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| Response Form to the Consultation Paper |
| MiFID II/MiFIR review report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **06 September 2019.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_MDA\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_MDA\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_MDA\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on Position limits and position management in commodities derivatives”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is primarily of interest to users of market data and trading venues, but responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Click here to enter text. |
| Activity | Choose an item. |
| Are you representing an association? |  |
| Country/Region | Choose an item. |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_MDA\_1>

Cboe Europe is a pan European operator of stock exchanges and OTC reporting services, with licenses to operate regulated markets, MTFs and APAs in the UK and the Netherlands. Cboe is also one of the five shareholders in Euro CCP, the pan-European clearing house. Cboe is the largest OTC reporting service for Equities in Europe, is consistently one of the largest venues for trading European equities and equity like instruments and has been at the forefront of the many positive developments in European equity markets since MiFID was implemented in 2007. These have included dramatic reductions in trading and reporting fees, the development of a competitive interoperable clearing model and innovative trading services such as the Cboe LIS service for block trades and periodic auctions for low impact institutional trading.

Cboe is also a large consumer of European equity market data from all of the EU’s major equity exchanges. Cboe uses the data for market control and reference price purposes.

<ESMA\_COMMENT\_MDA\_1>

**Questions**

1. : Have prices of market data increased or decreased since the application of MiFID II/MiFIR? Please provide quantitative evidence to support your answer and specify whether you are referring to equity and/or non-equity instruments.

<ESMA\_QUESTION\_MDA\_1>

We have seen an increase in prices for equity market data. This had been taking place before MiFID II/MiFIR, but has continued since their application. ESMA should examine published price lists to analyse these increases.

<ESMA\_QUESTION\_MDA\_1>

1. : If you are of the view that prices have increased, what are the underlying reasons for this development?

<ESMA\_QUESTION\_MDA\_2>

Trading venues have attempted to address falls in trading revenues that have happened as a result of increased competition by increasing market data revenues . Furthermore, the welcome focus on best execution has meant that market participants have been obliged to consume more data, reducing price elasticity. In some cases this has been attempted by charging for new services or developing new fees for services that were previously included in other fees. Some venues have also used market data fees as a tool to attempt to reduce competition for trading. Please see our response to question 3.

<ESMA\_QUESTION\_MDA\_2>

1. : Following the application of MiFID II/MiFIR, are there any market data services for which new fees have been introduced (i.e. either data services that were free of charge until the application of MiFID II or any new types of market data services)?

<ESMA\_QUESTION\_MDA\_3>

New or higher fees may be justified in cases where additional value is being provided to users of the data. However we have seen some new fees which do appear difficult to justify. A number of trading venues have introduced the concept of “order routing fees”. These are fees that are charged in addition to standard non-display fees for firms that also trade on other venues. This amounts to a charge on firms that wish to enjoy the benefits of increased competition and is in some cases, is actually preventing firms from trading on alternative venues. The charge is clearly not justifiable.

Other new fees include specific systematic internaliser fees. This would again seem difficult to justify as firms will already be paying non-display fees to consume venue data and are then producing their own prices on the back of it.

<ESMA\_QUESTION\_MDA\_3>

1. : Do you observe other practices that may directly or indirectly impact the price for market data (e.g. complex market data policies, use of non-disclosure agreements)? Please explain and provide evidence.

<ESMA\_QUESTION\_MDA\_4>

As a significant consumer of market data from all of the Europe’s major equity trading venues, we have experienced the use of complex policies and contract terms to support excessive market data prices. We believe that this might be in some way addressed through standardization. Please see our answer to question 7 below.

<ESMA\_QUESTION\_MDA\_4>

1. : Do you agree that trading venues/APAs/SIs comply with the requirement of making available the information with respect to the RCB provisions? If not, please explain which information is missing in your view and for what type of entity.

<ESMA\_QUESTION\_MDA\_5>

Cboe Europe makes available the required information with respect to the RCB provisions. Disclosures aside, RCB is vaguely defined and without case law or regulatory guidance to support its application. Cboe Europe has data to compare its cost of data to its market share. On this basis several venues stand out as charging well above this level for their data and also have penal market data contracts. Generally such venues are not perceived to be providing data on a RCB

<ESMA\_QUESTION\_MDA\_5>

1. : Do you share ESMA’s assessment on the quality of the RCB information disclosed by trading venues, APAs and SIs? If there are areas in which you disagree with ESMA’s assessment, please explain.

<ESMA\_QUESTION\_MDA\_6>

Yes. We believe that to improve the quality and usefulness of RCB information ESMA should:

• collate the data centrally and display to end users and;

• provide further guidance on a common “template” that exchanges should use, the timing of the publication, where it the information should be displayed on venues’ websites etc.

We also believe that RCB should be assessed against some externally verifiable factor such as market share. However RCB data on its own is not sufficient. The establishment of a consolidated tape that has direct control over its own pricing is essential as a mechanism to establish fair pricing for venue data and a market constraint upon that pricing. N.B. venues may well still charge more than the CTP, but the availability of the CT would ensure that their ability to do so would have to reflect superior value being offered.

<ESMA\_QUESTION\_MDA\_6>

1. : Do you agree that the usability and comparability of the RCB information disclosed could be improved by issuing supervisory guidance? If yes, please specify in which areas you would consider further guidance most useful, including possible solutions to improve the usability and comparability of the information.

<ESMA\_QUESTION\_MDA\_7>

Yes. We would encourage ESMA to address this by requiring standardisation of data policies, and terms, including the rights that attach to them, to ensure a common understanding of what is being charged for. This would also support the RCB provisions by allowing easy comparability of the prices being charged by various venues. The FISD has a typology that has been developed by industry and is used by Cboe Europe amongst others. Using Level 3 to clarify that use of such an industry standard is an implicit requirement to meet RCB would be a very positive step forwards.

<ESMA\_QUESTION\_MDA\_7>

1. : Do you think that the current RCB approach (transparency plus) can deliver on the objective to reduce the price of market data or should it be replaced by an alternative approach such as a revenue cap or LRIC+ model? Please justify your position and provide examples of possible alternatives.

<ESMA\_QUESTION\_MDA\_8>

Yes, with the caveat that the enhancements set out in our response to question 6 are implemented, along with the prohibition of unwarranted charges such as the order routing fee, the imposition of standardization of terms as discussed under question 7, and the creation of a functioning consolidated tape, which should in due course also include pre trade data from central limit order books.

<ESMA\_QUESTION\_MDA\_8>

1. : Do you consider that a revenue cap model as presented above might be a feasible approach to reduce the cost of market data? Which elements would be key for successfully implementing such a model?

<ESMA\_QUESTION\_MDA\_9>

No. Any revenue cap would be too difficult to calibrate given the diversity of market data producers, with a high likelihood that larger organisations would be able to evade any effects to the detriment of smaller and more straightforward providers.

<ESMA\_QUESTION\_MDA\_9>

1. : Did data disaggregation result in lower costs for market data for data users? If not, please explain why?

<ESMA\_QUESTION\_MDA\_10>

No – we have seen very little demand for disaggregation, beyond what was available. That said – the area that might have been expected to deliver the most benefits to consumers, given the pricing power that these events provide, would be closing auctions. It is not clear that the operators of these auctions have disaggregated them in a way that is promoting meaningful competition for more substitutable elements of their offering, such as intra-day pricing data.

<ESMA\_QUESTION\_MDA\_10>

1. : Why has there been only little demand in disaggregated data?

<ESMA\_QUESTION\_MDA\_11>

For auction data, we believe that this is evidence that disaggregation is not being facilitated in a way that is meaningful. More generally, and given that most data consumers receive data via vendors, we are not aware that any vendors have implemented entitlement code changes to the disaggregated level, and most venues will only allow disaggregated pricing if the data delivery is restricted. There are therefore additional implementation costs that vendors would seek to recover from customers which would wipe out any cost savings achieved through disaggregation. It is also worth noting that some aspects of disaggregation – e.g. by geographic region, or post trade only – were effectively already available. <ESMA\_QUESTION\_MDA\_11>

1. : Do trading venues and APAs comply with the requirement to make available data free of charge 15 minutes after publication? If not, please explain in which areas you have identified deficiencies

<ESMA\_QUESTION\_MDA\_12>

Cboe Europe does, and always has done via third parties. Cboe has also developed a web based service in response to the ESMA Q&A to allow users to consume the data directly. However we have encountered almost no demand for the data via this channel.

<ESMA\_QUESTION\_MDA\_12>

1. : Do you consider it necessary to provide further supervisory guidance in this area (for instance by reviewing Q&As 9 and/or 10) Please justify your position and explain in which area further guidance may be needed? Please differentiate between pre- and post-trade data.

<ESMA\_QUESTION\_MDA\_13>

No – those that want to receive the data generally can, often via third parties. As stated above, the ESMA Q&A required us to build a new delivery mechanism for the data which, to date, almost no one has registered to use. Our firm belief is that those that required delayed data were already able to access it<ESMA\_QUESTION\_MDA\_13>

1. : Do you agree that the identified reasons, in particular the regulatory framework and competition by non-regulated entities, make it unattractive to operate an equity CT?

<ESMA\_QUESTION\_MDA\_14>

The biggest barrier to development of a CTP has been input costs. Establishing CTPs that are able to establish a reasonable price for end users, and can determine the amount they pay to venues and APAs as a proportion of this, will be able to compete effectively with non-regulated entities.

<ESMA\_QUESTION\_MDA\_14>

1. : Do you consider that further elements hinder the establishment of an equity CT? If yes, please explain which elements are missing and why they matter.

<ESMA\_QUESTION\_MDA\_15>

It is vital at this point that regulators agree the technical and commercial framework under which the CTPs will work. There should be an acceptance that some technical compromises will be necessary to make progress on this issue - e.g. latency of data delivery will be different from exchanges/MTFs. The many benefits of a CT will start to be delivered with an initially imperfect offering, which can be refined over time.Technical competition will also improve the CTPs’ solutions.

<ESMA\_QUESTION\_MDA\_15>

1. : Please explain what CTP would best meet the needs of users and the market?

<ESMA\_QUESTION\_MDA\_16>

It is vital that at least one CTP is created – indeed the single SIP model serves the US market well. However, given the regulatory framework in Europe created by MiFID II, and the expectation that commercially competitive entities will step up to perform the function, we believe that the market will be even better served by around three CTPs, which should be awarded the right to operate the tapes via contracts with overlapping tenors. This will minimise fragmentation and associated duplication of costs while also ensuring some competition to ensure that service standards were high . The consolidated tape product should be for viewers of data, as opposed to being a non-display offering. CTPs should be free to consume data from one another at no charge, which would lower the costs of entry for new providers and allow for a seamless transmission contracts pass from one organisation to another . The inbound and outbound interfaces should also be standardised to allow easy connection and substitution of CTPs. CTPs should be free to offer other services, based on the data for which they charge separately. The core CT offering should end up being reasonably commoditised across the providers with differentiation only really possible through price and service level. Venues and APAs should be obliged to connect to one or more CTPs (notwithstanding the fact that CTPs can consume data from one another if they wish to reduce connections, at least initially). CTPs should offer several PoPs around Europe for venues to deliver data and consumers to source feeds.

<ESMA\_QUESTION\_MDA\_16>

1. : Do you agree that real-time post-trade data is available from both trading venues and APAs as well as data vendors and that the data is currently not covering 100% of the market, i.e. including all equity trading venues in the EU and all APAs reporting transactions in equity instruments? If not, please explain.

<ESMA\_QUESTION\_MDA\_17>

It is vital that at least one CTP is created – indeed the single SIP model serves the US market well. However, given the regulatory framework in Europe created by MiFID II, and the expectation that commercially competitive entities will step up to perform the function, we believe that the market will be even better served by around three CTPs, which should be awarded the right to operate the tapes via contracts with overlapping tenors. This will minimise fragmentation and associated duplication of costs while also ensuring some competition to ensure that service standards were high . The consolidated tape product should be for viewers of data, as opposed to being a non-display offering. CTPs should be free to consume data from one another at no charge, which would lower the costs of entry for new providers and allow for a seamless transmission contracts pass from one organisation to another . The inbound and outbound interfaces should also be standardised to allow easy connection and substitution of CTPs. CTPs should be free to offer other services, based on the data for which they charge separately. The core CT offering should end up being reasonably commoditised across the providers with differentiation only really possible through price and service level. Venues and APAs should be obliged to connect to one or more CTPs (notwithstanding the fact that CTPs can consume data from one another if they wish to reduce connections, at least initially). CTPs should offer several PoPs around Europe for venues to deliver data and consumers to source feeds.

<ESMA\_QUESTION\_MDA\_17>

1. : Do you agree that post-trade data is provided on a timely basis and meets the requirements set out in MiFID II/MiFIR and in the level 2 provisions? If not, please explain.

<ESMA\_QUESTION\_MDA\_18>

Yes we do.

<ESMA\_QUESTION\_MDA\_18>

1. : Do you agree with the issues on the content of data and the use different data standards identified or do you consider that important issues are missing and/or not correctly presented?

<ESMA\_QUESTION\_MDA\_19>

No – the quality of data is generally improving. It is already of a sufficiently high quality to allow for consolidation. The MMT standard is generally being used by venues, APAs and investment firms. Specific issues continue to be identified around the rules for how to flag certain trades but these can be addressed by further ESMA guidance.

<ESMA\_QUESTION\_MDA\_19>

1. : Do you agree that the observed deficiencies make it challenging to consolidate data in a real-time data feed? If yes, how could those deficiencies best be tackled in your view?

<ESMA\_QUESTION\_MDA\_20>

No. Unregulated vendors do consolidate data to the extent that it is commercially attractive to do so. If the commercial issues are addressed then the CTPs will be able to consolidate in real time . Any residual data standardisation issues will be addressed over time once the CTPs are functioning. Those that raise data standardisation as a barrier are generally seeking to delay the development of CTPs for commercial reasons.

<ESMA\_QUESTION\_MDA\_20>

1. : What are the risks of not having a CTP and the benefits of having one?

<ESMA\_QUESTION\_MDA\_21>

The benefits of having a CTP include better monitoring of best execution, TCA, reduced market data costs, competition and the ability of new and smaller venues to establish a foothold and earn revenues from market data as soon as they start producing data.

<ESMA\_QUESTION\_MDA\_21>

1. : Would you be supportive of an industry-led initiative to further improve data quality and the use of harmonised standards or would you prefer ESMA guidance? Please explain.

<ESMA\_QUESTION\_MDA\_22>

We believe that the current approach is working: the industry developed and maintained MMT data model in combination with ESMA level 3 guidance on specific scenarios when a divergence of approach is identified. With a known, well defined data model all that is missing is universal definition and application across Europe of how each type of trade should be flagged. The MMT data model already caters for identifying “non-addressable” liquidity so all trades can and should be submitted to a CTP; the consumer can then filter according to their own needs.

<ESMA\_QUESTION\_MDA\_22>

1. : In addition to the standardisation of the reporting and format, as described before, did you identify any further relevant data quality issue to be considered for the successful establishment of CTPs?

<ESMA\_QUESTION\_MDA\_23>

The only additional enhancement required would be consistent timestamping. APAs do not have to timestamp with the same granularity as venues. Given that OTC trading is just as likely as venue trading to be conducted electronically, the same standard should apply to ensure that the sequencing of events on the CT is accurate.

<ESMA\_QUESTION\_MDA\_23>

1. : Do you agree that the mandatory contribution from trading venues and APAs to a CTP would favour the establishment of CT?

<ESMA\_QUESTION\_MDA\_24>

Yes. As long as a revenue share model has been established, this is a necessary condition for the creation of viable CTPs .

<ESMA\_QUESTION\_MDA\_24>

1. : Do you have preferences between the option of (i) requiring trading venues and APAs to contribute data to the CT, or, in alternative (ii) setting forth criteria to determine the price that CTPs should pay to TVs and APAs for the data? If so, please explain why.

<ESMA\_QUESTION\_MDA\_25>

Yes – we strongly believe that option 1 is the only viable arrangement. Venues and APAs must be obliged to provide data to the CTPs. CTPs should then distribute a share of revenues back to contributing venues and APAs based on the market share represented by the data provided. Furthermore, CTPs should be required to be profit making to ensure that they are not used to establish an artificially low price.

<ESMA\_QUESTION\_MDA\_25>

1. : Do you agree that the mandatory consumption could favour the establishment of a CT? If not, please explain your concerns associated with the mandatory consumption.

<ESMA\_QUESTION\_MDA\_26>

Yes. Use of CTP data should be mandated for any provisions that require a calculation of size of market e.g. the determination as to whether a firm is an SI in a given instrument. If pre trade data is ultimately included the CT could be mandated as the pricing source for reference price waiver systems and for best execution monitoring . If CTs are offered at a reasonable price we believe there would be sufficient demand to support their businesses. CTPs should also be free to create additional added value data products and sell these in addition to the core CT offering.

<ESMA\_QUESTION\_MDA\_26>

1. : Would mandatory consumption impact other rules in MiFID II and if yes, how?

<ESMA\_QUESTION\_MDA\_27>

Yes – as per the response to question 26, if pre trade is ultimately included then the reference price waiver should be amended to require use of the best bid and offer on the consolidated tape, as this would be a standardised European Best Bid and Offer (“EBBO”).

Furthermore, once a consolidated tape is established, all ESMA calculation such as detrmining most relevant market should be based on the public CTP data to enhance the transparency of those determinations. Furthermore, the liquidity measure in the tick size regime should also be amended to count all on venue transactions when assessing liquidity to determine which tick table should be used.

<ESMA\_QUESTION\_MDA\_27>

1. : Do you consider it necessary that the CT covers all trading venues and APAs and the whole scope of equity instruments or would you be supportive of limiting the coverage of the CT? Please provide reasons for your preference and explain your preferred approach.

<ESMA\_QUESTION\_MDA\_28>

Yes. As long as venues and APAs are mandated to provide data, CTPs should cover all equity and equity like instruments.

<ESMA\_QUESTION\_MDA\_28>

1. : Do you agree with ESMA’s preferred model of real-time CT? If you consider that, on the contrary, the delayed or tape of record CT are preferable, please indicate the reasons of your preference.

<ESMA\_QUESTION\_MDA\_29>

Yes. The CTP must be a real time product if it is to act as an effective constraint on market data prices provided elsewhere . To be clear, for this constraint to be effective the CT should be pre-trade and post-trade. Pre-trade is more technically difficult but should be addressed at the same time otherwise those who seek to delay or stop the CT will slow down the delivery of the post-trade CT in order to significantly delay the implementation of the pre-trade CT.

<ESMA\_QUESTION\_MDA\_29>

1. : Are there any measures (either technical or regulatory) that can be taken in order to mitigate the latency impacts?

<ESMA\_QUESTION\_MDA\_30>

Latency should not be a significant issue as the consolidated tape is a display product that is intended to be viewed by the human eye. It will never be a substitute for venues’ non-display offering. That said, there should be no scope for latency to be used as an impediment to the creation of a credible display product. Accordingly, venues and APAs should be placed under a requirement to transmit data to CTPs in a way that minimises latency, and CTPs should be subject to performance standards . As long as there are clear services levels provided by CTPs, the market will adopt product that are suitable to their requirements.

<ESMA\_QUESTION\_MDA\_30>

1. : Do you agree that the CT should be operated on an exclusive basis? To what extent should other entities (e.g. APA or data vendors) be allowed to compete with the CTP?

<ESMA\_QUESTION\_MDA\_31>

No. As stated above, the number of CTPs should be limited to two or three to ensure competition over service standards and pricing. As long as the CTPs are allowed to establish their own prices and share revenues with contributors accordingly, they should be able to thrive in the face of competition from other entities such as vendors.

<ESMA\_QUESTION\_MDA\_31>

1. : Should the contract duration of an appointed CTP be limited? If yes, to how many years?

<ESMA\_QUESTION\_MDA\_32>

Yes – we would propose a mix of durations from three to five years initially to allow for staggered renewals. Future contracts could then be harmonised at five years.

<ESMA\_QUESTION\_MDA\_32>

1. : Please indicate what would be, in your view and on the basis of your experience with TVs and data vendors, a fair monthly or annual fee to be charged by a CTP for the real-time consolidation per user?

<ESMA\_QUESTION\_MDA\_33>

Competing providers with the ability to set their own prices should establish a reasonable price. ESMA may consider requiring CTPs to offer differential pricing for different types of user e.g. a much lower cost for retail users. Cboe Europe does not currently charge retail investors for real time data.

<ESMA\_QUESTION\_MDA\_33>

1. : Would you agree with the abovementioned model for the CT to charge for the provision of consolidated date and redistribute part of the revenues to contributing entities? If not please explain.

<ESMA\_QUESTION\_MDA\_34>

Yes. As stated above, we believe that this is the fairest arrangement, and also the arrangement that is most likely to allow for a viable business model for CTPs. Such a model also ensure that smaller and new venues and APAs can hope to achieve some revenue for their market data immediately, which is not currently possible.

<ESMA\_QUESTION\_MDA\_34>

1. : How would Brexit impact the establishment of a CT? Would an EU27 CTP consolidating only EU27 transactions be of added value or would a CT that lacks UK data not be perceived as attractive?

<ESMA\_QUESTION\_MDA\_35>

Any CTP would be of value. How much value will depend upon where liquidity ends up. If, as a result of the share trading obligation, all liquidity in EEA instruments transfers to EU venues, then an EU CTP will have more value. If significant liquidity stays within the UK then there will be value in consolidating that data as well. ESMA should explore mechanisms for allowing the consolidation of data between the EEA and the UK . The establishment of CTPs in the EU 27 and the UK, and particularly allowing the same organisations to register as CTPs in both jurisdictions will make “bridging” between those jurisdictions more straightforward.

<ESMA\_QUESTION\_MDA\_35>

1. : In your view, how would an EU27 CT impact the level playing field between the EU27 and the UK? Please explain.

<ESMA\_QUESTION\_MDA\_36>

If the EU has a CT and UK doesn’t then it will be a competitive advantage for the EU.

<ESMA\_QUESTION\_MDA\_36>