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Financial Conduct Authority Publishes Call for Input on Accessing and Using Wholesale Data

On 9 March 2020, the UK's Financial Conduct Authority ("FCA") published a Call for Input ("CFI") looking at the use and impact of data and advanced analytics in wholesale financial markets. The CFI follows previous studies conducted by the FCA, which suggested that trading venues, benchmark administrators and other data generators may not face sufficient competitive pressures, which in turn may result in high prices and other harms to clients and competitors. In publishing the CFI now, the FCA is demonstrating its commitment to obtaining a better understanding of rapid and wide-ranging innovation in the use of data in wholesale markets, and that it intends to examine the steps it should consider taking to regulate wholesale markets in the face of such significant change.

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The CFI seeks to understand how data and advanced analytics are being accessed and used, whether there are barriers to innovation in firms' use of data, the value offered and whether these products are being competitively sold and priced. The regulator will scrutinise the use of what has become known as "alternative" or "big" data, such as satellite imagery, client data, location data and social media. In particular, it will consider whether firms gain a market advantage by having access to such information and the proprietary tools to analyse it. The CFI invites respondents to consider all data that are made available from or accessed in the UK, regardless of where it has been generated.

The CFI considers:

Trading data (including information on prices, bid/ask quotes and volumes available for trading on trading venues and over-the-counter systems): The FCA observes that this has recently become a major source of revenue and a key growth driver for trading venues. It will look at issues such as market dynamics, pricing levels, quality and innovation in provision of trading data and the potential for discriminatory pricing. The FCA also notes that, in the United States, the Securities and Exchange Commission has recently intervened in cases related to market data pricing and taken steps to regulate the manner in which trading venues set their data fees. The CFI will assist the FCA in assessing the appropriate regulatory actions it should take in this regard.

Benchmarks: The FCA notes that certain benchmarks seem to be growing in importance, with investors increasingly choosing passive index-tracked investments and a rise in 'self-indexing' by issuers of indexed products. The FCA seeks to examine the forces driving – or indeed inhibiting – competition between benchmark administrators, including the extent to which the market is constrained by demand-side preference for established benchmarks and/or prohibitively high switching costs for benchmark users. The FCA also is seeking to explore whether such concentrated markets are leading to user harm, including the consequences of those market conditions for pricing, quality and innovation. The FCA will also examine whether complexity and lack of transparency in contract terms limits the ability of users to compare service providers or serves to conceal high switching costs. Finally, the FCA intends to explore the effects of vertical integration in the benchmark market.

Market data vendor services (market data vendors generally provide desktop or web based products with sets of content such as trading data from various exchanges, research, analysis, statistics and news): The FCA will look at issues such as market dynamics, including the extent to which the FCA should intervene to improve competition between data vendors. The FCA will also look at how data vendor products and services are sold (focusing in particular on bundling of content alongside certain functionalities and analytics) and the impact of vertically integrated data vendors.

Access and use of data and advanced analytics in wholesale markets: The FCA wants to understand how market participants are capturing and using alternative data sources and the analytics being applied to generate meaningful insights from unstructured data sets (including artificial intelligence and machine learning, which were subject of a 2019

joint survey conducted by the FCA and Bank of England). It will look at how this data is used in business decisions and activities, and whether this may change business models and data strategies. It notes that use of data and advanced analytics can pose risks to competition and potentially market integrity if those with access to certain data and technology can identify market movements ahead of those without such access. The FCA will consider information sharing, collusion and biases as well as data governance, controls and ethics as part of its review.

The changing use and value of data and analytical techniques is transforming how business and markets function. Wholesale participants have long been using new data sources and improving their capacity to extract valuable insights from such data. While the FCA sees the benefits of technology and innovation, it is clear that it is concerned that it understands both the risks and the opportunities that are generated by these. This will help inform the regulatory environment and in which the regulator and market participants seek to balance risk against benefit.

Responses to the CFI are due on 1 May 2020. As the FCA acknowledges, by publishing the CFI it is simply opening its engagement from stakeholders, and we would certainly expect to see further developments in this area following its conclusion. Such steps may, depending on the outcome of the CFI, include a market study to investigate particular issues in further detail, or targeted interventions like supervisory, policy action, or competition law enforcement. The FCA intends to publish a Feedback Statement in Autumn 2020, in which it will set out its analysis, findings and proposed next steps.