structures”
- “Taking account of technological innovations”
- ”Increased transparency”
- “Reinforced supervisory powers and a stricter framework for commodity derivatives markets”
- “Stronger investor protection”

General policy lines of MiFID II

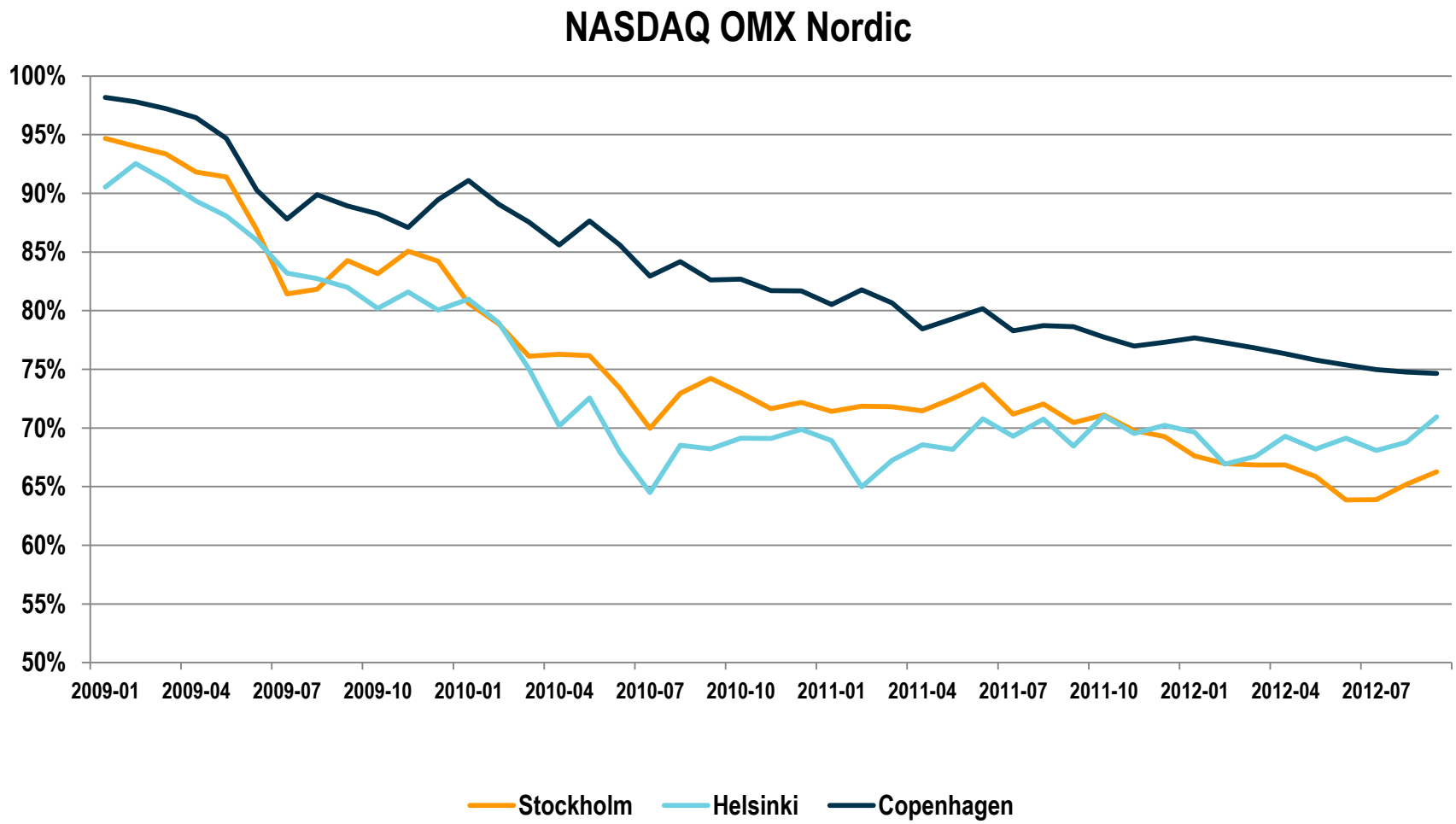
MIFID I has:

- Increased competition in equity trading
- Removed concentration on exchanges & allowed in-house matching
- Fostered alternative markets (MTFs)
- Has induced dark trading and fragmented markets

MIFID II will seek to:

- Maintain and develop competition between venues (derivatives)
- Re-introduce more transparency (OTFs)
- Make the European market more secure and cure the negative effects of fragmentation (market data, algo/HFT, trading of OTC derivatives on organised venues)

NASDAQ OMX NORDIC MARKET SHARES
JANUARY 2009 – SEPTEMBER 25, 2012



WHAT IS HIGH FREQUENCY TRADING?

(ESMA) Trading activities that employ sophisticated, algorithmic technologies to interpret signals from the market and, in response, implement trading strategies that generally involve the high frequency generation of orders and a low latency transmission of these orders to the market. **Related Trading strategies mostly consist of either quasi market making or arbitraging within very short time horizons**. They usually involve the execution of trades on own account (rather than for a client) and positions usually being closed out at the end of the day.

esma

European Securities and Markets Authority

WHAT IS HIGH FREQUENCY TRADING?

- No standardized international definition
- Still, there are a few common characteristics

Arbitrage trading – HFT is the electronic equivalent to day trading

Proprietary trading

No **overnight** positions

Computerized high-speed **micro seconds trades** by way of co-location

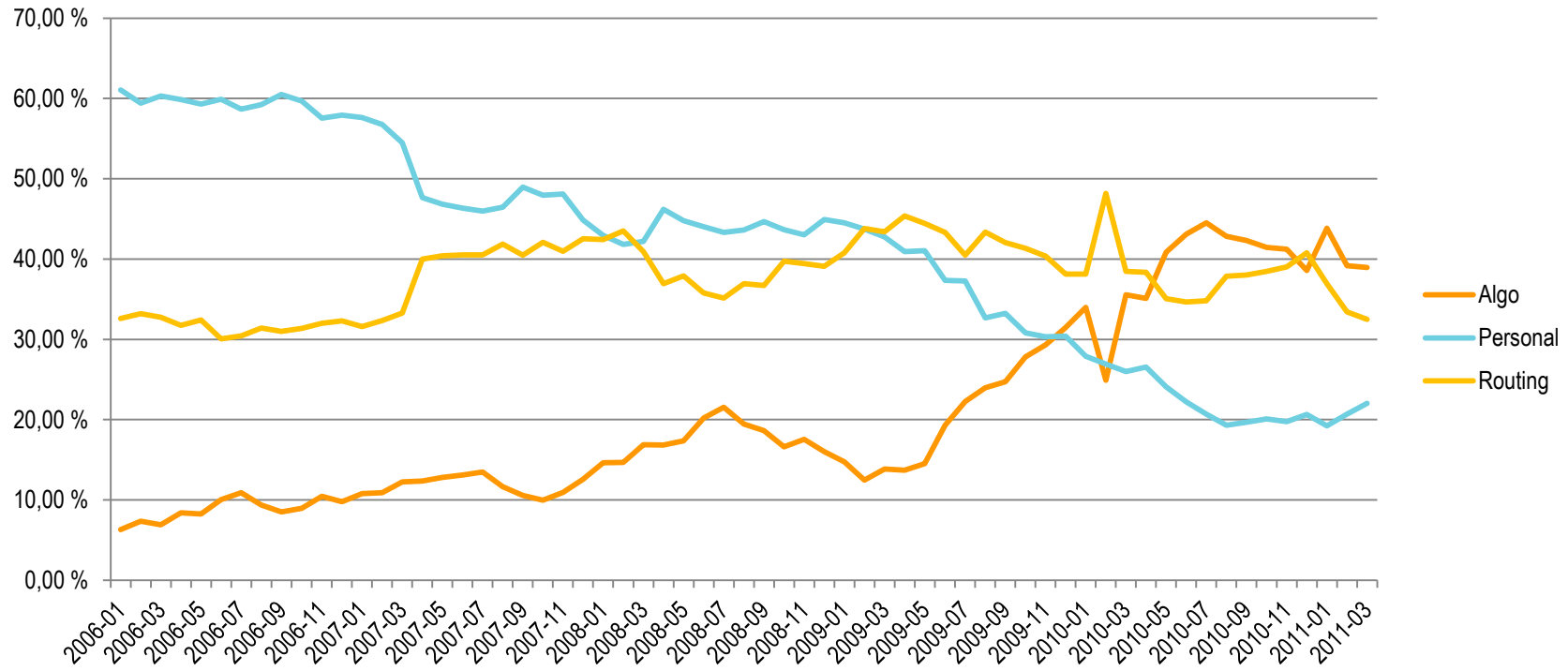
AUTD- accounts with Order-to-trade over **10** Based on Nordic list share trading

HFT is conducted both by **specialist** firms and by the **traditional** members, including large banks

Source: 2009 McCann quantitative and qualitative study with over 200 CFOs and senior executives.

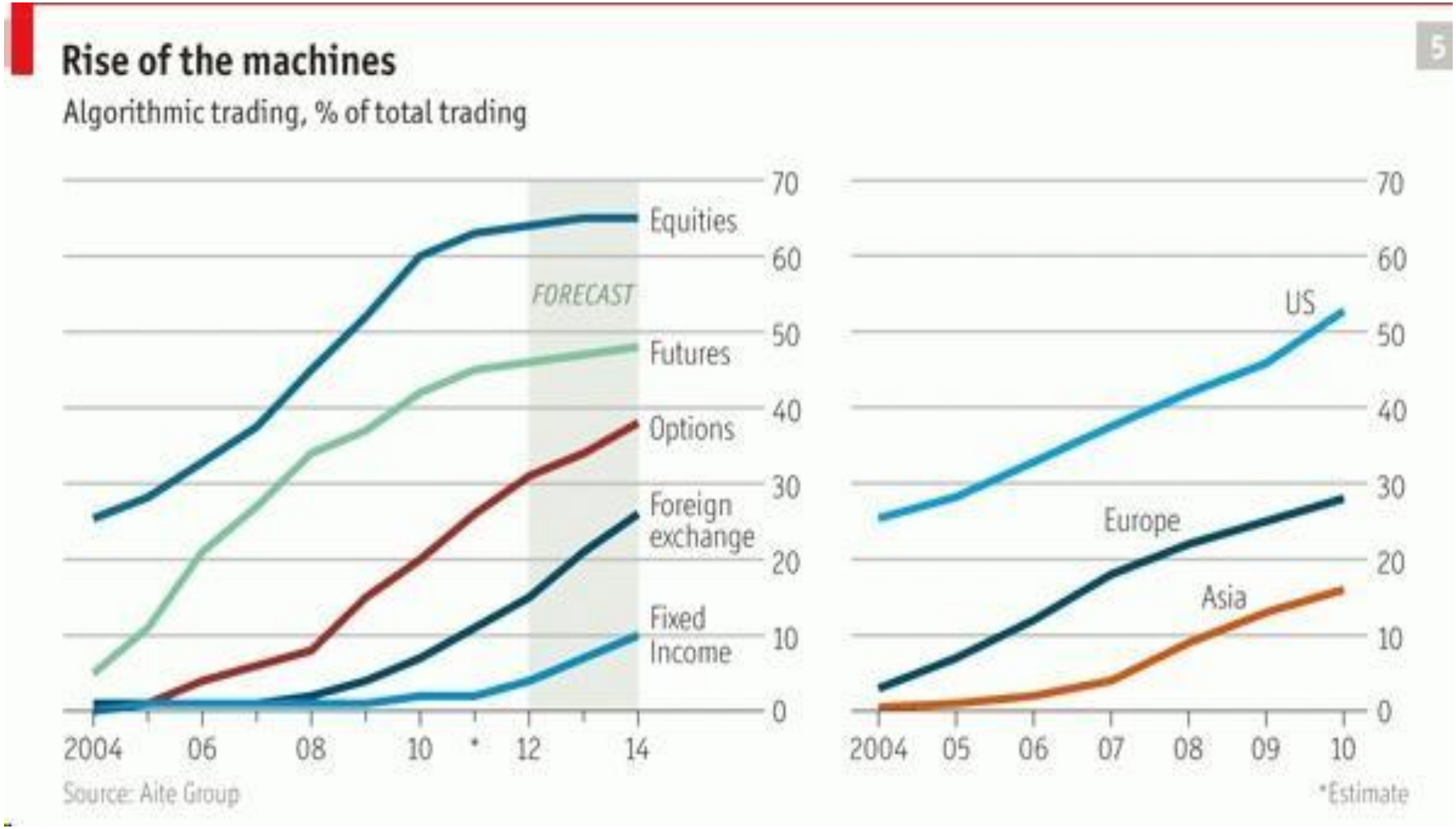
HFT (ALGO ACCOUNT) TRADING ACTIVITY

Algo accounts are behind 40% of the trading in Stockholm.



***-Personal accounts**. This is authorized personnel managing orders, mainly front-end users. It can also be an algorithm behind if this algorithm does not fall under the definition of an algorithmic account.*
***-Routing accounts (DMA)**. A member electronically and automatically routing client orders directly to the trading system.*
***-Algorithmic accounts**. Automated trading done by different computer programs, These programs generates a large number of orders in response to specific pre-programmed factors and place or cancel orders in the Order Book.*

DISTRIBUTION OF HIGH-FREQUENCY TRADING IN THE UNITED STATES BY ASSET CLASS



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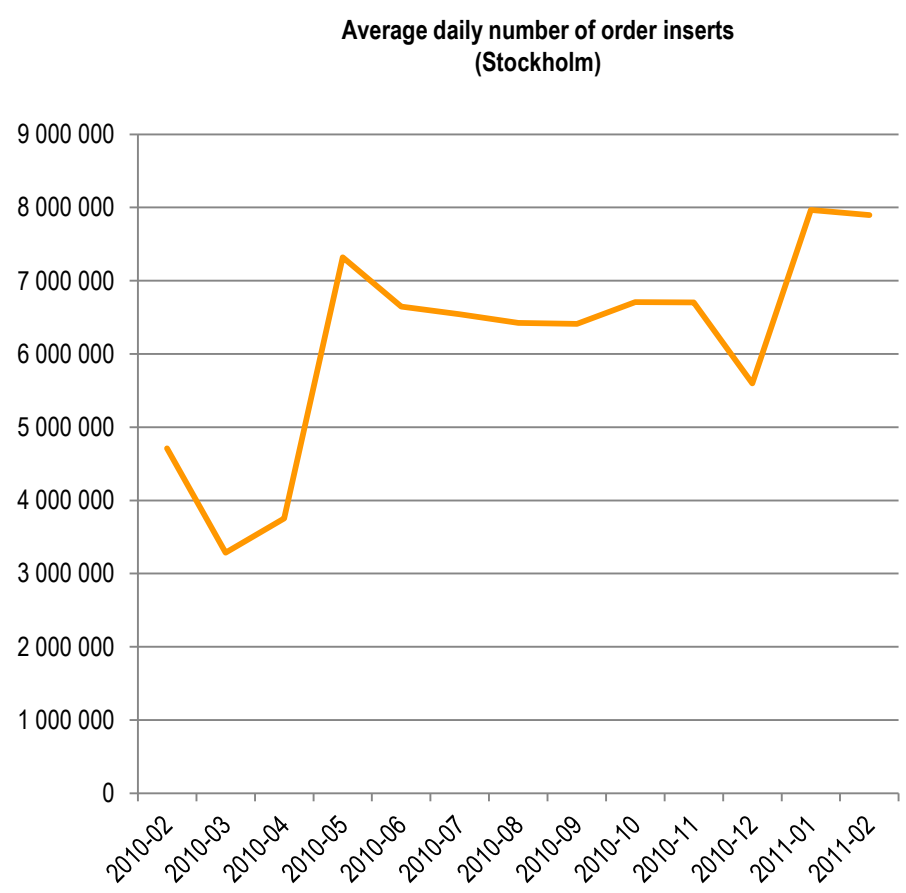
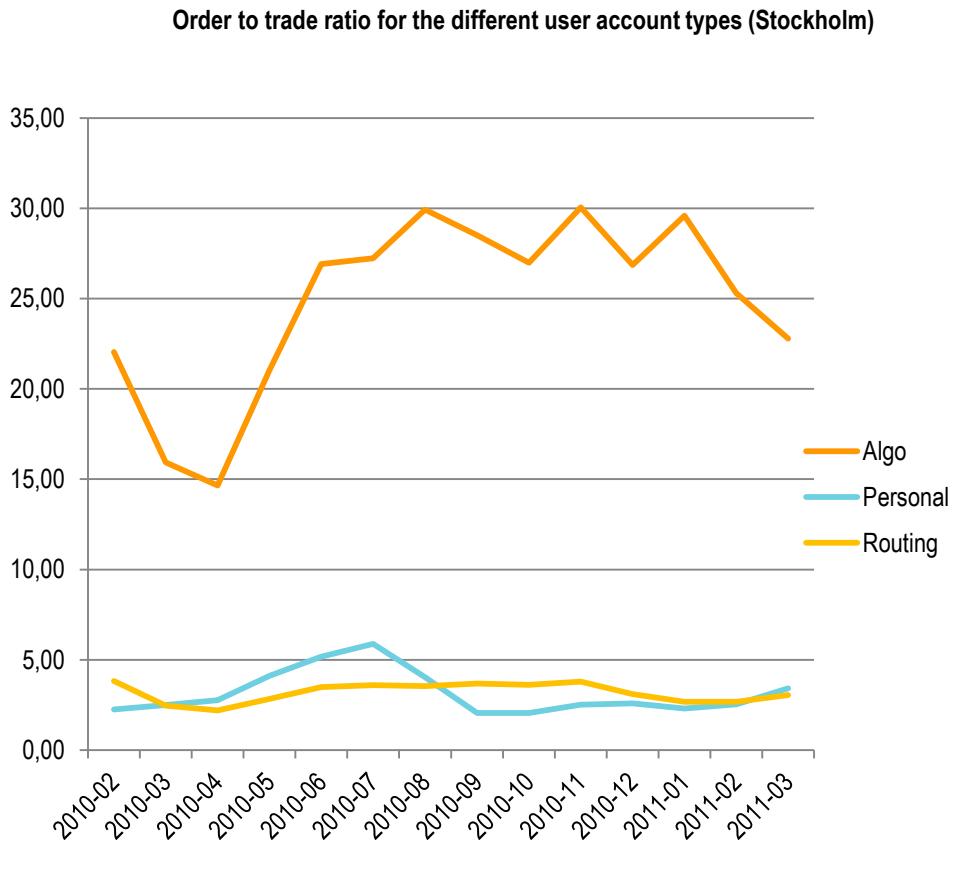
ORDER INSERTS & O/T RATIO





Proposals to deal with issues raised by algorithmic and high frequency trading

- All entities involved to be authorised and supervised under MiFID
- Firms involved in all forms of automated trading to put in place robust risk controls to reduce the possibility of potential system errors or rogue algorithms.
- Firms who allow other automated traders to use their trading systems to gain access to market to put in place proper risk controls and filters to detect errors or attempts to misuse the facilities
- Trading venues to strengthen their risk controls and arrangements

Proposals to deal with issues raised by algorithmic and high frequency trading, cont.

- According to the press release published on the European Parliament's web site, all trading venues must ensure that trading systems are resilient and prepared to deal with sudden increases in order flows or market stresses.
- These could include 'circuit breakers' to suspend trading. Additionally, all orders "should be valid for at least 500 milliseconds, i.e. must not be cancelled or modified during that time.

MiFID II – några andra exempel på förslag till förändringar

- Medlem i ledningsorgan ska kunna åläggas ett personligt straffrättsligt eller civilrättsligt ansvar vid överträdelser av regelverket
- Begränsningar såvitt avser hur många styrelser en styrelseledamot i ett finansiellt företag kan sitta i
- Mer detaljregler avseende kraven på ledande befattningshavares erfarenhet och kompetens, hur de ska rekryteras och utses etc.
- Produktgodkännadeprocess och mer detaljerade krav på hantering av intressekonflikter – dock inget uttryckligt provisionsförbud men möjlighet för medlemsstat att införa ytterligare begränsningar

MiFID II – How to implement changes in your business

Still somewhat early days, the devil is in the ESMA details – but…

- Create an internal working group
- GAP-analysis
- Attend seminars, check if new information is available on web pages etc.
- Call your MiFID II lawyer

TACK FÖR VISAT INTRESSE!

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