Commission de Surveillance
du Secteur Financier

Circular CSSF 21/783

Application of the Guidelines of the European Securities and Market Authority on the MiFID II/MiFIR obligations on market data

Commission de Surveillance du Secteur Financier

Circular CSSF 21/783

RE: Application of the Guidelines of the European Securities and Market Authority on the MiFID II/MiFIR obligations on market data

Luxembourg, 29 September 2021

To all regulated markets, market operators, credit institutions, investment firms and market operators operating an MTF or an OTF, approved publication arrangements (APAs) and systematic internalisers (SIs)

Ladies and Gentlemen,

Subject:

Application of the Guidelines of the European Securities and Market Authority on the obligations on market data under Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("MiFID II") and the 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") (ESMA Guidelines 70-156-4263).

Purpose of the Circular

The purpose of this circular is to inform you that the CSSF, in its capacity as competent authority, applies the Guidelines of ESMA on the MiFID II/MiFIR obligations on market data (Ref. ESMA70-156-4263) (the "Guidelines"), published on 18 August 2021. Consequently, the CSSF has integrated the Guidelines into its administrative practice and regulatory approach with a view to promote supervisory convergence in this field at European level.

All regulated markets, market operators, credit institutions, investment firms and market operators operating an MTF or an OTF, APAs and SIs shall duly comply with them.

Commission de Surveillance du Secteur Financier

The Guidelines

The Guidelines are issued by ESMA in accordance with Article 16 of the ESMA Regulation.[1]

The Guidelines apply in relation to market data to be made public for the purpose of the pre-trade and post-trade transparency regime in accordance with Articles 13, 15(1) and 18(8) of MiFIR as further specified in Articles 6 to 11 of Delegated Regulation 2017/567[2] and of Articles 64(1) and (2) and 65(1) and (2) of MiFID II[3] as further specified in Articles 84 to 89 of Delegated Regulation 2017/565[4].

The Guidelines apply as from 1 January 2022.

The Guidelines apply in relation to market data that trading venues, APAs and SIs have to make public for the purpose of the pre-trade and post-trade transparency regime.

The Guidelines aim to ensure that financial market participants have a uniform understanding of the requirement to provide market data on a reasonable commercial basis (RCB), including the disclosure requirements, as well as the requirement to provide the market data 15 minutes after publication (delayed data) free of charge.

The Guidelines are attached to this circular and are available on ESMA's website.

Scope of application

The present circular shall apply in relation to regulated markets, market operators, credit institutions, investment firms and market operators operating an MTF or an OTF, APAs and SIs when making public market data for the purpose of the pre-trade and post-trade transparency regime.

[1] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC

[2] Commission Delegated Regulation (EU) No 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions

[3] As of 1 January 2022, reference to these provisions should be read as a reference to the new MiFIR provisions as specified in Regulation (EU) No 2019/2175, and as further supplemented by relevant Level 2 acts. Please also see the correspondence table in Annex III of the Guidelines.

[4] Commission Delegated Regulation (EU) No 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

Date of application

This circular shall apply as from 1 January 2022.

Claude WAMPACH
Directeur

Marco ZWICK
Directeur

Jean-Pierre FABER
Directeur

Françoise KAUTHEN
Directeur

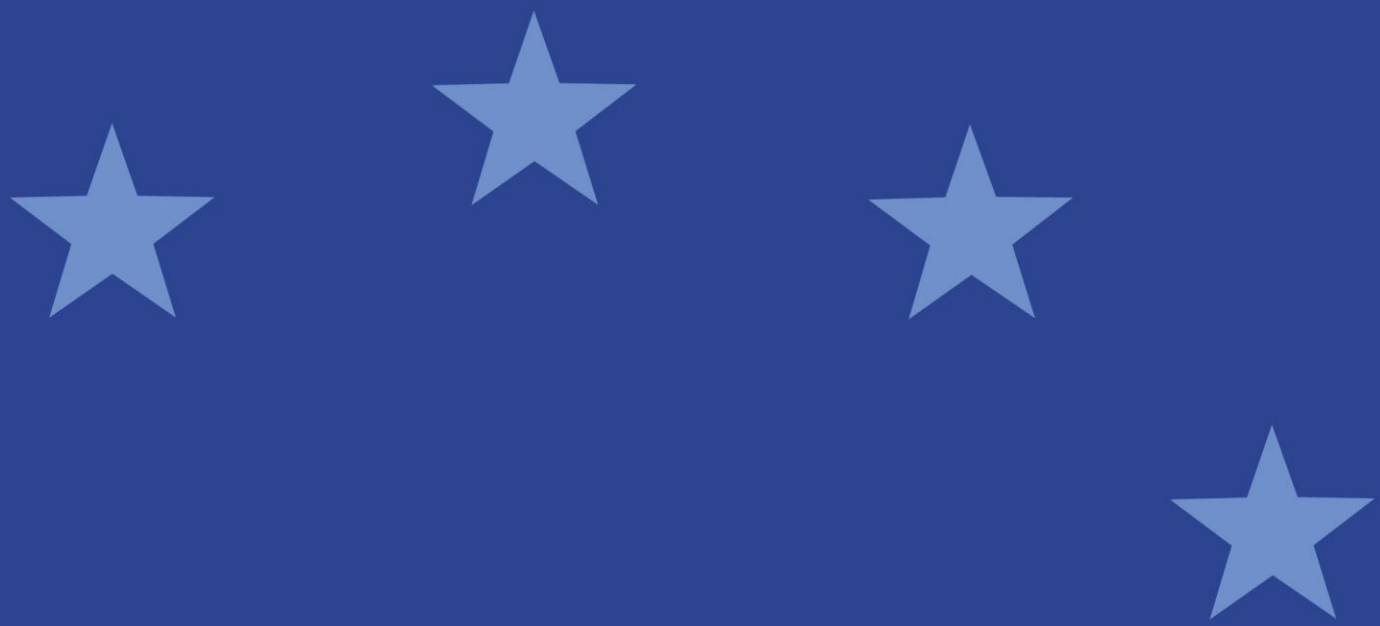
Claude MARX
Directeur général

Annex ESMA Guidelines on the MiFID II/MiFIR obligations on market data

esma European Securities and Markets Authority

Final Guidelines

On the MiFID II/ MiFIR obligations on market data



18/08/2021 | ESMA70-156-4263

Table of Contents

1. Scope

Who?

1. These guidelines apply to national competent authorities (NCAs), trading venues, approved publication arrangements (APAs), consolidated tape providers (CTPs) and systematic internalisers (SIs). Section 5.8 in relation to the provision of delayed data does not apply to SIs.

2. From 2022 onwards, the European Securities and Markets Authority (ESMA) will carry out supervision on APAs and CTPs, as stipulated in Regulation (EU) No 2019/2175. As of that time, references to NCAs should be read as references to NCAs supervising trading venues, SIs, and those carrying out supervision on their national APAs and CTPs exempted from ESMA supervision. While the guidelines are not addressed to ESMA, APAs and CTPs for which ESMA will be the responsible competent authority from 2022 onwards will themselves be subject to the guidelines.

What?

3. These guidelines apply in relation to Articles 13, 15(1) and 18(8) of MiFIR as further specified in Articles 6 to 11 of Delegated Regulation 2017/567 and of Articles 64(1) and (2) and 65(1) and (2) of MiFID II[1] as further specified in Articles 84 to 89 of Delegated Regulation 2017/565. The guidelines apply in relation to market data that trading venues, SIs, APAs and CTPs have to make public for the purpose of the pre-trade and post-trade transparency regime.

When?

4. These guidelines apply from 1 January 2022.

5. These guidelines do not apply to NCAs which are no longer responsible for the supervision of APAs and CTPs as of the date following that on which ESMA has taken over the supervision of those APAs and CTPs.

2. Legislative references, abbreviations and definitions

Legislative references

ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and

[1] As of 1 January 2022, reference to these provisions should be read as a reference to the new MiFIR provisions as specified in Regulation (EU) No 2019/2175, and as further supplemented by relevant Level 2 acts. Please also see the correspondence table in Annex III.

	Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[2]
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of Council 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012[3]
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU[4]
Delegated Regulation (EU) No 2017/567	Commission Delegated Regulation (EU) No 2017/567 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions[5]
Delegated Regulation (EU) No 2017/565	Commission Delegated Regulation (EU) No 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive[6]
RTS 1	Commission Delegated Regulation (EU) No 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser[7]
RTS 2	Commission Delegated Regulation (EU) No 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues

[2] OJ L 331, 15.12.2010, p. 84.
[3] OJ L 173, 12.06.2014, p. 84.
[4] OJ L 173, 12.06.2014, p. 349.
[5] OJ L 87, 31.03.2017, p. 90.
[6] OJ L 87, 31.03.2017, p. 1.
[7] OJ L 87, 31.03.2017, p. 387.

	and investment firms in respect of bonds, structured finance products, emission allowances and derivatives[8]
Regulation (EU) No 2019/2175	Regulation (EU) No 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds[9]

Abbreviations

ESMA	European Securities and Markets Authority
RCB	Reasonable Commercial Basis
NCAs	National Competent Authorities
EU	European Union
APA	Approved Publication Arrangement
CTP	Consolidated Tape Provider
SI	Systematic Internaliser

Definitions

The definitions set out in MiFID II and MiFIR apply.

market data	market data should mean the data trading venues, SIs, APAs and CTPs have to make public for the purpose of the pre-trade and post-trade transparency regime. Therefore, market data includes the details set out in Annex I of RTS 1 and Annex I and Annex II of RTS 2

[8] OJ L 87, 31.03.2017, p. 229.
[9] OJ L 334, 27.12.2019, p. 1.

delayed data	delayed data should mean market data made available 15 minutes after publication
market data provider	a trading venue as defined in Article 4(1)(24) of MiFID II, an approved publication arrangement (APA) as defined in Article 4(1)(52) of MiFID II, a consolidated tape provider (CTP) as defined in Article 4(1)(53) of MiFID II or a systematic internaliser (SI) as defined in Article 4(1)(20) of MiFID II
market data licence agreement	an agreement between the market data provider and the customer for licensing market data and reflecting the information and prices disclosed in the market data policy
market data policy	one or more documents from the market data provider, listing relevant information on the provision of market data, including a price list for both market data fees as well as indirect services to access and utilise market data, and the main terms and conditions of the market data licence agreement

3. Purpose

6. These guidelines are based on Article 16(1) of the ESMA Regulation. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision (ESFS) and to ensure the common, uniform and consistent application of the provisions in Articles 13, 15(1) and 18(8) of MiFIR and Articles 64(1) and 65(1) and (2) of MiFID II.

7. These guidelines aim to ensure that financial market participants have a uniform understanding of the requirement to provide market data on a reasonable commercial basis (RCB), including the disclosure requirements, as well as the requirement to provide the market data 15 minutes after publication (delayed data) free of charge. These guidelines also aim to ensure that NCAs will have a common understanding and develop consistent supervisory practices when assessing the completeness, comprehensibility and consistency of the RCB and delayed data provisions.

4. Compliance and reporting obligations

Status of the guidelines

8. In accordance with Article 16(3) of the ESMA Regulation, NCAs and financial market participants must make every effort to comply with these guidelines.

9. Subject to paragraph 2 of Section 1, NCAs to which these guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, NCA should ensure through their supervision that financial market participants comply with the guidelines.

Reporting requirements

10. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, NCAs to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.

11. In case of non-compliance, NCAs must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.

12. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.

13. Financial market participants are not required to report whether they comply with these guidelines.

5. Guidelines on the MiFID II/MiFIR market data obligations

5.1 Introduction

14. Articles 13, 15(1) and 18(8) of MiFIR and 64(1) and 65(1) and (2) of MiFID II set out requirements for trading venues, APAs, CTPs and SIs ('market data providers') to provide market data on an RCB and ensure non-discriminatory access to that information. Articles 6 to 11 of Delegated Regulation (EU) No 2017/567 and Articles 84 to 89 of Delegated Regulation (EU) No 2017/565 further specify these requirements.

15. The requirements in Delegated Regulation (EU) No 2017/567 and Delegated Regulation (EU) No 2017/565 set out the principle to provide market data on the basis of the cost of producing and disseminating it and require market data providers to comply with a number of disclosure requirements aiming at enabling market data users to understand how market data is priced, to compare market data offers and to ultimately assess whether market data is provided on a reasonable commercial basis.

16. Furthermore, Article 13(1) of MiFIR requires trading venues to make data available free of charge 15 minutes after publication (delayed data). The same obligation is provided by Articles 64(1), 65(1) and (2) of MiFID II in respect to APAs and CTPs.

17. According to Article 84(2) of Delegated Regulation (EU) No 2017/565 and Article 6(2) of Delegated Regulation (EU) No 2017/567 several requirements and transparency obligations do not apply to market data providers offering market data free of charge.

18. However, some of the provisions on market data in these regulations apply also to market data providers offering market data free of charge, notably the requirement related to making market data available to all customers on the same terms and conditions, the requirement to have scalable capacities in place to ensure that customers can obtain timely access to market data at all times on a non-discriminatory

basis and the requirement to offer unbundled market data are applicable to such market data providers. Therefore, Guidelines 4, 6 and 11 apply to those market data providers.

19. Market data providers should not charge for indirect services necessary for accessing market data when providing data free of charge.

20. In order to ensure that the requirements on market data deliver against their objectives, these guidelines set out further ESMA's expectations on how market data providers should comply with the provisions on market data. In particular, the guidelines elaborate on the requirement to provide market data on the basis of cost, on the requirement to ensure non-discriminatory access to data, on the disclosure obligations and on the requirement to provide delayed data free of charge.

21. While the legal requirements provide for the same approach for trading venues (regulated markets, MTFs, OTFs), APAs, CTPs and SIs, it is important to highlight that the scope of the market data requirements is different for these four types of entities. For instance, trading venues have to provide pre- and post-trade market data on an RCB, whereas the RCB requirements for SIs are limited to pre-trade market data and for APAs and CTPs to post-trade market data. Furthermore, SIs are not subject to the requirements on delayed data. In consequence, not all requirements apply to all entities to the same extent. Where relevant, this is highlighted in the guidelines.

22. ESMA acknowledges that it is important to take the different nature, scale and complexity of market data providers into account when specifying the expectations on the market data provisions. In accordance with Articles 1(5) and 8(3) of the ESMA Regulation, ESMA has taken into account the principle of proportionality when drafting these guidelines. For example, considering the different operating models and cost structures of market data providers these guidelines do not harmonise the cost accounting methods but rather require market data providers to have a clear and documented methodology for setting the price of market data. Similarly, to avoid that market data providers operating continuous auction order book trading systems face a high operational and administrative burden when disclosing delayed pre-trade data, and given the limited added value of users of very granular pre-trade data, these guidelines clarify that for such systems the obligation to provide delayed pre-trade data are met when providing access to the best bid and offer only.

23. The guidelines start with the requirements on RCB and non-discriminatory access (sections 5.2-5.7) and closely follow the structure of the delegated acts further specifying the RCB requirements. Section 5.8 covers the provisions on delayed data.

5.2 Clear and easily accessible market data policies

Guideline 1 clarifies Article 13 of MiFIR, Articles 64(1), 65(1) and 65(2) of MiFID II, as further specified in Articles 84 to 89 of Commission Delegated Regulation (EU) No 2017/565 and Articles 6 to 11 of Delegated Regulation (EU) No 2017/567.

Guideline 1: Market data providers should publish their market data policy in an easily accessible format which is user-friendly on their website. Where the market data policy consists

of more than one document, market data providers should clearly indicate this and make all documents of the market data policy accessible via a single location on their website.

The market data policy should present in clear and unambiguous terms all relevant market data information, including the price list for market data offerings as well as any indirect services necessary for accessing and utilising the market data offerings, to enable customers to understand the fees and the terms and conditions applicable to them. In this respect, market data providers should be ready to further explain their market data policy, where needed.

5.3 Provision of market data on the basis of cost

Guidelines 2 and 3 clarify Article 85 of Delegated Regulation (EU) No 2017/565 and Article 7 of Delegated Regulation (EU) No 2017/567.

Guideline 2: Market data providers should have clear and documented cost accounting methodologies for setting the price of market data. The methodologies should include both direct market data offerings (i.e. market data fees) as well as indirect services necessary for accessing market data offerings, such as connectivity fees or necessary soft- or hardware required to use and access the market data. The methodologies should be reviewed on a regular basis (e.g. annually). Market data providers may need to adjust their methodologies over time and account for changes in marginal costs. For example, if a market data provider allocates a portion of investments in IT infrastructure to the cost of production and dissemination of market data, the market data provider is expected to consider the amortisation of the investments when allocating these costs.

Market data providers should explain in their methodologies whether a margin is included and how that margin has been determined.

The cost accounting methodologies should demonstrate how the price for market data is based on the costs of the production and dissemination of market data. To this end, each methodology should also identify the costs that are solely attributable to the production and dissemination of market data (i.e. direct costs) and the costs that are shared with other services, such as joint costs. Where relevant, further distinction should be made between variable costs and fixed costs.

Direct costs should be understood as costs that are solely attributable to the production and dissemination of market data such as dedicated staff working on the production and/or dissemination of market data or the costs for performing audits. Joint costs should be understood as costs that occur when the processing of a single input resource results simultaneously in two or more different products, e.g. trade execution and the production and dissemination of market data.

Costs that are shared with other services should be apportioned on the basis of appropriate allocation keys. Variable costs should be costs incurred for the production and the dissemination of one additional unit of market data and fixed costs should be costs that do not vary with the volume of market data produced and disseminated.

In order to ensure that the allocation of costs of producing and disseminating market data reflects the actual costs of producing and disseminating market data, and ultimately the fees charged to customers, the methodologies should include a justification for which costs are included in the fees for market data and in particular a justification on the appropriateness of the allocation principles and keys for costs that are shared with other services. For example, for the allocation costs that are shared with other services, such as joint costs, market data providers should not use the revenues generated by the different services and activities of their company as an allocation principle because this practice is contradictory to the obligation to set market data fees (i.e. revenues of the market data business) based on the costs of producing and disseminating market data.

Furthermore, not every market data provider is likely to encounter joint costs. For instance, the licensed activity of APAs and CTPs is limited to the collection and dissemination of market data (and in the case of the CTP, the aggregation of such data) and does not automatically result in the production of a second product. In consequence, no joint costs are incurred.

Guideline 3: Market data providers should only apply penalty clauses in compliance with the principle of charging on a reasonable commercial basis. In particular, market data providers should not impose any unjustified or overly onerous penalty clauses.

To ensure penalties are justified, market data providers should impose penalties only where an infringement of the market data licence agreement has been demonstrated, for instance as a result of an audit which established that customers have not complied with the terms of the market data licence agreement.

The level of penalties in case of non-compliance with the terms of the market data licence agreement should generally be based on the recovery of revenues which would have been generated in case of compliance with the license.

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 condition of the license should be excluded. For example, such practices would be excessive interest charging or extensive retroactivity.

In addition, market data providers should ensure that audit practices do not create unnecessary costs to data users, for example by enlarging the scope of the audit beyond what is strictly necessary to detect the occurred breaches with market data licence agreements.

In order to gather the necessary information to assess potential breaches with market data licence agreements, market data providers may, for this purpose only, seek information from customers to provide information on the use of the data.

5.4 Obligation to provide market data on a non-discriminatory basis

Guidelines 4 to 7 clarify Article 86 of Delegated Regulation (EU) No 2017/565 and Article 8 of Delegated Regulation (EU) No 2017/567.

Guideline 4: 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. The criteria used should be:

(i) based on factual elements, easily verifiable and sufficiently general to pertain to more than one customer;

(ii) explained in such a manner that customers are enabled to understand the category they belong to.

Market data providers should explain in their market data policy the applicable fees and terms and conditions for each use. They should justify any differentiation of fees and terms and conditions pertaining to each category of customers.

In addition, market data providers should justify any amendment to their market data policy resulting in a change of the classification of customers on objective reasons.

Guideline 5: Along with the description of the different customer categories, 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, for instance, when the customer makes different simultaneous uses of the data. In such a case, market data providers should charge for the provision of data only once by applying one customer category only. As an exception, market data providers may add a proportionate increment of the relevant fee, where there are multiple and significant different uses made by the customers of the data.

Market data providers should clearly display in their market data policies the amount of the increment, its cases of application, and provide an explanation of its compliance with the principle of the price of market data being based on the cost of producing and disseminating data, with inclusion of a reasonable margin.

Guideline 6: Market data providers should offer to customers who fall within the same category the same set of options with respect to technical arrangements. Market data providers should ensure that technical arrangements, including latency and connectivity, neither discriminate nor create any unfair advantage. Market data providers should justify any divergence in the final solution adopted on the basis of valid technical constraints.

Guideline 7: When market data providers disclose discount policies, they should describe clearly the scope of application of the discount, the conditions for applications, and the terms of application (e.g. duration of the discount).

The conditions for the discount applications should be:

(i) based on factual elements, easily verifiable and sufficiently general to pertain to more than one customer;

(ii) explained in such a manner that customers are able to understand whether and when the discount is applicable to them.

In compliance with the principle to provide market data on a non-discriminatory basis, the application of a discount should not be used to create additional categories of customers or

data use cases. Similarly, in respect of the obligation to make data available without being bundled, the discount for bundled services should not exceed the price of a service offered separately. (see also Guideline 11)

5.5 Per user fees

Guidelines 8 to 10 clarify Article 87 of Delegated Regulation (EU) No 2017/565 and Article 9 of Delegated Regulation (EU) No 2017/567.

Guideline 8: The per user basis should be understood as a model of charging fees for display data which enables customers to avoid multiple billing in case market data has been sourced through multiple data providers or subscriptions. Market data providers should use for display data the unit of count of the active user, that enables customers to pay according to the number of active users accessing the data, rather than per device or data product.

Guideline 9: Market data providers should ensure that the conditions to be qualified as eligible for the per user basis require only what is necessary to make the per user basis feasible. In particular, eligibility conditions should mean i) the customer is able to identify correctly the number of active users who will have access to the data within the organisation and ii) the customer reports to the market data provider the number of active users. Market data providers may additionally seek an initial check *ex ante* to validate the number of users and/or the eligibility of the customer.

Guideline 10: When market data providers consider the per user basis as disproportionate to the cost of making the data available and are not able to offer it to customers, they should disclose the reasons by clearly indicating the specific features of their business model which make the adoption of the per user basis disproportionate and why these make the adoption of the model unfeasible. When impeding factors entail excessive administrative costs, market data providers should include in their explanation on disproportionality a high level and provisional indication of the costs foreseen for the implementation of the per user basis.

5.6 Obligation to keep data unbundled

Guideline 11 clarifies Article 88 of Delegated Regulation 2017/565 and Article 10 of Delegated Regulation (EU) No 2017/567.

Guideline 11: Market data providers should always inform customers that the purchase of market data is available separately from additional services (‘data unbundling’). Such additional services should be understood to include the provision of data other than pre- and post-trade transparency data (e.g. ESG data, data analytics). Market data providers should not condition the purchase of market data upon additional services.

Prices for bundled and unbundled data should be clearly disclosed in the market data policy.

5.7 Transparency obligations

Guidelines 12 to 16 clarify Article 89 of Delegated Regulation (EU) No 2017/565 and Article 11 of Delegated Regulation (EU) No 2017/567

Standardised key terminology

Guideline 12: Market data providers should adopt the terminology in Annex I of the Guidelines in their market data policy and price list. When market data providers use other terms, they should provide a clear definition of these terms in the market data policy or price list.

Standardised unit of count

Guideline 13: To facilitate price comparison, market data providers should display the price of display data by number of active users in their market data policy and in the template.

Market data providers should always make available to the customer the option to measure access to display data by the number of active users. In addition, they may set forth in their market data policy an alternative unit of count for display data (e.g. the number of display applications granted to the customer to access the data as desktop applications, mobile devices, wallboards). In such a case they should explain in their market data policy how the fees are applied by using a unit of count other than the number of active users and the circumstance in which this option is available. Market data providers should always enable the customers to choose freely the unit of count according to their preference.

Market data providers should also clearly indicate in their market data policies the unit of count for non-display data, its application and an explanation on why the method chosen is considered to be the most suitable to count the provision of non-display data to customers considering the data distribution system used (e.g. devices, servers, IT or cloud applications). The unit of count used by a market data provider for non-display data should be unique, meaning two or more units of count cannot be combined to count the extent of access.

Standardised publication format

Guideline 14: Market data providers should publish the information required by Article 89 of Delegated Regulation (EU) No 2017/565 and Article 11 of Delegated Regulation (EU) No 2017/567 by using the template provided in Annex II.

Market data providers should provide the information in a consistent manner in terms of granularity to make the disclosure meaningful for customers to compare between offers (e.g. per asset class and on an annual basis). Where relevant, information should be provided separately for pre- and post-trade data.

Additional information that is outside the scope of the transparency obligation should not be provided in the template. However, market data providers should ensure that the additional information is easily accessible by customers (e.g. by inserting a reference to the relevant publication containing information and justification for additional criteria used to distinguish data product and licenses or set customer categories as indicated in Guidelines 4 to 7).

Cost disclosure

Guideline 15: Market data providers should publish a summary, by using the template provided in Annex II, of how the price was set and a more detailed explanation of the cost

accounting methodology used in order to comply with Article 11(e) of Delegated Regulation (EU) No 2017/567 or Article 89(2)(e) of Delegated Regulation (EU) No 2017/565.

The explanation should provide, inter alia, the list of all the cost types included in the fees of market data with examples of such costs as well as the allocation principles and allocation keys for joint costs or other costs that are shared with other services. Market data providers should disclose whether they include a margin in the fees of market data and explain how it is ensured that the margins are reasonable.

Market data providers are not required to disclose the actual costs for producing or disseminating market data or the actual level of the margin, however the explanatory information provided on costs and margins should enable users to understand how the price for market data was set and compare the methodologies of different market data providers.

Auditing practices

Guideline 16: Market data providers should provide all the terms and conditions of their auditing practices in the market data licence agreement (frequency, lookback period, notice period, data confidentiality etc). The market data licence agreement should be explicit as to whether the market data fees can be applied retroactively. It should also clearly explain how customers are expected to prepare for an audit (which information needs to be stored and for what period of time etc.). Any audit should be carried out having in mind the need for collaboration between market data providers and users.

5.8 Obligation to make market data available free of charge 15 minutes after publication

Guidelines 17 to 19 clarify Articles 64 and 65 of MiFID II and Article 13 of MiFIR

Data access and content

Guideline 17: The free access to delayed data should be provided to any customer, including professional customers. Market data providers may require a simple registration for the purpose of monitoring who has access to the delayed data, provided that the data remains easily accessible to any user.

The delayed data publications should cover all the trading systems operated by the trading venues. The post-trade data should contain all the relevant fields for the purpose of post-trade transparency, including flags, as specified in RTS 1 and 2. For pre-trade delayed data, given the operational challenges resulting from high volumes of pre-trade data on one hand, and the requirements of data users on the other hand, it is considered sufficient to only include the first current best bid and offer prices available and the depth of trading interest at those prices.

Data format and availability

Guideline 18: The delayed data should be provided in a format adapted to the users' needs, and available for a sufficient period of time.

Pursuant to Article 14 of the Delegated Regulation (EU) No 2017/571, in case of delayed post-trade data, the data should be provided in a machine-readable format and available in commonly used programs. It should be possible for a user to automatize the data extraction. The data should be available for all instruments traded combined (or a class of instruments), but not on a single instrument basis only. In order to ensure that the data can be easily consolidated as per MiFID II / MiFIR objectives, it is necessary that all market data providers provide data in a machine-readable format. The data should be available at least until midnight of the following business day to initiate the data extraction by a user.

The pre-trade delayed data should be made available in a machine-readable format. Given that the data is not provided for the purpose of consolidation, it should be available until the next more recent quote is available (i.e. a snapshot view, without historical information), or in case of lack of such update, until midnight of the following business day.

Data redistribution and value-added services

Guideline 19: Without prejudice to the legal provisions prohibiting market data providers to charge for the use of delayed data, there may be limited instances where data providers may impose a charge. One such instance is where a delayed data user re-distributes the delayed data for a fee (including a general fee for accessing its services), then a charge to that user may apply. Likewise, where a delayed data user creates value-added services using that data which are then sold for a fee to third parties, trading venues, APAs and CTPs may charge that user.

In this context, data redistribution should be understood as a business model of selling the delayed data in unchanged form to third parties, either directly by charging when giving access to that data, or via a general access fee. Where a delayed data user publishes delayed data on its website, but does not charge for that access, it should not be considered as data re-distribution for the purpose of this guideline, including where the data user generates indirect revenue (for example via advertisement). Any charges from the data provider with relation to data redistribution can only apply where the data user generates a direct economic benefit via the selling of that data.

Value-added service should be understood as the creation of a product made on a basis of raw delayed data, e.g. through aggregating data sets across different sources or creating historical series, or combining it with other information, and offering it as a product to third parties. Only those value-added services which are sold as a product for a fee to third parties should be considered a value-added service and subject to charges from the data provider.

In both the context of data redistribution and the creation of value added services, where a company distributes delayed data internally[10] or makes use of delayed data for its internal purposes, including but not limited to value its portfolio, provide information to its clients on the basis of delayed data free of charge, pre- and post-trade analyses, risk management or research, it should not be subject to any charges for the purpose of this guideline.

[10] Internal distribution in this context should be understood as data being shared, either enhanced or in its raw format, within the same institution or group, for any purpose other than creating and subsequently selling data products.

Annex I – Standardisation of terminology

i. Customer

The Customer should be the natural and/or legal person who signs the market data licence agreement with the market data provider and is invoiced for the market data fees.

ii. Unit of Count

The Unit of Count should be the unit used to measure the level of use of market data to be invoiced to the customer and that is applied for fee purposes. It should distinguish between the type of use, i.e. display use and non-display use.

iii. Professional Customer

Professional Customer should mean a customer who uses market data to carry out a regulated financial service or regulated financial activity or to provide a service for third parties, or who is considered to be a large undertaking, i.e. meeting two of the following size requirements on a company basis: (i) balance sheet total of EUR 20 000 000 (ii) net turnover of EUR 40 000 000 (iii) own funds of EUR 2 000 000.

iv. Non-Professional Customer

Non-Professional Customer should mean a customer who does not meet the definition of Professional Customer.

v. Display Data

Display Data should mean the market data provided or used through the support of a monitor or a screen and that is human readable.

vi. Non-Display Data

Non-Display Data should mean all the market data which does not meet the definition of Display Data.

vii. Market Data

Market Data should mean the data trading venues, SIs, APAs and CTPs have to make public for the purpose of the pre-trade and post-trade transparency regime. Therefore, market data includes the details set out in Annex I of RTS 1 and Annex I and Annex II of RTS 2.

viii. Real-time Data

Real-time Data should mean market data delivered with a delay of less than 15 minutes after publication.

ix. Delayed Data

Delayed Data should mean market data made available 15 minutes after publication.

Annex II – Template for publishing RCB information

Please find beneath the template instructions for filling in the template.

<table>
<tr><th>Legal basis</th><th colspan="4">Contents</th></tr>
<tr><td rowspan="2">Article 89(2)(a) of Delegated Regulation (EU) No2017/565 and Article 11(2)(a) of Delegated Regulation (EU) No 2017/567</td><td colspan="4">Price List: year XXXX</td></tr>
<tr><td colspan="4">[Insert a high-level summary of the fees offered and a hyperlink to the full price list. The price list should include the following items as mentioned in the relevant Level 2 text:
(i) fees per display user;
(ii) non-display fees;
(iii) discount policies;
(iv) fees associated with licence conditions;
(v) fees for pre-trade and for post-trade market data;
(vi) fees for other subsets of information, including those required in accordance with the regulatory technical standards pursuant to Article 12(2) of Regulation (EU) No 600/2014;
(vii) other contractual terms and conditions;

Any changes to the price list should be clearly indicated and explained.]</td></tr>
<tr><td>Article 89(2)(b) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(b) of Delegated Regulation (EU) No 2017/567</td><td colspan="4">Advance disclosure with a minimum of 90 days' notice of future price change will entry into force on the DD/MM/YYYY
[Insert the hyperlink to the future price list with the date of entry into force]</td></tr>
<tr><td rowspan="5">Article 89(2)(c)(i-iii) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(c)(i-iii) of Delegated Regulation (EU) No 2017/567</td><td colspan="4">Market Data Content Information
Period covered: 01/01/yy - 31/12/yy</td></tr>
<tr><td><u>Asset Class</u></td><td>1) Number of instruments covered</td><td>2) Total turnover of instruments covered</td><td>3) Pre-trade/post-trade market data ratio</td></tr>
<tr><td>Equity instruments (shares, ETFs, DRs, certificates, other equity-like financial instruments)</td><td></td><td></td><td></td></tr>
<tr><td>Bonds</td><td></td><td></td><td></td></tr>
<tr><td>ETCs ETNs</td><td></td><td></td><td></td></tr>
<tr><td>SFPs</td><td></td><td></td><td></td></tr>
</table>

	Securitised derivatives			
	Interest Rate Derivatives			
	Credit Derivatives			
	Equity derivatives			
	FX derivatives			
	Emission allowances derivatives			
	C10 derivatives			
	Commodity derivatives			
	CFDs			
	Emission allowances			
Article 89(2)(c)(iv) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(c)(iv) of Delegated Regulation (EU) No 2017/567	**Information on any data provided in addition to market data**		*[List]*	
Article 89(2)(c)(v) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(c)(v) of Delegated Regulation (EU) No 2017/567	**Date of the last licence fee adaption for market data provided**		*[DD/MM/YYYY]*	
Article 89(2)(d) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(d) of Delegated Regulation (EU) No 2017/567	**Total Market Data Revenues (EUR)**		*[Per operating MIC]*	
	Market Data Revenues as a proportion of total Revenues (%)		*[Per operating MIC]*	

Article 89(2)(e) of Delegated Regulation (EU) No 2017/565 and Article 11(2)(e) of Delegated Regulation (EU) No 2017/567	**Information on cost accounting methodology: year YYYY**	
	Information on how the price was set, including the cost accounting methodologies used and information about the specific principles according to which direct and variable joint costs are allocated and fixed joint costs are apportioned	*Please provide a summary of how the price was set, including:* *1) An exhaustive list of types of costs included in setting the price, including direct and joint and common costs and examples of each cost type* *2) Allocation principles and allocation keys (%) for joint and common costs* *3) An explanation of any margin used in setting the price and how it is ensured that such margin is reasonable* *Please insert a hyperlink with more detailed information on the cost accounting methodology, where necessary.*

Instructions for filling in the template:

1) Reporting period

Information should be reported for a full period of 12 months except for the first reporting period where the period may be shorter or longer.

2) Number of instruments

The Average number of reporting or tradable instruments for the period covered should be provided. For derivatives, the average number of contracts should be considered.

3) Total turnover of instruments covered

For the calculation, the Average of the Daily Total Turnover should be considered and provided. The volume measure should be confirming table 4 of Annex II of RTS 2 for bonds instruments.

4) Pre trade/post trade market data ratio

Market data providers should calculate and publish the ratio of orders per transactions. Orders should include all input messages published in accordance with Articles 3, 4, 8, 9, 14 and 18 of MiFIR and including messages on submission, modification and cancellation sent to the trading system of a trading venue, relating to an order or a quote. However, these should exclude cancellation messages sent subsequently to: (i) uncrossing in an auction; (ii) a loss of venue connectivity; (iii) the use of a kill functionality. Transactions should mean a totally or partially executed order subject to the requirements under Articles 6, 7, 10, 11, 20 and 21 of MiFIR. The number of unexecuted orders should be calculated taking into account all phases of the trading session, including the auctions. Please note that SIs and APAs do not have to disclose the pre-trade/post-trade data ratio. SIs do not have to provide information on fees for post-trade market data and APAs do not have to provide their fees for pre-trade market data.

Annex III – Correspondence table

As of 1 January 2022, certain MiFID II provisions should be read as a reference to new MiFIR provisions as specified in Regulation (EU) No 2019/2175, and as further supplemented by relevant Level 2 acts. Please see the correspondence table below:

Correspondence Table	
MiFID II	MiFIR (new)
Article 4(1)(52)	Article 2(1)(34)
Article 4(1)(53)	Article 2(1)(35)
Article 64(1)	Article 27(g)(1)
Article 64(2)	Article 27(g)(2)
Article 65(1)	Article 27(h)(1)
Article 65(2)	Article 27(h)(2)

Commission de Surveillance du Secteur Financier
283, route d'Arlon
L-2991 Luxembourg (+352) 26 25 1-1
direction@cssf.lu
www.cssf.lu