EFAMA

European Fund and Asset Management Association

EFAMA RESPONSE TO THE IOSCO CONSULTATION ON MARKET DATA IN SECONDARY EQUITY MARKET

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Rue Marie-Thérèse 11 | B-1000 Bruxelles
T +32 2 513 39 69 | info@efama.org | www.efama.org
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KEY MESSAGES

- EFAMA supports the initiatives launched by IOSCO and other regulators (e.g. ESMA, FCA, SEC) to analyse and address the significant issues concerning market data in the secondary equity market.

- From the investment managers' perspective, the scope of the Consultation Report is too restrictive, as it does not fully consider the issues related to data provided by data vendors (e.g. Bloomberg, ICE, Refinitiv, etc.). In practice, market participants are confronted with significant issues in their relations with data vendors, due to the ongoing inflation and lack of transparency on fees, limitations of liability in case of wrong data, difficulties in making internal use of market data provided by market participants; etc.

- Market participants face challenges concerning the excessively high market data fees and unfair licensing provisions from some market data providers. The prices and consistently above-inflation fee increases are difficult to justify as they do not reflect the true cost of supplying these data.

- In order to provide data on a reasonable commercial basis, market data fees should have some relation to the cost of production of the data. The existence of monopolies at the data source level is not an issue per se, but the abuse of a dominant position by those monopolies is a problem. The existence of monopolies combined with the mandatory use of market data to satisfy regulatory requirements (Best Execution, rating and regulatory reporting) mean that market participants virtually have no leverage in negotiating fees and other contractual terms with regulated trading venues.

- EFAMA supports the use of Consolidated Tape on a voluntary basis, to the extent that it is properly constructed and governed. As a matter of fact, an ill-designed Consolidate Tape could actually worsen the market data problems considerably. If the Consolidated Tape Providers' (CTP) governance and operations requirements are not calibrated adequately, data users would use inadequate CTP data and therefore may be forced to continue to use the other market data sources as well. Consolidated Tape is not a solution to the fundamental issues with the cost of market data. This issue must be addressed regardless of whether a Consolidated Tape exists or not.

- For these reasons, we would suggest IOSCO to develop guidance with respect to market data licensing practices and terminology used by exchanges for basic market data products. More specifically, IOSCO should recognise that exchanges hold disproportionate market power on market data generated from orders and trades conducted on their venues.

DETAILED VIEWS

Defining Core Market Data

1. **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.

EFAMA welcomes the opportunity to provide its feedback and expertise on the crucial aspect of market data in the secondary equity market.

Financial market data can broadly be defined as encompassing the reference /static data and flow data to perform the necessary functions in front office (e.g. research, trading), middle office (e.g. compliance, reporting), back-office (e.g. clearing, settlement, valuation, NAV calculation), Risk Management and Corporate Actions functions in asset management. In this context, we deem important to highlight that from our perspective, the scope of this Consultation Report might be too restrictive, as it does not fully consider the issues related to Data provided by Data Vendors (e.g. Bloomberg, ICE, Refinitiv etc.) which aggregate and consolidate multiple data feeds into a manageable single feed and which are one of the main market data cost component for asset managers. Such aspect creates significant issues for market participants in practice, due to fees (e.g.: ongoing inflation on fees; lack of transparency on fees) and non-fees (terms of contracts, such as limitations of liability in case of wrong data; difficulties in making internal use of provided market data by market participants; etc.). In this context, we strongly suggest consulting the paper "Global Memo: Market Data Costs" published by EFAMA, ICSA and MFA[1] to highlight continuing increases in market data costs and their negative effects on capital markets. The paper recommends that governments, regulators, central banks, and standard setters establish core principles to address the problem.

We argue for changes to applicable supervisory laws that are needed to:

- Close gaps between existing legislations;
- Achieve a coherent regulation of financial market data cost in MiFID, Benchmarks (BMR) and Credit Ratings (CRA) regulations; and
- Impose cost and cost transparency rules across the different data providers.

Secondly, regarding data provided by Exchanges and trading platforms in equity market, our main concern is related to the Consolidated Tape for Post and Pre-trade. More specifically, EFAMA is supportive of a voluntary use based consolidated tape to the extent that it is properly constructed and governed. EFAMA would expect that the first step to CTP implementation is controlling the cost and access to market data. In this respect, we support the principle of sharing the cost of tape among sell-

[1]https://www.efama.org/Publications/20%2006%20Joint%20associations%20Global%20Memo%20on%20Market%20Data%20Costs.pdf#search=market%20data%20cost

side, buy-side and vendors.

However, EFAMA cautions that it could actually worsen the market data problems considerably if the Consolidated Tape Providers' governance and operations requirements are not calibrated adequately, as data consumers would use inadequate CTP data and therefore may be forced to continue to use the other market data sources as well. In addition, European authorities should keep in mind that a Consolidated Tape (CT) as such would not solve the market data's market failure – as is obvious when looking at the current problems in the US. For Europe, we would then suggest starting with setting a Consolidated Tape for Equity Post-Trade data, and only if satisfactory to extend it later on to Equity Pre-Trade data (and ultimately to the rest of financial instruments).

Thirdly, it is worth noting that the state of play and general organization on Equity market data is different from one region to another (e.g. in Europe and in the US). Therefore, these regional existing differences have to be kept in mind when finding a common solution.

However, ultimately, we advocate for a common solution at worldwide level, as we represent global asset managers which indifferently invest on behalf of the investors all over the world. Hence, convergence through IOSCO would be highly appreciated.

EFAMA members make use of Market Data as institutional investors, acting exclusively on behalf of retail and professional clients.

From our perspective, the most critical elements to make informed trading decisions are:

- To be able to benefit from order routing which ensures quick execution (e.g. electronic trading, algo trading, protocols);
- Even more importantly, to ensure access to all pools of Liquidity which would allow to overcome the today fragmented market;
- To get the most appropriate Post-Trade Data information;
- To make the most satisfactory Transaction Cost Analysis (TCA).

At the same time, we understand that in the US, speed remains a big challenge due to various fees and services offered by exchanges and trading platforms to market participants (including asset managers), as it seems that depending on the level of fees paid to exchanges or trading platforms, the speed at which market participants may get access to the most recent data information is not the same for all (to our knowledge, the US SEC started investigating this issue some years ago and recently adopted the New Market Data Infrastructure Rules[2] that aims at providing conditions for delivery of consolidated market data with sufficient content and speed to be substantially more usable for market participants to trade competitively and provide best execution). In this context we would like to reiterate that a level playing field for all market participants would be beneficial.

[2] https://www.sec.gov/news/press-release/2020-311

2. **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.

From our perspective, the need for standards, both for ensuring a Consolidated Tape (starting by the Post-Trade data) as well as for TCA, should be prioritised. In this context, a Pre-Trade Consolidated Tape is less urgent, as for instance in the EU we already have access to information on the top five trading venues.

3. **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.).**

We generally agree with IOSCO assessment that the two main components of Core Market Data are Pre-Trade and Post-Trade data. Pre- and Post-Trade data have the following elements:

- **Pre-trade data**: Data leading up to a trade, which consists of bids and asks for different financial instruments, including the identification of the traded security (ISIN, etc.). This is often divided into “level 1”, which contains the top of the order book, i.e. best bid/ask, and “level 2”, including Level 1 and the top 5 or 10 levels of the order book. The full order book is contained in what is often called "TotalView", i.e. all bids and asks.

- **Post-trade data:** A trade creates post-trade market data covering, for example, the identification of the traded security (ISIN, etc.), the price, the volume, and the time of the trade, i.e. the timestamp.

EFAMA considers both real time and delayed Pre- and Post-Trade data to be Core Market Data. These data are indispensable for both trading purposes (including routing) as well as documenting best execution/fiduciary obligation, to fulfil order protection rules etc.

In our view Core Market Data are a critical aspect for compliance due to the fact that it might create divergent views on how to verify best execution. For instance, the change of order routing may affect best execution.

An area of possible improvements relates to the provision of Summary Data by brokers, which facilitates the assessment of Data by the buy-side/Investors. Asset managers, are essentially acting as Long-Term investors on Equity Markets. For that we reason, they do not necessarily require micro-second by micro-second information, but more a summarized view of data to be provided by brokers.

We would also like to highlight that Audits on exchange contracts have become time consuming and our members had to put extensive measures in place to ensure compliance and avoid any audits. Audit by trading venues is perceived by our members as a third revenue generation source besides pricing and license policies. Increasingly exchanges like other data suppliers resort to a form of precontractual audit by requiring potential users of their data to describe in detail the intended use case and often general business model as a precondition to a contract.

Use of Market Data

4. **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**

As mentioned earlier, financial market data are necessary for asset managers to perform front office (e.g. research, trading), middle office (e.g. compliance, reporting), and back-office (e.g. clearing, settlement, valuation, NAV calculation) functions, as well as for risk management and Corporate Actions purposes.

For asset managers the use of market data includes, but is not limited, to asset allocation and transition management as well as portfolio construction, on-going monitoring and portfolio rebalancing. The market data needed consists in a combination of real-time and delayed data. For performance measurement and evaluation purposes, the use of data includes, but is not limited, to market data for calculation of the rate of return, index/benchmark creating and pricing, macro performance and pricing, macro performance attribution for both equities and fixed income.

Despite the importance of Compliance, Risk-Management and Back office functions, we believe that the most urgent regulatory priority should be on improving the access by Trading Desks, on a daily basis, to find the most appropriate Liquidity Pools and to improve the TCA.

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

Market participants face challenges concerning the excessively high market data fees and unfair licensing provisions from some market data providers. The prices and consistently above-inflation fee increases are difficult to justify as they do not reflect the true cost of supplying that data. In a practical sense, this adds costs to our members' businesses both directly via the fee increases themselves, as well as indirectly in the form of increasingly complex monitoring of market data. Trading data fees are increased aggressively by the monopolistic exchanges and market data (distributor) vendors because they are aware that there is no other source for the data, and market participants are required to consume the data to comply with their own best execution and reporting requirements.

For these reasons, we believe that global core principles should be adopted and implemented. As such we would suggest IOSCO to develop guidance with respect to market data licensing practices and terminology used by exchanges for basic market data products. More specifically, IOSCO should recognise that exchanges hold disproportionate market power on market data generated from orders and trades conducted on their venues. As such, market data costs (the market data pricing, licensing practices, definitions, audit procedures and connectivity fees) must be subject to regulatory oversight. Rigorous supervision of the entire market data business (as well as contiguous markets and products where the search for revenue could shift once there is increased scrutiny of market data sales) is crucial in order to maximize the economic benefits of financial market places.Authorities should consider developing a cost benchmark for producing and distributing market data, such as recommended in the Copenhagen Economics reports from 2013, 2014, 2018 and 2019 and the IEX report (January 2019).

The Core principles should entail:

1) The price of market data and connectivity must be based on the efficient costs of producing and distributing the market data (as opposed to the value market participants derive from market data) with a reasonable mark-up. The cost should be measured against a recognized cost benchmark.

    a) Regulators should require trading venues to submit detailed cost and revenue data in order to understand the amount of mark-up exchanges impose.

    b) As market data should be based on cost with a reasonable mark-up, exchanges should simplify contract terms and eliminate “non-display” categories. Instead, exchanges should consider simply differentiating between professional and non-professional users.

2) Trading venues of a single market system should standardize key market data contract definitions, terms and interpretations. Contract definitions, terms and policies should be specific and avoid overly broad or general terms.

3) Market data licensing contracts should avoid “derived data” terms, which are lopsided and unfair and standardized agreements should be subject to regulatory review.

4) Market data licensing contracts should be simplified to ease administration and so that audits are not necessary.

As a further alternative, we encourage IOSCO to also engage with the relevant Competition Authorities to tackle the monopolistic market behaviour of the exchanges. Exchanges increase constantly worldwide their dominant positions in their respective market segments, which facilitate by ever-increasing prices (Price Policy) and incremental licensing (Data Policy) requests. As exchanges are by nature monopolies in the provision of their own market data, we believe that to provide data on a reasonable commercial basis, market data fees should have some relation to the cost of production of the data. The existence of monopolies at the data source level is not an issue but the abuse of a dominant position by those monopolies is a problem.

The existence of monopolies combined with the regulatory mandates (Best Execution, rating and regulatory reporting) mean that market participants have little or no leverage in negotiations with Regulated markets (and in fact trading venues argue they are not able to negotiate bilaterally with market participants).

IOSCO engagement would allow that Competition Authorities are fully aware of the disproportionate market power of exchanges on market data and reinforce the need for action. IOSCO and National Competent Authorities have a deep understanding of markets and data while Competition Authorities have expertise and responsibilities and certain powers in this area.

Access to Market Data

Fair, Equitable and Timely Access

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

EFAMA notes that the concept of "*fair, equitable and timely access*" has already been considered and addressed by IOSCO in previous papers and workstreams, as well as in many regions and jurisdictions.

However, a few points need further attention. As mentioned previously, a good number of Regulated Markets have consistently increased the number of licenses (Data Policy) as well as the unit price (Price Policy), creating a leverage effect that dramatically impacts the investment manager population, despite the implementation of the Reasonable Cost Basis (RCB) regulatory requirement for market data in MiFID II in the EU.

Given that data costs are not directly proportionate to the size of the assets under management, smaller firms in particular face a high barrier to entry and might in practice be prevented from accessing certain markets or implementing certain strategies. This is true for both investment management firms as well as small brokers, and such issues have already been reported in the press. The impact is that the very steep data access cost for any financial institution intending to execute means that fewer firms find it cost-effective to trade in certain ways or execute orders themselves. Therefore, regarding "fair access", one of the underlying objective should be to ensure that smaller are not penalized vis-à-vis larger players and the buy-side/asset managers are not penalized vis-à-vis the sell-side/brokers.

Regarding "timely access", best selection is critical for asset managers to get access to the most appropriate liquidity pools.

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

As mentioned previously, fees imposed by trading venues can lead to the exclusion of smaller market participants. Therefore, such market participants search for less costly platforms or ways of trading, such as Periodic Auctions, as compared to official Exchanges which are more expensive.

8. **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**

EFAMA considers as a top priority the asset managers interaction with different venues and platforms and to be able to compare offers. Such interaction is fundamental as it allows to get access to the best liquidity pools, and therefore to take the best informed decisions.

9. **What issues or concerns arise in the context of fair, equitable and timely access to market data?**

As previously stated, one of the major concerns of our industry is related to the pricing of access to and use of market data. More specifically, data sources and Market Data Distributors (MDD) have reacted to the growth in data usage by developing since 2006 elaborate *Price and Data Policies* focusing on different scenarios of data usage in applications. This has subsequently allowed them to refine their licensing model and cover each step in the trade life cycle of portfolio managers. Data sources usually claim that they do not sell their data but that they grant a limited right to rent and use their Intellectual Property Rights (IPR) protected data for a specific purpose. Therefore, data providers have consistently increased the number of licenses (Data Policy) as well as the unit price (Price Policy), dramatically impacting in this way the overall cost for the investment manager population.

Moreover, EFAMA's members stress the need for getting appropriate closing prices. As closing prices are frequently required to set valuations of assets, in particular equities, this topic is crucial. For this reason we think that regulations should take into consideration and suggest more appropriate solutions to ensure fair prices for valuation. In practice, on equity markets, our industry depends on the monopolies of exchanges to take their closing prices, which will be used as standard official prices. To solve that issue, in order to improve the fairness of official market data to set standard official prices, we suggest to combine the different values encountered on the diversity of trading values and platforms on the given equity.

Interchangeability

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

Market Data is unique per trading venue. It is not possible to use data from trading venue A to trade on trading venue B as there is no interchangeability between venues, there is no competition in market data and the incumbent exchanges hold a dominant market position. As the market data from each exchange is indispensable for the data users, the exchange groups can set the prices and conditions for using the market data as they see fit.

As already mentioned in our answer to Q9, on closing prices there should be a combination of prices traded on the various venues on a given equity, instead of depending only on one closing price given on the official Exchange.

More widely, the lack of interchangeability of market data is currently more a challenge in Europe as compared to the US. In addition, we may wonder if Brexit will increase further this lack of interchangeability of market data in Europe.

Fees Associated with Market Data

11. **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?**

While we understand the potential benefit of a level playing field in case data fees would be regulated, we should make a difference between data vendors and brokers. For data vendors, which are in an oligopolistic (or even sometimes monopolistic) situations, regulating market data fees would make sense (at least ensuring fee transparency, terms of contract transparency, etc.). In the case of data vendors, their market data fees are permanently going up which we do not see any justification for such permanent inflation – and knowing that in addition technology costs are going down. But regarding brokers, what is critical is to ensure competition among them and therefore, broker fees should not be regulated as such.

In this case, an increased supervision and IOSCO's guidance with respect to market data licensing practices and terminology used by exchanges for basic market data products, would be useful.

Connected Services

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

We notice that it might be interesting to explore a holistic view concerning the regulation of trading venues and other data providers in order to ensure that there are new ways to identify revenue streams.

From another perspective, we should also mention the growing issue of co-location of servers by Exchanges with some participants (such as some hedge funds for instance). Paying the sharing of Exchange servers ensures a quicker access by some hedge funds to exchanges' data. In order to ensure a level playing field among all market participants in the timing for getting access to exchange data, this situation should be tackled and solved.

13. **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.**

See above our answer to Question 12.

Data Consolidation

14. **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?**

As mentioned previously, EFAMA is supportive of a voluntary use based consolidated tape to the extent that it is properly constructed and governed. However, EFAMA cautions that it could actually worsen the market data problems considerably if the Consolidated Tape Providers' (CTP) governance and operations requirements are not calibrated adequately, as data consumers would use inadequate CTP data and therefore may be forced to continue to use the other market data sources as well. Consolidated Tape is not a solution to the fundamental issues regarding the cost of market data. This issue must be addressed regardless of whether a Consolidated Tape exists.

In any case, for equity markets, if a Consolidated Tape had to be launched, it should start with Post-Trade data (which are the most critical in our view), and only if working satisfactorily, the Consolidated Tape might afterwards be extended to Pre-Trade data.

Where equities are traded on multiple trading venues, as already mentioned above, we need for:

- A Consolidated Tape, starting with Post-Trade, to facilitate access to information when facing fragmented pools of liquidity;
- A standard TCA.

In this respect, we support the initiative started by the EU Commission to create an effective and comprehensive Post-Trade consolidated tape for equity and equity-like financial instruments.[3] The EU Commission concludes that a consolidated tape will provide consolidated data on prices and volume of traded securities in the EU, thereby improving overall price transparency across trading venues.

To ensure that, the consolidated tape should have a strong governance framework that ensures collaboration from all stakeholders (ESMA and market participants - buy/sell-sides). Such governance body should ensure that data provision fees are reasonable and duly justified, ensure that data licenses are simple, and should not replicate current practices that create additional cost and complexity for market participants.

[3]https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:590:FIN, Action 14.

15. 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?

A Consolidated Tape, starting with Post-Trade data, is critical. But, it will not be a substitute for proprietary data, as firms cannot use a CT for trading purposes since the data is unique per venue. A CT will not solve the problems with high and increasing market data costs and it might also not be fit for solving best execution/fiduciary requirements either.

As mentioned before, the IOSCO consultation document does not tackle the issue of Data Vendors, while they play an important role regarding cost and access to market data. Market participants (both sell-side and buy-side) depend heavily on oligopolies of data vendors, which set their fee- and non-fee-conditions to market participants. It generates permanent inflation in market data costs, along with limitations of responsibility of some data vendors regarding the reliability of market data they provide, as well as internal use of market data by market participants. On the fee side, we would need more transparency on the fees they charge, as well as on their limitations of responsibility and use of data by market participants. Otherwise, we will collectively continue bearing a permanent market data cost increase while still needing regularly to check the accuracy of the data they provide and that we pay for.

Conclusion

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

Increasing market data costs have forced many data users (e.g. fund management companies) principally to scale back their data purchase to a minimum, and sometimes economically sub-optimal, level, deselecting certain types of securities or markets – especially smaller companies and smaller, foreign markets. Both in the EU and globally, this results in reduced transparency, decreased levels of cross-border competition, lower market integration, less informed markets, higher costs for investors and potential higher cost of capital. In short, the high market data costs distort the development of efficient capital markets, which harms companies and investors and ultimately the real economy. We therefore strongly encourage IOSCO to tackle the dominate market position of Exchange Groups in cooperation with other securities regulators and the Competition Authorities.

Data sources usually claim that they do not sell their data but that they grant a limited right to rent and use their Intellectual Property Rights (IPR) protected data for a specific purpose. Data sources are acutely aware of the difference between the IPR held by the data sources and the added Distribution Rights that they want to incrementally claim. An issue commonly reported by portfolio managers is that Regulated Market are capitalizing on their Intellectual Property Rights (IPR) on the data created on their execution platforms (Trading Engine) to create and force new licenses on existing data usage upon the Buy Side users & clients.

About EFAMA

EFAMA, the voice of the European investment management industry, represents 28 Member Associations, 57 Corporate Members and 23 Associate Members. At end Q3 2020, total net assets of European investment funds reached EUR 17.6 trillion. These assets were managed by more than 34,200 UCITS (Undertakings for Collective Investments in Transferable Securities) and almost 29,400 AIFs (Alternative Investment Funds). At the end of Q2 2020, assets managed by European asset managers as investment funds and discretionary mandates amounted to an estimated EUR 24.9 trillion.

More information is available at www.efama.org.

Contact

Elona Morina
Regulatory Policy Advisor
Elona.morina@efama.org | +32 2 548 26 ..