

# Audit Guideline to the Market Data Dissemination Agreement of Deutsche Börse AG

Effective as of 1 October 2022  
Version 7\_3

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# 1 Orientation Guide

## 1.1 Introduction

The Audit Guideline is binding part of the Market Data Dissemination Agreement and, therefore, basis for the Information Usage by Customers, Indirect Customers, Affiliated Companies and Sub-Vendors. In accordance with the provisions of the Market Data Dissemination Agreement the term Information Usage is to be construed broadly und shall include the unauthorized as well as the erroneous onward dissemination of or entitlement to Information.

By signing the Market Data Dissemination Agreement the Customers of Deutsche Börse AG have agreed to examinations of their Reporting and accounting documents as well as their technical equipment relevant to the Reporting. The Audit will be performed by an audit team which consists of employees of Deutsche Börse AG and/or third parties instructed by Deutsche Börse AG. The Customers of Deutsche Börse AG shall further inform the Indirect Customers of Real-time Data about the possibility of the performance of an Audit and commit them to cooperate during such an Audit.

This Audit Guideline informs about principles, procedure and conclusion of an Audit.

Regarding the defined terms used in this Audit Guideline the definitions in Section 2 of the “General Terms and Conditions to the Market Data Dissemination Agreement of Deutsche Börse AG” shall apply.

## 1.2 Target of an Audit

The purpose of an Audit is to examine the correct remuneration for the Information Usage by Customers, Indirect Customers and Sub-Vendors. The aim is further to identify potential sources of error as well as to cure potential errors in order to ensure a correct and efficient Reporting in the future.

## 1.3 Performance of an Audit

During an Audit the following issues will be examined:

- Product range;
- Cooperation between the Customer and Deutsche Börse AG;
- the Entitlement Systems and all administrative and technical proceedings connected therewith, e.g. the creation and the storage of the Audit Trail and other Entitlement protocols;
- the Information Usage by Customers and Indirect Customers and their cooperation with the Customer of Deutsche Börse AG and Deutsche Börse AG itself;
- Reporting and remuneration procedure (e.g. Honesty Statement/Entitlement Protocols/billing documentation); and/or
- Onward dissemination to further data providers (Sub-Vendors).

All systems and departments, which are incorporated into either the technical or the administrative implementation of the Information Usage, shall be analysed in the course of the Audit under the aspect whether a correct Reporting and/or licensing in accordance with the provisions of the Market Data Dissemination Agreement is possible.

As a rule, the Audit takes place at the Customer’s place of business. However, an Audit may also be performed at an Indirect Customer of Real-time Data.

Within the course of an Audit it may become necessary that documents and/or electronic data files are to be analysed at Deutsche Börse AG's site or at the site of the third party that is instructed to conduct the Audit, as the case may be.

## 2 Audit Principles

### 2.1 Support by the Customer

In order to enable an efficient performance of the Audit the Customer of Deutsche Börse AG are obliged to cooperate and to support the Audit.

This includes, in particular, that during the business and trading hours of Deutsche Börse AG the audit team and/or the third party instructed to conduct the Audit has access to the internal data collection systems and any data files and documentation needed. This also includes, for example, the Audit Trails and further Entitlement Protocols in electronic form as well as the existing Honesty Statements. The audit team and/or the third party instructed to conduct the Audit shall be entitled to analyse on site relevant electronic data files with its own computer programs and systems. Deutsche Börse AG may conduct the Audit either as a remote Audit or, in whole or part, as an On-site Audit and shall for that purpose be entitled to request from the Customer the delivery of the relevant documents and/or electronic data files for the purpose of a review and analysis at the site of Deutsche Börse AG or the third party instructed to conduct the Audit. After the analysis and the closing of the Audit concerned Deutsche Börse AG and/or the third party instructed to conduct the Audit will upon request return such documents and electronic data files to the Customer.

### 2.2 Frequency

If possible every Location of the Customer shall be audited approximately every two years on a routine basis (Regular Audit); however, this shall not exclude more frequent Regular Audits. Moreover, Extraordinary Audits can be performed. The necessity of an Extraordinary Audit shall be in the reasonable discretion of Deutsche Börse AG, taking the legitimate interests of the Customer into account. Reasons for an Extraordinary Audit are, for instance, inaccurate information on the Information Usage, discrepancies in Reporting, delayed or incomplete reports, or the material deterioration of the Customer's asset situation.

## 2.3 Timeframe

An Audit will generally be conducted 30 calendar days after it has been announced. For justifiable reasons, the Customer can refuse to have the Audit conducted on the announced Audit Date within 15 calendar days after receiving notification. Such a refusal may only be made a maximum of two occasions. The third Audit Date announced by Deutsche Börse AG must be accepted by the Customer.

If the Customer refuses to permit the Audit to be carried out on the Audit Date announced after the 15-calendar-day deadline, it shall reimburse Deutsche Börse AG in full for any costs (in particular travel and accommodation costs as well as expenses and the remuneration of the Auditors which cannot be cancelled) incurred due to the late cancellation. Deutsche Börse AG reserves the right to later on assert further claims in accordance with the Market Data Dissemination Agreement.

In the case of Extraordinary Audits, Deutsche Börse AG can shorten the lead time and/or reject a refusal of the Audit Date by the Customer for justifiable reasons.

After the announcement of a remote Audit Deutsche Börse AG may for justified reasons switch to an on-site Audit at any time without the need for a new Audit announcement. In the event of the announcement of an on-site Audit Deutsche Börse AG may switch in whole or part to a remote Audit at any time.

## 2.4 Costs

The costs of an Audit will generally be borne by Deutsche Börse AG.

If an Extraordinary Audit is being carried out for an important reason, the Customer shall, contrary to the first sentence of this clause, be obliged to bear the costs of the Audit (in particular travel and accommodation costs, additional expenses as well as the remuneration of the Auditors).

Should an Audit reveal that the Market Data Fees which actually have to be paid for the period audited exceed the Market Data Fees for this period calculated from the Reporting or other notifications submitted by the Customer by more than 10 percent, all the costs of the Audit shall also be borne by the Customer of Deutsche Börse AG.

The Customer of Deutsche Börse AG shall also bear additional costs, if any, which Deutsche Börse AG has to incur within the frame of an Audit because the Customer is not duly complying with its cooperation duties and has, for instance, not made the necessary preparations for the Audit provided for in Sections 3.1 and 3.2 or has delayed the provision of further documents, information or data files requested by the audit team.

## 2.5 Confidentiality

All books, records and systems inspected in the course of an Audit and all necessary Audit Work Papers will be treated by Deutsche Börse AG and the Auditors instructed by Deutsche Börse AG as strictly confidential. Deutsche Börse AG hereby warrants that the third party instructed to conduct the Audit have signed a declaration enjoining them to the same confidentiality obligations as Deutsche Börse AG is subject to in accordance with the Market Data Dissemination Agreement. Deutsche Börse AG is entitled to disclose Audit findings regarding the use of Third Party Information marketed by Deutsche Börse AG to the respective Third-Party Rights' Holder. The latter implies that the Third-Party Rights' Holder has a legitimate

interest in the Audit findings provided and will comply with the same confidentiality obligations as previously agreed by Deutsche Börse AG.

## 2.6 Audits at Indirect Customers of Real-time Data

Under the Market Data Dissemination Agreement, the Customers shall commit their Indirect Customers of Real-time Data to grant the audit team and/or the third party instructed to conduct the Audit access to all documents and technical equipment relevant for the Reporting.

The stipulations of this Audit Guideline apply to Audits at Indirect Customers of Real-time Data *mutatis mutandis*. However, the following special rules shall apply:

- The Customer shall bear those costs of an Audit at an Indirect Customer of Real-time Data, which are to be reimbursed according to Section 2.4 if the latter are not prepared to bear the costs by themselves.
- In the course of an Audit at an Indirect Customer of Real-time Data, Deutsche Börse AG shall be obliged to maintain confidentiality in accordance with Section 2.5 even *vis à vis* the Customer. However, Deutsche Börse AG shall be released from this confidentiality obligation as far as this release is necessary for an assertion of payment and other claims against the Customer.

The Customer shall take care that its Indirect Customers of Real-time Data comply with the cooperation duties *vis à vis* Deutsche Börse AG which derive from the application of this Audit Guideline.

## 3 Audit Procedure

### 3.1 Preparation

As soon as an Audit has been announced by Deutsche Börse AG to the party to be audited, the following issues are to be arranged by the latter:

- The party to be audited shall make available for the entire Audit Period at least one competent employee for all Audit related matters. That employee shall be available for the Auditors during normal business hours;
- The party to be audited shall at the beginning of the Audit make available all documents relevant for the period audited;
- Sufficient logistic resources, e.g. offices, staff, records and equipment, shall be made available for the duration of the Audit;
- The audit team and/or the third party instructed to conduct the Audit shall have sufficient access to relevant staff of the party to be audited in order to analyse, discuss and clarify varying interpretations of the Market Data Dissemination Agreement, either remotely or on site;
- The party to be audited shall ensure access to all Locations and rooms affected by the Audit as well as to the technical equipment, in particular the electronic Entitlement Systems and the data stored therein.

### 3.2 Relevant Documentation and Data Files

The documentation and data files relevant for the Audit shall, in particular, include:

General:

- The agreements and all related customer numbers which the Customer is using for its contractual relationship with its customers (agreements with Sub-Vendors, Indirect Customers, Vendor Service Agreements, order forms and other forms, Honesty Statements etc.);
- Description of the technical and administrative measures for the compliance with the Reporting obligation under Section 14 of the “General Terms and Conditions to the Market Data Dissemination Agreement of Deutsche Börse AG” and further obligations with regards to remuneration according to the Market Data Dissemination Agreement;
- Description of the systems used for the onward dissemination of Information;
- Description of Non-Display Data Usage;
- Description of CFD Data Usage;
- Complete list of White Labelling partners and Information Products entitled per each White Labelling partner;
- The latest business report of the Customer (as far as available).

Regarding the onward dissemination of Information to Indirect Customers:

- Technical specifications of the Entitlement Systems employed;
- Onward Dissemination application in accordance with section 9.1, if applicable;
- Documents regarding the electronic Entitlement;
- Vendor Service Agreements, Click-on-Agreements;
- Honesty Statements and the documentation regarding the checks of their correctness;
- Complete electronic excerpt from the Entitlement Systems for the Audit Period announced;
- Statements of Subscribers that they do not meet Deutsche Börse AG’s definition of a Professional Customer.

Regarding the onward dissemination of Information to Sub-Vendors or Displaying Parties:

- Description of the technical and administrative measure for the Entitlement, including the activation and deactivation of Information Products of Deutsche Börse AG;
- Applications “Sub-Vendor Application Form to the Market Data Dissemination Agreement of Deutsche Börse AG”/“Declaration of Displaying Party Form to the Market Data Dissemination Agreement of Deutsche Börse AG” approved by Deutsche Börse AG;
- Agreements with Sub-Vendors/Displaying Parties;
- Complete electronic excerpt from the Entitlement Systems for the Audit Period announced;
- Complete list of all URLs (own ones as well as Displaying Party URLs) and Information Products entitled per each URL.

In case of Audits of Indirect Customers of Real-time Data, as the case may be:

- Description of the technical and administrative measures for the tracking of the Information Usage by Users as well as the processes for the reporting and remuneration of that Information Usage to the Customers of Deutsche Börse AG and Deutsche Börse AG;
- Description of the Entitlement of Users;
- Description of all kind of Information Usage applied by the Indirect Customer of Real-time Data, Service Facilitator or White Labelling partner concerned;
- Agreements with Service Facilitators or White Labelling partners;
- Description of Non-Display Data Usage;
- Description of CFD Data Usage;
- Description of the use of back-up systems and the consideration thereof in the Reporting of the Customer of Deutsche Börse AG;
- Honesty Statements and description of the process implemented thereto;
- Complete electronic excerpt from the Entitlement Systems for the Audit Period announced.

The party to be audited should promptly cooperate with Deutsche Börse AG in order to enable the Audit to be planned and conducted in an efficient manner. This enables both parties to save resources.

## 4 Closing of the Audit

### 4.1 Audit Report

If applicable, the audit team shall inform the party audited about the preliminary results of the Audit and any topics still to be clarified. The audit team may set a deadline for the provision of the remaining information. Failure to comply with this deadline without a valid reason will result in the Audit Report being prepared on the basis of the information and documents available at the deadline. The audit team will record in a written Audit Report the results of the Audit as well as the requirements and recommendations resulting from the Audit. Customer may give feedback on the Audit Report within a deadline of 30 calendar days which can be extended upon well-founded reasons. Should the Customer not provide feedback within this deadline, the results of the Audit as set down in the Audit Report shall be considered to be undisputed facts and shall be used as the basis for the Audit Settlement. If the Customer raises objections to the Audit Report at a later date, the Customer shall have the full burden of proof.

Missing documents or electronic data files, as the case may be, by which the Reporting data provided to Deutsche Börse AG could be evidenced as well as a lack of cooperation by the Customer will also be noted in the Audit Report. Subject to further sanctions under the Market Data Dissemination Agreement both can lead to Extraordinary Audits and/or Audits of further locations of the Customer of Deutsche Börse AG as well as of Indirect Customers of Real-time Data.

Justified statements made by the Customer to the Audit Report will be taken into account by Deutsche Börse AG for the Audit Settlement.

### 4.2 Follow-up

If the Audit reveals material shortcomings of the Reporting which result in an incorrect assessment of the remuneration for the Information Usage and which cannot be remedied immediately those shortcomings will be addressed in the Audit Report. In addition thereto, the Customer will set a deadline within which the shortcomings are to be remedied. The audit team of Deutsche Börse AG will examine the timely remedy of the shortcomings within the following Audit at the latest. The rights of Deutsche Börse AG in case of an incorrect Reporting (e.g. in Sections 14.1 and 14.8 of the "General Terms and Conditions to the Market Data Dissemination Agreement of Deutsche Börse AG") shall remain unaffected by the setting of the deadline.

### 4.3 Audit Settlement

A potential claim for additional remuneration deriving from the Audit Report will be invoiced to the Customer by Deutsche Börse AG. Upon complete payment of that invoice Deutsche Börse AG will certify the completion of the Audit in a Closing Letter. The completion of the Audit refers the period audited and the Locations audited during the Audit. In case of outstanding follow-ups within the meaning of Section 4.2 at the time of issuing the Closing Letter the completion of the Audit will be made subject to the settlement of all outstanding follow-ups.

#### 4.4 Closing of Audits at Indirect Customers of Real-time Data

In the Closing Discussion the audit team will discuss with the audited Indirect Customer of Real-time Data, whether it agrees to a direct settlement of the Audit. If so the Audit Report will be issued to the Indirect Customer of Real-time Data, and the provisions for the closing of the Audit in Sections 4.1 to 4.3 shall apply mutatis mutandis. If the Indirect Customer of Real-time Data does not agree to a direct settlement or does not completely settle a claim for additional remuneration the Audit Report will be provided to the Customer with a 30 calendar day deadline for comments thereon and a claim for additional remuneration, if any, will be invoiced to the Customer.

In the event of material deviations between the reported and the actual Information Usage by an Indirect Customer of Real-time Data, Deutsche Börse AG shall be entitled to make the further supply of Information to the relevant Indirect Customer of Real-time Data, depended on the conclusion of a direct Market Data Dissemination Agreement with the relevant Indirect Customer of Real-time Data.