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Dear Sirs,

I am writing in response to your Consultation Paper on the Guidelines on the MiFID II/ MiFIR obligations on market data - ESMA70-156-2477.

I consider myself an Independent stakeholder with more than 30 years' experience in the market data industry.

Credentials:

- **Knight-Ridder Financial** – launched the data vendor into 30 countries in Europe & Asia/Pacific. Worked with exchanges in these regions (Equities, Commodities including Energy & Precious Metals and Future & Options) and led major contract negotiations with key banks, asset managers brokers and IDBs. Also conducted commercial negotiations with other data vendors selling them agreed datasets and buying datasets from them. At this time successfully retained a key Tier 1 investment bank who were being wooed by a larger competitor (predatory pricing which I threatened to publicise). Took out full page advertisements in the FT and WSJ showing a picture of the fattest cat in the world and highlighting the benefits of using Knight-Ridder. The analysts in the City of London and Wall Street considered the fat cat to be Reuters even though they were never mentioned albeit that Reuters sought to take legal action against us.

Member of an industry forum seeking to standardise licensing terms with Exchanges.

During this time and thereafter consolidation has taken place in the industry reducing the number of competitors and Reuters losing its prime position to Bloomberg.

- **Cognotec** - providing realtime financial data to UK Corporate treasurers to assist them with negotiating keener FX & MM prices and automating FX & MM trading for Barclays Bank, Swiss Bank and many others for deployment

with their clients (reducing costs for all parties and eliminating broken trades). Launched the first FX trading platform on the Bloomberg terminal.

- **Ballintrae** – a specialist consultancy in Market Data & Infrastructure providing services to investment banks, asset managers, pension funds and exchanges. On talking to many of the consumer firms it was clear that data policies and license agreements were becoming ever more complex and that this was still an industry issue in helping these firms understand the various nuances in some of the agreements. Therefore, we commissioned the London Business school (2009) to undertake quantitative & qualitative research amongst a representative sample of banks (largest to the smallest), asset managers, pension funds and exchanges in the challenges experienced with data policies and license agreements and the business benefit for creating a solution to deal with these challenges. The research bore out the opportunity/need for an online exchange rules and regulations database. We created and maintained a database in realtime of all exchanges who had policies and license agreements. *[Note: A large number of exchanges publish their policies with a date and version history number, but we discovered that some exchanges would make tweaks to their policies but leave the date and version history number the same. Thus, when we managed audits on behalf of clients, we would ask the data provider to provide us with a copy of the policy they were going to be using to perform the audit and then once delivered have the appropriate discussion with them. It should also be noted that some exchanges update their policies and it is the licensed clients responsibility to keep themselves abreast of any updates which are published on the exchanges websites.]* We provided interpretations of each exchanges' market data policies and license agreements in simple language which could be understood from the most junior of employees to a main board director. Such was our confidence in our interpretations of each exchanges market data policies and license agreements that we indemnified the users in the use of the database (£10mm indemnity). A number of leading exchanges validated our interpretation of their policies – the first was the LSE who gave a glowing endorsement of the service we provided – whilst others refused the opportunity. The take up globally for this product was very poor which surprised us considering the thoroughness of the research. A light version of the database was made available to the membership of the industry body FISD in Asia at no cost – again the take up was very poor. Upon further probing the answer always given was 'risk appetite' i.e. what was the likelihood of getting caught and, if caught, what would the penalty be. Experienced market data professionals knew that Citibank had been discovered by the LSE in significant under-reporting of licensed data usage which had shaken exchanges across the globe who had believed, until this major discovery, that banks had robust processes in place for reporting usage accurately. Thus, the number of exchanges and other data providers having a market data audit function and/or use the services of third-party auditors has grown significantly since this time. Audited firms found to be using unlicensed data/ under reporting of data usage would find themselves facing a financial liability of back fees for x many years plus interest and the cost of conducting the audit. Savvy operators fiercely negotiate the sum demanded and may pay 5 cents on every dollar claimed. Indeed, some deliberately under-report knowing that they will be caught but that the cost is still pennies compared to what the real cost would have been. From our

experience the quality of audits varies from one exchange to another i.e., they rarely unearth all the facts and data leakage of up to 40% has been found. In other words, if users of data complied with their license agreements the revenues generated by the various data providers would be greater and the need to raise prices could be better balanced. We also drafted new data policies for exchanges which were very clear and therefore understood by market data practitioners.

Regularly asked to chair industry panels on data compliance and licensing matters.

Created a forum of Tier 1 investment banks and asset managers seeking to bring standardisation to audits and data policies.

- **IPCL** – a specialist consultancy providing advisory services on data compliance, data compliance audits, policies & license agreements and monetisation of data to banks, asset managers, brokers, exchanges and data vendors.
- **Bayncore** – a specialist independent High Performance Computing, AI & Big Data Analytics, Training & Consulting services firm in Europe works with senior programmers and business managers across sectors to optimise performance and harness complexity utilising the latest chip technology and the various tools available. The increasing quantities of data generated by modern business processes pose enormous challenges for organisations seeking to glean knowledge and understanding from the data and the opportunities which can be leveraged. Combinations of HPC, Cloud and Big Data technologies are key to meeting the increasingly diverse needs of large and small organisations alike which we assist them with.

Response to question 4: 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.

No. You have some very sophisticated users of market data who consider the cost of market data to be a tax on the business and knowingly breach the data license agreements but seek to thwart any audit being conducted on them and will also use lawyers to frustrate the audit process. Until such time that regulation is really enhanced those firms and individuals will continue to act as they do to the detriment of the rest of the market. It is not uncommon to find up to 40% 'data leakage' in such firms.

Question 5: 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.

Absolutely not. Auditors know the firms who continually flout policies and license agreements. If those firms reported correctly it would increase the revenues of the data providers. More audits are taking place due to non-compliance.

Response to question 22: Do you agree with Guideline 13? If not, please justify.

I do not disagree with the principle you have proposed BUT you haven't proposed action to be taken against those organisations who deliberately use unlicensed data and/or under report their usage in fairness to those organisations who are either compliant or seek to be compliant with a data license agreement?

Perhaps if regulators were given the authority to take action against those firms who consistently and/or deliberately under report data usage/use unlicensed data it would be much fairer to those firms who do or who do seek to abide by the license agreements and a more level playing field would be achieved. This would ultimately reduce the need for so many audits and the costs involved to the consumer firms.

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