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| Response Form to the Consultation Paper |
| ESMA fees for DRSP |

**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:

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

ESMA will consider all comments received by **4 January 2021.**

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\_CP\_DRFE\_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\_DRFE\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ DRFE \_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” 🡪 “ Public Consultation on fees for data reporting service providers (DRSP)”).

**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 publicly 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?**

This consultation is looking for feedback from data reporting services providers, market participants and authorities.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Trax NL B.V. |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Europe |

**Introduction**

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

<ESMA\_COMMENT\_CP\_DRFE\_1>

MarketAxess operates a DRSP the Netherlands, which is approved by the AFM as an ARM and an APA. Our group focus is upon non-equity instruments and our comments relate solely to non-equity instruments.

MarketAxess notes that the cost and complexity of connecting a DRSP to multiple NCAs, with varying levels of support, has been a burdensome experience. If economies of scale can be achieved through central supervision and that this should be reflected in the supervisory fees, i.e. it would be an unusual outcome if the industry ultimately paid more for DRSP supervision once it has been consolidated under one authority (ESMA). ESMA’s estimates (annual budget of 5.5m EUR and 20 FTEs) should therefore be compared to current costs and headcount for the supervision of DRSPs by the existing NCAs.

<ESMA\_COMMENT\_CP\_DRFE\_1>

**Questions**

1. : Do you agree with the proposed approach for DRSP fees? Please elaborate in detail the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_1>

MarketAxess operates a DRSP the Netherlands, which is approved by the AFM as an ARM and an APA. Our group focus is upon non-equity instruments and our comments relate solely to non-equity instruments.

MarketAxess disagrees with a fee calculation based on turnover.

This approach may be more suitable where there is a large pool of regulated entities (such as investment firms and banks) where the supervisory fees (based on turnover) can be spread more consistently and evenly, without adverse disruption to their finances.

This is not the case for DRSPs. We calculate that there are approximately 30 firms that hold a DRSP license according to the ESMA Register. ESMA will be aware that DRSPs are consolidating their business already (an example is the recent acquisition by MarketAxess of Regulatory Services GmbH from Deutsche Börse) and the number of new DRSP firms entering the market is dwindling (only 1 new DRSP firm in 2020). This means that the larger DRSPs (by turnover) will be potentially subject to disproportionate fees compared to their smaller peers.

ESMA should not be focusing its efforts on one DRSP over any other as each are subject to the same regulatory requirements. Furthermore, more active DRSPs (in terms of turnover) are already subject to higher overheads for having to maintain more support and control staff than smaller DRSPs to manage their business.

MarketAxess also disagrees with ESMA’s approach to also include ancillary services attributable to DRSP activities for the turnover calculation. MarketAxess considers that this is not appropriate, as it will penalise those firms that operate complex businesses for the benefit of the market out of one legal entity compared to others that only operate as solo DRSPs (e.g. ARM or APA only). This approach will only prompt the complex DRSPs to find legitimate alternatives to being subject this proposed ‘all-inclusive’ calculation.

Either way, if ESMA were to charge DRSP by turnover, given that DRSPs generally operate with low margins, any increase in overhead cost will generally be passed onto the end party - in this case, the client. We do not think that would be a fair outcome for market investors, who are already bearing the cost of compliance from their other regulated service providers.

<ESMA\_QUESTION\_DRFE\_1>

1. : Do you agree with the proposed application fee for ARMs and APAs? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_2>

1. : Do you agree with the proposed authorisation fee for ARMs and APAs? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_3>

1. : Do you agree with the reduced additional application and authorisation fee for each additional DRSP type in the case of a simultaneous application? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_4>

1. : Do you agree with the proposed application and authorisation fee for CTP? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_5>

MarketAxess operates a DRSP the Netherlands, which is approved by the AFM as an ARM and an APA. Our group focus is upon non-equity instruments and our comments relate solely to non-equity instruments.

We do not agree with the proposal application and authorisation fee for CTPs. We would query the substantial proposed fees for CTPs (250,000 EUR) compared to other DRSP services. We understand that there is no incumbent CTP for comparison purposes. The rules for CTPs are essentially the same as those for APAs and it is likely that the only candidates for becoming a CTP would be those that already operate an APA today.

There are very limited opportunities for a CTP to make a commercial profit under the rules, particularly within fixed income where 15 minutes is tantamount to real time (meaning it is unlikely for a CTP to recover its costs from real time data which is published under 15 minutes). This together with the disproportionately higher fees for application and authorisation, therefore, are more likely to act as a deterrent for any firm to establish a CTP and in particular within non-equities.

<ESMA\_QUESTION\_DRFE\_5>

1. : Do you agree with the proposed approach to calculate first-year fees for DRSPs authorised by ESMA under MiFIR? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_6>

1. : Do you agree with the proposed approach for the calculation of annual fees for DRSPs supervised by ESMA? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_7>

1. : Do you agree with the use of revenues for the purposes of calculation of the applicable turnover? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_8>

MarketAxess operates a DRSP the Netherlands, which is approved by the AFM as an ARM and an APA. Our group focus is upon non-equity instruments and our comments relate solely to non-equity instruments.

We disagree with this proposal. This approach may be more suitable where there is a large pool of regulated entities (such as investment firms and banks) where the supervisory fees (based on turnover) can be spread more consistently and evenly, without a noticeable disruption to their budget.

This is not the case for DRSPs. We calculate that there are approximately 30 firms that hold a DRSP license according to the ESMA Register. ESMA will be aware that DRSPs are consolidating their business already (an example is the recent acquisition by MarketAxess of Regulatory Services GmbH from Deutsche Börse) and the number of new DRSP firms entering the market is dwindling (only 1 new DRSP firm in 2020). This means that the larger DRSPs (by turnover) will be potentially subject to disproportionate fees compared to their smaller peers.

ESMA should not be focusing its efforts on one DRSP over any other as each are subject to the same regulatory requirements. Furthermore, more active DRSPs (in terms of turnover) are already subject to higher overheads for having to maintain more support and control staff than smaller DRSPs to manage their business.

As a separate point, we understand that ESMA (per paragraph 32) is not able to cross-subsidise costs from other revenue streams. This will lead to more concentration of costs on DRSPs which is not consistent to how certain NCAs such as the FCA are applying their fees currently to help keep costs low. This would be a perverse outcome.

<ESMA\_QUESTION\_DRFE\_8>

1. : With regards to the revenues, do you agree with including both revenues form core and ancillary services? How complex is to identify and report the revenues from ancillary services attributable to each data reporting service separately? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_9>

MarketAxess operates a DRSP the Netherlands, which is approved by the AFM as an ARM and an APA. Our group focus is upon non-equity instruments and our comments relate solely to non-equity instruments.

MarketAxess disagrees with this proposal. ESMA’s approach to include ancillary services attributable to DRSP activities for the turnover calculation is not appropriate, as it will penalise those DRSP firms that operate as complex businesses compared to others that only operate as ‘solo’ DRSPs (e.g. ARM or APA only). This approach will only prompt the complex DRSPs to find legitimate alternatives to being subject this proposed ‘all-inclusive’ calculation.

Either way, if ESMA were to charge DRSP by annual turnover, given that DRSPs generally operate with low margins, any increase in overhead cost will generally be passed onto the end party (the client) or away from further investment in DRSP technology.

We also consider that these fees may be an additional cost to ancillary services that are already under scrutiny by ESMA, such as the provision of market data. We would not expect such ancillary services to be subject to ‘double costs’ in some way or another.

<ESMA\_QUESTION\_DRFE\_9>

1. : In those cases, where ancillary services cannot be directly allocated to each data reporting service, do you agree with allocating them in accordance with the revenues from the respective core services? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_10>

MarketAxess operates a DRSP the Netherlands, which is approved by the AFM as an ARM and an APA. Our group focus is upon non-equity instruments and our comments relate solely to non-equity instruments.

MarketAxess disagrees with this proposal. It would be difficult to determine which ancillary services are connected to which DRSP activity.

While it is possible to separate different DRSP revenues in our audited financial accounts, it is not necessarily obvious how to separate ancillary activity to each DRSP services where those DRSP services are similar, such as an APA and a CTP.

Further, there is not necessarily any direct relationship between the respective revenues of the DRSP services to the ancillary services.

Lastly, there are different rules upon each DRSP activity which have an impact on the nature of ancillary services which might be provided. In particular there is a significant distinction between ARM activities and possible ancillary services to APA And CTP services, (depending upon the nature of the services), and some ancillary services might be useful for clients across the board.

The range of ancillary services is very broad depending upon the needs of the clients. Ancillary services are not regulated and should not have an impact upon regulatory fees and to do so would be disproportionate to the actual turnover of the DRSP activity, in particular for APAs and CTPs which are limited by regulation in their ability to generate turnover in the first place.

<ESMA\_QUESTION\_DRFE\_10>

1. : Do you agree with the proposed level of minimum supervisory fee? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_11>

1. : Do you agree with the proposed level of minimum supervisory fees in case more than one data reporting service is provided? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_12>

MarketAxess operates a DRSP the Netherlands, which is approved by the AFM as an ARM and an APA. Our group focus is upon non-equity instruments and our comments relate solely to non-equity instruments.

We do not agree with the principle of a minimum fee (30,000 EUR) for each type of DRSP service that is provided as set out in paragraph 66. We would strongly question why an ARM and APA from the same group would be subject to two sets of minimum fees when there is substantial overlap of authorisation requirements between them. Perhaps ESMA could consider charging a full set for the first data reporting service, then a lower charge for the second. We would also like to understand why there is no minimum fee proposed for CTP.

<ESMA\_QUESTION\_DRFE\_12>

1. : Do you agree with the approach for determining the fees in 2022 for already authorised DRSPs? Are there any difficulties in identifying the revenues from data reporting services provided in 2020? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_13>

1. : Do you agree with the proposed approach for the supervisory fees related to preparatory work? Please elaborate.

<ESMA\_QUESTION\_DRFE\_14>

MarketAxess operates a DRSP the Netherlands, which is approved by the AFM as an ARM and an APA. Our group focus is upon non-equity instruments and our comments relate solely to non-equity instruments.

MarketAxess does not agree with this proposal. ESMA has been advanced 4.2 million EUR by the EC for preparatory work and to repay it over 3 years, i.e. roughly EUR 1.4 million per year. In order to recover this amount of money from the supervised DRSPs in the three relevant years, ESMA proposes that each DRSP supervised by ESMA pays an additional fee (in 2022, 2023 and 2024) proportionally to the share of the relevant annual supervisory fees paid by that DRSP. This would unduly punish successful DRSPs at the expense of less successful ones.

ESMA is proposing to charge incumbent DRSPs for the cost of recovery to develop new systems for the purpose of supervision. Such DRSPs have already been subject to similar costs with respect to their local NCAs which means that they will be potentially subject to ‘double charging’ due to a change in approach of the regulators. We would suggest that the NCAs that benefited from the cost of recovery to supervise DRSPs should contribute to ESMA’s preparatory work in some way in order to reduce this cost burden. This could be a combination of funding, expertise or technology, or both, to help alleviate the proposed preparatory cost on DRSPs.

<ESMA\_QUESTION\_DRFE\_14>

1. : Do you agree with the proposal for the payment conditions by DRSPs of the fees for application, authorisation or extension of authorisation under MIFIR? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_15>

1. : Do you agree with the proposal to not reimburse DRSPs in case they decide to withdraw their application for authorisation or extension of authorisation before authorisation is granted? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_16>

1. : Do you agree with the proposal that DRSPs pay their annual fees by 31 March of the year for which the fees are due? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_17>

1. : Do you agree with the proposal for the timing of payment of the 2022 fees? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_18>