

09 February, 2024

Via Email: cp23-33@fca.org.uk

Mr. Stephen Hanks
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Re: Consultation Paper 23/33; Consultation on Payments to data providers and forms for Data Reporting Services Providers including Policy Statement for the framework for UK consolidated tape (CP23/15)

Dear Mr. Hanks:

MFA (“**MFA**” or “**we**”)¹ appreciates the opportunity to submit comments to the Financial Conduct Authority (“**FCA**”) on Consultation Paper 23/33, “Consultation on Payments to data providers and forms for Data Reporting Services Providers including Policy Statement for the framework for UK consolidated tape (CP23/15)” (the “**December Consultation**”),² which moves forward the FCA’s previous consultation paper CP 23/15, “The Framework for a UK Consolidated Tape” (the “**July Consultation**” and, together with the December Consultation, the “**Consultations**”).³ This response builds upon the comment letter MFA previously submitted in September 2023 in response to the FCA’s July Consultation (“**MFA September Comment Letter**”).⁴

¹ Managed Funds Association (MFA), based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA’s mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 175 member fund managers, including traditional hedge funds, credit funds, and crossover funds, that collectively manage over \$3.2 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

² Financial Conduct Authority, Consultation on Payments to data providers and forms for Data Reporting Services Providers including Policy Statement for the framework for UK consolidated tape (CP23/15), CP 23/33 (Dec. 2023), avail. at <https://www.fca.org.uk/publication/consultation/cp23-33.pdf>.

³ Financial Conduct Authority, The Framework for a UK Consolidated Tape, CP 23/15 (July 2023), avail. at <https://www.fca.org.uk/publication/consultation/cp23-15.pdf>.

⁴ Letter from MFA to Financial Conduct Authority (15 Sept. 2023), avail. at mfaalts.org.

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MFA commends the FCA's efforts in developing a detailed tender process to select a consolidated tape provider ("CTP"). MFA represents the global alternative asset industry and has long been supportive of the benefits of a consolidated tape ("CT"). Properly calibrated consolidated market data will contribute to market competition and bring significant benefits to UK markets and enhance UK competitiveness. Many MFA member firms that trade in the US subscribe to the US consolidated tape administered by the Financial Industry Regulatory Authority ("FINRA"), known as TRACE, and have experienced firm-wide benefits from accurate and timely trade data, which serve business and regulatory needs, and ultimately benefit investors.

A CT will not be viable without broad buy-side adoption, and accurate and timely market data is critical to investment managers' implementation of investment strategies. Market data is increasingly used throughout many aspects of a manager's operations: (a) providing important colour on pricing that helps inform trading and order routing decisions; (b) helping monitor adherence to trading strategies and investment guidelines; (c) assessing execution quality, regulatory reporting, and asset valuation; and (d) from a longer-term perspective, aiding risk management and business continuity protocols.

Executive Summary

In our detailed comments that follow in Annex 1, MFA addresses the follow-up questions and reactions of FCA to the questions it originally posed in the July Consultation, in addition to the new questions raised in Chapters 10 in the December Consultation.

A. Number of CTPs per asset class (December Consultation, ch. 3)

- MFA continues to strongly support the appointment of a single CTP per asset class through a tender process.

B. The scope and operation of a consolidated tape for bonds (December Consultation, ch. 4)

- MFA concurs that it is not necessary to amend the scope of the bond CT framework first proposed in the July Consultation to begin with a fixed income securities CT is pragmatic and reasonable, based on a standardised, open-source protocol.
- As noted in the MFA September Comment Letter, MFA strongly supports the decision of the FCA to make consumption of the CT data discretionary (*i.e.*, optional) for market participants such as buy-side funds.
- MFA continues to support not delaying the introduction of the CT until after the bond transparency regime is adopted and agree that the CT could help identify and address data quality issues.

- On the matter of deferrals, MFA agrees that the responsibility for deferrals should remain with the data service provider and that consideration should be given to allowing the CTP to offer a deferral checking service should subscribers want the additional service.
- MFA strongly supports the CTP being required to make historical data available to subscribers and appreciates that the December Consultation recognises that historical data can increase usage of the CT and provide an additional revenue source to the CTP.

C. Economic Model (December Consultation, ch. 5)

- MFA does not support the fixed income CT sharing revenues with the data providers, and CTPs should not be obligated to compensate trading venues and approved publication arrangements (“APAs”) for providing data and connectivity.
- As with FINRA’s TRACE system, data should be free after 15 minutes for retail and academic uses, noting that FINRA has not suffered economically from offering trading data, on a fifteen-minute delay, without charge.
- MFA supports the clarification in the December Consultation that would impose appropriate safeguards with the CTP’s provision of value-added services to restrict it from using its position to take advantage of CT subscribers; MFA believes further that different license types, with appropriate transparency, would enhance the overall viability of the CT.

D. Rules Framework (December Consultation, ch. 6)

- MFA supports the continued applicability of current obligations contained in Regulations 13, 44 and 45 of the DRSRs and Articles 5 to 9 of MiFID RTS 13.
- MFA does not support the proposed deletion of the requirement for the CTP to price on a reasonable commercial basis and on a non-discriminatory basis, with appropriate guardrails and controls to assure transparency.
- MFA agrees with the proposal to require trading venues and APAs to provide data for free to the CTP and with respect to data quality.

E. Consolidated tape for equities (December Consultation, ch. 8)

- MFA supports the subsequent development of broad CTs for equities that cover all applicable asset classes, including shares, depositary receipts, ETFs, ETCs, ETNs, and other similar instruments and recommends publishing post-trade data once the CT is operational.

- While MFA opposes revenue sharing with the CTP for a fixed income CT, MFA would not oppose revenue sharing with data providers, provided adequate protections are built in to protect against pricing abuse.
- MFA supports allowing equities CT subscribers to subscribe to those CT asset classes that they want, without requiring it to subscribe to an aggregated CT that contains trade data they do not need.
- To facilitate subscriber regulatory needs, the CT must include data on market outages.

F. Consultation on payments to data providers (December Consultation, ch. 10).

- Consistent with the approach originally proposed by the FCA, MFA does not support payments to data providers for a fixed income CT.

* * * *

MFA appreciates the opportunity to provide constructive comments to the FCA as it continues forward on this important effort. We are hopeful that the FCA can take into consideration the lessons learned through the EU's efforts to implement a CT as well as the successes that FINRA's TRACE system has experienced in the US. If you have any questions, please do not hesitate to contact Jeff Himstreet (jhimstreet@managedfunds.org) or the undersigned (jhan@managedfunds.org).

Respectfully yours,

/s/ Jennifer W. Han

Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Global Regulatory Affairs

ANNEX 1

A. Number of CTPs Per Asset Class (December Consultation, ch. 3)

- ***Q1: Do you agree with the appointment of a single CTP per asset class through a tender process?***

MFA continues to support the appointment of a single CTP per asset class, provided the CTP tender process is rigorous, impartial, transparent, and public. MFA expects the FCA to exercise diligent oversight of the CTP in anticipation of the extension or renewal of any agreement between the FCA and the CTP and encourages the FCA to seek public input to help inform its decision of whether to extend or renew the CTP contract. Appointment of single CTP would afford the CT the most reasonable chance of economic success while acting as the “golden source” of fixed income trade data. MFA appreciates the commercial risks to the CT generally if multiple competing CTPs per asset class were appointed,⁵ and agrees with the FCA that multiple CTPs could threaten the viability of individual CTPs.⁶

The emergence of multiple CTPs per asset class would increase transmission costs for the trading venues as they would be reporting the same data to multiple sources and would seek to recoup those additional costs through levying higher fees to the CTPs for the trade data.⁷ More importantly, appointing multiple CTPs per asset class raises the risk of inconsistent data amongst CTPs for the same trades, increases the risk of breakage between the trading venue and one or more CTPs, and dilutes the efficacy of the CT in general by moving away from the CT functioning as the single source of trade data per asset class.

B. The scope and operation of a consolidated tape for bonds (December Consultation, ch. 4)

- ***Q3: Do you agree with our proposals on the scope of a bond CT?***

MFA concurs with the proposals on the scope of a bond CT proposed in CP23/15, covering the MiFID category of bonds (sovereigns, public bonds, convertible bonds, covered bonds, corporate bonds, other bonds).⁸ We understand that it may not be practical to include Exchange Traded Notes (“ETNs”) and

⁵ As the FCA noted in the July Consultation, although MiFID II introduced a regulatory framework for a CT and invited multiple CTPs per asset class, no firm has sought CTP authorisation. the July Consultation, at §2.1.

⁶ Consultation, at § 3.8 (referencing Letter from FCA to Harriett Baldwin, Chair, Treasury Select Committee, Sub-Committee on Financial Services Regulation (25 Aug. 2023)).

⁷ *Id.*

⁸ MFA encourages the FCA to transition to consideration of an equities CT with all due haste. Given that most of the equities traded in the UK trade on the London Stock Exchange, MFA is hopeful that this single source of trade data can enable the UK to sidestep the commercial and territorial discussions that have hampered the ability of an equities CT in the EU. MFA September Comment Letter, *supra* note 4, at pp. 5-6. While the introduction of a fixed income CT

Exchange Traded Commodities (“ETCs”) when the CT begins operation but appreciate the recognition that it will be necessary to consolidate ETN/ETC data on a CT when (and where) practicable.

With any reporting of trades, the value of the reported data diminishes rapidly after the time of trade. As the FCA notes, most do “not see any value in a bonds CTP publishing delayed data.”⁹ MFA agrees, and for this reason, supports not only the regulatory standard for the publication of bond trades by trading venues to as soon as reasonably possible (but no later than five minutes) after trade, and supports the tender process considering the speed at which the CTP can publish data after it receives the data. MFA encourages the FCA to closely monitor the speed at which the CTP publishes the trade data and consider latency risk as an important component of its vendor oversight of the CTP.¹⁰

- ***Q4: Do you agree that data should be transmitted from data providers and received by the CTP via a standardised, open-source API developed by the CTP? Should this be based on the FIX protocol?***

MFA strongly supports data transmitted from data providers and received by the CTP via a standardised, open-source API.¹¹ Trading venues and other data providers are generally accustomed to transmitting and receiving data via the FIX protocol, and addressing any issues associated with data transmission via FIX. Because the CTP will be receiving trade data from multiple sources, it is imperative that the data transmission format be standardised to reduce delays, errors in the data, or breakages in transmission. The use of a standardised API protocol also would reduce connectivity expenses, making it unnecessary for the CTP to pay the data provider for connectivity.

- ***Q6: Do you agree that the consumption of the data published by the CT should be discretionary for market participants?***

MFA agrees with the FCA’s assessment in the July Consultation that it “do[es] not think the success of a bonds CT requires” firms to be mandated to subscribe to the CT.¹² As we noted in the MFA September

is an important first step, both from a commercial and markets perspective, the benefits of price transparency to the markets more broadly cannot fully be realised without an equities CT. *Id.*

⁹ July Consultation, at §4.2.

¹⁰ The intermediation of an APA into the process adds an extra layer into the reporting process, as the trades go from the trading venue to the APA and then to the CT. This extra transmission layer adds complexity and cost to the reporting process, which makes the time of reporting by the trade venue even more critical.

¹¹ December Consultation, at §4.18 (referencing that the FIX protocol, as several respondents noted, was either the preferred (or one of the preferred) options). See MFA September Comment Letter, *supra* note 4.

¹² July Consultation, at §4.31.

Comment Letter, subscribers currently are obtaining trade data from other sources to meet their trading, compliance, and risk needs.

Investment managers bear the regulatory obligations for best execution and valuation issues and are best positioned to determine the data sources they need to best comply with their regulatory and fiduciary obligations. MFA appreciates that the December Consultation concurs that the consumption of CT data will “be at the discretion of market participants.”¹³ If the CT is an accurate, golden source of trade data, published data in a timely manner, and priced fairly, investment managers and others will subscribe to CT. This has been the experience in the US with TRACE reporting data, which has been widely adopted as the primary data source for fixed income and equity securities traded in the US.

- ***Q7: Do you agree that the CT should only start operation after bond transparency regime changes come into effect?***

MFA continues to encourage the FCA to move towards swiftly implementing a CT for fixed income securities. It is unnecessary to delay implementing the fixed income CT by waiting until summer of 2025, the anticipated time when the bond transparency regime to take effect, before moving forward with a fixed income CT. Because the development of an equities CT would take place after the fixed income CT, MFA recommends the FCA move forward with a fixed income CT without delay. The FCA can at a minimum commence the tender process long before then to speed the implementation of the equities CT once a CTP is selected. We further appreciate that timetables and transparency changes may shift as the FCA, the CTP, and market participants move towards the adoption and implementation of the transparency regime.

- ***Q8: Do you agree that responsibility for applying deferrals should remain with data providers and not the CTP?***

Deferrals are an important component in the publication of market data and serve as a critical check to ensure the accuracy of the trade data published. The value of trade data hinges on the timeliness of the data. We also note that pre-trade transparency efforts have been hampered by a large number of waivers from reporting, which has resulted in a lag in reporting.¹⁴ MFA looks forward to commenting on deferrals more broadly following the issuance of the MiFID II/MiFIR post-trade transparency consultation paper.

¹³ December Consultation, at § 4.26.

¹⁴ On a related note, as we expressed in the MFA September Comment letter, MFA members have observed that cancellations and amendments to existing trades currently are often inaccurately reflected as new trades. MFA encourages the FCA to address this anomaly as it develops technical standards for the CTP. MFA September Comment Letter, *supra* note 4, at n.12.

- ***Q9: Should the CTP offer a deferral checking service? If so, should use of this service by data providers be mandated?***

MFA supports a two-tiered approach to deferrals. The primary responsibility for deferrals should rest with the APAs, as they currently apply the deferral regime to trades passing through the APA. MFA does not object to having the CTP act as a check to, as the July Consultation notes, “apply an additional layer of protection” and can “consistently apply deferrals.”¹⁵ The CTP can provide a critical benefit to ensuring that deferrals are applied consistently from data provider to data provider.¹⁶ A two-tiered approach will increase the consistency of the application of deferrals and serve as a check against deferrals that are inappropriately applied when the trade is transmitted through the APA. We recognise that not all CTPs will possess the technology and processes to validate deferrals applied by the APA and recommend that the FCA seek to determine CTP capabilities during the tender process.

- ***Q10: Do you agree that the provision of a historical data service should be optional for a CTP?***

MFA strongly believes that the CTP should be mandated to make available historical data to CT subscribers on an optional basis. While some subscribers may value historical data, others have obtained historical data from other sources and may continue to do so. In addition, subscribers should be able to download, at no additional fee, their trade data so they can maintain and preserve the data to meet their own recordkeeping and related obligations.¹⁷ We support the recognition expressed in the December Consultation that “it is appropriate to make sure that the CTP offers historical data for sale to its users as a separate subscription from the live CT.”¹⁸

Because the CT is acting as a “quasi-utility,” as noted by the FCA, the CT should be required to maintain and preserve historical data for an agreed upon period of years.¹⁹ As the golden source of fixed income data, the CT data should not disappear after a truncated period of weeks or months. Subscribers should have the option to subscribe to (or download) the historical data. Allowing subscribers, with

¹⁵ July Consultation, at §4.36.

¹⁶ MFA would not support having the CTP act as the sole processor of deferrals. This approach would result in increased costs to the users of the CT, a new skillset for the CTP to apply across a wide variety of trades and trade types, and increase the likelihood that a deferral would be applied incorrectly given the relative lack of familiarity with the deferral process when compared with the APAs currently applying deferrals. We support leaving it to the CTP, as the December Consultation notes, “whether it wants to offer a deferral checking service for data providers.” December Consultation, at § 4.37.

¹⁷ *See id.*, at §4.43.

¹⁸ *Id.*

¹⁹ *See id.*

reasonable licensing restrictions,²⁰ to download data for securities they trade in would minimise development and storage costs for the CTP and empower the subscriber to manage and archive the trade data to suit its own regulatory, risk, and data management needs.

C. Economic model (December Consultation, ch. 5)

- ***Q13: Do you agree that a bond CTP should not be required to share revenues with data providers but be allowed to offer incentives to data providers for high quality data?***

MFA does not support revenue sharing between the CTP and the data providers for a fixed income CT. Revenue sharing arrangements, as noted in the MFA September Comment Letter, would leave the CTP “beholden to the data providers and incentivise the data providers to negotiate for a greater revenue share over time, driving up costs to the CT subscribers.”²¹ We concur with the assessment of other commenters that it is “not appropriate to offer compensatory payments for meeting a regulatory obligation.”²²

- ***Q14: Do you agree that a bond CTP should not be required to contribute to data providers’ connectivity cost recovery? If you think that a bond CTP should contribute to data providers’ connectivity cost recovery, on what basis should the terms of this arrangement be set?***

MFA concurs that the CTP should not be required to contribute to the data providers connectivity cost recovery. Use of a standardised API such as FIX should greatly reduce any connectivity costs. Currently, the data providers are required to publish high quality data and have developed their own connectivity and recovery systems. Imposing variable revenue sharing or connectivity costs would disrupt the economic assumptions that the CTP has made going into the CT development and threaten the economic viability of the CT.

- ***Q15: Do you agree that the requirement for a CTP to provide data free of charge 15 minutes after publication should be removed? If so, how best should we seek to ensure that academic and retail users of the data have low-cost or free access to the data?***

MFA continues to support the CTP providing data free of charge 15 minutes after publication. As we have noted, the value of the data to subscribers (and prospective subscribers) diminishes rapidly after the

²⁰ While we believe that it would be feasible to restrict users from, for example, reselling the data, MFA does not believe it is reasonable to charge users a monthly or yearly fee to maintain and preserve the licensed data for firm use as firms will have already paid once for the data.

²¹ MFA September Comment Letter, *supra* note 4, at p. 9. We also noted that if the CT is not priced reasonably and fairly, the CT will fail as subscribers will obtain data from other sources, as they do today. *Id.*

²² December Consultation, at §5.7.

time the trade is reported. We appreciate the commercial concerns expressed in the December Consultation but note that with respect to FINRA's TRACE system, such commercial concerns have not materialised. As we note in the MFA September Comment Letter, anyone can access the TRACE portal and receive trade information on a 15-minute delay, and as such, commercial concerns with the free provision of 15-minute-delayed data are unfounded.²³ Nevertheless, to address concerns for prospective CTPs that providing free, delayed data may affect the commercial viability of the CT, upon a proper showing by the CTP, MFA does not object to revision of the 15-minute timeframe to the end of that trading day or limiting access to delayed, free data to retail and academic uses.

- ***Q16: Do you agree that the CTP should be able to offer value-added services, provided that the CT service is available on a stand-alone basis and the provision of such services does not give the CTP an unfair advantage?***

If the value-added services provided by the CTP are optional for subscribers, MFA does not object to allowing the CTP to develop value-added services and market them separately or in addition to the CT, so long as the CT service is available on a stand-alone basis. These value-added services, as MFA noted,²⁴ cannot come at the expense of the CT subscribers in the form of higher costs. MFA recognises that additional revenue streams to the CTP may be important in helping manage the costs of the CTP, which should result in lower prices for CT subscribers.

- ***Q17: Do you agree that CT licences should be separated according to re-use/direct use? For direct use licences, do you agree that users should be charged on a per-user basis? For re-use licences, should users be charged on a per volume basis or on a use case basis? Which ways of licensing would encourage competition and innovation?***

MFA appreciates that a firm will use CT data in a variety of ways and that different license types could enhance the overall viability of the CT. The use of the data by fund portfolio managers will be very different than its use by risk professionals, compliance personnel, or operations staff. For this reason, the MFA September Comment Letter supported the CTP offering different licensing classes based on use,²⁵ as a firm may have several different uses for trade data covering the same trade. We support the approach in the

²³ MFA September Comment Letter, *supra* note 4, at p. 10.

²⁴ *See id.*

²⁵ *See id.*, at p. 10-11.

December Consultation to consider and seek public feedback on license types in the CTP invitation to tender.²⁶

D. Rules framework (December Consultation, ch. 6)

- ***Q25: Do you agree with our proposed retention unchanged of the obligations currently contained in Regulations 13, 44 and 45 of the DRSRs and Articles 5 to 9 of MIFID RTS 13?***

MFA agrees with the FCA's proposed approach to retain unchanged the obligations currently contained in Regulations 13, 44 and 45 of the DRSRs (requirements for the management body of a data reporting service provider) and Articles 5 to 9 of MIFID RTS 13 (conflicts avoidance provisions).²⁷ FCA oversight of the CTP will be critical to the success and ultimate industry adoption of the CT, and MFA urges the FCA to exercise vigilant oversight of the CTP. Undisclosed or unaddressed conflicts of interest with the CTP and potentially its other commercial endeavors would reduce subscriber confidence in the fairness of the CTP.

- ***Q27: Do you agree with our proposed deletion of the requirement for a CTP to price on a reasonable commercial basis?***

MFA strongly opposes the deletion of the requirement that the CTP price its services on a reasonable commercial basis. As we previously noted, if the subscription fees charged by the CTP are not reasonable, the CT will fail.²⁸

The bounds of a "commercially reasonable price" are subjective and offer the CTP considerable latitude: removing even those loose outer limits would leave the CT subscriber vulnerable to the pricing whims of the CTP. There exists a "commercially reasonable" requirement in Europe for market data and yet the costs of data in Europe are, for many firms, prohibitively high, and the absence of a CTP for this critical market evidences the failures in reasonable pricing.

- ***Q28: Do you agree with the retention of the requirement for a CTP to provide market data on a non-discriminatory basis?***

MFA strongly supports requirements that the CTP provide market data on a non-discriminatory basis. The integrity of the CT dictates not only that the CTP price market data in a commercially reasonable

²⁶ December Consultation, at §5.36.

²⁷ *Id.* at §6.13.

²⁸ MFA September Comment Letter, *supra* note 4, at p. 11.

manner, but also that prices are non-discriminatory amongst subscribers. We therefore continue to support the obligation of a CTP to provide market data on a non-discriminatory basis.²⁹

- ***Q29: Do you agree with our proposed changes to the transparency obligations in respect of pricing?***

MFA continues to support the existing transparency obligations covered in art. 89 of the MiFID Org Regulation by disclosing prices and other terms, explaining the list of information that is included in the price, and providing at least 90 days' notice of future price changes, a description of the market data revenue information regarding the sale of the CT, and information on how price is set. We further support the recommendations of other respondents that the transparency obligations be coupled with additional assurances of the transparency of CTP pricing, either through third-party auditing or exercise of the FCA's own supervisory obligations.³⁰

- ***Q31: Do you agree with our proposals on requirements for trading venues and APAs to provide data to the CTP? Do you agree with our proposals on the management by the CTP of potentially erroneous information?***

MFA agrees with the proposals on the requirements for trading venues and APAs to provide data to the CTP. As the July Consultation noted, a "CT can only be successful if it receives the data it is to consolidate in a timely fashion. Creating an obligation for trading venues and APAs to send data to the CTP will enable [the FCA] to supervise the provision of the data."³¹ We agree, and noted in the MFA September Comment Letter that one key reason for the success of TRACE is that FINRA member firms are required to submit data to TRACE and are subject to regulatory risk from both FINRA and the SEC if they fail to do so.³² The CTP, as part of the tender process, should be required to demonstrate that it has or is prepared to implement processes and controls to reconcile the data received against the trade data to ensure that it is publishing data that is complete and free from error.³³ This reporting would also enable the FCA to ascertain the source of any erroneous data and encourage appropriate corrective measures.

²⁹ *Id.* at pp. 11-12.

³⁰ December Consultation, at 6.23.

³¹ July Consultation, at §6.49.

³² MFA September Comment Letter, *supra* note 4, at p. 12.

³³ The CTP should be required to share with the FCA periodic reports of reconciliation and error data, listing the errors in data it received, or errors in the CTP's publication of the data, and the steps the CTP took to correct any incorrect or incomplete trade data. *See id.*

- ***Q32: Do you agree with our proposals on data quality?***

If market participants do not trust the CT as the golden source of data, they will not subscribe. MFA supports the reporting protocol prescribed in the July Consultation to require the CTP to submit reports of data quality to the FCA every six months.³⁴ Furthermore, as we suggested in the MFA September Comment Letter, to provide maximum transparency to subscribers and the marketplace the FCA should publish a periodic report based on the reported accuracy and quality of the data reported. FCA publication of periodic reports will enable subscribers, the CTs, the FCA, and the marketplace to understand clearly the source of any erroneous data.³⁵

E. Consolidated tape for equities (December Consultation, ch. 8)

- ***Q39: Do you agree that an equities CT should cover shares, depositary receipts, ETFs, certificates, other similar instruments? Should it also include ETCs and ETNs?***

MFA continues to support the development and implementation of a CT for equities as soon as practicable. The bulk of the trading volume in the UK is in equities and thus there is likely to be a strong market demand for an equities CT.

MFA supports the inclusion of a broad array of asset classes in the equities CT, including ETCs and ETNs. We do not disagree with the FCA's assessment that ETCs and ETNs are of a different class than bonds and that the commercial case for a separate CT for ETCs and ETNs is challenged.³⁶ That said, ETCs and ETNs as a general matter should be included in a CT, and including ETCs and ETNs in the equities CT would appear a sensible approach.

- ***Q40: Should an equities CT include pre-trade data? If so, why do you think this is necessary and what scope of data (including but not limited to depth of order book) should be included? If not, why not?***

MFA supports inclusion of pre-trade data with a CT at the appropriate time. We appreciate the measured approach proposed in the December Consultation of the FCA, with public input, developing a "very firm evidence base" regarding inclusion of pre-trade data in an equities CT.³⁷ The equities CT need not await a final determination by the FCA regarding inclusion of pre-trade data, however, and could at initial launch be limited to post-trade data. The request to tender can seek detailed information from CTPs and

³⁴ July Consultation, at §6.51.

³⁵ MFA September Comment Letter, *supra* note 4, at pp. 12-13.

³⁶ See July Consultation, at §8.13.

³⁷ December Consultation, at §8.12.

the public regarding pre-trade data inclusion and related costs. Delaying the implementation of an equities CT until a decision on pre-trade data is made would pose additional delays of the equities CT that are unjustified given the strong market interest in an equities CT. MFA, however, would not support a decision by the FCA or the CTP to abandon pre-trade data in the equities CT altogether.³⁸

MFA appreciates the ambition to consider pre-trade data, but as we noted in the MFA September Comment Letter, pre-trade data is of considerable value to the trading venues, and we are skeptical of their willingness to part with it freely.³⁹ Delaying the introduction of an equities CT while the financial (and political) considerations play out would deprive the markets of an equities CT for an undetermined and unnecessary time. MFA strongly supports the inclusion of pre-trade data into the equities CT once the equities CT is established and in use.

- ***Q41: Should an equities CTP be required to remunerate data providers through a form of revenue sharing? If employed, which data providers should a revenue-sharing model reward, how should the revenues to be shared be determined and how should shares of the revenues be set?***

Unlike a fixed income CT, MFA understands that there is support for revenue sharing between the equities CT and the data providers, noting that such arrangements exist in the US. Equities CTPs, like the fixed income CTPs, are entitled to predictable costs to the extent necessary and any revenue sharing arrangement between the CTP and the data providers should not come at the expense of the pricing assumptions of CTPs and subscribers when entering into the CT arrangement. Revenue sharing, again, has the risk of leading to increased subscriber costs and ultimately threatening the viability of the equities CT.

- ***Q42: Do you think that there will be demand for disaggregated feeds, by instrument or industry sector, of the data included in an equities CT?***

MFA continues to support the CTP offering disaggregated feeds, by industry or sector, of an equities CT. An equities CT, like fixed income CTs, can maximise its subscriber reach by offering subsets of the overall data feed so managers and others can elect to subscribe to the data sets that are of the greatest use to the subscriber, without having to pay for asset classes that the manager would not need. MFA supports, as advocated in the MFA September Comment Letter, a “cafeteria” style approach where subscribers can elect to subscribe to the data sets that are appropriate for their needs but not require them to subscribe to data sets they neither want nor need.⁴⁰

³⁸ MFA September Comment Letter, *supra* note 4, at pp. 13–14.

³⁹ *Id.*

⁴⁰ MFA September Comment Letter, *supra* note 4, at p. 14.

- ***Q43: Do you agree that the equities CT should provide a single, combined feed of trade reports from different instrument categories?***

MFA does not support an equities CT that is limited to a mandated, single, combined feed of trade reports for different asset categories. A CTP or a data reseller that is interested in aggregating the various equity CTs into a single consolidated feed to offer to subscribers and prospective subscribers can do so, so long as subscribers retain the option of subscribing either to the consolidated, aggregated equities CT or one or more subsets of asset classes to suit their business, risk, and compliance needs.

- ***Q44: Do you agree that the equities CT should include data on market outages, and, if so, exactly what data on market outages do you think should be included?***

Subscribers use CT data to satisfy a number of regulatory obligations and when that golden source of data is unavailable for whatever reason, regulatory authorities invariably seek information on the outage: what happened, the duration of the outage, and steps the subscriber took to procure alternative data to meet its regulatory obligations during the period of the outage. For example, when pricing securities, regulatory authorities will invariably inquire why the CT price was not used to price a particular security on a particular day. A record from the CTP is critical in demonstrating that there was a market outage or other disruption that caused prices to be unavailable for that security on that day. We again recommend that the CTP tender process specifically inquire about the reporting of market outages – or other instances where the data provider was unable to provide data or an issue at the CTP which may have prevented the publication of trade data.⁴¹

F. Consultation on payments to data providers (December Consultation, ch. 10).

For the reasons described above in Sections C and E, above, MFA does not support payments to data providers for a fixed income CT. MFA supports the approach the FCA initially proposed in the July Consultation, which in declining to advance a revenue sharing model, noted that “[i]ncluding revenue sharing would add to the costs the CTP faces, leading to higher prices for the CTP service. This would reduce the direct benefits to users of purchasing the CTP service and would weaken the competitive constraint on existing providers that exists without revenue sharing.”⁴² MFA agrees, and we further noted in our MFA September Comment Letter that Revenue sharing arrangements for a fixed income CT would leave the CTP beholden to the data providers and incentivise the data providers to negotiate for a greater revenue share over time, driving up costs to the CT subscribers. Revenue sharing therefore could potentially jeopardise the entire CT, as unfair pricing will incent potential subscribers such as buy-side firms to continue to rely on existing pricing and data sources rather than subscribe to the CT. MFA urges the FCA to revert to the approach proposed in the July Consultation for a fixed income CT, where FCA stated that it “[does] not

⁴¹ See *id.* at pp. 14–15.

⁴² July Consultation, at §5.45.

consider that revenue sharing would contribute to [its] objectives for a bond CT.”⁴³ MFA agrees that revenue sharing will not further the FCA’s objectives for a bond CT, particularly as it relates to market integrity and international competition.⁴⁴

Each of the three revenue sharing options presented in the December Consultation for a fixed income CT are seriously flawed, as evidenced by the FCA’s own, candid assessment. Option 1 relies “on average estimated cost numbers [to] give[] a rough and ready approach” for payments to data providers.⁴⁵ Speculation as to prices will very foreseeably result in either the subscriber being over-charged or under-charged and subject to dramatic price fluctuations. Subscribers need predictability and certainty in their data expenditures. Option 2 “does not give an incentive for a data provider to minimise their expenditure on creating its connection to the CTP.” Again, it takes no specific account of the CTP’s ability to pay beyond introducing instalments but removes the certainty over how much the CTP must pay.⁴⁶ Option 2 creates an environment for data providers to impose excessive pricing on the CTP which, at that point, will be faced with few options other than acceding to the data provider demands. Lastly, Option 3 contains the “most complex” pricing model but fails to take into account the CTPs cost of connectivity and creates an uncertain payment level to the data provider, which may “affect the incentive for the data providers to invest in the quality of their connection to the quality of their data.”⁴⁷ As MFA stated at the outset, if the CT cannot be relied upon to provide accurate and timely data at a commercially reasonable price, subscribers will abandon the CT and it will fail.

⁴³ *Id.*

⁴⁴ *See* July Consultation, at pp. 11-13.

⁴⁵ December Consultation, at §10.9.

⁴⁶ *Id.* at §10.10.

⁴⁷ *Id.* at §10.11.