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Dear Charlotte,

The Alternative Investment Management Association ("AIMA") and Managed Funds Association ("MFA") are writing to thank you for taking the time to speak with us regarding your on-going work on issues related to market data and to place on record our strong support for this initiative. This is a topic of broad interest to the investment management industry and this submission is co-signed by our colleagues at the Bundesverband Alternative Investments e.V. ("BAI"), BVI, the German Investment Funds Association, and the Investment Association, who share our concerns about the increased fees that exchanges and trading venues are charging for access to market data.

The members of our Associations are investment managers who invest on behalf of retail investors, pension plans, university endowments, charitable organizations, family offices and other institutional investors, among others. Our members engage in a broad range of investment strategies and receive market data from trading venues, investment firms and third-party data vendors in the course of their activities.

Market data has, over time, become more important to firms' activities. In part, this reflects the changing nature of the investment process. However, regulatory considerations are also an important driver for firms when it comes to the nature and scale of the data they consume. **Various regulatory requirements have essentially required firms to increase their consumption of data and ability to process that data**, including: requirements relating to monitoring of execution quality; regulatory reporting requirements; rules on inducements; asset valuation requirements; and data security, risk management and business continuity requirements (such as maintenance of redundant feeds and archives). This need for data is amplified by competition between venues and the fragmentation of trading activity across multiple venues, each with its own data products.

Despite implementation of MiFID2 and world-wide trends in declining costs of computing and data storage[1], **many trading venues have continued to increase market data fees year-after-year**. This reflects a marked and on-going shift in the revenue model of trading venues, with market data now constituting a significant and increasing share of their income. This in turn has had a major impact on firms of all sizes in the investment management industry. Given that data costs are not directly proportionate to the size of the assets that a firm manages, smaller firms in particular face a high barrier to entry and might in practice be prevented from accessing certain markets or implementing certain strategies as a result of data costs. This is true for both investment management firms and brokers, as fewer firms find it cost-effective to trade in certain ways or execute orders themselves because of the high cost of market data. As a result, due to the prohibitive costs associated with market data, investors rely on the execution algorithms and order execution services provided by a small number of brokers.

One way in which trading venues have been able to increase proprietary and consolidated market data fees is by changing the terms of licensing agreements, creating new categories of fees and redefining and recategorizing fees. **In the quest for greater market data revenue, exchanges have unbundled products and charged higher fees for the "new" products.** Currently, fees related to market data licensing may include: access fees, site fees, distribution fees, display fees, delayed data fees, non-display fees and fees for creating and storing derived data/work. In this context, almost any central application consuming real-time market data such as profit and loss calculation, risk management and portfolio valuation is likely to be captured as a non-display application and therefore attract higher fee levels. Further adding to the complexity, there is no standardization of how concepts are defined and interpreted by trading venues, nor of the procedures they adopt, which makes it harder for investors to compare the cost of different exchanges' proprietary market data products.

At the same time, trading venues have in some cases **aggressively pursued audits of market data licensees, reviewing usage over several years**. Anecdotally, we found that it is not uncommon for licensees to have incorrect understandings of the license agreements due to the divergence in licensing practices and vagueness in terms, and to be asked to pay fees retroactively along with monthly interest fees (at sometimes non-market rates) on retroactive payments. Based on a small sample of members, we estimate firms spend an average of 30 business days of employee time per audit in relation to addressing and responding to a market data licensing audit.

This situation has changed the commercial dynamic between trading venues as providers of data and investment managers as consumers of data, making it challenging for investment managers to budget effectively for data consumption. Our members are also commercially disadvantaged when trading venues engage in market squeeze tactics, reducing competition in the index space by charging high market data fees to index providers outside the exchange group. As noted earlier, smaller firms are particularly disadvantaged given that data costs make up a larger share of their operating costs.

In terms of the scale of the problem, we would highlight that it is wide-reaching: it encompasses a broad set of product classes, including equities and exchange-traded derivatives; it relates to venues operating in several different Member States; and it extends beyond regulated markets to Multilateral Trading Facilities ("MTFs"). In the case of futures markets, the challenges associated with market data are heightened by the concentration of liquidity at particular trading venues; while this is preferable

[1] See, for example, the US Consumer Price Index for Information Technology, Hardware and Services Chart, which shows a steady decline in costs over the last several years. Available online at https://ycharts.com/indicators/us_consumer_price_index_information_technology_hardware_and_services_unadjusted.

from the point of view of being able to achieve best execution, it compounds the degree of power that trading venues have in respect of market data pricing.

We are concerned that **the market data licensing practices of trading venues may not be in compliance with the MiFIR requirements regarding the provision of data on a reasonable commercial basis**.[2] Indeed, based on our members' experiences with the lack of transparency with respect to market data costs, the complexity of data licenses and lack of comparability in terms of trading venues' disclosures, we question whether venues are acting in compliance with the rules. We therefore welcome the fact that ESMA is looking at trading venues' practices when it comes to the provision of market data.[3]

In considering the potential role for the Level 3 process to address any identified shortcomings, we respectfully **encourage ESMA to coordinate formal supervisory review work** by the National Competent Authorities (NCAs) responsible for the supervision of the most significant trading venues in the EU. Where NCAs identify that trading venues' approaches are not compliant with MiFIR provisions, we would encourage them to consider robust enforcement action to encourage swift and meaningful change in behaviour.

We encourage ESMA to reconsider possible policy approaches to market data and whether **a more explicit approach of examining fees relative to revenue or costs** is now warranted. As trading venues 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 the production of the data. Many trading venues, including the London Stock Exchange, Borsa Italiana and Wiener Börse, charge market participants a separate "created works" or "derived data" license based on use of trading venue data to create (e.g., through mathematical or other manipulations or processes) new data.[4] Trading venues clearly do not have any production costs associated with a market participant's created works/derived data uses and, accordingly, we question whether such licenses meet the reasonable commercial basis provision of MiFIR.

ESMA could also examine the structure of market data pricing agreements to consider how rules could support **greater standardization in terms of definitions and other terminology** or practices employed in those agreements.

We would encourage ESMA to look broadly at **similar challenges that arise in respect of index licensing and use of credit ratings**, given that similar problems are evident in this space. Indeed, we welcome ESMA's recent report[5] on ratings data and the fact that ESMA is actively working to improve the transparency of activities of CRA-related data providers.[6]

[2] Article 13 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR). Available online at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&from=EN.

[3] ESMA Final Report Amendments to Commission Delegated Regulation (EU) 2017/587 (RTS 1), March 2018. Available online at https://www.esma.europa.eu/sites/default/files/library/esma70-156-354_final_report_rts_1_amendment.pdf.

[4] See London Stock Exchange letter to Customers regarding changes to its Market Data products and pricing: https://www.londonstockexchange.com/products-and-services/market-data/realtimedata/pricesandpolicies/lse-client-notification-jan-2019.pdf; and London Stock Exchange Terms and Conditions available at: https://www.londonstockexchange.com/products-and-services/market-data/realtimedata/pricesandpolicies/terms-and-conditions-2019.pdf.

[5] ESMA Thematic Report on fees charged by Credit Rating Agencies (CRAs) and Trade Repositories (TRs), 11 January 2018, p.17 para. 61 et seq. Available online at: https://www.esma.europa.eu/press-news/esma-news/esma-raises-concerns-fees-charged-cras-and-trade-repositories.

[6] Consultation Paper: Guidelines on the submission of periodic information to ESMA by Credit Rating Agencies – 2nd Edition, 19 July 2018 | ESMA 33-9-252, Q24. Available online at: https://www.esma.europa.eu/sites/default/files/library/esma33-9-252_revised_guidelines_on_periodic_reporting.pdf.

Finally, we also note that this problem is global in its nature and that AIMA and MFA have addressed similar concerns to the US Securities and Exchange Commission.[7] In light of this, we believe that **ESMA could helpfully work with US regulators through IOSCO** to develop guidance with respect to market data licensing practices and terminology used by exchanges for basic market data products.

The Associations will continue to work with our members to produce evidence and data in support of our arguments and look forward to engaging with ESMA as its important work in this area continues. If you wish to discuss any aspect of this submission, please contact Adam Jacobs-Dean (ajacobs-dean@aima.org), Managing Director, Global Head of Markets Regulation, AIMA, and Jennifer W. Han (jhan@managedfunds.org), Associate General Counsel, MFA.

Yours sincerely,

[signed]

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[7] See AIMA/MFA Petition for Rulemaking Regarding Market Data Fees and Request for Guidance on Market Data Licensing Practices; Investor Access to Market Data. Available online at: https://www.sec.gov/rules/petitions/2018/petn4-728.pdf.

About the Associations

The **Alternative Investment Management Association** ("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 programmes 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 specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors).

Bundesverband Alternative Investments e.V. (BAI) is the central advocacy association for the alternative investment industry sector in Germany. The BAI serves as a catalyst between institutional and professional German investors and recognized providers of alternative investment products worldwide. Particularly, one goal is to make it easier for institutional and professional German investors to more effectively diversify their financial assets into Alternative Investments, especially as many of those investors are responsible for safeguarding long-term retirement pensions. Another core task of the organization is to improve public awareness and enhance the understanding of asset classes and strategies in public. The BAI maintains an intense dialogue with political institutions as well as supervisory bodies. Furthermore, the BAI cooperates with various national and international organizations and industry associations. It advocates for legal reforms to design an attractive and competitive regulatory environment for Alternative Investments in Germany. At present, BAI counts more than 200 members from all areas of the professional alternative investments sector. www.bvai.de.

BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Fund companies act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's over 100 members manage assets of more than 3 trillion euros for private investors, insurance companies, pension and retirement schemes, banks, churches and foundations. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

The **Investment Association** is the trade body that represents investment managers based in the UK, whose 255 members collectively manage over GBP 7.7 trillion on behalf of clients. The UK is the second largest investment management centre in the world and manages 35% of European assets.

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. MFA has cultivated a global membership and actively engages with regulators and policy makers in

Asia, Europe, North and South America, and many other regions where MFA members are market participants.