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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 | Oktris Limited |
| Activity | Other Financial service providers |
| Are you representing an association? |[ ]
| Country/Region | UK |

**Introduction**

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

<ESMA\_COMMENT\_MDA\_1>

Oktris Limited is a start up company which grew out of efforts to deliver MiFID II capability for a mid-size brokerage in the City of London. We (Oktris) felt the larger firms were not covering all areas, and we also believed we could respond more effectively, and faster than they could. We also felt offerings were overpriced and determined to deliver reporting capabilities for less. So, we picked some areas in which others were not operating and built and launched our first products.

In addition to our existing products, we’ve spent some time looking into CTP, an area of interest to us for the past year. Ultimately, we agree with ESMA that transparency is a good thing and support the general aims of MiFID II in this regard. We also saw an opportunity to deliver something truly special to the market in the form of cheap (free for example) consolidated trade data. Whilst we lack the large budgets to purchase and offer the real-time data made available under MiFID II transparency, we felt we could certainly build something around the free data. Afterall, it was written into legislation that it had to be provided free of charge, non-discriminatory, publicly available, machine readable and all those other good things after 15 minutes. How hard could it be to build something useful that we could use to build our capability, and in the fullness of time, offer something useful to the market?

We’ve spent a large part of the past twelve months developing scalable technology behind the scenes to handle the massive amounts of data required of an EU wide CTP. And last week, we published on our website a rough and ready visual presentation showing a current subset of the data we gather – whilst this front end presentation has problems and limitations, the data is there and the mechanisms for aggregating it, storing it, and distributing it are all built. The front end will be upgraded as new investment comes in, and the data sources will be expanded.

This journey is the fuel for our response to this ESMA paper. It is not a happy story of data being available as envisaged by MiFID II. It is the contrary – a story of data being hoarded, and non-compliance by most UK based APAs and some Trading Venues. This is reflected in the answers to the questions, and we believe, that until this problem is resolved, that it is significantly harder for a CTP to emerge – if not impossible.<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>

TYPE YOUR TEXT HERE

<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>

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<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>

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<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>

Cartel-like practices from data venders (in this case, the examples known are also APAs). Some large data provider firms have agreements to distribute each other’s data, with the fees each way cancelling each other out. Yet for any new would be entrant, these means of offsetting the cost of data acquisition do not exist and the price of obtaining the data is prohibitive – we believe unreasonably so (Oktris was in discussions with one data provider where €26,000 per month was being discussed for a single stream). This has the effect of cementing the position of incumbent firms whilst making access to newcomers very difficult, who may otherwise be able to bring more competition and lower prices to the market.<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>

No. We do not agree. Obtaining information on prices for data from UK based APAs, let alone how they were arrived at is a time consuming process taking several man days of effort, and even when it is understood what has been requested and the “answer” provided, the picture is still unclear in many cases. Oktris has e-mail trails from several APAs spanning months trying to obtain this information. Oktris has approached very few Trading Venues but has found a similar pattern. Oktris has no experience of looking for this data for SIs. <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>

TYPE YOUR TEXT HERE

<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>

Firms are aware of their obligations. It is therefore unlikely that more guidance telling them what they already know will help.<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_MDA\_10>

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

<ESMA\_QUESTION\_MDA\_11>

TYPE YOUR TEXT HERE

<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>

The data is provided. But it does not meet the requirements. In particular, RTS 13, article 14 machine readability is often neglected. For example, data can be hidden behind user logins needing a username and password – i.e., not directly and automatically readable by a computer. Once through the logins, the manual retrieval mechanisms are presented in such as way as to obfuscate the underlying code requests made to obtain the data – so they are harder to replicate. Additionally, the requirement to provide instructions on accessing data in a machine readable manner mandated under article 14 are either completely absent (most cases), or vague to the point of being useless. For four out of six UK based APAs, Oktris can provide evidence of lack of compliance, and even direct obstruction (which was raised with the UK NCA). Furthermore, in ESMAs General Q&A on Transparency topics, Q10 states: “The data made available free of charge should be published in a similar format as real-time data published on a reasonable commercial basis.” – Oktris did not discover a single provider where this was the case. If money was paid, a data feed could sometimes be subscribed to, if it were free data, it was typically manually downloading CSV files. Hardly a similar format.<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. Oktris believes that these firms know what they are doing. RTS 13 article 14 is very clear, and the Q&A clarifications 9 and 10 make it even clearer. Oktris has communicated with these firms pointing to specific lines of legislation where many people might conclude (as we did) that the methods used by them to publish data are not compliant, yet the firms concerned never respond to the specifics provided or in the rare case where they did, typically assert that they are compliant stating that the UK FCA and/or ESMA are happy with the approach – something partially vindicated when Oktris approached the FCA on one particular matter. Oktris therefore sees little value in further supervisory guidance – either existing regulations are enforced, especially when the breaches are clear and the lack of intent to comply could be perceived as obvious, or just scrap them. Further supervisory guidance telling firms again what they already know and ignore is a pointless exercise in the view of Oktris.<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>

Yes

<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>

The technical possibility to obtain the data due to a lack of publication compliance (see response to Q12) as equally important. It doesn’t matter what the regulatory framework is if the data itself is not made available<ESMA\_QUESTION\_MDA\_15>

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

<ESMA\_QUESTION\_MDA\_16>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

We have tried getting this data from one Regulated Market in the UK, and we have not yet managed it. That it exists, and that some firms can obtain it, is beyond doubt (hence we could not agree with Q17). That the large entity concerned is interested in making it publicly available, freely, machine readable is questionable, particularly when it is so difficult to find the relevant person to speak with at the firm after several weeks of trying. Therefore, the compliance with MiFID II / MiFIR is questionable. We disagree with the statement in Q18.<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>

From a CTP perspective, bringing the data together into a single format, even if the source data uses different data standards as long as it contains core mandated elements, should not be problematic. However, where data is incorrectly reported and is of low quality, of course, any consolidation of such data will inherit those same problems (as we see in FIRDS today). Oktris generally agrees with the issues outlined, but does not consider them terminal, rather a work in progress that will improve with time.<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>

We disagree. It’s not hard – more difficult than it needs to be, but far from “challenging”.<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 risks are that the existing high prices and fragmentation of market data for those that have an interest, persist. The benefit of a CTP would be a reduction in either the severity or probability of that risk but could be compromised by how a CTP came into being and the level of prescriptive regulation that enabled it (some possibilities might include burden on firms to consume the data when they don’t need most of it, potential costs as everyone subsidises it, forced infrastructure to connect, and so on).<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>

Either. But not yet another standard– we have plenty in existence today for transmitting data. Also, the RTS documents on transparency specify already what fields need to be present – any data submitted could be verified against this. Any would-be CTP just needs to decide on a standard widely accepted today and capable of distributing significant volumes of information at speed.<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>

TYPE YOUR TEXT HERE

<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. But we’re not sure it would be a good thing to do so.<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>

No. We regard both options as having equal potential for negative outcomes if handled badly. On the surface, option (i) could appear to make the most sense, but unintended consequences and difficulty of implementation lead us to conclude it might not be the best way to do it.<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. But we are not sure it would be a good thing to do so.<ESMA\_QUESTION\_MDA\_26>

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

<ESMA\_QUESTION\_MDA\_27>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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. Real time data is better than delayed data. If real time data is provided, a recipient does not have to use it right away, but whenever they want. In contrast, if delayed data is provided and a user needs it in real time, it’s too late. So preferred real time, yes. Viable in terms of cost v’s benefit? That’s another matter.<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>

The data will be big. Very big. Whatever technical means are used to process it and zip it around need to consider this. As an example, if you wanted to transmit a price of 1.23, XML might have that as “<price>1.23</price>” – 19 characters, when you only need to process and transmit 4. A bloat factor of almost 5. For a modern computer, this one example is not problematic. When you’re talking about millions of transactions per day, potentially thousands per second, distributed to an unknown number of users across the world – parsing that to extract the data from it, and distributing it through narrow pipes with finite limits in near real time presents a situation whereby the processing and transport of the data will need to be very efficient indeed. So, protocols such as XML are likely not the way to go. Oktris has done analysis on the sort of data volumes that a CTP would likely have to process across all asset classes over the EU, and both the sheer size of the data, along with the per second network throughput is substantial.<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. ANNA-DSB is the precedent. Effectively, it’s a monopoly created by the regulator that has branched out of the area it was created to service and long after Oktris built and marketed one of our products, now undermines our product off the back of that monopoly. Aside from the abuse of the regulatory mandated monopoly position to the detriment of competition, when Oktris looks at the fee breakdown published by ANNA-DSB, we struggle to understand how they’re spending so much on what they deliver to justify the high costs to firms. But as there’s no alternative, firms must pay if they want to create ISINs or obtain ISIN data electronically, and ESMA themselves have stated that the issuing venues or ANNA-DSB are the ONLY acceptable root sources of reference data (Oct 2018, Paris – FIRDS/FITRS 6th workshop). The industry does not need a repeat.<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>

If a CTP will be appointed, duration should be limited. Otherwise the monopoly will be enforced further. However, practical factors such as transition of what by that point will have become an integral part of the financial system in Europe from one provider with tried and tested technical capability to a new provider whose technology may not be as battle hardened needs to be considered. Also, the cost of a potential CTP of building that capability, and of firms supplying it with data all having to potentially connect with a new entity, maybe in a different format could be high. Transitions would entail an element of certain pain along with some risk and should not be frequent.<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>

TYPE YOUR TEXT HERE

<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>

On the surface, this would appear sensible. Assuming that there was enough revenue generated somewhere to cover that cost.<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>

Before answering this question, it is interesting to look at the ESMA view put forward in point 198 of the CP CT which talks about “require significant cooperation between the EU27 and the UK to ensure regulatory alignment between the two legal frameworks”. Our understanding is that today, as a member state, the UK is in complete alignment with the regulatory regime in the EU and it has never been clear to us why that would change on the day following Brexit. Looking at the FCAs Temporary Permissions Regime and having heard a number of FCA statements around the Brexit topic, it’s the view of Oktris that were ESMA to reciprocate, the UK would likely maintain a satisfactory level of alignment with the EU in this area. The points raised in 198 are ESMAs to eliminate as causes for concern.

On to the question: Data from 2 data sources is better than data from 1. Data from every venue and APA across 27 nations therefore has value. Just less than if it were 28 nations – particularly as the missing nation is somewhat prominent in the field under consideration.<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>

Point 200 in the CP CT outlines this quite well. It comes down to asking if transparency v’s cost of that transparency is better for the system – and MiFID II has already taken a view on that.<ESMA\_QUESTION\_MDA\_36>