

28 August 2024

FIA EPTA response to the ESMA MiFIR Review Consultation on assessment criteria for the CTP selection procedure (ESMA74-2134169708-7225)

The European Principal Traders Association (FIA EPTA) represents Europe's leading Principal Trading Firms. Our members are independent market makers and providers of liquidity and risk-transfer for markets and end-investors across Europe. FIA EPTA works constructively with policy-makers, regulators and other market stakeholders to ensure efficient, resilient and trusted financial markets in Europe.

FIA EPTA members believe a comprehensive consolidated tape is essential for improving the international competitiveness and accessibility of EU markets to international investors many of whom currently find EU markets too complex and opaque. A comprehensive low cost, real-time, pre-trade CT will support transparency, ameliorate fragmentation and will support liquidity and investor confidence, strengthening EU financial markets. We have limited our comments in this consultation to the organisational requirements as part of the Criteria to Assess CTP Applicants.

Q51: What are in your view the most important elements that should be taken into account when defining the governance structure of the CTP?

FIA EPTA members agree with ESMA that due to the de facto time-limited monopoly created by the selection process, it is imperative that the CTP's governance model ensures an appropriate level of stakeholder involvement.

We believe the CTP's governance structure should incorporate the following elements:

- It should ensure that the CTP is held accountable to efficiently deliver **CT products that are useful, of high quality, and fairly priced under non-complex fee and user policies.**
- **Three-tier governance structure:** Appropriate checks and balances are essential so as to avoid giving any group of stakeholders exclusive rights. This is the most important safeguard against the risks of monopoly or undue conflicts of interest. We would consider that a **three-tier governance structure** that exists for such bodies as GLEIF and the IFRS Foundation could provide useful inspiration in this respect¹. However, it is important that the CTP has a customised governance model suitable to its function and role in European financial markets. A direct copy-paste of these examples would not be appropriate.
- **Transparency:** The CTP should be held **accountable to be fully transparent in relation to its data products and the associated fee and user policies** as well as any material changes to these. Transparency is essential to stakeholders' confidence that the CTP

¹ [Governance - GLEIF – GLEIF](#)

operates in fair and effective manner for all participants. All relevant information regarding the data products and fee and user policies should be provided by the CTP in concise and plain language that is accessible to all data providers and (potential) users.

- **Stakeholder consultation:** The CTP should establish mechanisms to **consult with data providers and users**, ensuring due process is applied to consideration of feedback and communications with data providers and users. The CTP should remain accountable for explaining how this feedback has been incorporated in decision-making, either through appropriate apportionment of responsibility for this obligation to senior management or via collective responsibility of the governing body.
- **Board composition:** The board of directors of the CTP should comprise a majority of independent directors to ensure the broadest range of stakeholder interests are taken into consideration in the boards' decision making, as suggested in the Market Structure Partners' Study on Study on the Creation of an EU Consolidated Tape published in October 2020. Board appointments should be made with regard to functional diversity. Voting rights of members should be capped so that no one stakeholder group or membership category holds an outright majority.
- **Consultation:** The CTP and associated governance bodies should **consult on material changes to (the principles guiding) the delivery of the CT data products and fee and user policies** by means of a transparent, public and well-governed process.

The main features of that process should include:

- What changes the CTP plans to implement and why;
 - The targeted objectives, to be assessed by reference to concrete and stable criteria/KPIs;
 - The manner in which the CTP Operator and/or governance bodies will take into account stakeholder inputs;
 - How the CTP operator and/or governance bodies will measure, monitor and review that those objectives are indeed being met, taking into those same criteria/KPIs, including a formalised process enabling stakeholders to respond to the changes; and
 - What the mitigating actions will be in case the objectives are not met, or if negative or unforeseen impacts are found and/or further changes are deemed necessary.
 - This process should be data-driven manner and based on a clear, ex-ante communicated timetable so it is both objective and predictable for stakeholders/users.
- **Majority stakeholder approval for significant changes:** in the event that the CTP wishes to make a material change to its structure or business model, this should require approval of a super-majority of the stakeholder representative body. This is essential given the monopoly created by having a sole CTP and role of the CT as a core financial market infrastructure.

Q52: Should the CTP include representation of other stakeholders within their governance structure?

FIA EPTA members agree with ESMA that due to the de facto time-limited monopoly created by the selection process, it is imperative that the CTP's governance model ensures an appropriate level of stakeholder involvement. Please see our response to question 51 for further detail.

Q53: Do you agree with the proposed approach on the assessment of necessity of joint application?

No comment

Q54: Which minimum requirements on identifying and addressing potential conflicts of interest would you consider relevant?

Given the nature of the market participants likely to submit to tender for the CTP, it is crucial that the CTP is held to high standards regarding conflicts of interest management. This is due to the unique position the CTP will be in by receiving a direct data feed from all trading venues and APAs which could potentially put it at an unfair advantage with respect to its other business activities, particularly in the context of there being a sole CTP. We take as a reference the scenario in the US where a market participant may be a contributor to the SIP feed and also a UTP Plan Administrator. Such dual roles potentially give an unfair advantage regarding future market opportunities on trading execution and strategies.

To ensure there is a level playing field amongst market participants and the CTP does not act improperly, the CTP should implement robust information barriers which amount to complete physical separation of the business of the CTP and the other business arrangements operated by that entity, especially if it has close links to a RM, MTF, APA or investment firm.

Establishment of such information barriers should be a selection criterion included in the tender process, a pre-requisite for authorization as a CTP and subject to ongoing monitoring and supervision by ESMA.

We consider these measures necessary for all applicants, not just joint applicants.

Q55: To score the applicants on their development expenditure and operating costs, ESMA intends to look at the costs the applicant will need to cover on an annual basis. Do you agree with this approach? If not, which alternative approach would you deem more appropriate?

No comment

Q56: The simplicity of the fee structure and licensing models can be scored by taking into account the number of tiers, fee types and licensing models. Does this accurately reflect simplicity? If not, would you propose a different approach to assess simplicity? Please elaborate.

FIA EPTA members consider it crucial that the CTP be able to pursue product lines/services that are value added, for example by providing enriched data products, to ensure its commercial viability and support ongoing incentivization to innovate despite the time limited monopolistic nature of the CTPs appointment. Therefore whilst we acknowledge simplicity of fees and licensing models are crucial to support provision of the core CT data at price that makes it accessible to the broadest possible range of consumers, this structure should not exclude the possibility of the CTP offering additional value added services.

Q57: The approach proposed for the assessment of the ability of CTP applicants to process data is grounded on the assessment of the technological infrastructure in ensuring scalability, low-latency, accuracy and security throughout the data lifecycle. Do you agree with this approach, or would you consider additional elements to be assessed?

No comment

Q58: Which is the minimum speed of dissemination you would consider appropriate for the CTP? Please distinguish between asset classes (and for the case of the equity CTP, between pre- and post-trade date).

No comment

Q59: The proposed approach to data quality would reward additional commitments and measures that CTP applicants intend to put in place. Do you agree with this approach ? What additional commitments and measures would you consider appropriate?

No comment

Q60: The proposed approach to modern interface and connectivity is grounded on the assessment of the interface technology in terms of reliability, scalability, low latency and security. Do you agree with this approach, or would you consider additional elements to be assessed?

No comment