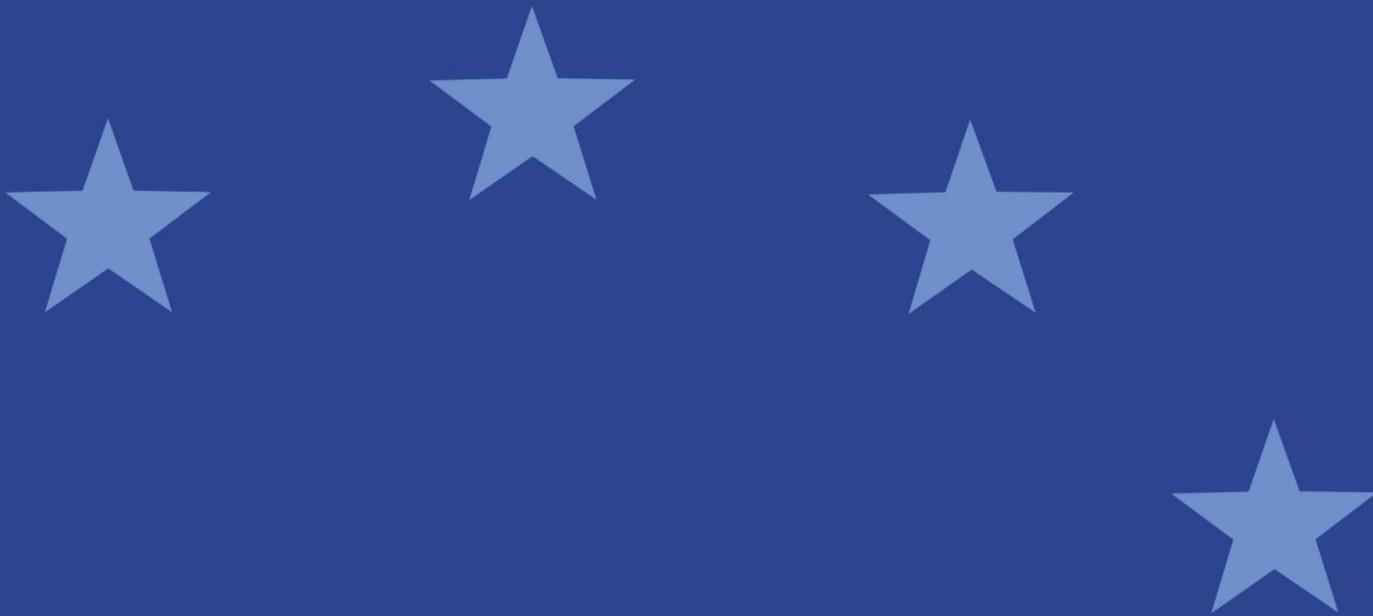




European Securities and  
Markets Authority

## **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](http://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](http://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](http://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	Finance Denmark
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Denmark

## Introduction

*Please make your introductory comments below, if any*

<ESMA\_COMMENT\_GOMD\_1>

Finance Denmark<sup>1</sup> welcomes the opportunity to respond to the ESMA consultation regarding Guidelines on the MiFIDII/MiFIR obligations on market data with a deadline on 11 January 2021.

### General comments

Firstly, Finance Denmark welcomes this initiative as further guidance is needed to ensure compliance with the existing regulatory requirements as also documented by ESMA in the Final Report no. 1<sup>2</sup>. In this context, Finance Denmark strongly agrees with the conclusions in the Final Review Report no. 1 where it is stated that there is an overall need to strengthen MiFIDII/MiFIR in connection with the MiFIDII/MiFIR Review and i.e. change the guidelines into binding law and strengthen the level 1 and level 2 measures in general to ensure a cost-based approach. Finance Denmark has provided proposals for changes in our response to the European Commission consultation on the MiFIDII/MiFIR Review, where the concrete text proposal can be found in the appendix<sup>3</sup>. Furthermore, Finance Denmark would also stress that we strongly encourage a change in the power of supervision with the trading venues from the NCAs to ESMA in order to ensure consistency in supervision and enforcement, thereby ensuring a level playing field for the trading venues.

That said, we find the guidelines a step in the right direction. However, we also see a need for more concrete guidelines as we fear that the guidelines are too broadly written at present,

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<sup>1</sup> Finance Denmark is a business association for banks, mortgage institutions, asset management, securities trading and investment funds in Denmark. EU Transparency Register – registration number 20705158207-35.

<sup>2</sup>

[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](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)

<sup>3</sup> <https://finansdanmark.dk/media/40706/finance-denmark-response-to-european-commission-consultation-on-mifidiimifir-review.pdf> and <https://finansdanmark.dk/media/40705/proposals-to-questions-in-the-ec-consultation-finance-denmark-position-paper.pdf>

which leaves too much room for interpretation. This will limit the outcome due to the risk of inappropriate interpretation. We have included some concrete proposals to mitigate such risks. In addition to these proposals, we strongly recommend a review of the guidelines overall at the latest two years after application followed by an ESMA feed-back statement including possible changes to the guidelines to ensure compliance.

The most significant shortcoming is the lack of a firm cost benchmark which should be established as the official point of reference (the fact-list) for costs that may be included in the cost-based approach according to the Delegated Regulation 2017/567, art. 7 and Delegated Regulation 2017/565, art. 85. Without firm specifications, trading venues will include as much as possible in their cost assessment to be able to charge as high prices as possible. Furthermore, without a firm cost benchmark it is not possible/very complicated to compare venues and it is not possible/very complicated for NCAs to ensure proper enforcement and for ESMA to ensure a level playing field in the enforcement of the rules. Finance Denmark refers to 1) the IEX report<sup>4</sup>, which contains the needed information on relevant costs and to 2) the Copenhagen Economics guideline on the creating of a cost benchmark<sup>5</sup>, which outlines how a cost benchmark can be created with the use of the IEX data as an example and within the present regulatory framework.

Secondly, in case ESMA does not want to move forward with a cost benchmark, we find it crucial that ESMA develops further guidance on how costs will be assessed, which costs may be included, what is a reasonable mark-up and what is best practice. For the cost assessment, an exhaustive list of permitted costs could be included as an annex. In this context, we strongly urge a follow-up of the compliance of the guideline after one year to ensure it fulfills its purpose. As the guideline in any circumstances should be revisited after two years at the latest, the findings from the compliance exercise can be used in this process. The follow-up should be supplemented with a “best practice” statement after the review of the various trading venues’ cost data. Such “best practice” should serve as the basis for assuring a level playing field as the power of supervision and enforcement with the trading venues at present rests with the NCAs and not ESMA.

Thirdly, we call for a guideline on pricelists as it should be a requirement to publish pricelists for at least the past five years (and preferably longer) as well as pricelists based on multiyear comparisons. Such requirements should be included in guideline 10. Furthermore, the pricelists should be simplified in accordance with the proposed guideline 11 and our comments, cf. below. Any changes in products must be thoroughly explained in the pricelists.

Fourthly, we urge ESMA to include specification of elements to be avoided such as a new tendency from trading venues to require data use declaration (DUD) or statements of use (SOU) requirements as a precontractual condition to obtain a market data feed. Such requirements are justified as being “a help for customers” to obtain the “right licenses” but are merely another feature from especially the incumbent Exchanges to obtain additional revenue streams from market data.

<ESMA\_COMMENT\_GOMD\_1>

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<sup>4</sup> <https://iextrading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf>

<sup>5</sup> [https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/4/504/1592575721/copenhagen-economics\\_a-guideline-to-a-cost-benchmark-of-market-data.pdf](https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/4/504/1592575721/copenhagen-economics_a-guideline-to-a-cost-benchmark-of-market-data.pdf)



## 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>

Finance Denmark supports such coverage and we encourage to include all kinds of data providers, including vendors in scope for this regulation even as this would require a change of level 1.

That said, it remains unclear why ESMA maintains the stance that 15 minutes delayed data which should be free of charge can be subject to distribution licenses and user count. Finance Denmark is of the firm opinion that such interpretation is in contradiction with the legal requirements in MiFIR, art. 13, MiFIDII, art. 64 and art. 65. Finance Denmark strongly encourages ESMA to revisit its permission to allow distribution licenses as well a user count. Finance Denmark also strongly encourages to ensure that data free of charge is not subject to a time constraint, such as 24 hours. There is no legal room including such data into end-of-day and/or historical data licensing.

<ESMA\_QUESTION\_GOMD\_1>

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

<ESMA\_QUESTION\_GOMD\_2>

First of all, Finance Denmark welcomes and supports ESMA's draft guideline on the provision of market data based on costs and in particular ESMA's reference to IEX's "The Cost of Exchange Service (2019)" as an appropriate benchmark for such an exercise.

As for the content of the guideline 1, Finance Denmark welcomes the elaboration of present requirements of provision of market data based on costs as stipulated in Delegated Regulation 2017/567, art. 7 and Delegated Regulation 2017/565, art. 85.

That said, Finance Denmark strongly disagrees with the existing provision which allows the trading venues to include "an appropriate share of joint costs" when determining the market data prices as market data is a by-product of the trading activities – not a joint product. As orders in financial instruments are supplied by the market participants via bids and asks and executed in the market, the market data (pre- and post-trade data) is automatically produced. This implies that the marginal costs of producing market data are close to zero and the incremental cost of production is related to collecting the information and distributing this to customers<sup>6</sup>. These limited costs are also clearly demonstrated in the IEX report. The provision to include joint costs should therefore be removed in connection with the MiFIDII/MiFIR Review.

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<sup>6</sup> <https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/6/466/1543587169/pricing-of-market-data.pdf>,  
<https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/0/200/0/Regulating%20access%20to%20and%20pricing%20of%20equity%20market%20data%20-%20Revised%20version%2012%20September%202013.pdf>,  
<https://iextrading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf>

Furthermore, Finance Denmark strongly urges - to enable trading venues to comply with the regulatory requirements and facilitate consistent, uniform supervision and a level playing field among the covered entities – that a cost benchmark is developed which may serve as the standard of reference. If no standard of reference is available, it becomes unnecessarily complicated to compare, comply with and enforce the regulatory requirements.

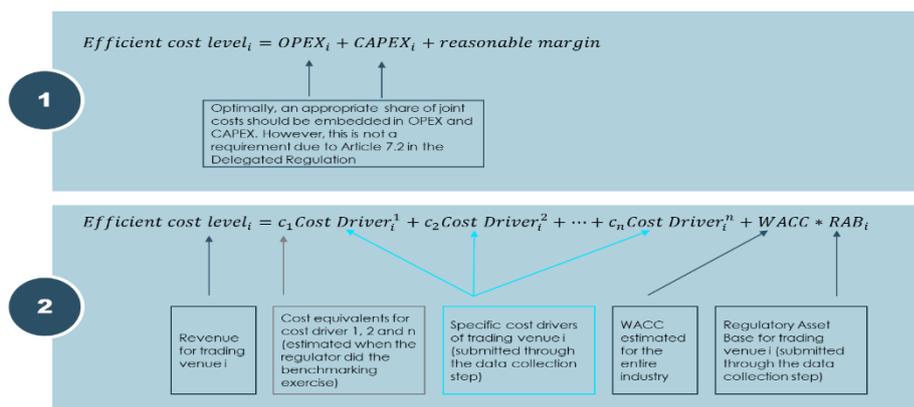
As previously mentioned, Copenhagen Economics has developed the framework and methodology for such benchmark which includes the IEX measures.<sup>7</sup> This guideline can serve as the basis for the creation of a cost benchmark. Finance Denmark is ready to help with this work. Please also see our general comments.

<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>

Yes. It is crucial to ensure uniform and consistent compliance, there is a need to specify which costs that may be included in the calculation of the market data fee, cf. the figure:



These cost drivers are defined and elaborated in chapter 2 of the Copenhagen Economics guideline, cf. footnote 3, taking the IEX report<sup>8</sup> into account. The cost benchmark is based on the existing regulatory framework in EU (MiFIDII/MiFIR).

Furthermore, as the enforcement of the existing regulatory requirements has been lacking, Finance Denmark is of the firm opinion that there should be minimum requirements to the documentation the NCAs shall collect and review. These requirements should follow the content of the IEX report including documentation for these figures for justification purposes.

The NCAs should further be obliged to publicly make formal statements about what they have reviewed and concluded in respect of compliance with the rules.

<sup>7</sup> [https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/4/504/1592575721/copenhagen-economics\\_a-guideline-to-a-cost-benchmark-of-market-data.pdf](https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/4/504/1592575721/copenhagen-economics_a-guideline-to-a-cost-benchmark-of-market-data.pdf)

<sup>8</sup> <https://iextrading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf>

<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>

Yes, absolutely. The burden of proof must lie with the Exchanges – like it will with any accuser wanting to raise a claim against another party.

As for further comments to the Guideline 2, Finance Denmark suggests that the guideline also includes the following as ESMA writes in the guideline: “Overly onerous practices that result in the generation of additional revenues on the basis of non-compliance or the inability by the customer to prove compliance with the terms and conditions of the license should be excluded”. Our proposal are concrete measures to facilitate this important goal:

- A) A limitation of the audit period (called Audit Term). This should not be longer than one (1) year. This will encourage the Exchanges to make clear and understandable terms and will ensure that these terms are correctly understood by the investment firms. At present, investment firms face a limit on how far back in time the investment firms are entitled to be compensated for overpaid market data fees (usually 60-90 days from the time of the audit/today), whereas trading venues can go back several years if the investment firms underreported (up to ten (10) years).
- B) Prior to the commencement of any audit it shall be the obligation of the trading venue to facilitate to the auditee any and all applicable versions of contracts, terms and policy for the audit term.
- C) The audited party shall have the “Right to Postpone” twice for three months after having received the trading venue’s proposal of an audit start date to enable the investment firm to focus its resources entirely on the burdensome audit process.
- D) The audited party shall have a “Right of First Refusal” to the audit process in whole or in part as proposed by the trading venue, if the audited party in a reasonable manner can identify elements to the audit or concerning the audit that are conflicted or need a separate resolution prior to the commencement of an audit.
- E) Any “Conflict of Interest” with the auditor shall be disclosed to the audited party. Including, but not limited to employment status and/or compensations based on audit claim size.

Furthermore, the Exchanges hold the responsibility to ensure ongoing dialogue with their clients (investment firms) regarding the understanding of the Exchanges’ market data policies and pricelists to avoid the situations where Exchanges may be able to detect errors in the market data usages. The Exchanges must be able to verify this dialogue and document this on request.

<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>

Yes, absolutely. One of the largest problems is linked to the final definition of Market Data Contractual terms which is set by the auditor in the audit process. In this context, the investment firm is already put under pressure from the potential of a back bill and therefore more likely to accept a re-interpretation.

Please also beware, that some Exchanges are not willing to give any interpretation of their policies outside an audit. Others are not responding to this kind of requests.

<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>

With the present regulatory framework in mind, Finance Denmark supports that market data providers should describe in their market data policy the categories of customers and how the use of data is taken into consideration to set up the categories of customers.

That said, Finance Denmark strongly disagrees with the regulatory framework allowing trading venues to differentiate between clients as this contradicts with the requirements to base market data prices on costs (and not demand as demand is inelastic).

Please also beware that with reference to guideline 10 and our comments to this, there should only be two categories of clients; professional and non-professional as lack of standardisation complicates conditions for market data usage unnecessarily and increases costs. The definition of the categories should be consistent across the Exchanges.

Finance Denmark also refers to our previously submitted input both to the ESMA consultation<sup>9</sup> and to the European Commission consultation on the MiFIDII/MiFIR Review (see footnote 3).

<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>

With the present regulatory framework in mind, Finance Denmark supports that market data providers should clarify in their market data policy how fees are applied when a customer potentially belongs to more than one customer category because the customer makes different simultaneous uses of the data. In such a case, market data providers should apply the relevant

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<sup>9</sup> [https://finansdanmark.dk/media/40034/response\\_to\\_esma\\_consultation\\_on\\_the\\_development\\_in\\_prices\\_for\\_pre-\\_and\\_post-trade\\_data\\_and\\_on\\_the\\_consolidated\\_tape\\_for\\_equity\\_instruments\\_final\\_0-finance-denmark.pdf](https://finansdanmark.dk/media/40034/response_to_esma_consultation_on_the_development_in_prices_for_pre-_and_post-trade_data_and_on_the_consolidated_tape_for_equity_instruments_final_0-finance-denmark.pdf)

fees in a way that ensures the provision of same data is charged only once by applying one customer category only.

That said, Finance Denmark strongly disagrees with the regulatory framework allowing trading venues to differentiate between clients as this contradicts with the requirements to base market data prices on costs (and not demand). Please also see our comments to question 6 and to the guideline 10 (question 16 and 17).

The classification of data usage based on business use-cases (for example Risk, MtM, Fund valuation, trading), strongly contradicts the requirement to base market data prices on costs (Section 4, no. 22). Secondly, the division of business use-cases/activities is not defined in a consistent way across vendors. This further constitutes to the low transparency regarding how market data license prices are determined.

The fact that data consumers have multiple use-cases for the same data point does not correspond to an increase in costs for the market data provider and hence, should not constitute a higher cost for the consumer.

<ESMA\_QUESTION\_GOMD\_7>

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

<ESMA\_QUESTION\_GOMD\_8>

Finance Denmark agrees: When different customers fall within the same category and thus the same terms and conditions apply, the market data providers should also offer the same technical arrangements. Market data providers should ensure that practices in terms of such technical arrangements, including latency and connectivity, are non-discriminatory.

That said, Finance Denmark strongly disagrees with the regulatory framework allowing trading venues to differentiate between clients as this contradicts with the requirements to base market data prices on costs (and not demand). Please also see our comments to question 6 and to the guideline 10 (question 16 and 17).

<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>

Yes. Finance Denmark strongly disagrees with the regulatory framework allowing trading venues to differentiate between clients as this contradicts with the requirements to base market data prices on costs (and not demand). This possibility to differentiate between clients should be removed in connection with the MiFIDII/MiFIR Review.

Please also see our comments to question 6 and to the guideline 10 (question 16 and 17).

<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>

Please beware that per user model is only relevant for access to real time data.

Finance Denmark does not agree with the definition of “Active User-ID”, which is stated in point 55. Active User-ID should be understood as users who actually use the data and not all users who may have access to data. Such proper definition would ensure a reasonable and fair baseline for the cost-based approach.

Furthermore, this approach would support the unfolding of the European Commission Digital Agenda with the use of Application Programming Interfaces (APIs).

Finance Denmark supports that market data providers should (for display data) use as a unit of count the “Active User-ID” that enables customers to pay according to the number of active users accessing the data, rather than per device or data product. The per user model should enable customers to avoid multiple billing in the case that market data has been sourced through multiple data products or subscriptions.

<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>

Finance Denmark supports that market data providers should ensure the conditions to be qualified as eligible for the per user model which only requires what is necessary to make the per user model feasible. In particular, eligibility conditions should mean i) the customer is able to identify correctly the number of active users who have access to the data within the organisation and ii) the customer reports to the market data provider the exact number of active users.

That said, the approach is very broad and should be concretized and should include the active user definition as suggested in our response to Q10. Furthermore, there should be a requirement of one standardised approach which is recognized and used by all marked data providers to ease the administrative burden considerably. In this context it should be considered to allow for one application valid for all market data providers as the present application procedure is 1) extremely heavy and time consuming and 2) different from market data provider to market data provider. By allowing for a one-step-approach, an unnecessary complex due diligence process could be avoided. At present many firms which potentially could benefit from a per user model would refrain from even trying due to the unattractive initial burden.

<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>

Finance Denmark cannot see any reasons for not offering per user model and it should be a requirement to offer the per user model.

However, if trading venues can say no, Finance Denmark supports that when market data providers do not offer the per user model to customers, and when they disclose the reasons why the adoption of the model is disproportionate to the cost of making the data available, market data providers should indicate the specific features of their business model which makes the adoption of the per user model disproportionate and why these make the adoption of the model unfeasible. The factors could include justification of excessive administrative costs.

That said, it is crucial that the reasoning behind a refusal to offer per user model is adequately documented to the relevant Competent Authority (which preferably should be ESMA to ensure a level playing field).

Please also see our response to Q13.

<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>

Yes. ESMA should define requirement/factors which ensure consistency when vendors disregard the per user model. If not, we risk ending up in a situation where each market data provider comes up with their own definition/reason why their business model does not need to adopt the per user model.

<ESMA\_QUESTION\_GOMD\_13>

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

<ESMA\_QUESTION\_GOMD\_14>

Finance Denmark supports that market data providers should always inform customers that the purchase of market data is available separately from additional services. 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>

Finance Denmark draws the attention towards the discussion on unbundling versus license fragmentation: Fragmentation of licenses for the use of market data occurs when an area of usage of market data, which was covered by one license in one year, requires two or multiple licenses in the following year. Alternatively, when a new license is introduced to an area of usage of market data, which previously did not require a license at all. In both cases, the license fragmentation allows the market data providers to raise the total costs of using market data for the investment firms, without necessarily raising any existing license fee, by either splitting an existing license fee into two or multiple license fees, or by introducing new license fees altogether.

Market data providers may argue that their practice of splitting existing licenses or introducing new licenses is unbundling rather than fragmentation. Specifically, they may argue that they are making their system of licenses more use-case specific, i.e. aimed specifically at the needs of particular investment firms, which should result in cheaper licenses for those specific use-cases. But the market data providers are, in fact, fragmenting licenses by ensuring that each use-case requires multiple new licenses. Hence, there is rarely, if ever, any intention from the market data providers to provide cheaper use-case specific licenses through unbundling. Rather, the intention was to increase revenue through fragmenting. In addition to that, some Exchanges do not provide different delivery mechanisms per use case. The market data consumer always pays the most expensive delivery mechanism despite the need for the relevant use case.

It is Finance Denmark's view that bundling of data should be avoided or at least optional and require explicit justification as it makes pricing and price development of the individual products opaque. Each product must always have a specific unbundled cost for the sake of transparency. In this context it is relevant for the authorities to ensure that the price of bundled data does not exceed the price of the sum of the unbundled data included in the bundled dataset. In short, measures should be made to ensure that unbundling does not lead to increased profit.

Finance Denmark also urges ESMA to clarify the definition of "unbundled". Does unbundling only concern for example data and some technical platform? Or does unbundling also concern different data types, i.e. bundling of USD and EUR swap data?

<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>

Finance Denmark supports the first part of the guideline. However, Finance Denmark does not support the part starting with: "When market data providers use other criteria (e.g. level) to distinguish the type of licenses (other than professional/non-professional) or data product

(other than display/non-display data), they should provide a definition of these criteria in the market data policy or price list.”

Finance Denmark urges simplification of the pricelists in accordance with the proposed guideline 11 and our comments, cf. below. Any changes in products must be thoroughly explained in the pricelists. Furthermore, we call for an extension of guideline 10 as it should be a requirement to publish pricelists for at least the past five years (and preferably longer) as well as pricelists based on multiyear comparisons.

Finance Denmark is of the firm opinion that standardisation is crucial to facilitate transparency and comparability so other criteria should not be allowed. Additional definitions may be allowed in the market data policies and pricelists (Guideline 11, not Guideline 10) if properly defined with an explanation of why these additional definitions are needed and for which purpose. Please also see our comments to guideline 11.

<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>

No. Finance Denmark calls for a strengthening of appendix 1 with a more throughout requirement of publication of pricelists from at least the past five years (and preferably longer) as well as pricelists based on multiyear comparisons including explanations for changes in products.

Furthermore, with a reference to our comments to guideline 12 below, we strongly oppose the vague requirements in the cost accounting methodology. Much more detailed requirements are necessary: When IEX can do it, all other trading venues can too. Actual costs must be disclosed as well as the level of margin included.

A detailed definition of what is included in the market data revenue is necessary. In order to verify effects of unbundling, the revenue should be split per fee type. This will not reveal sensitive information as there is little or no completion between the Exchanges (you cannot buy a license for Nasdaq data at the Deutsche Börse).

Similar on the cost side – each license fee must be justified by the incremental cost of offering such a license.

It is unclear if the proposed standards will enable the reader to calculate total profits from market data (revenue – cost), which must be a requirement.

In short, we urge ESMA to prepare a standardised definition of market data revenue to enable comparison.

<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>

Finance Denmark supports the proposed definitions in Guideline 11 with the comment that it would be operationally easier if the pro/non-pro definition matches the criteria “eligible counterparty”/”retail” definition of MiFIDII/MiFIR. Alternatively, to refine the definition of Professional Customer in order to avoid misunderstanding so that a private investment activity (where the user does not hold a license to act as a financial institution/investment firm) is not labelled as a professional investment activity by the Exchanges (which is the case today) to “Professional Customer should mean a customer who uses market data to carry out a regulated service or a regulated investment activity or a regulated service for third parties.”

Additionally, having a non-standard definition means that for each end-user, an investment firm needs to keep a category and furthermore explain this to the user.

Furthermore, it is important to be more specific to the definition of data and to include “Usage” (for example “Non-Display Usage” and not only “Non-Display”) for all definitions in order to make it workable towards the market data providers’ policies and price lists.

For Display Usage it is very important to add to the present proposal that Display Usage of data is applicable to both snapshot and streaming of market data as this is not clear from the present definition.

In relation to Non-Display Usage of data, it is important to add that it is only applicable to real time streaming data. Non-Display Fees can only be charged as an enterprise-wide license, and not on a per use case purpose.

Finance Denmark is also missing a definition of “Original Work”, which is unique data created in a way where it cannot be reverse engineered back to the trading venue market data used in the production process and does not materially replace the trading venue market data.

Finally, Finance Denmark does not support that market data providers may use Derived data as a license form as this content is already included in the Non-Display Usage. Derived data is a good example of fragmentation. It is not possible to derive a value without using an application. The application attracts a non-display license and most likely also a Display license as user needs to monitor the data flow. The Exchange does not incur additional costs from the fact that an output is produced from the usage.

<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>

Please see our input to Q18.

<ESMA\_QUESTION\_GOMD\_19>

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

<ESMA\_QUESTION\_GOMD\_20>

Finance Denmark does not agree with the requirement to publish verbal explanations only. When IEX can provide detailed explanation with actual figures as they have done in their report, other Exchanges can and must do this too.

Finance Denmark cannot support that market data providers are not required to disclose actual costs of producing and disseminating market data or the actual level of the margin to the public. We can understand that the Exchanges argue that the information is “sensitive”. We do not agree – there is nothing sensitive in publishing such information for non-competing, unique products such as market data. When IEX can do it, other Exchanges can too.

If this request for some reason is not considered, the information provided on costs and margin should enable users to understand how the price for market data was set and compare the methodologies of different market data providers.

Also, here a cost benchmark would be highly relevant and appropriated as a tool, where the Exchange could provide a relative overview of compliance with the requirements. A benchmark would also support a movement towards a reasonable cost basis: When an Exchange includes unreasonable costs, it would be revealed in the cost benchmark and be subject for scrutiny.

<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>

Yes. See input to Q1-3 including the Copenhagen Economics guideline to a cost benchmark.

<ESMA\_QUESTION\_GOMD\_21>

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

<ESMA\_QUESTION\_GOMD\_22>

Guideline 13: Market data providers should 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 (e.g. frequency) and how customers are expected to demonstrate their compliance with the market data agreement.

Finance Denmark partly agrees and refers to our response to Q4:

In respect of retroactivity, Finance Denmark suggests that

- a limitation of the audit period (called Audit Term). This should not be longer than one (1) year. This will encourage the Exchanges to make clear and understandable terms and will ensure that these terms are correctly understood by the investment firms. At present, investment firms face a limit on how far back in time the investment firms are entitled to be compensated for overpaid market data fees (usually 60-90 days from the time of the

audit/today), whereas trading venues can go back several years if the investment firms underreported (up to ten years). Being able to charge for activities that occurred years ago encourage unclear terms with room for interpretations, as the Exchange later can claim the fee. It also encourages the frequent changes to terms that we are currently seeing.

As for how customers are expected to demonstrate compliance, please see our response to Q4: The burden of proof must be lie on the Exchanges – like it will with any accuser wanting to raise a claim against another party. In this context, we also urge ESMA to include specification of elements to be avoided in the guidelines such as a new tendency from trading venues to require data use declaration (DUD) or statements of use (SOU) requirements as a precontractual condition to obtain a market data feed. Such requirements are justified as being a help for customers to obtain the “right licenses” but are merely another feature from in particular the incumbent Exchanges to obtain additional revenue streams from market data.

We support a simpler approach where long declarations are not needed as well as a move away from complex use case licenses. An investment firm should be licensed per active users and for streaming real time data to an application.

<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>

Finance Denmark supports the present requirement for pre- and post-trade data publication as specified in RTS 1 and RTS 2.

Delayed data should be provided in the same format as real-time data (only delayed 15 minutes).

<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>

Finance Denmark is of the opinion that pre- and post-trade compliance could be done on 15 minutes delayed data without much issue. The format in this case (if by individual feed or a consolidated tape) is of little concern.

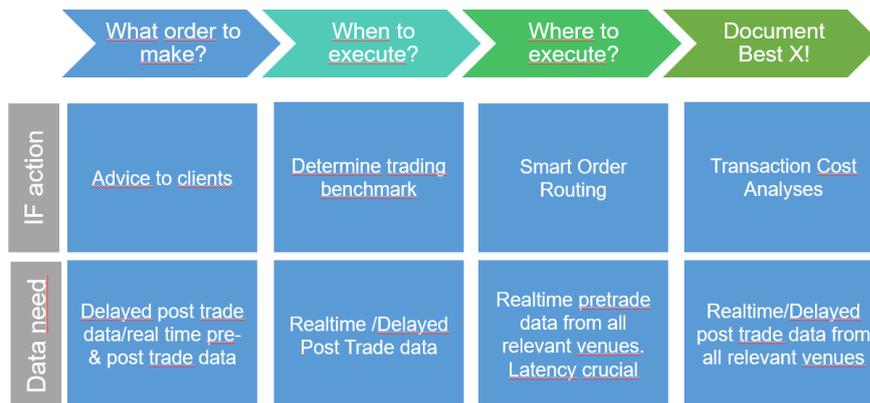
Finance Denmark also proposes

- Price info to clients (i.e. pricelists display)
- Advisory analytics
- Research
- Risk monitoring
- Reporting

- Client custody-account valuation calculations (client positions)
- Regulatory use-cases such as VAR/FRTB calculations, Counterparty risk calculation, Best ex and Market Abuse monitoring

Please also see the overview:

## MARKET DATA IN THE TRADING SITUATION 15



<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>

Finance Denmark does not support that ESMA maintains the stance that 15 minutes delayed data which should be free of charge - can be subject to distribution licenses and user count. Finance Denmark is of the firm opinion that such interpretation is in contradiction with the legal requirements in MiFIR, art. 13, MiFIDII, art. 64 and art. 65, where is it clearly stated that market data must be free of charge after 15 minutes. Finance Denmark strongly encourages ESMA to revisit its permission allowing distribution licenses as well a user count. In this context, we also strongly disagree with the proposal to only allow the “free of charge data” to be available for a limited period of time. There is no legal room for any licensing or registration, including additional end-of-day and historical data licensing.

<ESMA\_QUESTION\_GOMD\_25>

**Q26: Do you have any further comment or suggestion on the draft Guidelines? Please explain.**

<ESMA\_QUESTION\_GOMD\_26>

Finance Denmark refers to the comments in this response.

<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>

For the members of Finance Denmark, the guideline, including the additional comments from Finance Denmark, would imply a significant decrease in the amount of resources used for administration of the complex and opaque market data policies as well as a decrease in the direct market data costs.

Estimated 20-40 % of resources are spent on managing non-standard terms of Exchanges.

<ESMA\_QUESTION\_GOMD\_27>