



FIA response to FCA Call for Input on accessing and using wholesale data

(electronic submission to FCA via email)

London, 7 January 2021

FIA¹ welcomes the opportunity to respond to the FCA Call for Input on accessing and using wholesale data that was published in March 2020. We appreciate the extended submission deadline due to the Covid pandemic. Our response focuses on Section 3.A of the Call for Input (Trading Data) and we specifically provide feedback from the perspective of users of market data. 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 the FCA on these questions and await further publications on this important topic.

Executive summary / Key messages:

1. **Market data fees** charged by derivatives trading venues **have increased significantly** over the last few years.
2. **Mandatory consumption** and use of market data for regulatory purposes has also **increased dramatically** in recent years.
3. Real-time market data that market participants are required to consume to comply with their regulatory and risk management requirements (i.e. mandatory consumption of market data) should be available to them **free of charge**. Market data that they use for investment decisions and trading/commercial purposes should be available to them on a **reasonable commercial basis** (RCB).

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.



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4. Given that by its very nature the market of data providers is highly concentrated and often monopolistic, while at the same time the demand for market data is inelastic and guaranteed, it is important that there is adequate and continuous **regulatory supervision and enforcement** of the RCB rules.
5. When considering pricing of producing market data, trading venues should be mindful and take into account the fact that their members and clients, who ultimately consume market data, contribute their own data to the market in the first place, which then in turn allows trading venues to provide market data that reflects the entire market participants' activity. **Market data users are also contributors of their own trading information to the trading venues.**
6. There should be a distinction between the **cost of producing** market data and the **cost of disseminating** the same data. The cost of producing market data should not depend on how it is disseminated to market data users.
7. **Increased demand for market data** and the value of data for data users (e.g. non-display data) **should not drive the level of pricing** as it does not impact the cost of producing that data.
8. Market data users would benefit from more **standardised and consistent** (i) processes and formats of consuming market data across different trading venues, (ii) types of fees that they are charged for market data use by trading venues (iii) contractual terms between market data providers and market data users and (iv) billing practices when charging for use of market data.

Q3.1: What type of trading data do you use/obtain directly from trading venues and APAs, and how do you use trading data?

FIA exchange and clearing members obtain market data, including historical, real time and delayed, in addition to trading drop copies and clearing feeds. Market data is used for the purposes of clearing trades, managing risk, quality control, and compliance processes, including trade surveillance in order to comply with exchange regulations. More concrete examples of market data consumption include the following:

- it allows both internal and external clients that use their execution platforms to see the current market price in order to accurately route orders;
- firms' algos process the data to enable them to make decisions when to route orders into the market;
- pre-trade risk checks use the data to ensure the prices sent are measured versus the market price to keep an orderly market;
- Trade Capture Analysis: to demonstrate best execution to clients;
- Trade Capture Analysis: to improve the performance of firms' algos;
- ensuring compliance with exchange rule obligations.

Some firms also use exchange market data which is obtained via market data vendors (and they source the data from the trading venues). This is used for display on device to traders and non-display for algo and risk functions.



Q3.2: Are you content with the price, quality, provision, coverage, speed and depth of trading data (or other data sold by trading venues or APAs)? If you are not satisfied with any of these elements, please explain why not and the impact this has on your business.

The quality of data provided by trading venues directly is generally good. Some firms experience data quality issues when obtaining data via data service providers/vendors.

The cost of providing data over time has become increasingly problematic and expensive; one could argue that exchange members should not be charged for the data at all as their clients/house business, and competing members and their clients are contributing to the order book and the generation of the prices. If someone is contributing to the order book and generating prices, there should be a different fee structure in place.

There is a general perception among exchange and clearing members that trading venues are utilising market data as an additional revenue stream and not to enable fair and orderly markets. Historically, in the context of ETDs, market data used to be free to anyone actively trading in that market. Our exchange and clearing members understand that trading venues may want to charge a certain level of fees to cover their costs, however this is not what the exchange and clearing members believe is happening in practice. Market data fees that they are charged have a significant impact on the members and clients who wish to be active in the ETD markets.

Pricing structures are unsatisfactory also because there seem to be big differences in cost of data across various venues.

Traders are charged multiple times to view the same price if they use multiple applications. They are not receiving different data, so the data charge should be single no matter how many times it is presented on screen. This can stifle innovation as new tech offerings may not be taken due to extra market data cost. It would be good to understand from the trading venues the different breakdown of cost between cost of delivery and cost of data. The data is a single item, but if a trader is using five different screens, one could understand a delivery cost. However, despite five different delivery costs, there is still only one data cost. Some US trading venues do offer a netting type agreement which addresses some of these issues.

Overall, our clearing and exchange members believe that the cost of market data is too high, specifically when applied to regulatory and market risk functions. Firms are also classed as market data redistributors by default in some cases, with significant fees applied for a market data redistribution license regardless of the number of end users.

We understand that in the event a firm is using a vendor it is not unreasonable that a fee should be paid to provide that service.

Q3.3: Do you consider any trading venues or APAs set of trading data a 'must have' for your business purposes? If so, please explain why. For example, is it linked to a liquidity threshold in the relevant financial instrument and/or to best execution requirements considerations?



Market data for any trading venue our clearing and exchange members trade on is essential and absolutely core to their businesses. They would be unable to execute house or client orders safely and transparently without it.

Functions such as market risk and trade surveillance are 'must haves', in addition to BAU processes. In most cases these functions are mandated by the regulators, the trading venues and the CCPs, hence there is no choice on the consumption of market data, and it is not for commercial gain. Clearing firms are also required to participate in member default auctions, and hence need real time data to value the defaulting portfolio and submit accurate bids. Large penalties can apply for non-participation. In the case of liquidity programs, in many cases the quality of the quote in relations to real time market prices is a determining factor in the liquidity threshold calculations.

Q3.4: For each data set you use, how have the trading fees, trading data costs and quality evolved over the last 5 years? What impact has this had on your business and your clients?

Trading fees have gone up and trading data has too since trading venues have all started charging for data over the last 5 years or so. This has had serious impacts on the cost of doing business. This is particularly noticeable for non-member clients who do not benefit from netting and so can end up paying multiple times for the same data.

The fees have increased disproportionately in several cases and new additional fees applied. The resource required to report and collect the fees on behalf of the exchanges is also significant, in many cases requiring FT head count. Firms are also required to pay for the exchange audits of these fees and provide the data used.

Market participants typically consider five main categories of trading data fees that are charged for by trading venues: (i) User Display fees, (ii) Access fees, (iii) Non-Display fees, (iv) Redistribution fees and (v) Enterprise fees.

The overall feedback from our exchange and clearing members has been that the prices of market data have increased and also that the costs of market data have increased. The cost of (i) User Display fees, where there is some price elasticity of demand, have increased. The cost of User Display fees, Access fees, Non-Display fees, Redistribution fees and Enterprise fees, where there is a high level of price inelasticity of demand, have increased in proportion to the increased fees. For quantitative analysis, please see data in a separate document - **Attachment A**. Attachment A has been shared with the FCA on a confidential basis.

Trading venues have been focusing a lot more on non-display licensing and granularity being applied in this space. This means that granularity of charging trickles down to other suppliers of market data. FIA clearing and exchange members are already seeing examples of requiring middle office and back office charges. There have been new granular charges around non-display and onward distribution. Trading venues have also focused more on usage declarations and have been continuously auditing their members.

Q3.5: How easy are trading data pricing/licensing terms to understand and comply with? What, if any, do you find to be complex or restrictive and what impact does this have on your business?



There are multiple issues with licensing terms as outlined in detail below. At the outset, it is worth pointing out that this is very complex with each exchange having their own nuances and charging policies, making this a very hard process to accurately maintain and report. Market data agreements, in general, are designed to be in favour of the supplier, non-negotiable in the main, and vague by design. One might argue this is done for obvious reasons, i.e. to leave agreements open to interpretation. Everything varies by exchange as there is no standard and exchanges all have different agreements. There are differing reporting structures around user distribution, which creates problems. There are also differing licence structures across the venue, firm level, business level, platform, algo, non-algo, session.

At least one trading venue insists on having client names and addresses being submitted when distributing. When they were challenged, they did not provide a reasonable explanation other than reference to the rulebook. This all adds to the admin cost for exchange members.

Charging for market data on a per user basis

MIFID II reasonable commercial basis obligations are clear in relation to 'per user' fees: for display market data products, trading venues should offer a unit of count of per user where a user is a natural person. Some exchange and clearing members have observed that there has not been full compliance by trading venues in relation to this obligation.²

Some trading venues have offered 'per user' unit of count as prescribed by MIFID II, but added a premium on fees for users who would like to utilize this option. In our exchange and clearing members' view, adding a premium on fees goes against MIFID II, because the cost associated with market data fees should be in line with the cost of producing and disseminating the data.³

Currently, there are different types of unit of count across different trading venues:

- Multiple instances (max count): Toronto Stock Exchange
- Single vendor netting (per user, per source), example: Johannesburg Stock Exchange
- Multi-vendor netting (per user): Deutsche Borse

Definitions of unit of count are not always clear in the policies and often open to interpretation. We believe that fair unit of count is 'per user' or 'per user, per source'. It is not fair and reasonable to charge max count, as often multiple number of instances for a user is associated with the technical set-up with no additional value for a user.

Example of 'Per User' policies of regulated trading venues in the derivatives markets.

- ICE Futures Europe do not offer a unit of count of 'per user' where a user is a natural person, although it is a requirement to do so under MIFID II.
- EUREX do offer a unit of count of 'per user' where a user is a natural person, although charge a 10% premium.
- CME Group do offer a unit of count of 'per user' where a user is a natural person, although charge a \$15 premium fee.

² For example, in the context of derivatives, ICE Futures Europe, ICE Endex and MTS market do not offer per user unit of count.

³ Examples of venues that charge a premium on 'per user' fees include: London Stock Exchange +15%; Borsa Italiana +15%; Nasdaq Nordic +0%; Six Swiss Exchange +0%; Deutsche Boerse +10%; Wiener Boerse +14%; Euronext +15%; BME +20%.



- Euronext Equities and Index and Currency Derivatives do offer a unit of count of 'per user' where a user is a natural person, although charge a 17-20% premium.
- LME do offer a unit of count of 'per user' where a user is a natural person.

Confusion around derived data

Some trading venues and third-party vendors may charge derived data distribution fees. We strongly believe that trading venues should not charge for internal distribution of derived data. Once the data becomes derived, intellectual property rights to the data no longer belong to trading venues. Trading venues, however, may charge for ability to create derived data.

Q3.6: Are you aware of trading venues or APAs charging different amounts to different customers for similar services? Please give specific examples and explain how these practices affect your ability to compete in the markets you operate in.

Some of our exchange and clearing members are aware of trading venues using different categories to charge for data usage, which would lead to differences in costs, although many trading venues do publish their policies, use standard agreements and are transparent in terms of a fee structure.

Other members are not aware of any trading venues charging different amounts to different customers for the similar services.

Q3.7: Please explain when you are charged for the use of delayed data.

Delayed data obtained directly from the trading venue is generally available free of charge, however some of our members are seeing more and more trading venue charge for delayed data. Please see details below.

Some exchanges charge fees for:

- Licences that are required to redistribute delayed data (e.g. CME, Deutsche Borse, Borsa Italiana, Euronext, Bolsas y Mercados Espanoles);
- Licences that are required to distribute end of day data (e.g. Vienna Stock Exchange, Prague, Ljubljana, Zagreb, London Stock Exchange (before midnight), Luxembourg Stock Exchange);
- Licences that are required to calculate and distribute indices/benchmarks utilizing delayed and/or end of day data. (e.g, LSE After Midnight Distribution licence as of 2020 – newly licensed use case. A fee is charged for the distribution of after midnight LSE data, which is widely publicly available at no charge via the internet);
- Licences that are required for non-display or derived data usage utilizing delayed data (e.g. Vienna Stock Exchange, London Stock Exchange, Luxembourg Stock Exchange);
- Vendor data licenses that exist for reference data, which would include end of day RTV data.

Some APAs and OTFs do not offer free of charge 15 minutes policy. Trading venues, formally known as 'brokers', do not publish market data policies on their public websites. The price lists have been only provided based on the type of use and free of charge delayed data appears to not be available (e.g. Gottex, Tradition, Tradeweb, ICAP).



There are also trading venues where the delayed periods are greater than 15 minutes (e.g. MTS Markets Repo Data – the delayed period is 90 minutes; London Metal Exchange – the delayed period is 30 minutes).

Q3.8: To what extent do you think ESMA’s suggested improvements to the RCB requirement will adequately constrain trading data pricing (see 3.23)? Are there other ways to ensure trading data prices are competitive.

FIA exchange and clearing members do not believe the suggested improvements are enough and more needs to be done to reduce both cost and complexity of market data fees. In some cases, these are simply new fixed revenue streams for the incumbent trading venues who maintain open interest concentrations due to the vertical silo’s which exist in the ETD markets.

Trading venues should only to be able to charge a minimal fixed fee (if anything) to their members if they are using the data to trade or using the data to keep an orderly market.

Vendors consuming the data and distributing it should attract additional costs based on the usage and services being provided by that vendor to its clients.

We are supportive of the ESMA suggestion that market data costs should be split at least into two parts – delivery cost and production cost. If the data is being delivered on multiple channels, each channel can then be assigned an appropriate cost based on cost of delivery. The production cost should only be paid once, as the data is only produced once.

Furthermore, market data prices should not be driven by the value of data for data users or by demand for data, in particular in relation to non-display data. Instead, we believe that prices should be determined on the basis of cost, taking into account the principle of reasonable commercial basis. Demand for trading a specific product should not drive market data prices. Demand for non-display will most likely drive more electronic liquidity on the venue, so the trading venues are charging more for an item which they receive direct benefit.

Thank you for consideration of these comments. We would be happy to discuss them in more detail with you as required. Please contact the undersigned at +44 (0)20 7519 1831 or msiraj@fia.org in case of any questions or to schedule a follow-up call.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mitja Siraj', is positioned above the printed name.

Mitja Siraj
Vice President of Legal, Europe
FIA