Non Display Information Usage – Guidance Note for customers

Version 1.1 - 05 December 2019
Deutsche Börse AG (DBAG) has changed the licence model for Non-Display Information Usage\(^1\) (NDIU) within its Market Data Dissemination Agreement and Non-Display Agreement effective 1 January 2018.

This document shall give further guidance for clients relating to the licensing categories for NDIU.

This document is a supplementary service by Deutsche Börse AG and does not form part of the Market Data Dissemination or Non-Display Agreement.

The examples listed for the different categories are not exhaustive and the fact that a specific example is not listed does not automatically mean that it is not subject to the NDIU licensing requirements.

Where a client is unsure about the licensing requirements or where a specific use case is not listed in this document, clients should contact Deutsche Börse AG and clarify any open questions.

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\(^1\) Terms used in capital letters shall have the same meaning as defined in Section 2 of the General Terms and Conditions to the Market Data Dissemination Agreement.
New licensing categories for Non-Display Information Usage (NDIU) effective 1 January 2018
### Definitions

**Non-Display Information Usage**

Non-Display Information Usage is accessing, processing or consumption of Real-Time Information for purposes other than the support of its display, onward dissemination to third parties or CFD Information-Usage.

#### Trading-based activities

‘Trading based activities’ include, but are not limited to, semi-automated or automated order/quote generation, order pegging, price referencing for trading purposes, smart order routing to facilitate trading, order management, execution management, market making, ‘black box’ trading, algorithmic trading, program trading and operation of multilateral trading facilities as well as quoting and trading of financial derivatives (including but not limited to futures, options, warrants and certificates linked to the respective underlying market data).

#### Tier 1 – Trading Platforms

Non-Display Information Usage for the purpose of the operation of trading platforms and/or systematic internalization, including but not limited to multilateral trading facilities (MTF), organised trading facilities (OTFs), broker crossing networks and dark pools.

#### Tier 2 & 3

**Trading as Principal**

Internal Non-Display Information Usage is for the purposes of trading-based activities as principal i.e. acting in one’s own name and for one’s own account (Trading Firms/ Proprietary Trading)

**Brokerage**

Internal Non-Display Information Usage is for the sole purpose of trading-based activities to facilitate customer business, i.e. acting in another person’s name and for another person’s account or acting in one’s own name and for another person’s account (Brokerage Firms)

#### Tier 4 – Entry-level / Managed NDU

Non-Display Information Usage for the purpose of trading-based activities for own purposes (Trading as Principal) within a hosted service of a Managed NDU provider that has the sole technical control over the entitlement.

#### Index Calculation

Non-Display Information Usage for the purpose of calculation and distribution of indices

#### Other Application Usage

- Non-Display Information Usage for other purposes than trading-based activities and/or Index Calculation including, but not limited to, risk management, profit and loss calculation, portfolio valuation, quantitative analysis, fund administration, fund accounting, portfolio management or instrument pricing. It does not include the execution of Non-Display Information Usage by the Contracting Party as a vicarious agent (“Erfüllungsgehilfe”) on behalf of a third party.

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1) Based on FISD Best Practice Recommendations  
2) Only applicable if trading-based activities are not subject to Tier 1
## Trading-based activities - Overview

| Tier 1 | Trading Platform | Covers trading based activities for the operation of trading platforms including, but not limited to multilateral trading facilities (MTF), organised trading facilities (OTFs), alternative trading systems, broker crossing networks, dark pools and systematic internalization
| Tier 2 | Trading as Principal and Brokerage | Internal Non-Display Information Usage is for the purposes of trading-based activities as principal i.e. acting in one’s own name and for one’s own account (Trading Firms/ Proprietary Trading), and for the purpose of customer business facilitation, i.e. acting on behalf of another person’s name and for another person’s account or acting in one’s own name and for another person’s account (Brokerage Firms)
| Tier 3 | Trading as Principal or Brokerage | Fixed monthly fee per Information Product (enterprise licence1)
| Tier 4 | Managed NDIU | Only applies for Managed NDIU2) (Trading as Principal) via a single data provider

### Trading-based Activities (Examples)

- Semi-automated or automated order/quote generation
- Algorithmic or program trading
- „Black-box“ trading
- Order Pegging
- Price referencing for trading purposes
- Systematic internalization
- Mid-point trading
- Smart order routing to facilitate trading
- Market making
- Execution Management
- Quoting and trading of financial derivatives

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1) Affiliated companies listed in MD+S interactive covered by licence
2) Managed NDIU = NDIU Applications are hosted by a Managed NDIU provider and the provider has control over entitlement.
**Trading-based activities: Tier 1 – Trading Platforms**

**Definition**

**Tier 1 – Trading Platforms**

Non-Display Information Usage for the purpose of the operation of trading platforms and/or systematic internalization, including but not limited to multilateral trading facilities (MTFs), organised trading facilities (OTFs), alternative trading systems, broker crossing networks and dark pools.

**Guidance**

- **‘Multilateral trading facility’ (MTF) means** a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract.

- **‘Organised trading facility’ (OTF) means** a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract.

- **‘Systematic internalization’ means** dealing on an organised, frequent systematic and substantial basis on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system.

- **‘Alternative trading systems’ means** any organization, association, person, group of persons, or system that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange.

- **Broker crossing networks and dark pools are** types of ‘alternative trading systems’.

**What is not covered?**

- Non-Display Information Usage which is not trading-based activity (see Index Calculation or Other Application Usage)

- The automated generation of own quotes/orders by an investment firm that are not used to internally match buy and sell orders

- Automated trading activity as principal and/or broker (see Tier 2 & Tier 3) if that trading activity is not for the purpose of internally matching buy and sell orders

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1) Based on definitions used in EU directive 2014/65/EU of 15 May 2014 (MiFID II)

2) Based on rule 300a) of the SEC regulation on ATS
# Trading-based activities: Tier 2 – Trading as Principal and Brokerage

## Definition

Internal Non-Display Information Usage is **for the purposes of trading-based activities as principal** i.e. acting in one’s own name and for one’s own account (Trading Firms/ Proprietary Trading), and **for the purpose of customer business facilitation**, i.e. acting on behalf of another person’s name and for another person’s account or acting in one’s own name and for another person’s account (Brokerage Firms).

## Guidance

- **Trading as principal** means acting in one’s own name and for one’s own account i.e. trading against proprietary capital resulting in the conclusion of transactions
- **Brokerage** means acting on behalf of another person’s name and for another person’s account or acting in one’s own name and for another person’s account i.e. trading to execute orders on behalf of clients
- **Related activities typically include** e.g. automated or semi-automated order/quote generation, algorithmic/program/“black-box” trading, market making, smart order routing and automated execution, order management or automated quoting and trading of financial derivatives
- **Market making** is considered to be trading as principal
- **Smart Order Routing** is considered to facilitate customer business
- **Other trading based activities** might be used for both purposes, trading as principal and brokerage

DBAG Information used for automated trading activities for both purposes – Trading as Principal and Brokerage

## What is not covered?

- Non-Display Information Usage which is not trading-based activity (see Index Calculation or Other Application Usage)
- Non-Display Information Usage by trading platforms such as exchanges, MTFs, OTFs, alternative trading systems and systematic internalization systems (see Tier 1)
- If the trading based activities are solely for the purpose of trading as principal or solely for the purpose of brokerage (see Tier 3)
## Trading-based activities: Tier 3 – Trading as Principal or Brokerage

### Definition

<table>
<thead>
<tr>
<th>Tier 3 – Trading as Principal or Brokerage</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Internal Non-Display Information Usage is for the <strong>sole purpose of trading-based activities as principal</strong> and with no customer business facilitation, i.e. acting in one’s own name and for one’s own account (Trading Firms/Proprietary Trading)</td>
</tr>
<tr>
<td>b) Internal Non-Display Information Usage is for the <strong>sole purpose of trading-based activities to facilitate customer business</strong>, i.e. acting on behalf of another person’s name and for another person’s account or acting in one’s own name and for another person’s account (Brokerage Firms)</td>
</tr>
</tbody>
</table>

### Guidance

- **Trading as principal means** acting in one`s own name and for one`s own account i.e. trading against proprietary capital resulting in the conclusion of transactions
- **Brokerage means** acting on behalf of another person’s name and for another person’s account or acting in one’s own name and for another person’s account i.e. trading to execute orders on behalf of clients
- **Related activities typically include** e.g. automated or semi-automated order/quote generation, algorithmic/program/"black-box" trading, market making, smart order routing and automated execution, order management or automated quoting and trading of financial derivatives
- **Market making** is considered to be trading as principal
- **Smart Order Routing** is considered to facilitate customer business
- **Other trading based activities** might be used for both purposes, trading as principal and brokerage

DBAG Information used for automated trading activities for only one purpose – **Trading as Principal or Brokerage**

### What is not covered?

- Non-Display Information Usage which is not trading-based activity (see Index Calculation or Other Application Usage)
- Non-Display Information Usage by trading platforms such as exchanges, MTFs, OTFs, alternative trading systems and systematic internalization systems (see Tier 1)
- Trading based activities for both purposes – Trading as Principal and Brokerage (see Tier 2)
Trading-based activities: Tier 4 – Entry-level / Managed NDIU

Definition

Tier 4 – Managed NDIU

Internal Non-Display Information Usage is for the sole purpose of trading-based activities as principal and with no customer business facilitation, i.e. acting in one’s own name and for one’s own account (Trading Firms/Proprietary Trading) by the Subscriber of the Contracting Party of Deutsche Börse AG. This tier applies to Managed Non-Display Information Usage of the Subscriber via a single managed Non-Display service provided by the Contracting Party of Deutsche Börse AG.

Guidance

- This tier relates to trading-based activities as principal by a Subscriber (Tier 4 Client) of a managed NDIU service of a Contracting Party of DBAG (Managed NDIU Provider)
- Preconditions:
  - Managed NDIU service allows for trading-based activities
  - Managed NDIU Provider is hosting the service/applications within its own infrastructure
  - Managed NDIU Provider controls the Entitlement to the service/application
  - The service is offered including market data provided by the Managed NDIU Provider
- Managed NDIU Provider needs to have a Market Data Dissemination Agreement with DBAG and needs to pay the relevant Distribution Licence Fees
- Managed NDIU Provider need to inform DBAG of his Tier 4 Clients for each relevant Information Product and will be billed by DBAG
- Tier 4 Clients are not required to have their own NDIU Agreement with DBAG
- Tier 4 Clients can still opt to have their own NDIU Agreement with DBAG (Tier 1-3)

What is not covered?

- Non-Display Information Usage which is not trading-based activity (see Index Calculation or Other Application Usage)
- Non-Display Information Usage by trading platforms such as exchanges, MTFs, OTFs, alternative trading systems and systematic internalization systems (see Tier 1)
- Trading based activities for Brokerage (see Tier 2 and Tier 3)
- Tier 4 Client is using a hosted service for trading-based activities but market data is sourced from a third party or own data feed
- Tier 4 Client is using a hosted service for trading-based activities but the entitlement to the application is not controlled by the Managed NDIU Provider
Index Calculation

**Definition**

Non-Display Information Usage for the purpose of calculation and distribution of indices

**Guidance**

- **An ‘index’** ¹ means any figure that is published or made available to the public and is regularly determined, either by applying a formula or other calculation or making an assessment on the basis of the value of one or more underlying assets/prices (including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys).

- **An index becomes a ‘benchmark’** ¹ where it is used to determine the amount payable under a financial instrument or financial contract, or the value of a financial instrument, or it is used to measure the performance of an investment fund for the purpose of tracking the return, defining the asset allocation or a portfolio, or computing the performance fees.

- The category addresses the **administrator** ¹ that has control over the provision of the benchmark i.e.
  - the administration of arrangements for determining the benchmark,
  - the collection, analysis and processing of input data and
  - the determination of the benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose

The category addresses the creation of indices for the purpose of using them as benchmark

**What is not covered?**

- Client calculates index based on DBAG Information and uses index only internally as trading signal for “trading-based activities”
  - **Licence for trading-based activities Tier 1-4 required**

- Client calculates index indication based on DBAG information and publishes the index free of charge on a public domain and not for the purpose of becoming a benchmark
  - **Licence for Other Application Usage required**

- Client calculates index based on DBAG information and uses index internally, but not for trading-based activities (e.g. calculation of board compensation)
  - **Licence for Other Application Usage required**

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¹ Based on definitions used in EU regulation 2016/1011 of 8 June 2016 („EU Benchmark Regulation“)
## Other Application Usage

### Definition

Non-Display Information Usage for other purposes than trading-based activities and/or Index Calculation including, but not limited to, risk management, profit and loss calculation, portfolio valuation, quantitative analysis, fund administration, fund accounting, portfolio management or instrument pricing.

### Guidance

- Covers **any Non-Display Information Usage that is not trading-based activity** (see Tier 1-4) or Index Calculation
- **Includes Non-Display Information Usage by middle and backoffice functions** for the calculation of 'derived data' (e.g. risk figures, profit and loss calculations, automated valuations, etc.)
- **Includes the calculation of 'derived data'** that is not used for trading-based activities or index calculation. The 'derived data' may be used internally or disseminated externally.
- **Includes the calculation of an index that is used only internally** e.g. for the calculation of an amount payable for a financial instrument (e.g. certificate) or to determine the board compensation
- **Includes the creation of evaluated pricing data** that may be disseminated externally
- **Includes the creation of trading analytics** that are not directly used for trading-based activities and may be distributed externally

### What is not covered?

- Trading-based activities (see Tier 1-4)
- Index Calculation
- Conducting Non-Display Information Usage as vicarious agent (“Erfüllungsgehilfe”) on behalf of a third party

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1) Based on definitions used in EU directive 2014/65/EU of 15 May 2014 („MiFID II“)
2) Based on rule 300a) of the SEC regulation on ATS