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How to ensure that Market Data is available at a genuine cost-based approach thereby complying with the new MiFIDIII/MiFIR2

The supporting Associations below¹ are deeply engaged in ensuring that access to market data is provided according to the new MiFIDIII/MiFIR2, recital 12 and article 13. These new requirements mean that pricing of market data must be based on the actual cost of production and dissemination with a reasonable margin, bearing in mind that market data is a by-product of the trading activity. Furthermore, no value-based pricing is allowed.

However, we are deeply concerned that the present proposal from ESMA² on new level 2 measures risk not being in line with the level 1 mandate and thereby not achieving these objectives for the following reasons:

1. The proposal takes a joint cost perspective
2. Price categorisations allow value-based pricing to continue to exist
3. The cost calculation allows for charging beyond that which can be related to the production and dissemination of the market data and allows for undefined additional costs to be included
4. The standardised definitions or harmonised template for market data policies are inadequate
5. The proposals for increased transparency are limited

The present proposal will, if not changed significantly in line with the associations proposals, imply that the trend of considerably increasing costs of market data and complexity of terms & conditions will continue to exist to the detriment of the key-stakeholders in the capital markets meaning **investors and pension savers** will face less investment choices, less transparency, higher costs, lower savings, and **companies** may face reduced access to capital and higher cost of capital..

Additionally, we would like to stress that the use of market data is not only essential to obtain an overview of trading opportunities and trading activity. Market data is indispensable for the functioning of an investment firm's operation (both buy- and sell-side) and to comply with regulatory requirements³. It is used for trading, clearing, settlement, research, investment strategy, trade control, best execution, reporting, accounting, risk management etc.

We encourage ESMA to include the following features in the final RTS⁴:

- a) A precise and exhaustive overview of which costs that may be included by market data providers in their cost allocation based on a clearly stated by-product approach.
- b) Margins should be defined as operating profit
- c) Standardise the requirements of the implementation of per user approach.
- d) Prepare an exhaustive list of definitions and a template covering the allowed content of market data policies.

¹The Association for Financial Markets in Europe ([AFME](#)), The European Fund and Asset Management Association ([EFAMA](#)), the European Forum of Securities Associations ([EFSA](#)) and the Nordic Securities Association ([NSA](#)) .

² [ESMA74-2134169708-7241_CP_Package_on_the_MiFIR_Review_-_RTS_2_RCB_and_Reference_Data.pdf \(europa.eu\)](#)

³ Besides MiFIDIII/MiFIR2, regulatory requirements such as the use of market data to ensure the integrity of the financial markets through its regulatory obligations to monitor, detect, and identify market abuse as outlined in MAR, to support market risk models, e.g. as a consequence of the Fundamental Review of Trading Book ("FRTB") as implemented in CRR etc.

⁴ Please see the various associations responses to the CP 1 consultation [here](#)

- e) Additional requirements for more detailed transparency on both pricelists, costs, margins and revenue. This will also facilitate ESMA's monitoring of the development in the market data costs as also required in article 13 MiFIR.
- f) Ensure that the rules are consistently monitored and enforced by the NCAs

Ensuring that the level 2 measures properly reflect level 1 legal requirements as suggested above is of outmost importance to embrace EU's urgent objectives to achieve growth and competitiveness in the capital markets.

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