

# Transparency Obligation for Market Data under MiFIR

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## 1. Regulatory Requirements for Market Data Provision

### 1.1. Overview of Regulatory Requirements

Based on the Regulation (EU) No 600/2014 (“**MiFIR**”)<sup>1</sup> supplemented by the Delegated Regulation (EU) 2017/ 567 (“**RTS**”)<sup>2</sup> additional obligations for trading venues and investment firms operating a trading venue and systematic internalisers for the publication of market data have become effective on 3 January 2018. As outlined in Recital (1) of MiFIR the key objective was to strengthen transparency:

*“The financial crisis has exposed weaknesses in the transparency of financial markets which can contribute to harmful socioeconomic effects. Strengthening transparency is one of the shared principles to strengthen the financial system as confirmed by the G20 Leaders’ statement in London on 2 April 2009. In order to strengthen the transparency and improve the functioning of the internal market for financial instruments, a new framework establishing uniform requirements for the transparency of transactions in markets for financial instruments should be put in place.”*

Already in the past, real-time market data from exchange venues provided for a precedent of highly reliable and transparent data. The regulation aims to make market data more easily and readily available to users by establishing a new transparency regime for non-equities and further strengthen and broaden the existing equity trade transparency regime.

#### **Provision of real-time market data**

With MiFIR data publication by trading venues (and systematic internalisers) falls under the new uniform transparency requirements. Under the new regime pre- and post-trade data shall be made available in a disaggregated form and ‘unbundled’ from further services (MiFIR, Article 12, and RTS, Article 10 (1)).

Further requirements are set out in MiFIR, Article 13 and RTS, Article 8 (obligation to provide market data on a non-discriminatory basis), and a new obligation in relation to per user fees (RTS, Article 9).

Adherence to these requirements for the different trading venues within Deutsche Börse is reflected within the Market Data Price List of Deutsche Börse AG (“**Deutsche Börse**”), which is publicly available on the website.

#### **Data fees at reasonable commercial terms**

Amongst others, trading venues are also obliged to make the relevant pre- and post-trade data available on a reasonable commercial basis (MiFIR, Article 13).

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<sup>1</sup> 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; see also section 1.2 of this paper for further regulatory details

<sup>2</sup> COMMISSION DELEGATED REGULATION (EU) 2017/567 of 18 May 2016 supplementing Regulation 600/2014 of the European Parliament and the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions

In line with RTS, Article 11 (2) (e), this document is providing information on how the price of market data is being set.

## 1.2. Legal Basis for the Provision of Real-time Data on a Reasonable Commercial Basis

The core requirements to provide pre- and post-trade data on a reasonable commercial basis are outlined within MiFIR

### **Article 13 Obligation to make pre-trade and post-trade data available on a reasonable commercial basis**

*1. Market operators and investment firms operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 available to the public on a reasonable commercial basis and ensure non-discriminatory access to the information. Such information shall be made available free of charge 15 minutes after publication.*

*2. The Commission shall adopt delegated acts in accordance with Article 50 clarifying what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1.*

Further details have accordingly been provided in the RTS, in particular,

### **Article 6, Obligation to provide market data on a reasonable commercial basis (Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)**

*1. For the purposes of making market data containing the information set out in Articles 3, 4, 6 to 11, 15 and 18 of Regulation (EU) No 600/2014 available to the public on a reasonable commercial basis, market operators and investment firms operating a trading venue and systematic internalisers shall, in accordance with Article 13(1), Article 15(1) and 18(8) of Regulation (EU) No 600/2014, comply with the obligations set out in Articles 7 to 11 of this Regulation.*

*2. Articles 7, 8(2), 9, 10(2) and 11 shall not apply to market operators or investment firms operating trading venues or to systematic internalisers that make market data available to the public free of charge.*

in combination with

### **Article 7, Obligation to provide market data on the basis of cost (Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)**

*1. The price of market data shall be based on the cost of producing and disseminating such data and may include a reasonable margin.*

*2. The cost of producing and disseminating market data may include an appropriate share of joint costs for other services provided by market*

*operators or investment firms operating a trading venue or by systematic internalisers.*

The RTS also provides for certain transparency obligations and in particular publication requirements:

**Article 11 Transparency obligation (Article 13(1), 15(1) and 18(8) of Regulation (EU) No 600/2014)**

1. *Market operators and investment firms operating a trading venue and systematic internalisers shall disclose the price and other terms and conditions for the provision of the market data in a manner which is easily accessible to the public.*
2. *The disclosure shall include the following:*
  - (a) ...
  - (e) *information on how the price was set, including the cost accounting methodologies used and the specific principles according to which direct and variable joint costs are allocated and fixed joint costs are apportioned, between the production and dissemination of market data and other services provided by market operators and investment firms operating a trading venue or systematic internalisers.*

## 2. Relevant Market Data Products and Scope of Description

The core business of the Market Data + Services (“**MD+S**”) segment is the distribution of capital market information, technology and infrastructure services to clients worldwide. These services include real-time trading and market signals, as well as indices such as the EURO STOXX 50 and the DAX. Capital market participants subscribe to this information, or license it for their own use, processing, or dissemination.

Data Services is one of the business areas of MD+S, which is providing real-time transparency and dissemination services for Deutsche Börse Group’s own trading venues as well as third party trading venues (i.e., partner exchanges) or other data providers. As such, the Data Services business area mainly involves the distribution of licenses for real-time trading and market signals, and the provision of historical data to banks, trading firms, and fund management companies. The most important products in this respect are order book data from the cash and derivatives markets, as well as reference data of exchanges within Deutsche Börse Group and its partner exchanges.

MiFIR applies to certain data products published by Deutsche Börse. Below, all MiFIR relevant products affected by the new transparency regime under MiFIR, provided by Deutsche Börse and for which Deutsche Börse have been tasked by Frankfurter Wertpapierbörse and Eurex Deutschland are being listed:

Originating trading venue	Data products
Frankfurter Wertpapierbörse	Xetra® Pre-Trade
	Xetra® Post-Trade
	Börse Frankfurt Pre-Trade
	Börse Frankfurt Post-Trade
Eurex Deutschland	Eurex® Pre-Trade
	Eurex® Post-Trade

Comprehensive information on real-time market data products and the respective licensing agreements including a fully transparent overview on pricing is available on Deutsche Börse's websites (<http://www.mds.deutsche-boerse.com/mds-en/data-services/real-time-market-data> and <http://www.mds.deutsche-boerse.com/mds-en/data-services/real-time-market-data/agreements>, respectively).

### 3. General Cost Accounting Principles and applied Cost Allocation Methodology

MD+S provides and disseminates the real-time market data on behalf of the trading venues subject to the requirements for MiFIR. In total, Deutsche Börse acts as both a manufacturer and a distributor of market data. The costs for each service consist of standard directly attributable costs and indirect costs.

Prices for the relevant data packages are generally being defined based on costs as laid out below, and the value of the data to various customer groups, including the content of the data packages.

Furthermore, pricing of similar services by other data providers are considered for validation.

#### 3.1 General Accounting Principles at Deutsche Börse

Deutsche Börse's financial statements are prepared in compliance with International Financial Reporting Standards (IFRS) and the related interpretations issued by the International Financial Reporting Standards Interpretation Committee (IFRSIC), as adopted by the European Union in accordance with Regulation 1606/2002 of the European Parliament and of the Council on the application of international accounting standards.

#### 3.2 Cost Accounting Methodology and Specific Principles

Prices charged for the real-time market data provided by trading venues belonging to Deutsche Börse Group are derived based on fair and reasonable terms to recover costs incurred for the whole process of creating and distributing market data, including the control of licensed third parties, plus a reasonable margin.

In order to set fees for the provision of market data at a "reasonable level" Deutsche Börse considers in line with the requirements of MiFIR different contributions to the overall costs:

- a) Directly attributable costs for the dissemination of real-time data (but also for production, insofar as relevant), for example staff costs, marketing costs, costs for the

real-time market data feed (CEF<sup>®</sup>) of Deutsche Börse (as technical infrastructure for dissemination of real-time market data), but also a relevant share of indirect costs from tax, accounting, legal and similar functions. These costs are incurred within the data business;

- b) Shares of joint costs for the production (but also for the dissemination, insofar as relevant), for example primary costs incurred by operators of the respective trading venues, amongst others their respective staff costs, costs for market supervision, IT costs for the trading platforms as well as the relevant share of costs from tax, accounting, legal and similar functions. These costs are primarily incurred in Xetra and Eurex as well as within Deutsche Börse directly (where applicable); and
- c) A reasonable margin both at the production and dissemination levels.

Deutsche Börse concluded that an Activity Based Cost accounting solution is the most appropriate method for determining the cost allocation for the provision of market data and associated services in the context of assessing the reasonable commercial basis.

### 3.3 Cost Allocation for Real-time Market Data

The determination of the relevant cost basis for the identification and assessment of the reasonable commercial basis of the fees set are the direct fixed and variable costs of the data business. As outlined above, those direct costs will be supplemented with attributable indirect costs and shared joint fixed and variable costs. Those allocations are implemented based on the following specific principles as follows:

- MD+S IT functions contribute to the cost base only when performing functions or services relevant to the production and dissemination of real-time market data, i.e. excluding those costs associated with clearing, asset servicing and settlement.
- MD+S business functions contribute to the cost base reflecting the increased awareness and efforts for regulatory controlled business.
- Costs incurred by the trading venues are adjusted for all clearing related activities. As a consequence, only the remaining trading related costs are taken into consideration only.
- Typical allocation keys are applied for the allocation of indirect costs both from corporate services as well as from other business areas are amongst others revenues, head count, and work space. In particular, for IT related costs a further set of refined allocation keys is applied.