

MEMO# 32082

December 6, 2019

ESMA Report on the Development of Prices for Market Data and a Consolidated Tape for Equity

[32082]

December 6, 2019 TO: Equity Markets Advisory Committee
ICI Global EU Capital Markets Union Task Force
ICI Global Exchange Traded Funds Committee
ICI Global Regulated Funds Committee
ICI Global Trading & Markets Committee RE: ESMA Report on the Development of Prices for Market Data and a Consolidated Tape for Equity

On 5 December 2019, the European Securities and Markets Authority (ESMA) published its first review report[\[1\]](#) (“Report”) on the development of prices for market data and on the consolidated tape (CT) for equity. The Report follows ESMA’s earlier consultation[\[2\]](#) to which ICI Global responded.[\[3\]](#)

Overview

ESMA’s review found that, to date, the MiFID II package has not delivered on its objective to reduce the cost of market data charged by trading venues (TVs) and Approved Publication Arrangements (APAs). As a result, ESMA recommends the following:

- The establishment of an EU wide real-time CT for equity instruments; and
- Legislative and supervisory changes to the basis on which market data is priced and the transparency of fee structures.

Consolidated Tape

ESMA believes that the limitation on commercial rewards for potential CT providers (CTP) is the main reason why a market-led equity CT has not been developed so far. ESMA recommends the establishment of a real-time CT with the following key factors:

- A high level of data quality, in particular, for OTC data (Section 4.5.2, Report);
- The mandatory contribution of data by trading venues and APAs to the CT (Section 4.5.3, Report) and mandatory consumption (Section 4.5.4, Report);
- The CTP sharing revenues with contributing entities (Section 4.5.8, Report); and
- A strong governance framework (Section 4.5.9, Report).

ESMA recommends, in principle, that the CTP should cover all equity and equity-like instruments and all reporting entities (Section 4.5.2.2, Report) but recognises the difficulties in achieving such coverage and therefore subject to conditions (to be determined) the CTP may not have to achieve full coverage. ESMA recommends a tender model for the appointment of a CTP and an appointment period of between 5-7 years.

Throughout its review, ESMA has considered the legal framework concerning the establishment of a CT, including the provision of market data on a reasonable commercial basis (RCB) under MIFID II/MiFIR.^[4] ESMA has previously considered three options for implementing the RCB provisions:

- a transparency plus approach;
- a revenue share limitation; or
- applying a long-run incremental cost-plus methodology (LRIC+).

Based on the views provided by stakeholders in response to the consultation, ESMA believes that a transparency plus approach should be adopted. To support this ESMA intends to work on supervisory guidance and recommend targeted legislative changes, as outlined below.

ESMA plans to develop guidance in 2020 to improve the usability and comparability of the market data including:

- the development of a standardised publication format to be used by all trading venues, APAs and SIs for disclosing RCB information;
- standardisation of key terminology used;
- guidance on key concepts (e.g. per user fees); and
- guidance on the typology of costs to be included in the fee calculation.

In the Report, ESMA also recommends the following targeted changes to MiFID II^[5]/MiFIR^[6], including two delegated regulations:

- add a mandate to MiFID/MiFIR empowering ESMA to develop draft Technical Standards specifying the content, format and terminology of pre-trade and post-trade data required to be made available on an RCB;^[7]
- move the provision to provide market data on the basis of cost from the MiFID^[8]/MiFIR^[9] delegated regulations to Level 1 text and supplement the general principle with further Level 2 measures;
- add a requirement in the Level 1 text for trading venues, APAs, SIs and CTPs to share information on the costs and margins of producing and disseminating market data;
- remove the ability of trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the market data represents to users and in doing so reinforce that market data should be priced-based on the costs for producing and disseminating the information.

Next Steps

ESMA has submitted its Report to the European Commission to feed into the report on the development in prices for pre- and post-trade transparency data and on the CT for equity instruments, which is due to be presented by the European Commission to the European Parliament and Council.

ESMA intends to begin working on supervisory guidance on the application of the provision to provide market data on an RCB.

endnotes

[1] MiFID/MiFIR Review Report No. 1 – On the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments, 5 December 2019, *available from* https://www.esma.europa.eu/sites/default/files/library/mifid_ii_mifir_review_report_no_1_on_prices_for_market_data_and_the_equity_ct.pdf

[2] See ICI Memorandum No. 31857, RE: ESMA Consultation on the Development of Market Data Prices and an EU Consolidated Tape, dated 17 July 2019, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo31857>

[3] See ICI Memorandum No. 31938, RE: ESMA CP on the Development of Market Data Prices and an EU Consolidated Tape, dated 5 September 2019, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo31938>

[4] Articles 64 and 65 of MiFID II require APAs and CTPs to publish post-trade market data on an RCB. A similar requirement for trading venues, but applying to both post- and pre-trade data, is provided in Article 13 of MiFIR. Moreover, SIs are required to make public their quotes on an RCB, following the provisions in Articles 15 and 18 of MiFIR

[5] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, *available from* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>

[6] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, *available from* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0600>

[7] Article 13, MiFIR

[8] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms, *available from* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0565>

[9] Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, *available from* https://eur-lex.europa.eu/eli/reg_del/2017/567/oj

Source URL: <https://icinew-stage.ici.org/memo-32082>

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.