THE STATUS OF

SERVICE FACILITATORS

IN THE FINANCIAL MARKET DATA INDUSTRY

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1. Introduction

Exchanges and Trading Firms have always relied on technology providers for the deliverance of data. In the early part of the nineteenth century, the post train between Aachen and Brussels was used to deliver messages from the Paris Stock Exchange. Famously, the innovation at that time was the use of carrier pigeons which proved faster and more efficient. In 1851, they were superseded by the introduction of the direct telegraph link and Paul Julius Reuter moved back to London where he set up an office in the London Stock Exchange – founding Reuters.

Technical innovations continue to this day and Reuters still exists in a form inside Thomson Reuters, one of the two largest market data Vendors in the world.

While the concept of a Vendor firm in the market data industry has been established for some time, the term ‘Service Facilitator’ has been in use for less than 20 years since it first appeared in the terms and conditions for taking data from the CTA (US Consolidated Tape).

Service Facilitators are technically specialist firms who provide technical services which deliver market data and trading messages between Exchanges and trading participants. It is the transmission of trading messages which are the essential characteristic of a Service Facilitator.

Market Data Vendors aggregate and deliver market data.

It is possible, and is not unusual, for a firm to be both a Service Facilitator and a market data Vendor with respect to one or more Exchanges.

While helpful for the industry, this new term “Service Facilitator” has the effect of making the range and type of relationships between Exchanges and other parties more varied and complicated.

The terms of the standard contracts that Market Data Vendor firms enter into with Exchanges have strong terms and onerous liabilities governing the dissemination of Exchange market data.

The terms of standard contracts that Service Facilitators enter into with Exchanges are less onerous in this respect. In some cases there may be no direct contract as the end user firm may be required to contract directly with the Exchange and name the Service Facilitator, therefore accepting liability for the actions of the Service Facilitator. In such cases it is technically possible with modern technology to disseminate Exchange market data so widely that the liabilities incurred can be very significant indeed.

It is also noteworthy that where a Service Facilitator has more than one end client who has accepted liability for their actions, it will not always be clear which of the end clients should accept the concurrent liability.

This document explores standard Exchange contracts to contrast and compare the ways in which different Exchanges have used and interpreted the term “Service Facilitator”, based on information from 2011.
2. What is the definition of the term ‘Service Facilitator’?

There is no standard definition as each Exchange chooses its own definition in its contracts and there are many such definitions. Several Exchanges\(^1\) choose not to use the term at all.

Generally the principal to keep in mind is that Service Facilitators provide technology to facilitate other businesses in the deliverance of data. These firms can include Exchanges, Market Data Vendors and Trading Firms. Often Service Facilitator status is granted to firms whose activities may not justify taking on the full status of a Vendor or Distributor relationship with the Exchange, and yet both parties wish to enable the firm to redistribute Exchange data to others.

Registration process

This is one stumbling block which reveals a lack of standardization and industry consensus.

At least three different approaches to registration exist:

- Exchanges with formal documentation and registration procedures such as:
  - NASDAQ\(^2\) with a document dedicated to Service Facilitators
  - Deutsche Börse with a thorough registration process on their website.
- Exchanges that mention Service Facilitators as part of their standard order form documentation.
  - CTA data, currently administered by NYSE
- Exchanges who recognize the concept of Service Facilitators without standardizing their registration such as the London stock Exchange\(^3\).

The defining properties of a Service Facilitator?

While there is not yet a commonly accepted industry standard, themes are developing.

All Service Facilitators need to be authorized by a Vendor and the involved Exchanges prior to disseminating data to clients. This step is often known as “prior approval”. There are a large number of Exchanges globally and each has at least one authorization to be obtained, sometimes more.

Two approaches stand out:

1) Technology Focus – the Service Facilitator agreement is based on the technologies and control methods used for dissemination of data.

2) Technology and Publicity Focus – this includes the Technology focus and also includes terms governing the publicity and marketing materials of all concerned including the Exchange, the Vendor and the Service Facilitator.\(^\copyright\)

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\(^1\) (BME) Sociedad de Bolsas S.A., Distribution Agreement 2010 Agreement for distribution of Stock Exchange Interconnection System Market Data.

\(^2\) http://www.nasdaqtrader.com/Content/AdministrationSupport/AgreementsData/servicefacilitapp.pdf

Technology Focus

The Technology Focus approach above is more commonly used by North American and Asian Exchanges where control of the entitlement system is a key defining point of such agreements, and “Prior Approval” from the Exchange is required before Exchange data is enabled.

This positions the Exchange as being in full control, governing the actions of Vendors and Distributors who must implement all Service Facilitator policy towards data dissemination. They are required to manage the technology and entitlement systems according to the terms of the Exchange and report back to the Exchange as required.

The Vendor is liable for the action of their Service Facilitators which are named in the Vendor agreements:

- An audit of the Vendor may involve any related Service Facilitators.
- When a Service Facilitator is audited, the Vendor will be ultimately responsible and liable for the Service Facilitator’s actions and any discrepancies in fees.

A pivotal point in the development of such agreements is how responsibilities are split between Vendor and Service Facilitator for complying with the Exchange’s requirements. When clearly defined this makes it easier for the Vendor to manage and control its relationship with Service Facilitators regarding use and liabilities of Exchange data.

Technology and Publicity Focus

This approach is more commonly adopted by Exchanges in Europe and Asia-Pacific. The scope of the agreement is wider and includes mutual promotion of the businesses of the Vendor and the Service Facilitator.

Conditions governing publicity usually apply to the ways in which branding is attached to the display of data. Where Non-Display or creation of Derived Data by applications is concerned, branding constraints are less often required.

Depending on the Exchange, the degree of complexity in contract terms will vary under the headings below:

a) Logo policy

The Service Facilitator may be required to highlight the Vendor’s name and branding. These terms are particularly important where white labeling is concerned.

Here are examples of Exchange requirements:

London Stock Exchange:

“For the avoidance of doubt, if a licensed Vendor opts to interpret this policy in respect of their ‘white label’ data services, the Vendor must be clearly branded as the data provider within each service to the end users of that service.

Clear branding includes but is not limited to the following:

- The Vendor’s logo and name must appear on the data service;
Service Facilitators in the Financial Market Data Industry

- The Vendor’s logo and name must be displayed within the service at all times.

It is unacceptable for the unlicensed ‘agent’ in such a scenario to have the predominant branding within the data service as there can be no confusion to the end user as to who is the provider of the data.."^4

Australian Stock Exchange:

“Any Display Service provided by a Service Facilitator that includes the Information must:

3.1.2.1 be prominently branded so it clearly identifies the Distributor or Sub-Vendor as the source of the Information”^5

Deutsche Börse

“All services and/or product provided through a Service Facilitator shall be clearly branded as Services and/or products from the Contracting Party or an Affiliated Company of the Contracting Party covered by this Market Data dissemination Agreement. Service Facilitators are not allowed to distribute information in their own name and/or logo, not even in the form of co-branding together with the name and/or logo of the Contracting Party.”^6

There are two limitations to the application of such policy.

- For display access: end users are not always familiar with the name of Vendor but much more familiar with the platform they are working with. The view of the end user will be distracted by Vendor logo images that are not helpful.

- For Non-display access: there are no obvious places for the logo to be applied because use of the data takes place inside a computer or application where there are no humans to see the branding.

b) Geographical business opportunity

As for the London Stock Exchange:

“The Exchange does not recognize Vendor Sales Agents, except in extreme circumstances in geographical regions where it may be impossible for the Vendor to have a presence. In these circumstances Exchange approval must be granted, in writing, prior to the agent’s appointment.”^7

^4 Market Data Services Licence Agreement 2008
^6 General Terms and Conditions to the Market Data Dissemination Agreement of Deutsche Börse AG, of 2 August 2010
And for SIX Exfeed:

"An agent bound by contract to Distributor to distribute Distributor’s Service to Distributor’s Subscribers in a particular territory"\(^8\)

c) Data Integrity

The Vendor takes a risk by authorizing a third party to redistribute data takes a risk regarding the quality of such data delivery.

Naturally Exchanges act in favor of the protection of the intellectual property rights in their market data, and contract terms are not limited only to the way in which the data is displayed.

The London Stock Exchange specifies here:

"The agent does not database, add to, subtract from, or modify the data"\(^9\)

SIX Exfeed is even more restrictive here:

"Service Facilitator is unable or forbidden to change the display of Data within Distributor’s Service"\(^10\)

3. The advantages of becoming a Service Facilitator

Drivers that might prompt a firm to become a Service Facilitator include:

- To reduce and control the risk of penalty fees for unlicensed use of Exchange market data products. Consider that Exchanges and other third parties scan the activities of their Vendors, Distributors and also monitor Exchange data use on the internet.
- As a tidying up exercise to regularize contractual relations after a warning or Exchange audit on a Vendor’s site, or at the future Service Facilitator’s site.

The spectrum of use of Exchange market data that can lead to financial liabilities is in a status of permanent evolution.

Generally Exchanges retain full discretion on whether to accept firms as Service Facilitators. Below are some examples of activities considered by the Exchanges in reaching a determination of whether a firm should be granted Service Facilitator status:

The Deutsche Börse in its agreement is considering:

"Marketing, and service sales, technical support services, administration services, or similar services"\(^11\)

\(^8\) [http://www.exfeed.com/download/information/exfeed_dda.pdf](http://www.exfeed.com/download/information/exfeed_dda.pdf)


\(^10\) [http://www.exfeed.com/download/information/exfeed_dda.pdf](http://www.exfeed.com/download/information/exfeed_dda.pdf)

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Equivalent terms from Chi-X are for support and assistance:

“Service Provider authorized to support or assist the transmission of Data to Customers by Recipient and/or Affiliates and approved by CXE as a member of Recipient’s Group for the purposes of any Fees applicable per Recipient’s Group.”

CME considers whether to accept Services Facilitators based on their activities:

“Information from Distributor or Affiliated Companies for the sole purpose of facilitating dissemination of Information in Distributor’s Service” and might be “agents of the Distributor, owners or operators of web sites displaying the Distributor’s Service, software developers, facilities managers, property managers or providers of other support services.”

SIX Exfeed interprets a Service Facilitator as:

- “An organization (for example a facilities management company) providing Distributor’s Service on its premises to Distributor’s Subscribers,
- An organization developing or maintaining software on behalf of Distributor for use in connection with the Data and the Service
- An organization incorporating Distributor’s Service into its website for access by Distributor’s Subscribers”

NASDAQ considers:

“A Service Facilitator is a third party to which a Distributor outsources the responsibility for managing some portion of its technical, financial, legal, or operational role in distributing the Information. Service Facilitators may be agents of the Distributor, owners or operators of web sites displaying the Distributor’s Service, software developers, facilities managers, property managers or providers of other support services. Service Facilitators have no right to use Information outside the Distributor’s Service.”

While Exchanges retain the right to decide which third party can or cannot become a Service Facilitator by listing activities, the Exchanges must face the fact that technologies are rapidly evolving and contract terms must be constantly updated to keep up.

While terms for display access are well established in the industry, they are not wholly standardized across all Exchanges. Consider the many different flavors of Unit of Count.

Terms for Non-Display usage are relatively new having been successfully introduced by the Deutsche Boerse in April 2008. Other Exchanges are introducing their own flavors such as LSE in January 2011. Non-Display accesses are playing an increasingly important role as automated trading activities continue to grow in number and in relative importance compared to Display Access. Special Exchange terms for the High Frequency Trading and Low Latency markets are yet to appear.

One recent surprising innovation concerns co-location by Exchanges themselves. In some cases by promoting authorized Vendors in their Datacenter Exchanges can become Service Facilitators of other Exchanges’ feeds.

4. What are the benefits and drawbacks of Service Facilitator Status?

Benefits for the Service Facilitator:

- There is a significant real cost saving in being Service Facilitator rather than Vendor or Sub-Vendor.
- The critical legal point is that liabilities remain with the Vendors.
- The Service Facilitators are each able to focus on their area of expertise and follow Vendors requirement to stay compliant with respect to Exchanges rules.

Benefits for the Vendor:

- Being able to take advantage of the technical expertise of the Service Facilitator who may already have connectivity to key liquidity providers.

Drawbacks for the Service Facilitator

It is necessary to satisfy the terms of the Exchanges.

- Software providers might be reluctant to let the Vendor become the administrator of their entitlement system.
- Service Facilitators are almost always considered as affiliates to the Vendor. Therefore the relationship between the Vendor and the software facilitator will become extremely tight and a dependency can develop.
- Service Facilitators might be perceived to be clients of their Vendors.

Drawbacks for the Vendor

- It is necessary to consider the Service Facilitator as an outsourcing partner and not as a client.
  - The relationship can be likened to the in the automotive industry between the manufacturer (Service Facilitator) and the main dealer (Vendor).
- It is necessary to support and manage the risks associated with Exchange audits and resulting disputes where the Service Facilitator does not act under the full control of the Vendor.
5. Impact on Contracts

Consumer firms receiving Exchange market data where a Service Facilitator is involved must sign at least two contracts and possibly three, as follows:

1) A contract with the Service Facilitator
2) A contract with the Vendor
3) A contract with the Exchange

6. Conclusion

Service Facilitator status is not standardized globally and there is a wide variation in the ways that fees are positioned by Vendors and Exchanges.

In the future, we expect that as markets evolve, any entity disseminating a RAW feed will be considered as a Service Facilitator of the Exchange.

Terms governing publicity and branding will continue to create ambiguities in the case of Non-Display access.

Not all Exchanges will recognize their own contract terms in this document which will certainly require updates as markets continue to evolve.
7. Circuits

a. Contractual workflow:

1. A contract shall exist between the third party and the Vendor.

2. The Vendor requests to have a new Service Facilitator who complies with the rules of the Exchange.

3. The Exchange agrees (if not there is no need for further analysis).

4. The final user has a contract with the Service facilitator for the service provided.

5. The final user has a contract with the Vendor for the market data.

6. The final user has a direct contract with the Exchange if required.
b. Market data workflow

1. The market data is provided by the Exchange to the Vendor.

2. The Vendor provides the market data to the final user. (From the point of view of the Exchange it helps to explain why the entitlement system shall be controlled by the Vendor).
   a. The Vendor provides the Service Facilitator with the data.
   b. The Service Facilitator provides data to the Final user.
c. Reporting workflow

1. If services provided by the Service Facilitator are delivered as a Controlled Feed then the Final User will report usage to the Service Facilitator.

2. The Service Facilitator reports usage onwards to the Vendor.

3. The final user may report usage directly to the Vendor if the data is delivered in as an uncontrolled Feed.

4. The Vendor reports usage directly to the Exchange.

5. The final user will report usage directly to the Exchange when required.
d. Invoicing workflow

1. If services provided to the Service Facilitator are delivered as a controlled feed then fees are payable to the Service Facilitator.

2. The Service Facilitator passes these revenues on to the Vendor.

3. The final user pays the Vendor directly if the data is delivered in an uncontrolled manner.

4. The Vendor reports and pays directly to the Exchange.

5. The final user pays the Exchange directly when required.