

General information about respondent

Name of the company / organisation	Cboe Europe
Activity	Trading Venue and APA.
Are you representing an association?	<input type="checkbox"/>
Country/Region	Europe

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_GOMD_1>

Cboe Europe is a pan European operator of stock exchanges and OTC reporting services, with licenses to operate regulated markets, MTFs and APAs in the UK and the Netherlands. Cboe is also the sole shareholder of EuroCCP, the Netherlands-based, pan-European clearing house. Cboe is the largest OTC reporting service for Equities in Europe, is consistently one of the largest venues for trading European equities and equity like instruments, and has been at the forefront of the many positive developments in European equity markets since MiFID was implemented in 2007. These have included dramatic reductions in trading and reporting fees, the development of a competitive interoperable clearing model and innovative trading services. Cboe is also a large consumer of European equity market data from all of the EU's major equity exchanges and uses the data for market control and reference price purposes.

Cboe Europe on Market Data

Cboe Europe is well-known for its commitment to innovation and competition and its customer-first approach. We are equally committed to providing transparency around our market data practices and seek to ensure our market data policy, pricing schedule, and licensing arrangements remain clear, fair and reasonable.

Reasonable Commercial Basis Guidelines

We believe the reasonable commercial basis (RCB) standard can operate more effectively than at present but is vastly preferable to more aggressive regulatory intervention, which would risk stifling innovation and damaging competition. Thus, we generally support further guidance to ensure market data is provided on a RCB, especially in relation to transparency requirements as we believe transparency is key to ensuring consumers of data have the information necessary to make an informed decision about the data they consume and the market data providers with whom they contract. Discussed more fully in our responses, however, we are concerned by several aspects of the Guidelines that go beyond additional transparency and would lead to inequitable and undesirable outcomes.

In our view, in addition to operating an enhanced RCB standard it's equally important for authorities to promote venue competition both in the provision of market data and more generally, by developing a consolidated tape, and removing any actual or perceived

regulatory barriers to utilising competing data providers. At the end of the day, promoting customer choice through transparency and non-discriminatory access should be the goals.

We also must not fail to recognise that many end users receive data from market data vendors sitting between end users and the creators of market data. Market data vendors are an integral part of the market data and trading ecosystem, and too often exchanges and the creators of market data are the sole focus of the market data debate. It is increasingly evident that market data vendors sitting between end users and the creators of market data account for a significant portion of market data costs of end users. Therefore, prior to considering any additional regulatory intervention applicable to exchanges we believe it is critically important for ESMA to consider the market dynamics of the entire ecosystem.

<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>

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<ESMA_QUESTION_GOMD_1>

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

<ESMA_QUESTION_GOMD_2>

We are generally supportive of further transparency in this area as we believe transparency is key to ensuring consumers of data have the information necessary to make an informed decision about the data they consume and the market data providers with whom they contract. It is this transparency - combined with competition - that allows data consumers to explore alternative data providers that may offer better customer service, better-suited mix of products, better value, and/or lower price points.

We strongly believe that in addition to an enhanced RCB standard that rightfully includes transparency (and a reasonable margin whereby value can be considered) authorities should also focus on promoting venue competition, a consolidated tape, and lowering regulatory barriers to utilising competing data providers. On the latter point, to the extent there are real or perceived requirements to access data from a particular provider we believe the removal of those requirements would promote transparency and competition and alleviate concerns that there is a lack of competition for trading data. Thus, we encourage authorities to identify relevant obligations and either remove them or provide clear guidance that alternative data sources may be utilised to satisfy the particular regulatory obligation. For example, Cboe Europe has one of the largest lit trading books for equities in Europe; yet, we are prohibited from using our own lit book data for purposes of the reference price waiver. This dynamic arbitrarily increases the demand for primary exchange market data and could be easily rectified.

<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>

See response to Q2.

<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>

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<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>

We agree that data providers should only impose penalties where customers have not complied with the terms of a market data agreement and support the elimination of interest on recovered amounts. Additionally, while we understand that it is theoretically possible that market data providers could inflate their costs by artificially increasing their auditing budgets, we believe it would be preferable for market data providers to simply disclose their auditing practices through the proposed transparency regime, rather than requiring them to exclude auditing costs from the “cost to produce and disseminate.” Mandating which of a market data provider's costs can or cannot be considered market data costs is not an area that should be addressed in guidance. We compete on price, product, and customer service. Ultimately, customers should have the information necessary for them to make an informed choice.

<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>

TYPE YOUR TEXT HERE

<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>

If Guideline 4 was limited to requiring market data policies to clarify how fees are applied when a customer potentially belongs to more than one customer category, we would be supportive of the guideline in so far as it would further promote transparency. However, Guideline 4 also provides that market data providers should apply relevant fees in a way that ensures the same data is charged only once by applying one customer category only - even when a customer belongs to multiple customer categories because the customer makes different simultaneous uses of the data. A very literal view of this guideline implies that a customer using data for Non-Display purposes and separately for Display purposes, for example, could only be charged once for a particular category. It also implies that market

data vendors would have to create separate categories, which allow for multiple uses. Not only would this not be an equitable outcome, but such a standard is inconsistent with Article 8 of (EU) 2017/567, which specifically provides that market data providers can create different categories and can apply differential pricing based on the different categories "proportionate to the value which the market data represents to those customers". Display and Non-Display, for example, have different uses and value. If a customer wants to use the same data for multiple uses, thus qualifying under different customer categories, it is perfectly reasonable for the customer to be charged for multiple uses. More importantly, it's consistent with (EU) 2017/567. If Guideline 4 is adopted as proposed and is intended to prevent market data providers from charging for multiple uses (e.g., distribution and non-display) broader customer categories may need to be created to ensure customers only pay once per category (e.g., tier 1 license encompassing a certain number of uses, tier 2 license with other uses, and potentially still other tiers for numerous combinations of other uses) or a multitude of categories will need to be created to address all of the possible permutations of customer type, usage, etc. Either outcome would greatly increase complexity but also would likely force customers into customer categories that include data uses they don't require, which would likely increase their market data costs. In this manner Guideline 4 will potentially harm smaller data consumers with business models tailored to particular uses. Thus, Cboe recommends the last sentence of Guideline 4 be struck to enable Guideline 4 to serve as an additional transparency obligation.

<ESMA_QUESTION_GOMD_7>

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

<ESMA_QUESTION_GOMD_8>

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<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>

As we've previously noted, we strongly believe that in addition to an enhanced RCB standard authorities also should focus on, among other things, promoting venue competition in the provision of market data. In this regard a number of incumbent trading venues have adopted practices that we believe are inconsistent with the obligation to provide market data on a non-discriminatory basis. Notably, a competing primary exchange implemented a non-display category for the "operation of an MTF" and priced the offering at a significant premium to other non-display uses. This has prevented competing venues such as Cboe Europe from consuming primary trading data for Eastern European symbols, resulting in minimal participation in these securities by our trading members and therefore reducing venue competition. We have also witnessed the implementation of similar discriminatory fees that see primary exchanges assessing fees against their trading members that seek to trade on other venues. This deters participants from trading on alternative venues and thus directly impacts venue competition and data competition.

In addition, some primary exchanges require trading members of competing venues to have a direct license with the primary exchange in order for the trading member to utilise the competing venue's mid-point pegging functionality where the competing venue is already paying a license fee to use those prices. We believe this is another restrictive practice that harms venue competition and data competition.

<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>

ESMA's proposed Guideline 6 provides that market data providers should for display data use as a unit of count the "Active User-ID". Cboe does not agree with the application of "Active User-ID" as a proxy for "per user" under Article 9 of Delegated Regulation (EU) No 2017/567 insofar as "Active User-ID" is intended to capture actual usage vs. entitlement to receive data. We believe the longstanding, widely understood subscription method whereby per user fees apply based on the number of licensed end users with rights to receive data is consistent with Art. 9. Moreover, the intent of Art. 9 (EU) No 2017/567 is to ensure market data is widely available on a per user basis. It's clear that current practices successfully enable market data providers to implement fees on a per user basis. We are concerned that mandating the Active User-ID model would actually lead to less access to market data on a per user basis and would also increase the need for more cumbersome audits to determine active users.

<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>

See response to Q10.

<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>

TYPE YOUR TEXT HERE

<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>

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<ESMA_QUESTION_GOMD_13>

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

<ESMA_QUESTION_GOMD_14>

Cboe Europe supports Guideline 9 as it supports market data transparency and enables market data consumers to make informed choices.

<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>

TYPE YOUR TEXT HERE

<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>

We welcome additional transparency related to market data pricing as we believe transparency generally helps customers make an informed choice about the services and data providers they utilise. Ensuring information is provided in a standardised and accessible format helps promote investor choice; thus, we're supportive of a standardised publication format for RCB information.

To that end, the amendments could go further, with the RCB information compared against some externally verifiable factor such as market share. We would, again, welcome customers having this information in order for them to make an informed decision about the value they receive from their service providers. This would also serve to highlight the onerous market data contracts many market data providers require.

<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>

We welcome additional transparency related to market data pricing as we believe transparency generally helps customers make an informed choice about the services and data providers they utilise. Thus, we're supportive of the common "template" that exchanges would use to publish RCB information as it will allow customers to more easily compare the market data practices of competing exchanges.

Importantly, standardised publication formats should in no way impede a market data provider's ability to innovate or implement competitive practices.

<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>

We encourage ESMA to also consider adopting standardised definitions, including on the broad use categories, to ensure a common understanding of the services and products for which market data providers are charging. This would support the application of RCB provisions by allowing comparisons of prices to be made more easily across various venues. The FISD has a typology that has been developed by industry and is used by Cboe Europe amongst others. Using Level 3 to clarify that use of such an industry standard is an implicit requirement to meet RCB may be a positive step forward. However, any standardised definitions must not be too prescriptive as this risks stifling innovation and competition.

<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>

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<ESMA_QUESTION_GOMD_19>

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

<ESMA_QUESTION_GOMD_20>

We strongly believe in addition to an enhanced RCB standard that rightfully includes transparency (and a reasonable margin whereby value can be considered) authorities should also focus on promoting venue competition, a consolidated tape, and lowering regulatory barriers.

<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>

The amendments could go further by requiring market data providers to disclose additionally externally verifiable factors, such as market share. Cboe Europe has data to compare its cost of data to its market share. On this basis, several venues stand out as charging well above this level for their data, and we would, again, welcome customers having this information in order for them to make an informed decision about their service providers.

<ESMA_QUESTION_GOMD_21>

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

<ESMA_QUESTION_GOMD_22>

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<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>

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<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>

As a data user we have not identified a meaningful use case for delayed pre-traded data. Furthermore, as a data provider we have received no requests for delayed pre trade data.

<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>

ESMA's proposed Guideline 16 would prohibit market data providers from charging redistributors of delayed data unless the redistributor directly charges end users a fee for that delayed data, effectively drawing the line at whether a redistributor receives direct economic

benefits vs. indirect economic benefits. While we are supportive of providing 15-minute delayed data at no cost, it is entirely inequitable to allow redistributors of delayed data to then extract value from that data by redistributing to their downstream customers at no cost to the redistributor. Whether a redistributor offers delayed data on a website for "free" or offers value-added services for "free", there is at the very least an indirect economic benefit accruing to that redistributor—not to mention the direct benefit in the case of advertising. It is perfectly reasonable for market data providers to recoup a portion of that benefit from a redistributor. Ultimately, end users can access delayed data directly from Cboe for their internal use. Otherwise, fairness dictates that if a redistributor creates a business model to redistribute delayed data via its own channels and thus benefits economically from that delayed data - directly or indirectly - then market data providers should also be allowed to recoup a portion of that economic benefit from that redistributor.

In addition, ESMA proposes to define Delayed Data as market data “made available 15 minutes after publication” and to define Historical Data as “this part of Delayed Data which is made available later than the end of the following business day after publication.” We are concerned that these proposed definitions appear to suggest that Historical Data is a subset of Delayed Data. In actuality Historical Data and Delayed Data are entirely different products with different uses and obligations attached to them. For instance, there is an obligation to provide Delayed Data free of charge after 15 minutes, and there is no such requirement to provide Historical Data free of charge (nor a justification for doing so). We believe the definition of Historical Data should be refined to make clear that Historical Data is not a subset of Delayed Data.