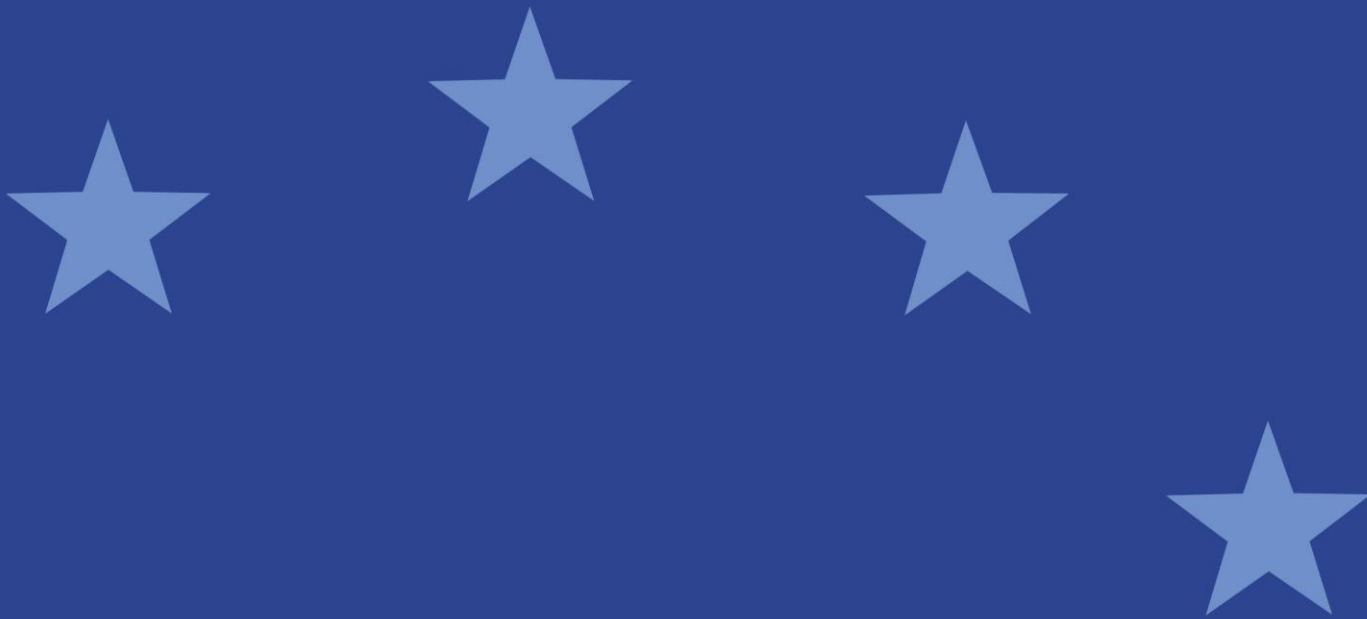




European Securities and
Markets Authority

Reply form for the Consultation Paper on Guidelines on the MiFID II/ MiFIR obligations on market data



Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. 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 **11 January 2021**.

All contributions should be submitted online at 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_GOMD_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_FOTF_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_GOMD_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on the Guidelines on the MiFID II/MiFIR obligations on market data").

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 under the heading [Legal Notice](#).

Who should read this paper

This consultation paper is interesting for you if you are a trading venue, an APA, an SI or a consumer of market data.

General information about respondent

Name of the company / organisation	FIA
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	International

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_GOMD_1>

FIA¹ welcomes the opportunity to respond to the ESMA Consultation on the proposed Guidelines on the MiFID II/MiFIR obligations on market data that was published in November 2020. Comments expressed in this letter represent the views of a subset of FIA members, namely of clearing and exchange members only, and we are conscious that other FIA members, for example those firms that provide market data, may have different views, which are not represented in this letter. In terms of product scope, the comments set out in this letter are given from the perspective of market data users in relation to exchange-traded derivatives (ETDs) and do not cover other asset classes, for which market data is also relevant.

We look forward to engaging further with ESMA on these questions and await further publications on this important topic.

<ESMA_COMMENT_GOMD_1>

¹ [FIA](#) is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.

FIA's mission is to:

- support open, transparent and competitive markets,
- protect and enhance the integrity of the financial system, and
- promote high standards of professional conduct.

As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.



Questions

Q1: What are your views on covering in the Guidelines also market data providers offering market data free of charge for the requirements not explicitly exempted in the Level 2 requirements?

<ESMA_QUESTION_GOMD_1>

Certain guidelines should be applicable to the providers offering market data free of charge. Specifically, transparency of the conditions for receiving this data for free, the offer being available on a non-discriminatory basis, and the quality and content of the free service. Other guidelines should not be applicable, where they create an unnecessary administrative and cost to the market data providers, distributors and users.

<ESMA_QUESTION_GOMD_1>

Q2: Do you agree with Guideline 1? If not, please justify.

<ESMA_QUESTION_GOMD_2>

Yes.

<ESMA_QUESTION_GOMD_2>

Q3: Do you think ESMA should clarify other aspects of the accounting methodologies for setting up the fees of market data? If yes, please explain.

<ESMA_QUESTION_GOMD_3>

The accounting methodologies for setting up the fees for market data should be publicly available, readily understandable and ideally have some level of consistency across multiple market data providers.

The suggestions outlined in the CP address FIA exchange and clearing members' concerns at a high level, however it may be hard to clearly identify and decouple the costs directly associated with the production of market data from other costs. For example, infrastructure which is responsible for supporting matching engines which ultimately also disseminate market data, the data centres which house this infrastructure, communications infrastructure which is responsible for both the receipt of client trading instructions and for dissemination of market data, etc.

In many cases separate fees are already applied to accommodate fixed infrastructure costs, API fees, port costs, etc., which are applied to cover the supporting infrastructure, and hence should be considered when determining the reasonable commercial basis (RCB).

Market data providers should include justifications for any specific chargeable items, i.e. why does a non-display license carry the cost it does. If there are any other granular costs, how have the costs been attributed.

<ESMA_QUESTION_GOMD_3>

Q4: With regard to Guideline 2, do you think placing the burden of proof, with respect to non-compliance with the terms of the market data agreement, on data providers can address the issue? Please provide any other comments you may have on Guideline 2.

<ESMA_QUESTION_GOMD_4>

Customer compliance with the terms of the market data agreement are greatly assisted when the market data fees and related policies are reasonable, readily understandable and ideally consistent across multiple market data providers. The burden of proof then becomes a collaborative effort between the market data provider, the market data distributor and the market data customer. An example of a reasonable policy is where the unit of count for a display user is a 'per user', where a user is a natural person. FIA market data user member also believe that it will help to have the burden of proof with the supplier. They think this may encourage clearer terms that are not open to interpretation, or made overly complicated.

<ESMA_QUESTION_GOMD_4>

Q5: Do you consider that auditing practices may contribute to higher costs of market data? Please explain and provide practical examples of auditing practices that you consider problematic in this context. Such examples can be provided on a confidential basis via a separate submission to ESMA.

<ESMA_QUESTION_GOMD_5>

Auditing practices may contribute to the higher cost of market data, but in an opinion of FIA exchange and clearing members this is avoidable if the market data fees and related policies are fair and reasonable, readily understandable and consistent across multiple providers. Two specific examples of this are as follows:

- (i) The unit of count for display fees. If the unit of count is per user or per user, per source, there is significantly less disagreement, during an audit, between the provider and the customer on the amount that should have been paid and the amount that was paid.
- (ii) The non-display fees should be a simple and fair and reasonable fees per customer. So that the customer does not have to count applications, or locations, or entities, or types of use. Customers prefer that the audits are conducted by the data provider, as opposed to external consultancies, as this avoids misinterpretation or misunderstanding in relation to the policies of the data provider.

When completing an audit reconciliation, as well as including any past underpayments, past overpayments should also be included.

FIA exchange and clearing members agree that there should not be any excessive interest payments, extensive retroactivity or fines that are unrelated to the data used.

We believe that auditing practises do contribute to higher costs, with different venues applying different policies and in many cases excessive auditing costs and timeframes. We feel it is not appropriate for the user to pay the auditing costs of the market data disseminators.

Finally, FIA exchange and clearing members would like to see auditors taking away feedback and results of audits where non- compliance is commonly found and focus on making the rules clearer. Lack of clarity and over complication of the rules is more often than not the

driver behind non-compliance, as opposed to cost avoidance. If common areas and issues were clarified in the rules, and proactively communicated to other customers, compliance would improve.

<ESMA_QUESTION_GOMD_5>

Q6: Do you agree with Guideline 3? If not, please justify, by indicating which parts of the Guideline you do not agree with and the relevant reasons.

<ESMA_QUESTION_GOMD_6>

It is agreed that the categories of customers defined by market data providers are:

- (i) based on factual elements
- (ii) readily understandable

It is felt that Guideline 3 permits market data providers to charge different fees for different type of use, as opposed to simply charging fees based on the cost of producing and disseminating data. If ESMA is going to permit the charging of fees for different type of use, then the methodology for arriving at the fee for each type of use must be publicly available, justifiable and fair and reasonable.

<ESMA_QUESTION_GOMD_6>

Q7: Do you agree with the approach taken in Guideline 4? If not, please justify, also by providing arguments for the adoption of a different approach.

<ESMA_QUESTION_GOMD_7>

Agree with the Guideline 4. Large institutions could fall into a number, if not all, categories set out by the provider. Although licencing categories and charges may make sense if a market data user only falls into one, or two. When it fall into many or all, the licensing structures should have a clear descriptions on how the costs are attributed; i.e. if a customer is a consumer of the data, a distribution and production cost can be charged, if the customer consumes the data for 3 different reasons but only has one feed, then how can individual changes be justified.

<ESMA_QUESTION_GOMD_7>

Q8: Do you agree with Guideline 5? If not, please justify.

<ESMA_QUESTION_GOMD_8>

Agree with the Guideline 5, however firms taking co-location facilities and hence benefitting from latency due to geographical location and connectivity (ie cross connect in data centre vs leased line) should not incur additional costs given the data content delivered is identical and the firm typically already incurs additional infrastructure costs.

<ESMA_QUESTION_GOMD_8>

Q9: Do you think that ESMA should clarify other elements of the obligation to provide market data on a non-discriminatory basis? If yes, please explain.

<ESMA_QUESTION_GOMD_9>

All fees and related policies should be publicly published. All methodologies used for the calculation of fees should be publicly published.

<ESMA_QUESTION_GOMD_9>

Q10: Do you agree on the interpretation of the per user model provided by Guideline 6? If not, please justify and include in your answer any different interpretation you may have of the per user model and supporting grounds.

<ESMA_QUESTION_GOMD_10>

Agree. The fees for display use should be "per user", where a user is a natural person or "per user, per source" where a customer does not have ability to identify or capture and net all inventory for each user.

One suggestion to ESMA is perhaps to consider adding text around how "Active User-ID" and natural person align.

There could be occasions where Active User-ID is taken as a logon account or technical ID, a single natural person may have more than one technical Active User-ID, but the data is being consumed (viewed) by 1 natural person.

<ESMA_QUESTION_GOMD_10>

Q11: Do you agree with Guideline 7? If not, please justify. In your opinion, are there any other additional conditions that need to be met by the customer in order to permit the application of the per user model or do you consider the conditions listed in Guideline 7 sufficient to this aim? Please include in your answer the main obstacles you see in the adoption of the per user model, if any, and comments or suggestions you may have to encourage its application.

<ESMA_QUESTION_GOMD_11>

Agree.

For customers to adopt a per user model, they need to ensure that all end users within their organisation receive data via their entitlement systems and all of the inventory related to these entitlement systems is managed in the inventory management system, which captures all relevant user information including user name and unique user HR ID.

Our exchange and clearing members understand that most permissioning systems allow for reporting to show the exact number of active users. They believe the challenge will come when accurately associating different user accounts in different systems back to one natural person where multiple systems are being used by single users.

This can be made easier by ensuring the software vendors allow for a unique identifier to be recorded for each user (staff ID or similar) in each system. Reports can then easily be combined.

<ESMA_QUESTION_GOMD_11>

Q12: Do you agree with Guideline 8? If not, please justify also by indicating what are the elements making the adoption of the per user model disproportionate and the reasons hampering their disclosure.

<ESMA_QUESTION_GOMD_12>

Agree. The reasons for not adopting 'per user' model should be publicly published and readily understandable.

<ESMA_QUESTION_GOMD_12>

Q13: Do you think ESMA should clarify other elements of the obligation to provide market data on a per user fees basis? If yes, please explain.

<ESMA_QUESTION_GOMD_13>

For display use, there should be no other elements to consider. The only element to consider is whether the user is a natural person. A user that receives the data via data redistributor A and data redistributor B for display purposes should only be charged once.

<ESMA_QUESTION_GOMD_13>

Q14: Do you agree with Guideline 9? If not, please justify.

<ESMA_QUESTION_GOMD_14>

Agree.

<ESMA_QUESTION_GOMD_14>

Q15: Do you think ESMA should clarify other elements in relation to the obligation to keep data unbundled? If yes, please explain.

<ESMA_QUESTION_GOMD_15>

No.

<ESMA_QUESTION_GOMD_15>

Q16: Do you agree with Guideline 10 that market data providers should use a standardised publication format to publish the RCB information? If not, please justify.

<ESMA_QUESTION_GOMD_16>

Agree. This will make side by side comparisons easier and will help in supporting justifications for guideline 8.

<ESMA_QUESTION_GOMD_16>

Q17: Do you agree with the standardised publication template set out in Annex I of the Guidelines and the accompanying instructions? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions?

<ESMA_QUESTION_GOMD_17>

Price List

- Link to price list - Agree.
- Advance disclosure - Agree.

Market Data Content Information

- Asset Class, Number of Instruments covered, Total turnover of instruments covered, Pre trade/post trade market data ration- do not consider this essential, although it would be useful. Regulated Trading Venues should be given time (2 years) to make market data content information publicly available and updated automatically on a monthly basis.
- Information on any data provided in addition to market data - do not think this is required.
- Date of the last licence fee adaption for market data provided - Agree
- Total Market Data Revenues - Agree
- Market Data Revenues as a proportion of total revenues - do not think this is required.

Cost accounting methodologies

- Information on how the price was set - Agree
- Accounting methodologies - Agree
- Principles - Do not understand what is required in relation to "Principles"

<ESMA_QUESTION_GOMD_17>

Q18: Do you agree with the proposed definitions in Guideline 11? In particular, do they capture all relevant market uses and market participants? If not, please explain.

<ESMA_QUESTION_GOMD_18>

Customer - do not agree that a customer is a natural AND legal person. We believe the customer should be the natural OR legal person who signs the market data agreement with the market data provider and is invoiced for the market data fees. If a customer is a legal person, then it is likely to be an entity on behalf of group of entities (e.g. on behalf of the entire group, including affiliates).

-- Unit of Count:

---- For display use, it should be clear that the unit of count is "per user", where a user is a natural person. Therefore the Active User ID should be a single ID per user, where a user is a natural person

---- Non-display use. Do not agree that a server or device should be used as a unit of count to quantify the level of use for the non-display fees. It is not reasonable or practical for

customers to count servers or devices for non-display use. There should be one non-display fee per customer.

- Professional Customer - Agree
- Non-Professional Customer -Agree
- Display Data - Agree
- Non-Display Data - Agree
- Market Data - Agree
- Derived Data - Suggest to change the definition to a more standard one: 'Derived data is data that cannot be reverse engineered.'
- Real-time Data - Agree
- Delayed Data - Agree
- Historical Data - Agree

<ESMA_QUESTION_GOMD_18>

Q19: 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_GOMD_19>

Do not agree with statement in paragraph 81, "Similarly, as non-display market data will be accessed through a machine by automated means, ESMA considers it appropriate to quantify the level of use by the number of servers or devices." It is not reasonable or practical to count the number of servers or devices in relation to Non-Display use. Fees in relation to Non-Display use should be charged once per customer, where a customer is a contracted entity and majority owned affiliates. Non-Display fees should be charged on a reasonable commercial basis and be related to the cost of producing and disseminating the data. Different types of use should be standardised across all regulated trading venues. For example, Automated Trading, Other application usage, Index Calculation. As per Guideline 4, customers should only be charged for one type of use.

We also suggest to include the following definitions:

-“End of day (EOD) data”; (price) data at close of business day.

-“Redistribution” means providing a customer and/or any other party other than an affiliate access to market data, irrespective of the means of dissemination or provision of access. Sometime distinction is made between “distribution” and “redistribution”, where the first relates to internal dissemination and the latter to external dissemination.

<ESMA_QUESTION_GOMD_19>

Q20: Do you agree with Guideline 12? If not, please justify.

<ESMA_QUESTION_GOMD_20>

Agree. However, without publication of actual cost it is difficult to see how the methodology and therefore costs charged can be challenged in any meaningful way.

Furthermore, if methodologies are different from venue to venue, there is no real mechanism for challenge. If a firm does not agree with the methodology of a venue, they cannot walk away from it.

<ESMA_QUESTION_GOMD_20>

Q21: 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_GOMD_21>

If there is a fee increase for a display fee or for a non-display fee that is above the level of inflation then a reason should be provided to justify why a fee increase above the level of inflation is reasonable. A fee increase above the rate of inflation shall be judged to be reasonable if it is related to either a change in the cost of producing and disseminating the data or related to a material change in the content of the data.

<ESMA_QUESTION_GOMD_21>

Q22: Do you agree with Guideline 13? If not, please justify.

<ESMA_QUESTION_GOMD_22>

Agree. The ability of the customer and the data provider to complete an audit are significantly improved if the policies related to the market data products are reasonable, transparent and readily understandable. In particular the unit of count for display users should be 'per user' where a user is natural person; the Non-Display fees should be per customer, where a customer is the contracting entity plus affiliates; Non Display fees for different types of use should be consistent across regulated trading venues.

Our exchange and clearing members believe that providers should have to publish audit themes, highlighting common areas of error so customers can proactively check their approach. Providers should also look to their own terms if common themes of error occur as it is likely that the terms are misleading or not clear, which means customers do not meet the providers expectations. In these cases the terms should be improved.

<ESMA_QUESTION_GOMD_22>

Q23: Which elements for post- and pre-trade data publication should be required? In particular, are flags a useful element of the publication? Should there be any differences between the different types of trading systems? Is the first best bid and offer sufficient for the purpose of delayed pre-trade data publication?

<ESMA_QUESTION_GOMD_23>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_GOMD_23>

Q24: Which use cases of post- and pre-trade delayed data are relevant to you as a data user? What format of data provision is necessary for these use cases, and especially for pre-trade delayed data?

<ESMA_QUESTION_GOMD_24>

In most cases customers receive regulated trading venue delayed data from Data Redistributors. Post and pre trade data is relevant to customers. The format of the delayed data should be the same as the format of the real-time data, with the time stamp indicating that the data is delayed.

<ESMA_QUESTION_GOMD_24>

Q25: Do you agree with the definitions of data-distribution and value-added services provided in Guideline 16? Please explain.

<ESMA_QUESTION_GOMD_25>

Agree delayed data should remain free of charge when distributed in raw format for no additional fee. For the avoidance of doubt, believe the reference to website delivery should be removed from Guideline 16 as all technical distribution methods should be included not just website delivery. Agree with definition of value-added services. For the avoidance of doubt Guideline 16 should make it clear that a value-added service is related to charging a fee for the delayed data and not charging a fee for products that contain the delayed data.

<ESMA_QUESTION_GOMD_25>

Q26: Do you have any further comment or suggestion on the draft Guidelines? Please explain.

<ESMA_QUESTION_GOMD_26>

It is felt there should be transparent advice on how guidelines will be enforced.

<ESMA_QUESTION_GOMD_26>

Q27: What level of resources (financial and other) would be required to implement and comply with the Guidelines 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_GOMD_27>

Customers do not consider that additional resources are required for customers to implement and comply with the Guidelines, over and above the resources already being allocated to management of regulated trading venue market data. It should be emphasised that a resource is already having to be allocated for Regulated Trading venue market data administration and contractual compliance.

<ESMA_QUESTION_GOMD_27>