

Introduction

Market data auditing is a significant but sometimes disruptive compliance tool used by many exchanges and data sources globally. Audits are used to affirm policies and procedures that protect data sources' intellectual property. The objective of this Position Paper is to propose spirit and process amendments to audit programs that enable them to fulfill their financial and IP management objectives without impeding consumption of market data.

The purpose of this document is to bring visibility to audit issues. It can be seen as a companion document to the existing FISD Best Practices on audit which reflect a broader industry consensus.

Audit Objectives

- 1) The purpose of audits should be solely to ensure that the Subscriber is compliant with the relevant contracts that it has with exchanges and vendors.
- 2) All audits should be expressly provided for in the auditing party's agreement with the Subscriber.
- 3) Audits can be used to assist the Subscriber in achieving cost reductions by advising them of opportunities like more affordable products available, netting policies, etc.
- 4) Audits should not be used for the marketing of new products.
- 5) Audits should not be used to conduct market research.

Vendor Declarations and Exchange Reporting Obligations

There is a redundant effort for Subscribers to generate monthly / quarterly entitlement reports for exchanges **and** vendors. Broad adoption of standardized, streamlined, and scalable workflows for entitlement reporting will benefit all parties and greatly simplify (or even eliminate the need for) audits.

- 1) Industry standardization of requirements for reporting frequency and coverage periods would streamline accounting and reporting practices and deliver workflow and financial benefits to all constituencies.
- 2) A standard reporting format for exchange / market data vendor entitlement and declarations could streamline workflow for usage reporting.
- 3) As per the FISD Best Practice Recommendation on Unit-of-Count, adoption by exchanges of usage and reporting metrics based on natural person will, in many cases, simplify the entitlement, reporting, and therefore auditing of market data usage.
- 4) Policies and resultant fees for data use not tied to an individual user should be easy to determine and report so audits of these usages are less likely to result in conflicting interpretations of ambiguous policies.

Communication of Policies

- 1) Information Provider policy documents, pricing schedules, and contracts that are timely, clear, consistent, and easy to understand will reduce the likelihood of inadvertent non-compliance by vendors and Subscribers, and therefore reduce audit issues.
- 2) Subscribers and Vendors should have access to these materials via a mainstream source (e.g. Internet website access), including access to a history of prior policies.
- 3) Information Providers should be consistent and transparent in the judgments that they make regarding policy interpretations that might be subject to Audits.

Treatment of Over / Under-reporting

- 1) Some exchanges provide for disparate retroactive treatment of under-reporting and over-reporting of usage (e.g., Subscriber credits for over-declarations limited to 60 or 90 days but charges for under-declarations go back until a previous audit or longer). This disparate treatment should not apply when a single audit discovers both under-reporting and over-reporting. In these instances, the final settlement of the audit should net over-reporting against under-reporting over the same audited period.

Third-party Auditing

- 1) The use of a third-party auditor by an exchange should be expressly agreed by the Subscriber beforehand, either by contract or in another written communication. Such auditors should know the terms of use against which they are auditing and provide the Subscriber with a document explaining the scope and parameters of such audit which should be agreed well in advance of the audit commencing.
- 2) Subscriber contracts with exchanges and vendors include confidentiality provisions that should cover all information gathered during audits. Third-party auditors should have comparable obligations to the parties that they audit and be willing to sign documents directly with the Subscriber to verify such obligations and abide by them.
- 3) The knowledge derived from the audit should not provide information or benefits to any third party or other exchange other than the exchange engaging the third-party auditor for that particular audit. Information should not be reused in different audits for different exchanges unless consent is granted by the Subscriber. Otherwise the presumption is that the auditor will destroy the Subscriber information after an audit is settled and closed.
- 4) Compensation for third-party auditors should embrace the same audit spirit and behavior as an audit performed by exchange employees. Third-party auditors should not have compensation arrangements or other incentives that might bias them towards larger back fee findings.
- 5) All audits should be done in as short a period of time and in a manner to minimize interference and active participation by Subscriber personnel as much as possible.
- 6) On-site audits should only be done in circumstances where written reports/documentation provided and sent by Subscriber would be insufficient to determine contractual compliance by Subscriber.