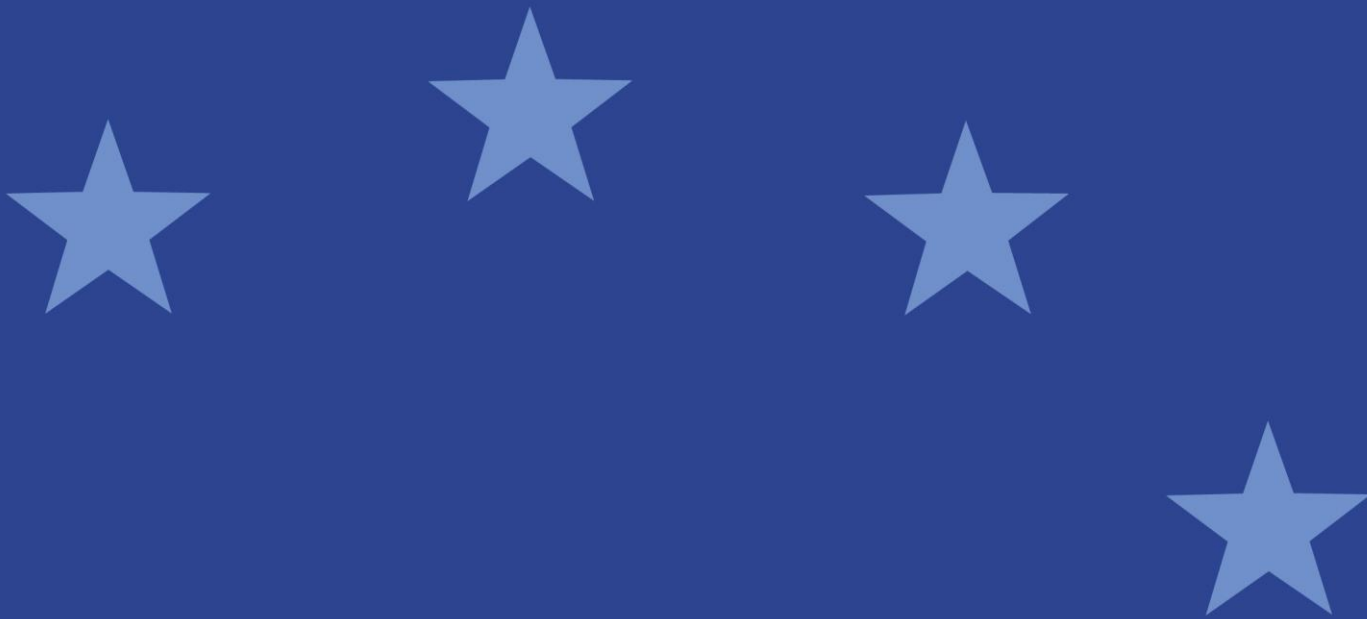




European Securities and
Markets Authority

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	NASDAQ
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Sweden

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_GOMD_1>

Nasdaq wants to highlight the need for keeping commercial incentives for data producers and requirements imposed on them proportionate, so that high quality data continues to be available for investors, listed companies and other market participants. Market data is the result of price formation and is the lifeblood of transparent markets. Those complaining about the costs of market data are increasingly using the data to execute transactions in the dark in SIs and OTC. In doing so they derive huge monetary benefits from the market data while not investing in price formation and the running of transparent markets. Whilst we agree that the price of market data has to be fair, we also want to underline that transferring the benefits of investments in transparent markets and price formation from exchanges to global banks would be unfair and threaten transparent markets, investors and the financing of the economy through public markets.

Some facts help understand what is at stake here. ESMA’s Annual Statistical Report on EU securities markets (2020) indicates the following that should be taken into account when setting rules on the costs of data:

- “Overall, the largest EEA venues by annual trading volumes were CBOE Europe (MTF) (EUR 3.4tn), Goldman Sachs (SI) (EUR 2.1tn) and the London Stock Exchange (RM and MTF) (EUR 1.9tn)”;
- “the number of SIs with permission to trade equity instruments has increased from less than 15 under MiFID I to 73 in 2019. The largest SI for equity trading was Goldman Sachs (EUR 2.1tn, accounting for 36% of trading volumes on SIs). Other important SIs in the EEA are Barclays (EUR 0.5tn), Morgan Stanley (EUR 0.5tn) and Credit Suisse (EUR 0.4tn) (S.43).

This confirms the tendency of SIs to be operated by large investment banks.”

This highlights the need for any regulatory action to ensure that operators of transparent markets can continue receiving remuneration for their investments in market data and

transparent markets. This means that the benefits of such investments cannot be transferred to large investment banks as they are currently requesting because it would discourage transparency in the market - in total opposition to the main policy aim of MIFID II.

Moreover, we want to underline that according to a recent Oxera publication (2020) Exchange market data fees account for less than 10% of sell-side and 0.5% of buy-side market data spend. This means that market data costs are not key drivers of sell-side and buy-side costs as often claimed by the industry bodies representing them. On the contrary, this data proves that market data provided by transparent markets is widely accessible at a reasonable cost, allowing financial services firms to derive huge profits, and it explains the explosion of SI trading as indicated in ESMA's statistical report. The above data equally show how incorrect and irrelevant the statements made by industry bodies representing sell-side and buy-side on allegations that market data would increase costs for investors or pensioners really are.

Additionally, it is important to take into account the joint product nature of trade execution and market data services i.e. it is not possible to generate one without the other, and most activities undertaken by a trading venue deliver both trading and price formation. Economic literature confirms that, in such cases, it is efficient to generate revenues through fees from both products (Oxera. "The Design of Equity Trading Markets in Europe." London, 2019). This has important economic implications. With joint products, the production costs of the outputs (market data and trading) cannot be fully separated. This is clearly the case with trade execution and market data services where there are fixed costs that have to be incurred to produce either product. This implies that independent analysis of either trade execution services or market data services is not helpful in assessing whether the recovery of costs by a trading venue is appropriate. Hence, regulators should keep this situation in mind when assessing the development in prices for pre-trade and post-trade data. The appropriate frame of reference for the analysis of an economically efficient recovery of costs of secondary market activities of trading venues is at the level of combined transaction revenues and market data revenues.

With the above in mind, we call on ESMA to adopt an approach on the cost of data that is conducive to supporting the financing of the economy through transparent public markets, benefiting investors (especially individual ones) and not solely the global banks. This would also support the ambition to develop a Capital Markets Union for the EU. For us, such an approach should therefore not include the proposed publication of allocation keys for joint costs and explanations around the determination of margins. We believe this goes too far in trying to harmonize the various data producers and in fact runs against the principles of EU competition law in that it may lead to limitations in the product offering. With the above in mind, we call on ESMA to adopt an approach on the cost of data that is conducive to supporting the financing of the economy through transparent public markets, benefiting investors (especially individual ones) and not solely the global banks. This would also support the ambition to develop a Capital Markets Union for the EU. For us, such an approach should therefore not include the proposed publication of allocation keys for joint costs and explanations around the determination of margins. We believe this goes too far in trying to harmonize the various data producers and in fact runs against the principles of EU competition law in that it may lead to limitations in the product offering.

Finally, and importantly, this consultation refers to the IEX Group publication entitled "The Cost of Exchange Services" as an example of a venue being transparent about their cost structure. It is worth noting that exchanges like IEX, that peg slower quotes to price setting exchanges quote data, earn more than \$10m/year in SIP revenues alone and over \$50m in gross revenue. The prices they peg against are those from venues like Nasdaq, meaning that for a relatively small outlay and with none of the costs of price formation, exchanges like IEX are able to offer trading and market data without incurring significant costs. For this reason, they are not an equitable comparison to exchanges with a high-quality price formation process.<ESMA_COMMENT_GOMD_1>

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>

Market data providers that provide data free of charge should also comply with the level 2 provisions. Some providers take a business decision to provide data without charging for it, but this data still has a cost to produce, and they may have other strategies for how to recoup these costs. This business decision to accept the costs and not charge consumers should not mean the provider is exempt from providing the data on a non-discriminatory basis or in a disaggregated format, and they should comply with transparency obligations.

<ESMA_QUESTION_GOMD_1>

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

<ESMA_QUESTION_GOMD_2>

Nasdaq wants to highlight the need for keeping commercial incentives for data producers and requirements imposed on them proportionate, so that high quality data continues to be available for investors, listed companies and other market participants. Market data is the result of price formation and is the lifeblood of transparent markets. Those complaining about the costs of market data are increasingly using the data to execute transactions in the dark in SIs and OTC. In doing so they derive huge monetary benefits from the market data while not investing in price formation and the running of transparent markets. Whilst we agree that the price of market data has to be fair, we also want to underline that transferring the benefits of investments in transparent markets and price formation from exchanges to global banks would be unfair and threaten transparent markets, investors and the financing of the economy through public markets.

Some facts help understand what is at stake here. ESMA's Annual Statistical Report on EU securities markets (2020) indicates the following that should be taken into account when setting rules on the costs of data:

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This highlights the need for any regulatory action to ensure that operators of transparent markets can continue receiving remuneration for their investments in market data and transparent markets. This means that the benefits of such investments cannot be transferred to large investment banks as they are currently requesting because it would discourage transparency in the market - in total opposition to the main policy aim of MIFID II.

Moreover, we want to underline that according to a recent Oxera publication (2020) Exchange market data fees account for less than 10% of sell-side and 0.5% of buy-side market data spend. This means that market data costs are not key drivers of sell-side and buy-side costs as often claimed by the industry bodies representing them. On the contrary, this data proves that market data provided by transparent markets is widely accessible at a reasonable cost, allowing financial services firms to derive huge profits, and it explains the explosion of SI trading as indicated in ESMA's statistical report. The above data equally show how incorrect and irrelevant the statements made by industry bodies representing sell-side and buy-side on allegations that market data would increase costs for investors or pensioners really are.

Additionally, it is important to take into account the joint product nature of trade execution and market data services i.e. it is not possible to generate one without the other, and most activities undertaken by a trading venue deliver both trading and price formation. Economic literature confirms that, in such cases, it is efficient to generate revenues through fees from both products (Oxera. "The Design of Equity Trading Markets in Europe." London, 2019). This has important economic implications. With joint products, the production costs of the outputs (market data and trading) cannot be fully separated. This is clearly the case with trade execution and market data services where there are fixed costs that have to be incurred to produce either product. This implies that independent analysis of either trade execution services or market data services is not helpful in assessing whether the recovery of costs by a trading venue is appropriate. Hence, regulators should keep this situation in mind when assessing the development in prices for pre-trade and post-trade data. The appropriate frame of reference for the analysis of an economically efficient recovery of costs of secondary market activities of trading venues is at the level of combined transaction revenues and market data revenues.

With the above in mind, we call on ESMA to adopt an approach on the cost of data that is conducive to supporting the financing of the economy through transparent public markets, benefiting investors (especially individual ones) and not solely the global banks. This would also support the ambition to develop a Capital Markets Union for the EU. For us, such an approach should therefore not include the proposed publication of allocation keys for joint costs and explanations around the determination of margins. We believe this goes too far in trying to harmonize the various data producers and in fact runs against the principles of EU competition law in that it may lead to limitations in the product offering.

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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>

Nasdaq believes that accounting methodologies should become sufficiently clear through the provision of examples and descriptions of the types of costs taken into account to set the price for market data as well as principles according to which direct and variable joint costs are allocated and fixed joint costs are apportioned. We consider however that having to disclose allocation keys and explanations around the determination of margins would go too far as indicated under question 2.<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>

Verifying compliance with the contractual terms and policies of the market data agreement should indeed be the purpose of audits. When a contractual agreement appears not to be respected, it is for the party that does not respect the agreed terms to explain why this is the case and possibly come up with a justification. This is not an issue of burden of proof, it is a dialogue between parties to an agreement to ensure its implementation.

Moreover, it appears logical that penalties and/or interests can be imposed on parties that do not respect a market data agreement. If the only sanction for non-compliance is to have to pay the amount initially due, there will be an incentive not to respect the relevant agreements; given there would be no sanction for non-compliance.

<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>

Firstly, Nasdaq considers that the question is incorrectly formulated. The question should focus on the actual price for market data; that is what the auditing practice is there to conclude. As long as a customer is transparent in its usage of market data, there is no risk of paying higher costs. If it does not, then the overall cost may naturally be higher if you include the interest for late payment (similar to any late payment). Nasdaq does not consider that auditing practices may contribute to higher costs of market data. In fact, we even see examples of the opposite outcome, that is, audits leading to the customer being informed that it is paying for products they are not using and, hence, contributing to lower costs of market data.

As indicated in our reply to question 4, audits are important to ensure compliance with market data agreements and that amounts due are paid for.

<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>

Nasdaq agrees that in their market data policies market data providers should describe the categories of customers and how the use of data is taken into consideration to set up the categories of customers, following Article 86 of Delegated Regulation (EU) No 2017/565 and Article 8 of Delegated Regulation (EU) No 2017/567.

<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>

Overall, Nasdaq agrees that clients should understand clearly what they are paying for. That said, Guideline 4 is misleading when it indicates that “when a customer makes different simultaneous uses of the data ... market data providers should apply the relevant fees in a way that ensures the provision of same data is charged only once by applying one customer category only”. This implies that market data providers should only charge according to one client category even when the client is consuming the same set of data as part of different products. It is a bit like saying that if one person sees a film in a cinema, they should not pay for watching the film again in another cinema or when acquiring a video of the film or for showing the film to others in a public place. It is important to understand that the same data can be offered in many different ways depending on the intended usage.

It should be possible to charge multiple times for the same data in relation to one customer, depending on the various use cases and/or the number of users.

Most global banks have highly diversified business models where the market data is used for different purposes. A global bank could for example use the market data in the following ways:

- The equity trading business may use exchange data for their large group of traders to view display data in realtime;
- Algo trading engines would use the data to facilitate customer trading without needing human interaction;
- The bank could also be a registered Systematic Internaliser (SI) and use the exchange data to price securities – prices are then published on an open website to meet transparency requirements;
- The wealth management arm of the business could use the real-time data in a system they provide to all customers;
- The derivatives desk could use exchange data to make a new instrument and provides the data for this new instrument to the bank’s customers;
- The bank creates its own index family to meet customer needs, and that becomes a separate revenue generating business for the bank

These kind of examples are seen throughout the industry in varying degrees – it is clear that if this diversified business pays the same fee as, for example, a pension fund using the data only to value a portfolio, there would be a difference in value to each customer, and the smaller use case would subsidise the larger one.

As market data providers charge based on cost plus a reasonable margin, this guideline would create unfair models by potentially damaging small and medium-sized market data customers and benefit large investment banks, which have very broad and diversified activities. There is a concern that smaller investment firms would ultimately be asked to support the market data costs of major international investment banks. This is unfair and detrimental to EU firms as it will affect their competitiveness in the EU.

It is well established that a single price cannot be considered reasonable for all market data users due to the wide range in the value users derive from market data services. The current degree of differentiation is aligned with a well-functioning and efficient market and competition. In particular, value-based charging is both fair and efficient and leads to different charges across user groups and use types. This diversity and granularity is reflective of competitive commercial conditions. Competition law precedents also recognise that product differentiation is reflective of competition on the market (1) and that even dominant undertakings can apply different commercial conditions to their customers (and are even required to do so if there are different objective circumstances) (2). Fees charged by trading venues are publicly available and have not hindered competition considering the number of competing venues that have emerged using high-quality data provided by trading venues on a non-discriminatory basis.

(1) See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004, para. 45. (“It is also easier to coordinate on a price for a single, homogeneous product, than on hundreds of prices in a market with many differentiated products”). See also Communication of the Commission - Guidance on the Commission's enforcement priorities in applying Art. 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, OJ C 45 of 24.2.2009, para. 13 (“the Commission will interpret market shares in the light of the relevant market conditions, and in particular of the dynamics of the market and of the extent to which products are differentiated.”).

(2) See for example Judgment in AKZO Chemie v Commission, Case C-62/86, ECLI:EU:C:1991:286, paras. 119-120 (“It should next be pointed out that there was no abusive policy of discrimination between the individual mills in the Allied group and the 'large independents', as these two categories of customers are not comparable”). See also Judgment in United Brands v Commission, Case C-27/76, ECLI:EU:C:1978:22, para. 228 (“differences in transport costs, taxation, customs duties, the wages of the labour force, the conditions of marketing, the differences in the parity of currencies, the density of competition may eventually culminate in different retail selling price levels according to the Member States”) and Judgment in Clearstream v Commission, Case T-301/04, ECLI:EU:T:2009:317, paras. 172 and 179.<ESMA_QUESTION_GOMD_7>

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

<ESMA_QUESTION_GOMD_8>

We disagree with Guideline 5 because it extends non-discriminatory basis obligations to technical arrangements of the market data providers. Practices on latency and connectivity, for example, vary depending on the market data user due to the high variety of market data

needs. These practices do not give favorable treatment to some market data users but offer services according to the actual demand of a particular customer. Not allowing differentiation of technical arrangements within customer groups would be disproportionate and distort competition between market data providers. The needs of various clients in one customer group may be different and a one size fits all rule would be detrimental to some of the clients especially smaller firms. As long as all connectivity options are offered on a non-discriminatory basis then customers should be free to choose the option that best suits their needs.

<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>

Data from trading venues is already made available on a non-discriminatory basis as per Article 13 of MiFIR, Article 86 of Delegated Regulation (EU) No 2017/565, and Article 8 of Delegated Regulation (EU) No 2017/567. There is therefore no need for intervention on this front. On the contrary, we believe that action should be taken to ensure that SIs and OTC transaction data can be easily accessed. Today it is challenging for data consumers to access much of this data.<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>

Nasdaq believes that enforcing the idea of “Active User-ID” as being the only unit of count is not practical. This would be extremely burdensome for the industry and trading venues. Usernames would have to be cross checked across multiple platforms and providers, as they can often be generic and are shared between users – and even in the case when they are not generic, the likelihood of a single login name being consistent across multiple internal applications and third party products is very unlikely. A process of reconciliation on the part of the user firm would result in a hugely burdensome task. It would also be a very complex system and unfeasible to monitor both for us and the user firm. In addition, differences in unit of count derive from the diverging commercial practices of trading venues. Harmonising units of count would require significant convergence in terms of business practices.

The existing netting policies that have been in place since MiFID II have already given customers a choice to submit lists of users to trading venues and ensure that customers only pay once. This netting policy is available to all and across all asset classes.<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>

Whilst we agree that market data providers should ensure the conditions to be qualified as eligible for the per user model, as per our answer to question 10 we do not agree that the per-user model be implemented as the de-facto unit of count, and believe that customers should continue to have a choice. Where the customer chooses to use per user, then we agree that eligibility should be the ability to correctly identify active users and report those active users. They should also be able to show how that correct identification and reporting is done in the course of an audit.

<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>

We agree with the guideline.

<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>

No, we believe the obligations are sufficiently clear.

<ESMA_QUESTION_GOMD_13>

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

<ESMA_QUESTION_GOMD_14>

Nasdaq agrees that Market data providers should always inform customers that the purchase of market data is available separately from additional services and that market data providers should not condition the purchase of market data upon additional services.

<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>

Nasdaq complies with the obligation to keep data unbundled but wishes to indicate that MiFID II/MiFIR regulatory requirements on disaggregation have forced us and other trading venues to create many new data sets that have been priced on a cost-plus basis (i.e. cost plus a reasonable margin). The obligation to disaggregate products has created costs for us in order to produce them but also to ensure websites are updated, products are updated, and that

support is provided for these products. Despite insisting that there was demand for disaggregated products from sellside firms during the MIFID II negotiations, there have been no clients for these products. The regulatory requirements on disaggregation, as we voiced during the MIFID II negotiations, have only added costs and no benefit to the industry. It is also important to note that the disaggregation requirements resulted in an increase in the number of data products – a fact that the buy-side now holds against the exchanges, arguing that price lists and product offerings post-MIFID II are more complex. This shows the importance of careful cost benefit analysis which should be carried out by the Commission and ESMA before imposing such requirements.

<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>

Nasdaq agrees with Guideline 10 and the use of a standardized publication format to publish RCB information.<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>

Nasdaq agrees with the standardised publication template set out in Annex I of the Guidelines. However, for the reasons indicated under question 2, we consider that having to disclose allocation keys and explanations around the determination of margins are going too far and should not be required.

<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>

Although Nasdaq is in favor of the harmonisation of contractual terminology, we believe that some of the definitions proposed are not fully appropriate.

Concerning the unit of count, we believe that the proposed definitions are overly onerous and could impose charging for display market data only on a per user basis. We consider that a unit of count should be a unit for the quantification, reporting, calculation and/or billing of fees for the use of information as set out in the market data agreement. The current differences in unit of count are tightly linked to trading venues' commercial practices and full harmonization would require significant convergence in business practices.

The definition of professional should be clearer referring to objective elements such as enterprise size and financial holdings.

Derived data should be defined as any information or data, which is derived in whole or in part from the information and which cannot be readily reverse-engineered to recreate the information and /or cannot be used as a substitute or alternative source for the market data or is not substantially similar to the information.

<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>

Nasdaq considers that the following reference terms could be usefully standardized: relevant parties of market data contracts, the scope of the agreement, billing, reporting, definition of vendor, sub-vendor, subscriber, affiliate, redistribution, data feed, entitlement system, or device.

<ESMA_QUESTION_GOMD_19>

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

<ESMA_QUESTION_GOMD_20>

Nasdaq agrees with Guideline 12 except when it comes to publishing an exhaustive list of all the types of costs included in the fees of market data, explanations around the determination of margins and margin differences, and allocation keys for joint costs. These requirements go beyond the scope of the current transparency plus approach and could undermine competition among market data providers.

<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>

We consider that publishing examples and descriptions of the types of costs that are taken into account to set the price for market data, principles according to which direct and variable joint costs are allocated, and how fixed joint costs are apportioned, are already sufficient for the cost disclosure requirements.<ESMA_QUESTION_GOMD_21>

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

<ESMA_QUESTION_GOMD_22>

Nasdaq agrees with Guideline 13 on the need for market data providers to be explicit in the market data agreement with respect to the market data fees that can be applied retroactively, the terms and conditions of the auditing, and how customers are expected to demonstrate their compliance with the agreement.

<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>

Nasdaq considers that the requirement to make delayed data available for 24 hours is disproportionate and strongly suggests limiting the availability of data to the whole trading day as it is commonly accepted that 24-hour data constitutes historical data.

We also consider that to improve the quality of data and facilitate its aggregation, all trading, execution, and reporting venues should be required to adopt a harmonised set of reporting standards, such as the MMT model. MMT is an operational solution that effectively supports trade flagging requirements raised in RTS 1 and RTS 2 and which is fully protocol-agnostic.

<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>

N/A

<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>

Nasdaq disagrees with the definitions of data-distribution and value-added services provided in Guideline 16. Among those deriving profit from delayed data, only those imposing a general fee can be charged, this would not cover someone deriving commercial value out of publication of data through advertising or including the publication as part of a service offering charged for or recouped in other ways. This seems inconsistent because in both cases they are exploiting the data for commercial purposes. Use of delayed data in commercial services is widespread in the industry and firms not paying for the price formation and distribution of exchange data should not be allowed to benefit commercially where the exchange may not.

Financial services firms and other businesses aggregating data to create value-added services should indeed pay for the data included in the product they sell. Equally, those that aggregate several sources and make this data available to their customers, for instance SIs, should also pay for this data even if they do not directly charge for such services, as it is a part of their

broader client offering allowing them to compete against other similar service providers.
<ESMA_QUESTION_GOMD_25>

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

Please explain.

<ESMA_QUESTION_GOMD_26>

TYPE YOUR TEXT HERE

<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>

Moving to an entirely per-user unit of count would require significant administrative spend on the part of Nasdaq. We would require a team to do reconciliation of usernames and contacting those vendors that offer direct billing to ensure compliance. We would estimate an additional 3-person headcount to carry out this task for our Nordic markets, and a further 1 for our other European markets.

<ESMA_QUESTION_GOMD_27>