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IOSCO Consultation on market data in the secondary equity markets

FIA Response

Date: 26 February 2021

General:

FIA[1] welcomes the opportunity to respond to the IOSCO Consultation on market data in the secondary equity markets. 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.

FIA primary members, who comprise exchange and clearing members (i.e. market data users), initially note that the topic of market data is relevant also in the context of ETDs and not only in the cash equities markets. Legislation setting out the rules on market data in Europe does not distinguish between the rules that apply to one asset class and not the other, for example.[2] Mandatory consumption and use of market data for regulatory purposes has increased dramatically in recent years. Market data fees charged by derivatives trading venues have increased significantly over the last few years creating burdensome barriers to entry for market participants.

Q1: Please identify the data elements that are necessary for investors and/or market participants to participate effectively and competitively and make informed trading decisions in today's markets. In your response, please consider:
• The type of investor (e.g. retail or institutional) that uses the data;
• How orders are sent to a trading venue (e.g. electronic, manual, direct access by clients; and
• How orders are routed

Please provide the reasons why each element is necessary.

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

[1] FIA is the leading global trade organisation 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 more than 48 countries as well as technology vendors, lawyers and other professionals serving the industry. 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 member firms play a critical role in the reduction of systemic risk in global financial markets.

[2] See Articles 13, 15(1) and 18(8) of MiFIR and 64(1) and 65(1) and (2) of MiFID II.

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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:

- firms use various forms of data to ensure compliance with exchange rule obligations;
- internal and external clients 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;
- firms conduct pre-trade risk checks using the data to ensure the prices sent are measured versus the market price to keep an orderly market;
- firms conduct Trade Capture Analysis: to demonstrate best execution to clients;
- firms conduct Trade Capture Analysis: to improve the performance of firms' algos.

Some firms also use exchange market data which is obtained via market data vendors which are sourced from the trading venues. This is used for display on device to traders and non-display for algo and risk functions.[3]

Q2: Are there other data elements that, while not necessary to all market participants, may be necessary for some market participants or business models? Please provide the reasons for your answer.

See response to Question 1.

Q3: Please share your view on defining Core Market Data and how such a definition can be used (for example, for compliance purposes or as a mechanism to make routing decisions, etc.).

See response to Question 11.

Q4: How is market data used by different types of investors or different functions of your firm? Consider, for example:
• Type of investor (e.g. retail or institutional)
• Trading Desks (proprietary or client-servicing including retail and institutional), Institutional, proprietary)
• Compliance
• Risk-Management
• Back office functions

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[3] Display data is commonly considered as data that is consumed by a human user through the support of a screen, whereas non-display data would generally refer to data directly fed into trading algorithms.

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Q5: What impact does different uses have on the need to access data? How can these impacts be managed or addressed?

See response to Question 11.

Q6: What factors should be considered in the context of evaluating "fair, equitable and timely access"? How should these factors be considered?

In the EU, MiFID II and MiFIR require market data providers to provide market data on a reasonable commercial basis and ensure non-discriminatory access to that information. In addition, trading venues are required to make data available free of charge 15 minutes after publication. EU legislation also sets out the principle to provide market data on the basis of the cost for producing and disseminating it and requires market data providers to comply with a number of disclosure requirements aiming at enabling market data users to understand how market data is priced, to compare market data offers and to ultimately assess whether market data is provided on a reasonable commercial basis.

In order to ensure that the above requirements on market data deliver against their objectives, ESMA recently set out their expectations in the form of **draft Guidelines** on how market data providers should comply with the provisions on market data. In particular, the guidelines elaborate on the requirement to provide market data on the basis of cost, on the requirement to ensure non-discriminatory access to data, on the disclosure obligations and on the requirement to provide delayed data free of charge.

Once finalised, the ESMA Guidelines could be a useful source of information for IOSCO to consider the conditions under which market data is provided on a fair, equitable and timely manner.

Q7: What types of access do trading venues and RDPs provide? Are some forms of access provided only to specific market participants?

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Q8: Please identify the type of access necessary for different investors and/or market participants to participate and make informed trading decisions in today's markets and the rationale for the type of access and identified differences. In your response, please consider:
• Type of investor (e.g. retail or institutional)
• Trading Desk (Proprietary or client-servicing including retail and institutional)
• How orders are sent to a trading venue (e.g. electronic, manual, direct access by clients)
• Order routing
• Business models
• Compliance and regulatory issues

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Q9: What issues or concerns arise in the context of fair, equitable and timely access to market data?

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. 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.

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.

Q10: Please share your view on interchangeability of market data between trading venues. If concerns are identified, please provide suggested mechanisms to address them.

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Q11: How should market data fees be assessed? How could this be implemented in practice? What factors should be considered and how can they be defined or applied?

1. 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).

   Regulations globally have increased the need to consume market data in real time to satisfy specific regulatory requirements.

In the EU, MiFID II and MiFIR have increased the need for market data. Commission Delegated Regulation (EU) No 2017/589 of 19 July 2016 supplementing MiFID with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members ('RTS 6') includes a number of requirements that demand real-time market data.

While Article 13 (automated surveillance) of RTS 6 does not explicitly demand real-time data, it does link through to the requirements in the Markets Abuse Regulation (MAR) and firms' internal audit and compliance teams are generally of the view that anything less than real-time monitoring for activities such as spoofing is not up to the expected compliance standard. Therefore, firms have had to implement real-time surveillance alerting systems to ensure that they meet MiFID II and MAR requirements. All those systems work on real-time data to spot patterns in trading too.

In other words, firms are unable to comply with these and other requirements if they do not have access to real-time market data, so they have no choice but to obtain the data if they wish to achieve regulatory compliance. On the other hand, trading venues are in a unique position of providing market data, as they are the only ones who have the requisite data and act as utilities in this regard. This could lead to unhealthy and uncompetitive pricing structures for market data because demand is inelastic and guaranteed (often driven by regulation), while supply is limited and concentrated in individual trading venues.

Market data users are of the view that the cost of market data needs to be transparent and that trading venue members should not be charged for essential market data separately from or in addition to the cost of membership, as the cost of providing the market data service is integral to the trading venue membership and is therefore already priced in the cost of that membership. While members of trading venues and other data users consume market data, they first and foremost contribute their own data by e.g. submitting orders to trading venues, which then allows the trading venues to turn the data received into a data service that is made available to all market participants. If exchange members and their clients did not contribute their own data in the first place, then trading venues would not be able to offer data services at all.

To the extent that market participants require real-time market data for regulatory compliance purposes or for risk controls/risk mitigation purposes, clearing firms are of the view that consumption of such data should be free of charge, as they do not have a choice but to use the data from a specific trading venue. Moreover, the fact that clearing members use this data for risk management and risk mitigation purposes represents a significant benefit to the trading venues. The same firms also acknowledge that market data can also be used for purely commercial, investment and speculative purposes and that such data should be available to market participants on a reasonable commercial basis.

2. Given that by its very nature the market of data providers is highly concentrated, 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. It is recognised that it is a highly complex task for regulators to decide what is fair and reasonable in relation to trading venue market data fees. Therefore, taking into account applicable anti-trust rules, it falls to all market participants to collectively agree formulae that determine whether a trading venue market data fee is fair and reasonable and once agreed request that the regulators ensure the formulae are adhered to. Components of such a formulae could include: asset class; latency; value of derivative contracts; value of share trading; consumer price index; base fees; upper fee thresholds; reasonable fee ranges; the cost of producing the data; the cost of disseminating the data; unit of count; how infrastructure costs are apportioned, i.e. how much of a data centre cost gets allocated to market data production versus hosting the matching engine.

Q12: Please provide details of other products or services related to market data that are provided by trading venues or other RDPs.

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Q13: Please share your views on the fees for connected services that are necessary to access essential market data. If concerns are raised, please identify mechanisms to address them.

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Q14: Please provide your view on the need for consolidated data where there are securities trading on multiple trading venues. What should be the primary objectives of consolidated data and what outcomes should it lead to? How should these objectives and outcomes inform the nature of the consolidated data made available?

There appears to be a lack of use cases for derivatives. Clients and end-users of derivatives have never expressed the need to have a consolidated tape for derivatives instruments. Frequently traded derivatives, IRS and CDS, are predominantly used by sophisticated market participants for risk management purposes. Therefore, the use case for retail investors seeking to have a better view of the market or finding "pockets of liquidity" is, unlike for equity and bonds, rather limited. It is difficult to see how a CT for derivatives could benefit derivatives markets.

Q15: Is a consolidated data feed the most efficient mechanism to achieve these objectives and outcomes? If not, what are the alternatives that could help achieve these objectives and outcomes? How do these alternatives affect the cost of and access to market data? How can they be addressed?

See response to Question 14.

Q16: Please describe any issues or concerns not raised by IOSCO in this Consultation Paper and describe any suggested mechanisms to address them.

Regulatory oversight of market data fees is inconsistent across financial products, exchanges, and jurisdictions. In some instances, regulatory oversight of market data fees is fragmented even within the same jurisdiction. The lack of coordination across regulators and jurisdictions makes it difficult develop a comprehensive policy that is fair to market structure and that does not create undue barriers for entry for market participants. FIA encourages IOSCO to consider a mapping exercise to identify jurisdictional differences in existing regulatory requirements related to exchange market data fees.

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