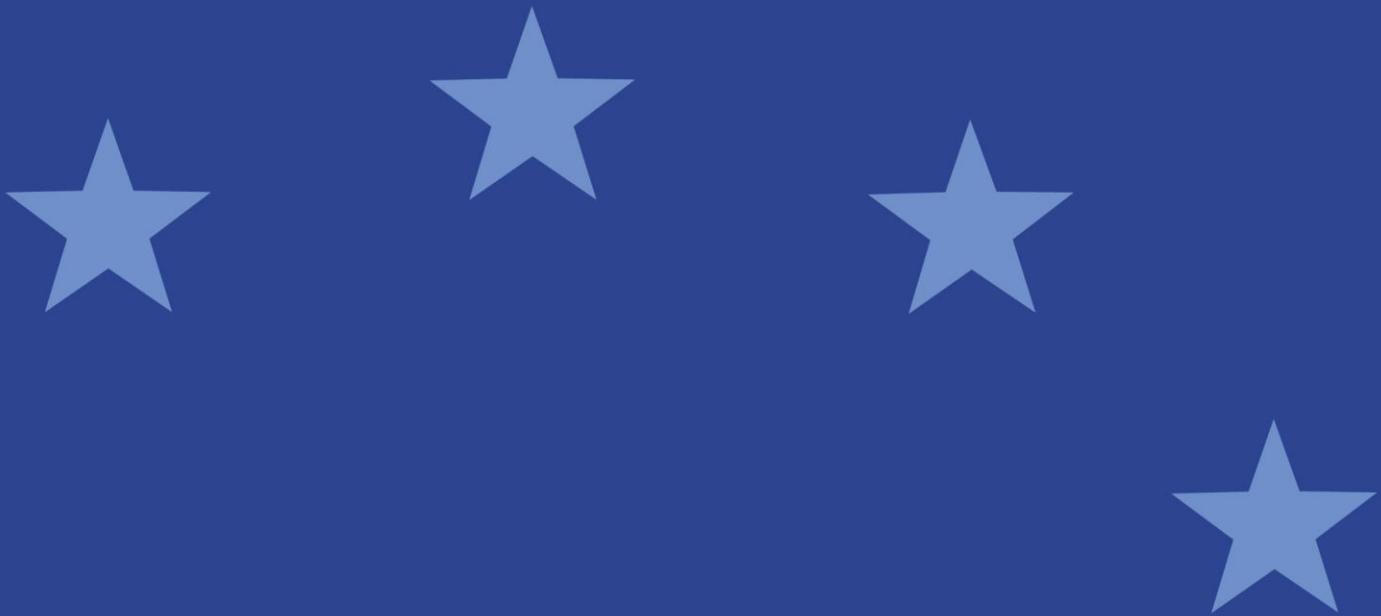




European Securities and  
Markets Authority

## **Reply form for the Consultation Paper on Guidelines on the MiFID II/ MiFIR obligations on market data**



## Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **11 January 2021**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_GOMD\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_FOTF\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_GOMD\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading "Your input – Open consultations" → "Consultation on the Guidelines on the MiFID II/MiFIR obligations on market data").

## **Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

## **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

## **Who should read this paper**

This consultation paper is interesting for you if you are a trading venue, an APA, an SI or a consumer of market data.

## General information about respondent

Name of the company / organisation	ICI Global
Activity	Choose an item.
Are you representing an association?	<input type="checkbox"/>
Country/Region	UK

## Introduction

*Please make your introductory comments below, if any*

<ESMA\_COMMENT\_GOMD\_1>

We broadly agree with ESMA’s proposed guidelines on the market data obligations under MiFID II/MiFIR. If implemented correctly, the guidelines should provide market participants, such as regulated investment funds and their managers, with easier, fairer and non-discriminatory access to market data at a lower average cost.

Regulated investment funds and their managers often face complexity and additional expense when obtaining comprehensive and accurate market data for a multitude of use cases, including transaction cost analysis, order routing and best execution. Enhancing access to market data will enable regulated investment funds and their managers to achieve better execution quality for their end investors at reduced cost. We recommend the following enhancements to ESMA’s proposed guidelines:

Accounting methodologies for setting market data prices – market data providers (MDPs) should: publish their current accounting methodology; give customers advanced notice of changes, including impacts on market data prices; and indicate where they have published their methodology (e.g., on a common location on MDP’s website).

Audit practices – MDPs should limit audit practices to only those necessary to confirm customers’ compliance with market data agreements (MDAs) and clearly set out how customers can positively demonstrate compliance with the MDA.

Customer categorisation – MDPs should publish easily accessible and verifiable criteria and information on their customer categories and enable corporate groups, which include regulated fund managers, to select whether they are placed into a customer category based on the group’s use of data or the use made by a group subsidiary.

Non-discriminatory access – MDPs should ensure that terms and conditions and technical arrangements for data access are applied in a non-discriminatory manner for corporate groups, subsidiary and stand-alone customers.

Per user basis charging – MDPs should charge for display data on a per user basis – only requiring customers to meet bare minimum qualifying conditions for such a model – or MDPs should publicly justify why they are unable to offer a per user fee model.

Unbundled data – MDPs should disclose the bundled price of all the MDP’s products and services (and a sub-set, if applicable) alongside the price for each item of unbundled data.

Reasonable Commercial Basis (RCB) Information – ESMA should enhance its proposed template of RCB information, require MDPs to highlight where their RCB information has been published (e.g., a common location on the MDPs’ website) and explore the merits of developing a database of MDP’s RCB information, including analytical tools to support easy customer access to and side-by-side MDP comparison.

Additional guidance – to enable customers to more easily compare approaches across MDPs, ESMA should: explore the merits of providing additional guidance and/or Q&A to further explain and harmonise MDP’s cost typologies; terms and conditions and technical arrangements for data access (e.g., latency and connectivity options); and MDP’s approaches to presenting accounting methodologies.

We support ESMA’s efforts to improve the MiFID II/MiFIR market data framework. Ultimately, we consider that a comprehensive, thoughtfully implemented consolidated tape (CT) with fair pricing (i.e., transparent, cost-plus margin basis), high data quality, timely coverage and delivery, and appropriate governance will provide the greatest enhancement to market transparency. We encourage policymakers, including ESMA, to prioritise changes to MiFID II/MiFIR to support the delivery of a CT.

<ESMA\_COMMENT\_GOMD\_1>

## Questions

**Q1: What are your views on covering in the Guidelines also market data providers offering market data free of charge for the requirements not explicitly exempted in the Level 2 requirements?**

<ESMA\_QUESTION\_GOMD\_1>

We do not object in principle to the application of ESMA's guidelines to MDPs offering data free of charge. Some guidelines are of limited relevance to free data providers (e.g., per user fees) and others should be applied in a proportionate manner so as to not limit access to, or reduce the provision of, free data (e.g., if it is no longer economically viable for a provider to operate.) <ESMA\_QUESTION\_GOMD\_1>

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

<ESMA\_QUESTION\_GOMD\_2>

We fully support ESMA's proposals for MDPs to have a clear, up-to-date and documented accounting methodology for setting market data prices. ESMA should require MDPs to publish their current accounting methodology and on an ongoing basis MDPs should highlight and notify customers at least 90 days in advance of planned changes (consistent with existing MiFID II transparency obligations). ESMA should also require MDPs to explain how changes in the costs they incur may impact market data prices (e.g., whether economies of scale from additional customers may reduce marginal variable costs and enable market data prices to be reduced).

<ESMA\_QUESTION\_GOMD\_2>

**Q3: Do you think ESMA should clarify other aspects of the accounting methodologies for setting up the fees of market data? If yes, please explain.**

<ESMA\_QUESTION\_GOMD\_3>

We support ESMA's proposals for MDP to publish their accounting methodology for determining market data prices, including fixed and variable components of direct and joint costs and an explanation of any included margin. Additionally, ESMA should examine the merit of publishing further guidance and/or Q&A to further explain and harmonise the cost typologies to enable customers, such as regulated funds, to more easily compare similar data services across MDPs.

<ESMA\_QUESTION\_GOMD\_3>

**Q4: With regard to Guideline 2, do you think placing the burden of proof, with respect to non-compliance with the terms of the market data agreement, on data providers can address the issue? Please provide any other comments you may have on Guideline 2.**

<ESMA\_QUESTION\_GOMD\_4>

We support ESMA's proposals for MDPs to only impose penalties where they can demonstrate that a customer has breached their market data agreement (MDA). Penalties should be limited to the additional revenue that would have been generated from a licence permitting the data use made by the customer and not considered by MDPs as an additional revenue stream. ESMA should limit MDP's audit practices to only those necessary to confirm compliance with the MDA and clearly set out how customers can positively demonstrate compliance (see also our response to question 22).

<ESMA\_QUESTION\_GOMD\_4>

**Q5: Do you consider that auditing practices may contribute to higher costs of market data? Please explain and provide practical examples of auditing practices that you consider problematic in this context. Such examples can be provided on a confidential basis via a separate submission to ESMA.**

<ESMA\_QUESTION\_GOMD\_5>

ICI Global members report that audit practices undertaken by MDPs to verify compliance with MDAs can be intrusive and require considerable resources (e.g., responding to information requests.) These audit practices result in additional cost for regulated funds and require MDPs to employ additional resources. ESMA should limit MDP's audit practices to only those necessary to confirm compliance with the MDA and should not require regulated funds and their managers, as market data customers, to devote considerable resources to responding to audit requests. MDPs should provide advanced notice of audits to customers and disclose the typical frequency at which they expect audits to occur.

<ESMA\_QUESTION\_GOMD\_5>

**Q6: Do you agree with Guideline 3? If not, please justify, by indicating which parts of the Guideline you do not agree with and the relevant reasons.**

<ESMA\_QUESTION\_GOMD\_6>

We support ESMA's proposals for MDPs to publish their customer categories and associated criteria in an objective and easily verifiable manner that enables customers to identify the category they are in. ESMA should require MDPs to define customer types clearly and publicly, accompanied by use examples and data types. To confirm the criteria used are sufficiently general to pertain to more than one customer, MDPs should also indicate the broad split of their customers across the different categories.

ESMA should require MDPs to highlight and notify customers at least 90 days in advance of planned changes to customer categories.

We fully support ESMA's proposals for MDPs to explain the applicable fees and terms and conditions for each data "use" and justify any differentiation among customer categories. ESMA should require MDPs to describe any differences in fees and significant terms and conditions among similar customer categories.

<ESMA\_QUESTION\_GOMD\_6>

**Q7: Do you agree with the approach taken in Guideline 4? If not, please justify, also by providing arguments for the adoption of a different approach.**

<ESMA\_QUESTION\_GOMD\_7>

We agree with ESMA's proposals to require MDPs to describe how they ensure that a customer is charged for the same data only once – for instance, where a customer uses data for two purposes and therefore potentially belongs to more than one customer category. ESMA should ensure that corporate groups that include regulated fund managers are able to select whether they are placed into a customer category based on the group's use of data or the use made by a subsidiary. For instance, a corporate group may elect to be placed into a single customer category that takes account of the use of data across all group entities. Alternatively, two or more subsidiaries within the corporate group may be placed into different customer categories based on their individual data use. MDPs must ensure that the range of customer categories, including differences in market data fees, are transparent to customers and established in a non-discriminatory manner. As different entities within a fund group may use the same data, such an approach will reduce and may eliminate duplicative charging (e.g., a UCITS management company and MiFID investment manager undertaking best execution analysis.)

<ESMA\_QUESTION\_GOMD\_7>

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

<ESMA\_QUESTION\_GOMD\_8>

We support ESMA's proposals that MDPs should offer the same terms and conditions and technical arrangements, including latency and connectivity, to all customers in the same category. ESMA should require MDPs to publish the terms and conditions and technical arrangements for each customer category.

We also support ESMA's proposal that MDP's terms and conditions and technical arrangements for data access should apply in a non-discriminatory manner for customers that are part of a corporate group. As noted in our response to question 7, ESMA should ensure that corporate groups that include regulated fund managers are able to select whether they are placed into a customer category based on the group's use of data or a different category based on the use made by subsidiaries.

<ESMA\_QUESTION\_GOMD\_8>

**Q9: Do you think that ESMA should clarify other elements of the obligation to provide market data on a non-discriminatory basis? If yes, please explain.**

<ESMA\_QUESTION\_GOMD\_9>

We recommend that MDPs publish the terms and conditions and technical arrangements for each customer category for both raw market data and bundled data services (see also our response to question 15). ESMA should review the publications of MDPs and examine the merit of publishing further guidance or Q&A (e.g., a typology) to further standardise terms and conditions, and technical arrangements (e.g., latency and connectivity options). If

implemented correctly, a standardised approach should enable customers, such as regulated funds, to more easily compare similar data services across MDPs.

<ESMA\_QUESTION\_GOMD\_9>

**Q10: Do you agree on the interpretation of the per user model provided by Guideline 6? If not, please justify and include in your answer any different interpretation you may have of the per user model and supporting grounds.**

<ESMA\_QUESTION\_GOMD\_10>

We support ESMA’s proposed clarifications for MDPs to: (i) charge for display data based on the number of active users, rather than per device or per data product; and (ii) “net” data fees to ensure customers are charged only once for the same data whether received through direct or indirect feeds. Charging for data on net user basis correctly acknowledges that while an employee of a regulated fund manager may be able to access display data on multiple devices (e.g., in the office or remotely), in practice they are unlikely to access data on more than one device at a time – for instance they are likely to either use an office based device or a remote device, not both simultaneously. Charging for market data on a net per user basis is also likely to reduce administrative costs and complexity if implemented effectively (e.g., reduce multiple charging/billing). See also our response to Question 11.

<ESMA\_QUESTION\_GOMD\_10>

**Q11: Do you agree with Guideline 7? If not, please justify. In your opinion, are there any other additional conditions that need to be met by the customer in order to permit the application of the per user model or do you consider the conditions listed in Guideline 7 sufficient to this aim? Please include in your answer the main obstacles you see in the adoption of the per user model, if any, and comments or suggestions you may have to encourage its application.**

<ESMA\_QUESTION\_GOMD\_11>

We support ESMA’s proposal that MDPs should only impose the bare minimum qualifying conditions necessary for customers to demonstrate their eligibility for the per user model. Customers should only be required to report the number of active users – defined as those staff who have access to display data – and not require customers to report the number, types or location of devices used to access the data, nor whether users can access data on different devices. Reporting information beyond just the number of active users is excessive, not necessary for the operation of a per user model and is consistent with ensuring that MDPs provide non-discriminatory access, i.e., pricing that is not based on the types or location of devices used to access data.

<ESMA\_QUESTION\_GOMD\_11>

**Q12: Do you agree with Guideline 8? If not, please justify also by indicating what are the elements making the adoption of the per user model disproportionate and the reasons hampering their disclosure.**

<ESMA\_QUESTION\_GOMD\_12>

We support ESMA’s proposal that MDPs that do not offer a per user model should publicly explain why they are unable to do so, including providing supporting information such as accounting methodologies. ESMA should require MDPs to apply aspects of its proposed “per user fee” guidance (guidelines 6-8) to other data provision models (e.g., per device models) unless doing so would increase data costs or be infeasible (which MDPs should be required to explain).

<ESMA\_QUESTION\_GOMD\_12>

**Q13: Do you think ESMA should clarify other elements of the obligation to provide market data on a per user fees basis? If yes, please explain.**

<ESMA\_QUESTION\_GOMD\_13>

ESMA should clarify that customers are only required to report to MDPs the number of active users – defined as those staff who have access to data – and not the number, types or location of devices used to access the data, nor whether users can access data on different devices. MDP should not impose limits on the number, type or location of devices used to access data. ESMA should confirm that an individual user who has the ability to login to multiple devices, for instance to permit access from an office device and a remote device, or to receive data through a direct or indirect feed, constitutes one user for the purposes of determining the number of active users to be reported by the customer to the MDP.

<ESMA\_QUESTION\_GOMD\_13>

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

<ESMA\_QUESTION\_GOMD\_14>

We support ESMA’s proposal that MDPs: (i) should always inform customers that they can purchase unbundled data; and (ii) should not make market data available only on condition of purchasing bundled services. ICI Global members report that the aggregated price of unbundled products or services under MiFID II can be greater than the price they paid under MiFID I for bundled products or services. ESMA should require MDPs to disclose the bundled price for all of the MDP’s product and services (and a sub-set, if applicable) alongside the price for each item of unbundled data, in accordance with ESMA’s proposed guidance on accounting methodologies (guideline 1). This will enable customers to identify the most suitable and cost-effective package for their needs, including whether purchasing several items of unbundled data is a similar price to a package of bundled services.

<ESMA\_QUESTION\_GOMD\_14>

**Q15: Do you think ESMA should clarify other elements in relation to the obligation to keep data unbundled? If yes, please explain.**

<ESMA\_QUESTION\_GOMD\_15>

ESMA should amend its proposed guidelines to confirm that “raw market data” – which MDPs are required to offer on an unbundled basis – should be accessible using the same technical arrangements, including latency and connectivity, that are available to customers that purchase bundled data services.

<ESMA\_QUESTION\_GOMD\_15>

**Q16: Do you agree with Guideline 10 that market data providers should use a standardised publication format to publish the RCB information? If not, please justify.**

<ESMA\_QUESTION\_GOMD\_16>

We fully support ESMA’s proposals for MDPs to publish reasonable commercial basis (RCB) information in a standardised format. At a minimum, ESMA should require MDPs to highlight where they have published RCB information, for instance in a common location on the MDP’s website. Furthermore, ESMA should explore the merits of developing a database of RCB information published by MDPs, including analytical tools, to support easy customer access to RCB information and side-by-side comparison of similar products and services. An RCB information database could mirror the database concepts that ESMA is developing for cross-border investment funds.

<ESMA\_QUESTION\_GOMD\_16>

**Q17: Do you agree with the standardised publication template set out in Annex I of the Guidelines and the accompanying instructions? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions?**

<ESMA\_QUESTION\_GOMD\_17>

We support the use of a standardised RCB information template. ESMA’s proposed template would only require MDPs to insert a hyperlink to their price list and include a high-level summary of fees. We encourage ESMA to include in the template those required MiFID II fields such as fees per display user, and non-display fees, discount policies, licence condition fees etc. (per Article 89(2)(a), MIFID II Delegated Regulation 2017/565). Requiring MDPs to set out information directly on the template, rather than inserting a hyperlink, will make it easier for customers to compare prices and fees. Furthermore, presenting RCB information on the template may highlight opportunities for ESMA to provide additional guidance to further standardise the presentation of RCB information. A similar approach should be adopted to the presentation of the MDP’s future price list (per Article 89(2)(b), MIFID II Delegated Regulation 2017/565.)

<ESMA\_QUESTION\_GOMD\_17>

**Q18: Do you agree with the proposed definitions in Guideline 11? In particular, do they capture all relevant market uses and market participants? If not, please explain.**

&lt;ESMA\_QUESTION\_GOMD\_18&gt;

We recommend the following clarifications to ESMA’s proposed definitions:

Customer – corporate groups, which include regulated fund managers should be permitted to designate the group itself, or any subsidiary, as the “customer” for purpose of the MDP, acting on behalf of all the group entities receiving and using the data. The fund group or one of the subsidiaries may be invoiced for market data fees.

Unit of count for display use – an active user ID for a human user may have multiple logins associated with it (for the same user ID) to permit access to data on different devices, but should be counted as one user for unit of count purposes.

Unit of count for non-display use – devices or machines accessing or processing the same data should not result in customers being charged for the same data multiple times.

&lt;ESMA\_QUESTION\_GOMD\_18&gt;

**Q19: Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.**

&lt;ESMA\_QUESTION\_GOMD\_19&gt;

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&lt;ESMA\_QUESTION\_GOMD\_19&gt;

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

&lt;ESMA\_QUESTION\_GOMD\_20&gt;

We support ESMA’s proposal to require MDPs to make their accounting methodologies public, including the costs included in market data fees and allocation keys for any joint costs. ESMA should require MDPs to highlight and notify customers at least 90 days in advance of planned changes and explain how changes in the costs may impact market data prices (see also our responses to question 2). ESMA should require MDPs to signpost the publication of their accounting methodologies, for instance in a common location on their website, and ESMA should examine the merit of publishing further guidance or Q&A to further harmonise approaches to presenting accounting methodologies to enable customers to more easily compare methodologies across MDPs.

&lt;ESMA\_QUESTION\_GOMD\_20&gt;

**Q21: Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.**

&lt;ESMA\_QUESTION\_GOMD\_21&gt;

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&lt;ESMA\_QUESTION\_GOMD\_21&gt;

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

&lt;ESMA\_QUESTION\_GOMD\_22&gt;

We support ESMA's proposal to require MDPs to include in the market data agreement (MDA): (i) information on fees that can be applied retroactively; (ii) the audit practice; and (iii) how customers can demonstrate compliance. ESMA should also require MDPs to confirm the following:

- that retroactive fees are limited to the additional revenue that would have been generated by licensing fees for the actual data use made by the customer (in cases where the customer uses data for purposes outside the MDA);
  - details of the audit practice, including frequency and nature of the audit (e.g., remote, onsite etc.);
  - information, reports and other evidence that will enable a customer to demonstrate their compliance with the MDA – either during an audit or outside of the audit process – and whether positive compliance may reduce the frequency or timing of subsequent audits.
- ESMA should require generic information concerning the MDA that is not specific to a particular customer to be published by the MDP.

&lt;ESMA\_QUESTION\_GOMD\_22&gt;

**Q23: Which elements for post- and pre-trade data publication should be required? In particular, are flags a useful element of the publication? Should there be any differences between the different types of trading systems? Is the first best bid and offer sufficient for the purpose of delayed pre-trade data publication?**

&lt;ESMA\_QUESTION\_GOMD\_23&gt;

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&lt;ESMA\_QUESTION\_GOMD\_23&gt;

**Q24: Which use cases of post- and pre-trade delayed data are relevant to you as a data user? What format of data provision is necessary for these use cases, and especially for pre-trade delayed data?**

&lt;ESMA\_QUESTION\_GOMD\_24&gt;

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&lt;ESMA\_QUESTION\_GOMD\_24&gt;

**Q25: Do you agree with the definitions of data-distribution and value-added services provided in Guideline 16? Please explain.**

&lt;ESMA\_QUESTION\_GOMD\_25&gt;

We agree with ESMA's proposed definitions of data-distribution and value-added services. We recommend that ESMA clarifies that neither the use of data by regulated funds managers (including any corporate group they are part of) for purposes such as portfolio valuation, fund pricing, performance analysis, transaction cost analysis, order routing, best

execution in the course of portfolio management, nor the provision of information by regulated funds to their investors (e.g., periodic fund prices, disclosures and other reports) represents a value-added service.

<ESMA\_QUESTION\_GOMD\_25>

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

**Please explain.**

<ESMA\_QUESTION\_GOMD\_26>

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<ESMA\_QUESTION\_GOMD\_26>

**Q27: What level of resources (financial and other) would be required to implement and comply with the Guidelines and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.**

<ESMA\_QUESTION\_GOMD\_27>

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<ESMA\_QUESTION\_GOMD\_27>