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ESMA Consultation Paper: MiFID II/MiFIR review report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments – AIMA and MFA response

Dear Edwin,

The Alternative Investment Management Association¹ (“AIMA”) and Managed Funds Association² (“MFA”; collectively, the “Associations”) would like to take this opportunity to share with you our response to the European Securities and Markets Authority (“ESMA”) regarding its Consultation Paper³ “MiFID II/MiFIR review report on the development in prices for pre- and post-trade data and on the

¹ AIMA is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (“ACC”) to help firms focused in the private credit and direct lending space. The ACC currently represents over 100 members that manage \$350 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialized educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors).

² Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has cultivated a global membership and actively engages with regulators and policymakers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

³ ESMA70-156-1065. Online at: https://www.esma.europa.eu/sites/default/files/library/esma70-156-1065_cp_mifid_review_report_cost_of_market_data_and_consolidated_tape_equity.pdf.

consolidated tape for equity instruments” (“the CP”), given the Financial Conduct Authority’s (“FCA”) own planned work⁴ in this area.

In our response to ESMA, we make the following points:

Trading venues and other market data providers are exploiting market participants’ need for data

- Market data costs have increased since the application of MiFID II for both equities and non-equities markets.
- Trading venues have been able to increase proprietary and consolidated market data fees by changing the terms of licensing agreements, creating new categories of fees and redefining and recategorizing fees. The increased focus by venues on “non-display” applications of data is an unfair and conceptually flawed approach that stifles innovation, whilst overlooking the fact that market data is ultimately a by-product of participants’ trading activities.
- Trading venues have in some cases aggressively pursued audits of market data licensees, reviewing usage over several years and taking advantage of ambiguous licensing terms.
- Data disaggregation has not in the experience of our members resulted in lower costs for market data.

The MiFID II goal to improve access to accurate, timely market data has not been realized

- Many trading venues and APAs also continue to fail to fully comply with the requirement that data be published free of charge after 15 minutes, which should be a priority area of enforcement.
- The fact of increasing fees and complexity of data policies is itself clear evidence that venues are not complying with the spirit of the MiFID II framework.
- While improvements to the existing publication standards and guidance would be welcome, ESMA should explore seriously the possibility of going beyond the existing “transparency plus” model by limiting data charges by reference to costs (ESMA has already established a possible model for this approach in the long-run incremental cost-plus methodology (LRIC+)). This would ensure that trading venues and users are in a more equitable position when it comes to the attribution of costs and benefits associated with market data.

Policymakers should act to introduce a Consolidated Tape and bring down data costs

- A post-trade CT would deliver clear benefits to all market participants, whether institutional or retail, and is long overdue. We see establishment of a post-trade CT as a vital next step in delivering CMU, relevant to both equities and non-equities asset classes.

⁴ See <https://www.fca.org.uk/publication/business-plans/business-plan-2019-20.pdf>.

Regulators must do more to foster consistency in terminology and provide better reference data

- ESMA could play an important role in developing standardised market data definitions. These should ideally be agreed among members of IOSCO to ensure that there is not undue variation across jurisdictions when it comes to the terms employed in market data policies.

Better ESMA guidance is necessary in respect of data standards and we strongly encourage ESMA to prioritise its work to develop further the role it plays in this respect, focusing in particular on the scope and accuracy of FIRDS data.

If you would like to discuss any aspect of this submission further, please contact Adam Jacobs-Dean (ajacobs-dean@aima.org) and Jennifer Han (jhan@managedfunds.org).

Yours truly,

/s/ Adam Jacobs-Dean

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