**London Stock Exchange Group (LSEG) response to the MIFIR Review Consultation Package -** [**Review of RTS 2 on transparency for bonds, structured finance products and emission allowances, draft RTS on reasonable commercial basis and review of RTS 23 on supply of reference data**](https://www.esma.europa.eu/sites/default/files/2024-05/ESMA74-2134169708-7241_CP_Package_on_the_MiFIR_Review_-_RTS_2__RCB_and_Reference_Data.pdf)

**About LSEG**

LSEG is a leading global financial markets infrastructure and data provider, trusted to deliver excellence by customers, partners and markets around the world. Our divisions offer customers seamless access to global financial markets, across the trading lifecycle.

LSEG’s Markets Division combines the Group’s trading and clearing businesses – the London Stock Exchange, Turquoise, LSEG FX, Tradeweb and LCH Group – with its risk management, capital optimisation, collateral management, and regulatory reporting capabilities.

We help customers across the trade life cycle, ensuring compliance and efficiency in clearing and reporting obligations, while granting access to diverse liquidity pools across various asset classes, fostering growth for customers, communities, and economies worldwide.

In the EU, LSEG operates several regulated businesses including Turquoise Global Holdings Europe B.V. (TGHE or Turquoise Europe™), a pan-European multilateral trading facility (MTF) offering trading in shares, depository receipts, ETFs, ETCs, and European rights issues (excluding UK and Swiss securities) across 17 European countries. Turquoise Europe is authorised and regulated by the Autoriteit Financiële Markten (AFM) of the Netherlands as an investment firm based in the Netherlands.

LSEG also operates TRADEcho. TRADEcho is the suite of MiFID II reporting services hosted and operated by the London Stock Exchange. As well as providing on exchange off-book trade reporting, it is approved as an arranged publication arrangement (APA) in the EU and UK, providing OTC and SI trade reporting in all MiFID II securities, regardless of the asset class.

**About our relevant market data businesses**

LSEG licenses data from the London Stock Exchange, Turquoise (UK and EU entities) and TRADEcho (UK and EU) to customers within a single agreement, enabling customers to enrich their business activities with our high-quality data, easily. For completeness, data from Turquoise Europe is offered as a separate commercial package, however the vast majority of customers elect to receive/license data from the joint Turquoise UK and EU data package which includes data from trading conducted on both UK and EU venues operated by Turquoise. Accordingly, our responses to this CP are predominantly based on the joint Turquoise package (data from Turquoise UK and EU venues).

Licensing has evolved over time as customers diversify their activities and their consumption of data has become more sophisticated. 20 years ago, market data licensing was focused on redistribution and receipt of display data, as this was the typical use case. However, since then, customers have started to consume and use data in a variety of ways. Accordingly, we have seen a shift towards consumption via datafeeds, and non-display processing of data for several uses, including index creation and trading, with a corresponding decline in display users over the same period. Data consumers are becoming more diversified and more data savvy. This is often conflated with the perception that market data fees are ever increasing, whereas in reality, the largest consumers of data are becoming data businesses in themselves, with increases in data costs largely due to increases in the volume of data consumed and the number of commercial uses of such data.

In order to facilitate use of our data, and to mitigate the impact of the shift away from display usage, market data licensing has evolved to explicitly cover common use cases, such as derived data creation and non-display usage.

Many of our licences incorporate bandings, which enable small customers with more limited use cases to get a licence at a rate which is small relative to the fees paid by their largest incumbent competitors. These limited licences are effectively offered at a discount, and enable competition by offering entry level fees which facilitate customers to gradually build their book of business and only increase banding of licence when their scale of use (e.g. number of end customers) increases, instead of immediately being charged the same fee as the incumbents. Licensing categories are based on the scope of use, scale of use and ultimately the value to the customer, as in reality most users receive the same data packages. Licensing is integral to distinguishing large customers with multiple use cases from smaller data consumers with limited requirements.

Our responses to this RCB section aim to detail how the proposals will apply in practice, and where we disagree with them on the basis of them benefitting the largest consumers at the expense of the smaller participants.

**CP on the RTS on reasonable commercial basis**

**Do you agree to the general approach used to specify the costs and margin attributable to the production and distribution of market data? Please elaborate.**

<ESMA\_QUESTION\_CP1\_26>

We do not agree with the proposals. Costs based on variable factors such as usage, instead of fixed principles, are extremely hard to produce, given that the ‘usage’ of infrastructure, which can be considered joint costs, can vary from day to day. Even identification of fixed hardware and software costs attributed to our market data platform itself is difficult as technically it is part of the trading platform.

We can manage this for the purposes of the current method of cost allocation as ESMA recognises that market data and trading are joint products, therefore a fixed principle of 50% of the cost is attributed to the calculations for cost of production of market data. Adding in further complexity into the calculation would be overly onerous to produce even once, let alone on an ongoing basis.

<ESMA\_QUESTION\_CP1\_26>

**Do you agree with the proposed approach to cost calculation based on the identification of different cost categories attributable to the production and dissemination of market data (i.e. (i) infrastructure costs; (ii) connectivity costs; (iii) personnel costs; (iv) financial costs; (v) administrative costs)? Please elaborate.**

<ESMA\_QUESTION\_CP1\_27>

We do not have any concerns with the categories suggested, but we do have concerns with producing costs based on variable factors, as noted in our response question 26. Please note that we do not allocate any audit costs to the cost of production as of today – please see our response to question 39 for more information.

Our preference would be for the costs to be allocated to the production of market data to be based on fixed costs.

<ESMA\_QUESTION\_CP1\_27>

**Do you agree with the proposal of apportioning costs based on the use of resources (i.e., infrastructure, personnel, software…) for each service provided? Do you think the methodology to be used to apportion costs should be further specified? Please elaborate.**

<ESMA\_QUESTION\_CP1\_28>

We do not agree with the proposal – see response to question 26.

LSEG is a large group and takes a group-wide approach to cost allocation. Attribution of costs to production of market data already falls outside of the typical approach taken across the group, but as this is based on fixed principles (e.g. 50% of cost of trading platform), this is manageable.

Allocation based on fully variable factors would be overly onerous to manage. It would also be disproportionate to what we believe to be the current acceptable mechanisms (50% of trading platform cost) which are consistent across the jurisdictions in which we operate.

<ESMA\_QUESTION\_CP1\_28>

**Do you agree that the net profit as defined in Article 3 of the draft RTS can be a representative proxy of the margin applicable to data fees and would you include additional principles to define when a margin can be considered reasonable? Please elaborate.**

<ESMA\_QUESTION\_CP1\_29>

Yes. We have no issues with this proposal.

<ESMA\_QUESTION\_CP1\_29>

**Do you agree with the proposed template for the purpose of information reporting to NCAs on the cost of producing and disseminating data and on the margin applied to data? Please elaborate, including if further information should in your view be added to the template.**

<ESMA\_QUESTION\_CP1\_30>

Yes. We do not have any concerns with the template proposed.

<ESMA\_QUESTION\_CP1\_30>

**What are in your view the obstacles to non-discriminatory access to data taking into consideration the current data market data policies and agreements?**

<ESMA\_QUESTION\_CP1\_31>

We do not believe there are any obstacles to non-discriminatory access to data, considering current market data policies and agreements.

LSEG has long pursued an ‘open access’ policy for the group’s trading venues and reporting services[[1]](#footnote-2), including all related market data services, not just regulated services, under which fees and terms are applied consistently for all customers.

This open access policy has been a fundamental element of LSEG’s commercial proposition as a trusted partner to the financial services industry, which LSEG believes has generated significant value for its customers as well as many other stakeholders. It enables customers to engage with LSEG in a way that best suits their needs and to use products and services that generate the most value for them. This approach also enables LSEG to develop and deliver innovative services to customers.

We license all data from LSE plc and the UK and EU entities of both Turquoise and TRADEcho in a single agreement, lowering the administrative ask for customers. All documents are publicly available, and we provide guidance alongside the policies with common use cases to enable customers to easily determine which licences may be required for specific uses.

Should ESMA implement some of the changes proposed in the consultation paper (e.g. preventing the charging of customers of redistributors, and removing value as an input into pricing of market data), licences would become more complicated for customers. We would be required to license data from the entities regulated by ESMA in a separate agreement to deal with the significant divergence from globally accepted set ups.

This would not only increase the administrative burden for us to manage these activities, but it would also make it more difficult for customers to license data from the group’s trading venues and reporting services.

We believe that non-discriminatory access is different from charging all users the same fee when their uses vary. We are concerned that this package of proposals in effect penalises smaller users with more limited uses of data.

The cost to provide the data to the two user groups is the same, but charging different rates based on use cases, using value as the differentiator benefits retail investors. The draft guidelines would prevent us from doing this in the future.

For customers commercialising the data, we offer banded licences which enable small/new market entrants to benefit from a lower fee than the largest incumbent providers. This would also be restricted by the guidelines, which risk reducing competition within the market.

Please see responses to subsequent questions for further detail.

<ESMA\_QUESTION\_CP1\_31>

**What are the elements which could affect prices in data provision (e.g. connectivity, volume)? Do they vary according to the use of data made by the user or the type of user? Please elaborate.**

<ESMA\_QUESTION\_CP1\_32>

Connectivity to data from LSEG venues attracts separate fees which do not impact market data fees. These connectivity fees are consistent across several systems, including access for the purposes of trading. These fees only apply to those participants who are directly connected to our systems.

We provide real time data from a single feed across our venues, Group Ticker Plant (GTP)[[2]](#footnote-3), for our various data packages. We provide Post-trade (trades) Level 1 (best bid and offer) or Level 2 (any depth from order book below best bid and offer) data from the feed for a specific data package, and there is no further distinction for those subscribing to our data. Participants connecting to our data directly, on the whole, require Level 2 data. Accordingly, there is no further distinction that can be made in relation to pricing based on cost only, than whether the subscription is to Post-trade, Level 1, or Level 2 data. We would only be able to offer 3 categories of users for each subscription level.

This means that if we can only base our pricing on the cost to supply a given data product + a reasonable margin, the fee charged to all participants taking Level 2 data, for example, would be the same.

This would involve charging a redistributor the same as a high frequency trader, a retail client with DMA access, a new entrant broker, or an investment bank with four separate business units commercialising the data separately across the business. We do not believe this to be the intention of the drafting or the optimal model of fee application, as ultimately the beneficiaries of such a change will be the largest data consumers (typically tier 1 banks and big market data vendors) at the expense of the smaller customers.

The volume of data does not translate to the value the customer receives from the data. A global incumbent index provider would be able to run their highly lucrative business using the last trade price data only, which would result in them being charged lower fees than a small boutique trading firm, which will almost always require Level 2 data.

Our costs to provide the data to a data vendor do not change depending on the number of end customers in receipt of the data through the data vendor.

Please see our responses to subsequent questions for further detail.

<ESMA\_QUESTION\_CP1\_32>

**Do you agree with ESMA’s proposal on how to set up fee categories. Please justify your answer.**

<ESMA\_QUESTION\_CP1\_33>

No. While we acknowledge that ESMA is drafting the guidelines based on the Level 1 mandate, it will be essential for the guidelines to reflect the realities of the market for market data and how users are charged for the service.

We believe the current ability of venues to charge for data based on scope and scale of use, and ultimately the value to the customer, is the only appropriate and proportionate manner to manage market data.

1. *The unintended consequences of the current proposals*

Charging based solely on costs will likely have unintended consequences for users, including reduced competition and lower access to data for retail investors. The proposals in the consultation paper would cause a very significant shift in how European data is managed and charged for, adding to the burden on customers and removing distinction between large and small customers, at the expense of the smaller customers with limited use cases. This would in our view discourage competition and likely prevent new market entrants. They would not be able to benefit from licences with more limited scope at the point of licensing, instead having to take out the same licence as their largest competitor with the same use of data.

We recommend that ESMA uses its discretion to mitigate the negative consequences of this Level 1 mandate.

In the short-term, this should involve at the minimum ensuring that those receiving market data from redistributors are subject to the same fees as those receiving data directly, so that directly connected trading participants and market data vendors are not the sole participants that can be charged by trading venues for supply of market data. The charges on these participants would otherwise drastically increase.

We only incur direct costs to supply data to those receiving data directly from us. The proposals, if not changed, would mean fees would be highly concentrated on a small number of directly connected participants, and would not allow us to charge any participant receiving data indirectly from a market data vendor. We would not be able to apply fees for use, only receipt of data as we do not incur any differences in cost to supply. We do not incur different costs to supply a market data vendor with 10 customers or 10,000 customers, therefore the current proposals would not allow us to distinguish between the differences in scale. The proposals would not allow us to compete for the supply of our own data. We would be forced to apply very high fees to an extremely small number of directly connected participants, whereas market data vendors would not have the same pressures.

We believe the above two points would lead to an erosion of competition for both trading participants and market data vendors, with larger participants able to incur the increased fees, and smaller, newer market entrants having a higher barrier to entry to (i) take a direct feed and trade on the venues and (ii) take a direct feed for the purposes of redistributing the data. The proposals would not allow us to distinguish scale of use by customers. This effectively means larger customers will get their data at a discount, at the expense of smaller participants with more limited data use.

The guidelines should also acknowledge the fundamental differences in which categories of customers consume data.

You will find details below on how we currently charge for market data using processes, which seek to guarantee fair charges to customers throughout the chain and ensuring that all customers can contribute to the cost of providing market data.

1. *Key principles behind current data charging practices*
2. Trade execution and market data go hand in hand.

As noted by ESMA, price formation is a joint product between trade execution and market data, A consistent and sound trading environment cannot exist without the integrity of its data, which, in turn, cannot exist without a robust, reliable trade execution and price formation process. Trade execution produces market data, market data generates further execution, which in turn provides more market data. The price formation process provides the true value of an asset, supported by the accuracy and speed of its robust surveillance systems. Participants in the price formation process make up the majority of those connected directly to our real time market data platform.

Users of market data benefit from the investment trading venues make in this process, despite not participating in the price formation process. As such, trading venues levy fees on trading, as well as the resultant market data to ensure that users of the data generated in the price formation process pay their fair share of the costs for this process, instead of levying fees on only trading activities (which would not be equitable as between these different customer groups).

This revenue from the commercialisation of market data allows trading venues to absorb these operational and regulatory overheads, reinvest market data revenue into the services offered (including ensuring the price formation process used so widely throughout the industry is robust and resilient), which in turn benefits all users of market data by enabling them to enrich their products and services with high quality market data from the trading venues, irrespective of whether the customer is a participant in the price formation process. The proposals would result in fees being concentrated to direct recipients of data, including direct trading participants. This would penalise those who participate in the price formation process and benefit consumers of data from such price formation without themselves participating or contributing to it. This seems to contradict the need to support the important role of direct participants and their benefits to the wider market.

1. *The value differs depending on uses of market data.*

The current set up ensures a level playing field and a proper cost balance across different clients: small clients consuming and using data in a limited way are charged less than large clients consuming on a large scale, where they are consuming the same data package. All licensing is applied on an open access basis. We apply different licences based on the scope and scale of the use, irrespective of where the data is sourced from.

Not all consumers receive the same value from their use of the data and as such, trading venues over a number of years have developed policies which enable the differentiation of use cases based on type of customer, scope, and the scale of use. Market data is a fast-changing, competitive ecosystem with new joiners, channels and services being developed continuously.

This is reflected in our data licensing practices, which distinguish between different types of customer categories / use cases and the amount / level of consumption of data, and ultimately the value the customer gets from the data, creating distinction based on scale of use. LSEG also works in close partnership with customers to understand their evolving needs and ensure that the data services and policies offered continue to support their requirements and are applied in a non-discriminatory manner.

Licence restrictions are implemented to ensure that each use case has clear scope, which is proportionate to the fees payable, as well as the subsequent value gained by the customer through the use of such data. Generally, the more limited the use case, the lower the price of the licence. This allows distinction between a global investment bank consuming data for several use cases across entities, and a small retail broker facilitating client business.

Both customers would be consuming the same level 2 data package in these instances. However, the investment bank may be using the data throughout their business for client facilitation, proprietary trading, distribution to retail bank customers, distribution to ultra-high net worth individuals, creation of benchmarks etc., whereas the retail broker may only be using the data to facilitate trading from private investors.

If these draft guidelines are implemented, these two clients would be charged the same fees, as there is no differentiation between the feed they take, therefore no difference in the cost to provide them the data.

While we understand the legislative text is constraining, it is important to reiterate that this is a fundamental challenge of charging based on costs and not considering use cases at all. This prevents the application of any licensing. One can only apply a per user data charges for receipt of data, for which the sole distinction is the 3 levels of data for each data set.

It will be important for ESMA to assess and mitigate the negative impact on smaller market participants. Charging based on costs could be very beneficial for large players with diverse business units and use cases for data. However, this is at the expense of smaller market participants with more limited use cases. Financial markets work best when they support fair and reasonable and access to all participants.

This may not be reflected in the consultation response from the largest data consumers, which will need to be weighed against the views of the broader market community.

1. *Costs cannot be attributed to uses of data.*

Cost cannot be attributed to uses of data when a single data feed can be used for numerous uses within a customer firm. The cost to supply a single data feed is the same for a small buy-side firm receiving a data feed used for the single purpose of managing client assets, as a large investment bank with a wide variety of use cases and a large customer base.

We disagree with the premise that a model which requires the same fee to be levied on these two customers is preferable to the current model which permits charging based on the scope and scale of the *use* of the data, instead of just the receipt of the data. This would lead to substantial fee increases for the smaller customers, and relative discounts for larger customers, which we believe cannot be the intention of the drafting.

1. *There are distinctions between categories of customers.*

We do not incur different costs based on use cases/categories of customers – the vast majority of customers with market data licensing subscribe to exactly the same data feed with exactly the same content.

Similarly, there is a distinction between a professional and retail customer viewing the data on their terminals, where they could be subscribing to the same data package, on the basis of value, as it is assumed that the professional customer will get more value from the data than the retail customer. The fee charged to the professional customer allows us to offer data to retail customers at a discount (fully fee waived) to the cost of the data production, using value as the key consideration. Data is offered to retail customers at a level which is not profitable – the fees charged to professional users enable this to happen. The draft guidelines would remove the ability for us to distinguish between these and this will lead to higher costs for retail customers.

As a further example, Turquoise offers banded Derived Data licences, which ensures that customers with a smaller number of end customers pay lower fees than those in higher bandings with a larger customer base. Where customers consume the same level of data, the scale of the use by the customer does not adjust the cost of supply. If the draft guidelines are implemented as they are currently, we would be forced to remove the bandings within the licensing structure which allow distinction based on the number of end customers (e.g. the scale of commercialisation by the licensee), instead charging the large incumbent providers the same as new market entrants and everyone in between.

1. *Categories depend on use cases.*

At present, it is possible for customers to belong to multiple categories within a licence structure.

The proposals in the consultation paper would remove the ability to apply multiple categories for such use, therefore leading in our view to one of two outcomes.

1. Removal of distinction within the policy to apply the same fees for the largest customers with diverse operations as a smaller institution with a single use of the data. We do not believe this to be proportionate or appropriate – the largest customers should not get a licence effectively subsidised by smaller customers paying the same for a much more limited use case.
2. Designing categories of licence to cover every possible combination of use, which would create a much lengthier, much more complex price list.

We do not believe either would be the optimal structure of fees. Fees which are proportionate to the scope and scale of use should be the desired outcome, and is what is applied in practice by most major exchange groups globally.

We would welcome further engagement on this topic, as we believe these are unintended consequences of the draft proposals.

Please see response to CP1 34 for further details.

<ESMA\_QUESTION\_CP1\_33>

**Regarding redistribution of market data, do you agree with the analysis of ESMA? If not, please elaborate on the possible risks you identify and possible venues to mitigate these. In your response, please elaborate on actual redistribution models.**

<ESMA\_QUESTION\_CP1\_34>

No. We disagree with the analysis and the subsequent proposals. They would cause data from EU venues to be managed in a fundamentally different way to all other market data from non-EU venues, as well as non-market data such as news, corporate actions, symbology etc. This will add complexity in the distinctions between categories of data not only as an operator of trading venues/APAs, but also for market data vendors to manage.

Customers can broadly receive our data from 3 channels:

1. Directly from our real time platform
2. Directly from our 15-minute delayed offering[[3]](#footnote-4); or
3. Indirectly from market data vendors.

There is no incremental cost to Turquoise for supplying the data to the market data vendors’ customers, given this is carried out by third party market data vendors – we incur cost to provide the data to the redistributors only.

As an example, we do not incur any additional cost for a redistributor who has a single end user (‘Redistributor A’), vs a redistributor with 1,000 monthly end users (‘Redistributor B’). Under the consultation paper proposals, we would not be able to make any distinction between these two redistributors, and instead would need to apply the same fee. Working this example through, Redistributor B would be able to pass through the cost of their redistribution licences to all 1,000 monthly end-users for the purposes of their own cost recovery, whereas Redistributor A would either need to consume this cost themselves or pass this through to their single end user. This does not promote competition amongst market data vendors, and instead strongly favours those with economies of scale.

This would not encourage new market data vendor participants and would likely induce a suction effect with all end-users having no choice but to consume data from only the largest data providers from a cost perspective. The current model permits trading venues to apply a licence fee to the vendor for the right to redistribute the data, and then a monthly per user fee for anyone with access to the data – this is proportionate and encourages competition amongst vendors. Based on the consultation paper proposals, we would need to set out fees based on costs plus a reasonable margin and allocate these to solely the customers connected directly to our systems. We would not be able to levy any additional fees for end users of market data vendors, which removes the level playing field currently maintained between users of all sources of data.

The proposals would also limit our ability to charge fees for *use* of the data (e.g. where the customers are commercialising the data through redistribution, derived data creation or use in trading applications), as the costs we incur are no different between use cases.

Turquoise data (and trading) must be priced competitively in order for customers to add Turquoise data as an alternative or additional source of data vs those received from the primary exchanges.

If the proposals are implemented, we would not be able to charge the additional fees for the *use* of the data, only the receipt of the data. This means that to prevent customers from switching the data off, we would be forced to run it as a loss-making business. This is because we would lose the revenue attributed to licensing use of the data, yet increasing the prices to the permitted level (cost plus group margin) would likely result in customers removing Turquoise as a data source. This does not in our view encourage competition.

This proposal would also distort the level playing field between those getting data from the trading venue and those getting data from a market data vendor, and would likely leave us unable to compete for the supply of our own data.

Should directly connected trading participants and market data vendors be the sole participants that can be charged by trading venues for supply of market data, the fees levied on these participants would dramatically increase. From a trading participant perspective, this would again favour larger participants who could consume this cost. Instead of promoting competition, this would likely lead to degradation of the number of participants in such price formation process, which would devalue central limit order book quality, and ultimately reduce the value of the data overall, which would lead to less demand for trading, data and even the consolidated tapes, when built. This means non-trading participants getting their data from market data vendors could receive the data at any price set by the redistributor, whereas we have obligations to price on the basis of cost-plus margin. This penalises trading participants for being the very customers who are investing to participate in the price formation process, which in turn benefits users who are not trading directly on the exchanges.

<ESMA\_QUESTION\_CP1\_34>

**Are there any other terms and conditions in market data agreements beyond the ones listed in this section which you perceive to be biased and/or unfair? If yes, please list them and elaborate your answer.**

<ESMA\_QUESTION\_CP1\_35>

We do not believe there to be any issues with market data agreements. We are supportive of ESMA’s efforts to date to standardise definitions used in market data agreements as a benefit to the end users managing various agreements.

<ESMA\_QUESTION\_CP1\_35>

**Please provide your view on ESMA’s proposal in respect to (i) the obligation to provide pre-contractual information, (ii) general principle on fair terms, (iii) the language of the market data agreement, (iv) the market data agreement conformity with published policies and (v) the provision on fees and additional costs.**

<ESMA\_QUESTION\_CP1\_36>

We do not have any issue with this proposal, as we publish all our documents on our website. All licensing applications are through our licensing portal, which provides the suggested licences and applicable costs as a quote to the user ahead of any contract execution.

<ESMA\_QUESTION\_CP1\_36>

**According to your experience, has the per-user model been inserted in the market data agreements as an option for billing? If yes, do you have experience in the usage of this option? Is the proposed wording of this option in the draft RTS useful? What are in your views the obstacles to its use?**

<ESMA\_QUESTION\_CP1\_37>

Yes. We have implemented this, and take up is limited. Exact figures, which are commercially sensitive, can be provided upon request.

<ESMA\_QUESTION\_CP1\_37>

**Do you agree with ESMA’s proposal on penalties? Please elaborate your answer.**

<ESMA\_QUESTION\_CP1\_38>

Yes. The LSEG Market Data audit process only levies the fees that would have applied if the customer had complied with the agreement, which would comply with this proposal.

<ESMA\_QUESTION\_CP1\_38>

**Do you agree with ESMA’s proposal on audits? Please elaborate your answer.**

<ESMA\_QUESTION\_CP1\_39>

No. We do not agree with the proposal on audits to reverse the burden of proof for initiation of audit.

The main purpose for, and responsibility of, the audit function is to maintain a level playing field between customers who are proactive with respect to licence compliance, and those who are found to be non-compliant, to ensure all customers are subject to the same fees and licence obligations for the same use.

Active auditing encourages a level of discipline in the market and ensures trading venues are treating customers in a non-discriminatory manner, e.g., ultimately charging customers the same amount for an individual licence, whether they are compliant from the start of their data usage, or if this is resolved via an audit.

We do not have to provide evidence to audit at present, which in practical terms would be impossible for most of the audits conducted. Without auditing, there could be abuse of market data policies, and customers would be financially better off if they are non-compliant, as if we do not have visibility of the non-compliance, we would not be able to conduct the audit in the first place.

*Honesty statements vs technical control*

With the exception of market data delivered via display methods which are typically technically controlled and trackable, market data as an industry is based on honesty statements. If a datafeed is delivered by Vendor A to Customer B including data from Exchange C, there is no visibility to Exchange C of (i) delivery of any data from Exchange C by Vendor A, or (ii) the distribution or use of such data within Customer B’s organisation. Accordingly, Exchange C would only have proof of non-compliance if such use were published openly, or Vendor A disclosed information regarding such delivery or use.

Given market data revenue is, to a large extent, based on honesty statements, our external auditors review samples of the audit programme each year and compare against our Price List, and the amounts invoiced for audit resolution as evidence that we are (i) applying our fees consistently and (ii) invoicing correctly on the basis of our contracts. We would be unable to give these assurances to our external auditors if the ESMA proposals are implemented as there would be no way of verifying compliance and therefore correct fee application.

With respect to the audit period, we apply 5 years, and we believe this to be proportionate. When we conduct an audit, we cover the group trading venues and reporting services whilst conducting the review. The audit period being 5 years allows us to conduct audits on a less aggressive timescale than a 3-year audit period would allow. Operationally, reducing the audit period would result in a larger audit team conducting more audits on an ongoing basis.

This proposal, if implemented would reward non-compliance and encourage under-reporting. We would not be able to maintain a level playing field if this is implemented, which contradicts the obligation on us to charge the same price to the same category of user for the same use dependent on scope/scale of use.

<ESMA\_QUESTION\_CP1\_39>

**Would you adopt any additional safeguards to ensure market data agreements terms and conditions are fair and unbiased? Please elaborate your answer.**

<ESMA\_QUESTION\_CP1\_40>

<ESMA\_QUESTION\_CP1\_40>

**Do you agree with the standardised publication template set out in Annex I of the draft RTS? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions? Please elaborate your answer.**

<ESMA\_QUESTION\_CP1\_41>

We do not have any issue with the structure of the template for disclosure, however we do not think (ii) of the first row is feasible unless further clarified. If a customer receives data indirectly, they are subject to the terms and conditions from their market data vendor. We have no visibility of these therefore we could not provide these in this disclosure. We believe this seeks to cover any additional fees for connectivity to direct data services, however again we note that these only apply to those receiving data directly from us – unless this is explicitly clear, the addition of detail on direct connectivity could provide a source of confusion for end users reviewing such a disclosure.

<ESMA\_QUESTION\_CP1\_41>

**Do you agree with the proposed list of standard terminology and definitions? Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.**

<ESMA\_QUESTION\_CP1\_42>

We do not have any issue with the definitions, but we would request that ESMA incorporates the flexibility to be able to make minor adjustments insofar that the adjustments do not change the intention of the definition but allow data providers to contextualise the definition in line with the rest of the agreement.

<ESMA\_QUESTION\_CP1\_42>

**Do you consider that the “user-id” and the “device” should still be considered as “unit of count” for the display and non-display data respectively? Do you think (an)other unit(s) of count can better identify the occurrence of costs in data provision and dissemination and if yes, which?**

<ESMA\_QUESTION\_CP1\_43>

We agree that these units of count are appropriate. However, the proposals in the consultation paper on redistribution would means most of the proposed/implemented definitions cannot be used, as we would only be able to levy fees on those receiving data directly from us, regardless of scale of use, and where most customers source their data indirectly, we would not be able to levy any fees on customers getting data indirectly.

Should ESMA reconsider the redistribution proposals, with respect to the non-display unit of counts, operationally many customers do not have control or recording over the number of non-display applications consuming the data. The proposals around the display and non-display unit of counts could therefore not be implemented this if not alongside some obligations for customers to be able to record all data use, and the ability for audit to verify this.

<ESMA\_QUESTION\_CP1\_43>

**Do you foresee other types of connectivity that should be defined beside “physical connection” to quantify the level of data consumption? Please elaborate your answer.**

<ESMA\_QUESTION\_CP1\_44>

Please see our response to question 32. Connectivity is a separate service to the provision of market data, and does not impact the amount of data consumed. We have a single market data feed with three levels of data offered, and this is the only distinction that can be made for a given data package if value and type of use is not considered.

<ESMA\_QUESTION\_CP1\_44>

**Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.**

<ESMA\_QUESTION\_CP1\_45>

No comments.

<ESMA\_QUESTION\_CP1\_45>

**Do you agree with the approach on delayed data proposed by ESMA? Please elaborate your answer.**

<ESMA\_QUESTION\_CP1\_46>

Subject to our response to CP1 47 below, we do not have any issues with the approach suggested by ESMA.

<ESMA\_QUESTION\_CP1\_46>

**Do you agree with the proposal not to require any type of registration to access delayed data? Please elaborate your answer.**

<ESMA\_QUESTION\_CP1\_47>

We do not agree with the proposal to remove the ability of data providers to require registration to delayed data services. Our registration process is simple, and requires provision of an email address and password, and agreement via tick box to some very short terms, which are provided for reference at the end of the response to this question. Registration and access to the service is achievable within a minute of navigation to the service.

Registration facilitates management of the following:

1. Management of any operational issues and advising users of plans to restore the service and/or correct any bugs.
2. Inform users of any planned changes to file formats or enhancements to the service.
3. Protection of our commercial model for redistribution of market data, ensuring we treat all customers equally regardless of where they source data from (please see the terms and conditions at the end of the response to this question).
4. Management of technology infrastructure to ensure the size of the service is commensurate with the number of active users.
5. Management of information security in line with group expectations of minimum standards.

Importantly, our simple registration does not prevent users from systematically downloading the machine-readable data from the service. From monitoring, we can see multiple users downloading data every minute of each day of service availability.

By having a simple registration process in place, we have been able to contact users of the service to provide updates on service interruptions as well as notifying users of planned changes to the service, allowing us to run the service to the standards our users expect from us.

Instead of mandating complete removal of registration, which would result in degradation of the overall service provided, we believe a middle ground would be for ESMA to mandate what registration should look like, and data providers to provide supplementary guides on how to systematically parse data from their solutions. We believe our registration process is simple and proportionate, and we would be happy to further discuss with ESMA as required.

**Terms for access to delayed data:**

London Stock Exchange Group ("LSEG") makes pre-trade and post-trade data available 15 minutes after its initial publication ("Delayed Data") in accordance with the requirements of Regulation (EU) No.600/2014 and Directive 2014/65/EU (MiFIR and MiFID) and all relevant supplementary regulations and guidance. Natural or legal persons ("Users") can use the Delayed Data, as published by LSEG via this website.

The Delayed Data is provided "as is" without any warranty of any kind. LSEG does not make any claim, warranty, or representation whatsoever, expressly, or impliedly, as to the accuracy, availability, timeliness, completeness, performance, or fitness for a particular purpose of the Delayed Data. No responsibility or liability is accepted by LSEG for (a) any loss or damage in whole or in part caused by, resulting from, or relating to the Delayed Data, or (b) any direct, indirect, special, consequential, or incidental damages whatsoever.

The Delayed Data is provided for information purposes only. LSEG does not provide investment advice and access to the Delayed Data should not be taken as constituting financial or investment advice or a financial promotion.

Where the Delayed Data is to be onward distributed (including, where applicable, to other companies within the User's group) and a fee is charged for the distribution of the data, including a general fee for accessing the data through third party services, or used in added value services where a charge is applied, Users will be required to enter into a licence agreement and should contact [marketdata@lseg.com](mailto:marketdata@lseg.com) to discuss licencing requirements before using the Delayed Data.

<ESMA\_QUESTION\_CP1\_47>

**ESMA proposes the RTS to enter into force 3 months after publication in the OJ to allow for sufficient time for preparation and amendments to be made by the industry. Would you agree? Would you suggest a different or no preparation time? Please elaborate your answer.**

<ESMA\_QUESTION\_CP1\_48>

No. Three months would not be sufficient notice. We license data from European entities of Turquoise and TRADEcho in the same agreement as LSE plc and the Turquoise UK entity.

Should ESMA implement any changes to redistribution models, we would need to unpick the agreements and separate UK and EU entities licensing to implement any changes. We would not want to apply the same changes to the UK entity licensing where possible as the current arrangements in the UK allow us to charge customers based on usage and value, which we believe is fairer, as noted above.

For customers, this would increase their administrative burden for management of Turquoise licensing, and as we would expect many ESMA-regulated providers to make wholesale changes to their agreements to manage the impact, customers will need to manage this across many venues. There is a risk that the impacted providers choose to comply with the proposals in a variety of ways, which could lead to a significant uplift in the customer resource needed to manage receipt and use of data from European venues.

We would need 12 months at a minimum, allowing for 3 months to make any changes and go through the established internal governance procedures for changes, and 3 months contractual notice to customers, with 6 months to enable the customers to assess impact and take any required actions. Although we provide 3 months’ notice to customers of contract changes, if customer input is required to migrate onto a new structure, this can take several months. For context, the last time we changed a structure of a licence and required customer input to determine which categories the customer belonged to, migration took over 12 months to complete.

In practical terms, if ESMA decides to implement the changes to redistribution models and how fees apply, vendors would likely need much longer than the 3 months contractual notice to implement the required changes to third party data sources, and disapply standard procedures to data from European venues.

<ESMA\_QUESTION\_CP1\_48>

**Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.**

<ESMA\_QUESTION\_CP1\_49>

As noted in response to the relevant questions, we have multiple concerns with the proposals, including:

* Inability to charge any user who does not source data directly from the exchange due to charging on the basis of cost.
* Inability for smaller trading participants to compete with larger trading participants due to charging on the basis of cost and no consideration of the value or scale of use.
* Inability to manage delayed data service properly and offer any kind of information to customers due to proposals on delayed data registration.
* Inability to maintain level playing field between compliant customers and non-compliant customers due to proposals on audit to reverse the burden of proof.

We have some concerns with the structural implications of the proposals:

* Inability to compete with market data vendors for supply of our own data due to charging on the basis of cost.
* Inability for smaller vendors to compete with larger vendors due to charging on the basis of cost.
* Inability for smaller trading participants to compete with larger trading participants due to charging on the basis of cost.
* A suction effect on competition within market data vending space due to charging on the basis of cost.
* A suction effect on price formation process, reducing number of participants and therefore quality of pricing due to charging on the basis of cost.

Together, these proposals would not allow us to compete for the supply of our own data, would likely erode trading participation, and would provide discounted data for larger participants at the expense of smaller customers.

Given the costs involved in respect of the supply of market data, these proposals would likely not result in us making less money from data, but would instead just concentrate fees to a very small number of participants. We would not be able to maintain the level playing field between (i) customers receiving their data from different sources or (ii) compliant and non-compliant customers. We also believe that the proposals will impact smaller venues disproportionately to primary venues, which could result in reduced competition and choice for customers.

<ESMA\_QUESTION\_CP1\_49>

**What level of resources (financial and other) would be required to implement and comply with the RTS, and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale, and complexity of the activities of your organisation, where relevant.**

<ESMA\_QUESTION\_CP1\_50>

If the changes to the redistribution model in particular were implemented, there would be a significant shift in the resources to manage our business, which would result in a large increase in the ongoing cost to provide market data.

There would also be one-off technical changes required to our licensing portal to be able to accommodate such changes, and also significant legal and compliance resource required to facilitate any updates to agreements.

From the perspective of the end user, this would have additional administrative burden on them, as they would still need to contract with their vendor for the supply of data, but would also need to contract with us, as well as every other trading venue who may choose to move to a direct licensing model.

<ESMA\_QUESTION\_CP1\_50>

1. We refer here to London Stock Exchange, Turquoise and TRADEcho, although noting that the European entities of Turquoise and TRADEcho are those directly impacted by ESMA proposals. [↑](#footnote-ref-2)
2. GTP is the external name of our market data feed, however in technology terms this is part of the trading application. [↑](#footnote-ref-3)
3. We will discount channel (2) from the analysis here due to the free of charge nature of the service. [↑](#footnote-ref-4)