**Appendix A**

**Standard market data Terms**

These standard terms to Trading Venues’s market data license agreements are drafted for the purpose of ensuring:

1. Comparable Product/ Price lists across Trading venues
2. Aligned and reasonable Documentation and Audit terms for the licensees

Ideally, the proposals should be included as regulation. However, a guideline or a market practice could initially also be a way forward.

**Contents**

Fundamental Pricelist Terms

* Non-pro vs. Pro User
* Display vs. Non-Display Usage
* Realtime, Delayed, EOD and Historical Data
* Derived Data

Audit Terms

* Obligation to present contractual foundation
* General audit principals, Reasonable commercial basis and conflict of interest
* Right to postpone audit
* Right to first refusal

**Fundamental Pricelist Terms**

1. **Non - Pro vs. Pro User**

**Purpose:**

The Trading venues do not hold the same user definition which in return causes a lot of unnecessary administration of market data access rights to these.

This is one clear and simple definition to the user types across the Trading Venues.

**Proposed Wording:**

A “Non-Pro” is a user who does not hold a license to act as financial institution, hereunder but not limited to: investment firms, credit institutions, insurance companies, investment management companies and management companies, and pension funds and their management companies and who is not a representative of a financial institution;

A “Pro” shall mean a user who does not qualify as a Non-Pro.

**Legal Reference:**

This is an alignment of the Trading Venue User definitions to be aligned with the Retail versus Eligible Counter Party definition found in Directive 2004/39/EF

1. **Display vs. Non – Display Usage**

**Purpose:**

Over the past decade, the SSDA have seen an inexplicable increase in Trading Venue market data licenses based on the use of market data outside the Display to end user format. This type of usage is commonly referred to as “Non-Display”, however sometimes quite confusing as also labelled as “Other application use” or similar by the Trading Venues.

This is one clear and simple definition to market data usage categorized as either Display or Non-Display usage to be implemented across the Trading Venues.

**Proposed Wording:**

“Display Usage” is usage of market data made by one or more physical persons who benefits from having (at minimum) visual usage access to the data.

Display Usage of data is applicable to both snap-shot and streaming market data.

“Non-Display Usage” is defined as any type of data which is not Display Usage.

Non-Display Usage of data is only applicable to real time streaming data.

1. **Realtime, Delayed, EOD and Historical Data**

**Purpose:**

In order to ensure that there is a clear definition of what market data is in use, it is important to have clear cut definitions to the difference between Realtime data, Delayed data, End Of Day (EOD) data and Historical data.

 **Proposed Wording:**

“Delayed data” is streaming market data delivered with a delay of minimum 15 minutes af the official publication.

“Realtime data” is streaming market data delivered in real-time or with a delay of less than 15 minutes.

“End Of Day (EOD) data” is the official closing prices of the current trading day.

“Historical data” is all market data generated prior to the End Of Day of the previous trading day. The Trading Venues waive all claims and right to the Historical data.

1. **Derived Data**

**Purpose:**

The situation where a market data set is used in whole or in part to make other data values is quite common across not only the financial industry, but also the research community and society in general.

Therefore, it is a problem not to have an industry wide definition applied across all Trading Venues.

Another problem to address is the ownership of the derived data regarding when the Trading Venue can claim some right or entitlement as opposed to when the deriving party is creating its own new original work. Ownership of markets data is also analyzed in legal opinion from Danowsky and Partners (2018).

**Proposed Wording:**

“Derived Data” is market data derived from the Trading Venue most commonly achieved using mathematical, logical, or other type of transformation, hereunder arithmetic formula, composition, aggregation.

“Original Work” is unique Derived Data created in a way where it cannot be reverse engineered back to the Trading Venue market data used in the production process and do not materially replace the Trading Venue market data.Page Break

**Audit Terms**

1. **Audit Term**

**Purpose:**

The term of the Trading Venue audit should never have such historical length that (in itself) carries a burden to document for year back in time. Therefore, a clearly defined upper limit is necessary.

**Proposal:**

The “Audit Term” is the period which the audit will cover.

The Audit term can be no longer than the shorter of the time from the closure of the latest audit or three (3) years, calculated from the time of the audit notice reception.

.

1. **Obligation to present contractual foundation**

**Purpose:**

The historical nature of the audit imposes a problem for either side in documenting what terms and conditions of the Trading Venue policies were applicable in relation the relevant time of the audit period. As the party drafting the terms and controlling changes there must be a clearly defined obligation for the Trading Venues to present the complete contractual foundation with updates and changes as imposed from start to end of the audit term.

**Proposal:**

“Prior to the commencement of any audit it shall be the obligation of the Trading Venue to facilitate to the auditee any and all applicable versions of contracts, terms and policy for the audit term.”

1. **General audit principals, Reasonable commercial basis and Conflict of Interest**

**Purpose:**

It important that the audit is carried out in adequate and reasonable manner. In order to ensure this, these general principals should be established.

**Proposal:**

These “General Principals” must be applied in the performance of any market data audit:

a)Objective

b)Competent

c)Performed with Due Care, and

d)Respect Confidentiality.

The audit shall happen in a “Reasonable Commercial Manner”, therefore either party (or representative thereof) to a contract is under the obligation to act in good faith and commercial reasonable manner.

Any “Conflict of Interest” with the auditor shall be disclosed to the audited party. Including but not limited to; employment status and/or compensations based on audit claim size.

1. **Right to postpone audit**

**Purpose:**

In order to cope with the requirements, the audited party is consistently required to focus its resources entirely on the burdensome audit process. Therefore, it should be possible for the audited party to request for the audit to be postponed ensuring a well-executed and mutually satisfactory audit process.

**Proposal:**

The audited party shall have the “Right to Postpone” twice for three months after having received the Trading Venue’s proposal of an audit start date.

1. **Right of first refusal**

**Purpose:**

From practice it has been observed that the audit process can be quite conflicted based on the behavior of the parties involved or flaws to the audit scheme. With the aim of preventing reoccurrences of such incidents, the audited party must have a right of first refusal to one of more audit participants or scheme elements that are conflicted.

**Proposal:**

The audited shall have a “Right of First Refusal” to the audit process in whole or in part as proposed by the Trading Venue, if the audited party in a reasonable manner can identify elements to the audit or concerning the audit that are conflicted or needs a separate resolution prior to the commencement of an audit.