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Mr. Giles Ward
International Organization of Securities Commissions
Calle Oquendo 12
28006 Madrid
Spain

Via electronic submission: consultation-03-2020@iosco.org

Consultation Report – Market Data in the Secondary Equity Markets

Dear Mr. Ward:

State Street Corporation ("State Street") welcomes the opportunity to comment on the consultation report ("consultation") issued by the International Organization of Securities Commissions ("IOSCO") on market data in the secondary equity markets. The consultation describes, based on a recent survey of member jurisdictions, the growing concerns which market participants have expressed regarding the 'content, cost, accessibility, fairness and consolidation' of equity market data.[1] This includes a rapid and sustained increase in the fees charged by exchanges for such data, driven by the lack of interchangeability of the underlying information and the monopoly-like commercial power of the exchanges. We strongly agree with these concerns and urge IOSCO, as the global standard setter for financial markets, to consider the development of recommendations to address competitive distortions and promote greater fairness in the distribution of equity market data in the financial system.

Headquartered in Boston, Massachusetts, State Street is a global custody bank which specializes in the provision of financial services to institutional investor clients. This includes investment servicing, investment management, data and analytics, and investment research

[1] IOSCO Consultation Report, page 1.

and trading. With $38.8 trillion in assets under custody and administration and $3.5 trillion in assets under management, State Street operates in more than 100 geographic markets globally.[2] State Street is organized as a United States ("US") bank holding company, with operations conducted through several entities, primarily its wholly-owned state-chartered insured depository institution subsidiary, State Street Bank and Trust Company. As such, our primary prudential regulators are the Massachusetts Division of Banks and the US Federal Reserve System. In addition, we are subject to regulation by the US Securities and Exchange Commission and other market regulators in the various national jurisdictions where we offer investment products and trading services through each of: State Street Global Advisors, our asset management division; State Street Global Markets, our trading and markets division, and Charles River Development, our front-to-back office provider of portfolio, risk and compliance management services.

Our perspective in respect of the consultation is broadly informed by our status as one of the world's largest providers of custody services to institutional investor clients globally. These clients, which include asset owners, asset managers and official sector institutions, contract with custody banks to ensure the proper safekeeping of their investment assets, as well as the provision of a broad range of closely related financial services. These services include access to the global settlement infrastructure in order to complete the purchase or sale of investment securities; various asset administration functions, such as the processing of income and other interest payments, corporate action events, tax reclamations and client subscriptions and redemptions; and the provision of banking services, notably access to deposit accounts used to facilitate day-to-day transactional activities. Furthermore, we offer specialized fund accounting and fund administration services to investment funds, most notably the calculation and generation of net asset values ("NAV") to support client investment activities.

The fundamental importance of financial services to the custody bank business model can be seen in the large amount of revenue that we derive from fee-related activities. For instance, in Q4 2020, fee revenue comprised 83% of State Street's total revenue. We appreciate the opportunity to offer insight relative to the impact of developments regarding equity market data on our role as a custodial entity, a role that is widely understood by the market and by the supervisory community as providing important benefits for the safety of client assets and the stability of the financial system.

Policy Considerations for Market Data

In Section 5 of the consultation, IOSCO notes that 'market participants in some jurisdictions have argued that the fees for market data have increased significantly in recent years' and that market participants believe 'that the fees charged are not commensurate with the cost of producing the data.'[3] Furthermore, IOSCO notes that some market participants 'argue that

[2] As of December 31, 2020.
[3] IOSCO Consultation Report, page 14.

market data from each trading venue cannot be substituted' and that exchanges ' may charge high fees for data because market participants must pay those fees to gain access to the data due to regulatory requirements or the essential nature of the data.'[4] We strongly agree with these observations, which have profound implications for both the efficiency of the financial markets and the interests of the underlying investor community.

At its core, these challenges reflect the *de facto* monopoly status of exchanges in the equity markets, which in the wake of their transformation from not-for-profit membership organizations to for-profit commercial entities, have used their market power to impose terms and conditions for access to key data on a 'take it or leave it' basis. This includes increasingly onerous and prescriptive licensing requirements that have had the practical effect of further pushing down the cost of market data within and across the financial industry. For instance, exchanges have placed terms on access to market data which require banks, such as State Street, to obtain a direct license with the exchange itself rather than being able to contract for services via a data vendor. More recently, certain exchanges have sought to replace the traditional 'single fee' model for market participant access to data with an approach based on the number of clients for which the data may be used, a highly intrusive approach that in effect seeks to re-characterize a market participant's clients as a client of the exchange itself.

While the IOSCO consultation largely focuses on assessing the implications of these trends on trading and investment-related activities, as a custody bank we would also draw IOSCO's attention to the impact which these trends are having on key asset servicing functions, such as the calculation and generation of an investment fund's NAV. This includes NAV calculations for regulated investment funds, such as open-ended US mutual funds and European Union ("EU") Undertakings for Collectives Investments in Transferable Securities ("UCITS") which are sold to retail investors and which are required by regulation to offer transparent, regular pricing, generally on a daily basis. Furthermore, while the IOSCO consultation focuses on challenges faced by market participants in the use of equity market data, we would note that the same trends are evident in other asset classes dominated by for profit exchanges, such as future and options. One of the major considerations that drives and sustains the exchanges' control over market data is the lack of competition which exists between exchange data products, so that firms have no practical choice but to accept the terms and conditions imposed by exchange providers.

This, of course, has had a dramatic impact on the cost that custody banks must pay for data that is critical to the day-to-day functioning of the financial markets. For instance, the administrative fees that we incur in order to obtain pricing data from one of the largest and best-known exchange operators in North America has increased by 186% over the past 10 years, well-beyond any reasonable relationship to the cost of producing the underlying data. For custody banks, the issue of rising cost for market data is aggravated by two considerations. First in order to appropriately calculate and generate an investment fund's NAV, it is necessary

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[4] IOSCO Consultation Report, page 13.

for us to have access to multiple, overlapping feeds in order to validate the accuracy of the underlying pricing information. This is true notwithstanding the lack of interchangeability in the data provided by the exchanges, whether on an intra-day or end-of-day basis. Second, we must also meet growing regulatory expectations regarding operational resiliency, including the imperative of maintaining access to alternative service providers in order to ensure the continuity of critical services. In each case, exchanges have resisted efforts to price their services on a net basis, resulting in duplicative costs that must be fully borne by market participants.

In effect then, the rising cost of market data serves as a *de facto* tax on the financial markets and the underlying investor, reducing investment returns and the benefit of automation and other technological innovations, which have otherwise led to a broad secular decline in investment-related fees. Regrettably, many exchanges have pushed back on market participants' efforts to address rising costs by claiming that regulatory mandates preclude them from agreeing to volume and other similar fee concessions. We view this as a simple, yet deeply misguided attempt to protect their already substantial monopoly-like economic power.

Policy Recommendations for Market Data

Given the clear dislocation which exists today in the pricing of equity market data, and the pronounced implications which this has for the functioning of the financial markets and the financial interests of the underlying investor community, we strongly urge IOSCO to take the next step in its work and develop recommendations to address barriers to fair and reasonable access to data by market participants. Specifically, we believe that IOSCO may wish to consider an approach that incorporates three interrelated components.

First, we recommend the implementation of a requirement for exchanges to provide 'near' real-time pricing information to the market used to calculate and generate investment fund NAVs on a 'utility cost' basis. This means that the fees charged by the exchanges for access to pricing information at market standard valuation points, both intra-day and end-of-day, should reflect the actual cost of producing the data plus a small margin for ongoing investments, without regard to other broader commercial considerations. This recommendation is intended to correct one of the most detrimental implications of the conversion of exchanges from not-for-profit membership organizations to for-profit commercial entities, which is the relentless exercise of market power over core data derived from, and used in support of, the financial markets as a whole.

While there are jurisdictions where pricing information is made available at reduced cost to the market on a time delayed basis, for instance 15 minutes after the close of equity markets in the US, this is not a viable substitute for 'near' real-time data given the obligations which custody banks have to provide NAV calculations for investment funds on a time sensitive basis, generally by 6:00 p.m. on the same business day. To be clear, this recommendation is solely intended to apply to the data used by market participants in support of a core market function, specifically the calculation and generation of investment fund NAVs at market standard valuation points. It is not intended to displace existing licensing agreements for real-time, continuous streaming data that exchanges may provide to market participants in support of their trading and investment activities.

Second, we recommend the implementation in all major market centers, of a consolidated data feed that would provide market participants with one single point of access to 'near' real-time pricing information at market standard valuation points, based on transactions entered into across all relevant trading platforms. This is designed to eliminate unnecessary redundancies and costs associated with having to establish linkage to multiple trading venues for access to the same core data. Alternatively, to the extent that there are concerns regarding the cost implications of such an approach in individual member jurisdictions, we recommend the adoption of a requirement for exchanges to provide 'near' real-time pricing information to market participants (both intra-day or end-of-day) on a net basis to address the otherwise unsupportable 'layering' of costs by multiple trading venues for access to the same core data.

Third, we recommend explicit clarification by market regulators, through guidance or other similar means, that requirements to provide market data to all market participants on terms that are not 'unreasonably discriminatory' is not intended to prevent the use of volume discounts and other price concessions designed to promote the efficient provision of core financial services for investors, such as the calculation and generation of investment fund NAVs. Without this guidance, we believe that exchanges will continue to be incentivized to mask their commercial motivations using questionable assertions that solidify their control over market data in a manner that is profoundly unfair to the financial system as a whole.

Conclusion

Thank you once again for the opportunity to comment on the important matters raised within this consultation. To summarize, State Street strongly agrees with the concerns raised by market participants regarding the economic dominance of exchanges over the pricing and use of market data and notes that this has implications not just for trading and investment-related activities, but also for core market functions, such as the calculation and generation of NAVs for investment funds. This includes regulated investment funds, such as open-ended US mutual funds and EU UCITS which are sold to the retail investor community.

We believe that IOSCO should take the opportunity afforded by this consultation to develop recommendations for market regulators to address existing dislocations in the commercial model of exchanges over market data. This includes a requirement for exchanges to provide 'near' real-time pricing information to market participants used to support core market functions, such as the calculation of NAVs at market standard valuation points, on a 'utility cost' basis; the establishment of consolidated data feeds in all major market centers, or alternatively, the requirement for exchanges to offer their 'near' real-time pricing services (intra-day and end-of day) to market participants on a net basis; and clarification through guidance that market regulation regarding equitable access to market data is not intended to prevent the use of volume discounts and other pricing incentives, designed to reduce cost and therefore drive further efficiencies in support of the investor community.

Please feel free to contact me at jjbarry@statestreet.com should you wish to discuss the contents of this submission in greater detail.

Sincerely,

Joseph J. Barry