



**RBC Capital Markets®**

## **Annexes & Schedules**

## CUSTODY ANNEX

### 1 SCOPE

- 1.1 **Application:** This Annex applies to assets transferred to us for your account or accounts for safekeeping. It does not apply to any non-cash margin transferred to us in accordance with paragraphs 7, 8 and 9 of the Margin Annex.
- 1.2 **Appointment of custodian:** You agree that we act as custodian of your assets which we may from time to time safeguard and administer under this Agreement.
- 1.3 **Types of accounts:** We shall open in your name one or more custody accounts recording any shares, stocks, debentures, bonds, securities or other similar property (including evidence of or title to securities and all rights in respect of securities) deposited or transferred by you or on your behalf with or to us or our sub-custodian or collected by us or our sub-custodian for your account ("**Custody Assets**"). We at all times reserve the right to reverse any provisional or erroneous entries (including reversals necessary to reflect adjustments by our sub-custodian to its records as a result of bad deliveries) to the custody accounts with effect back-valued to the date upon which the final or correct entry (or no entry) should have been made.
- 1.4 **Statements:** We shall provide you with periodic statements concerning the Custody Assets that we hold for you, as required by Article 63 of the MiFID2 Delegated Regulation. We shall provide such statements at least as frequently as required by Applicable Regulation, unless you request such statement more frequently, in which case we shall charge a commercial cost for such provision.

### 2 ARRANGEMENTS FOR CUSTODY

- 2.1 **Registration:** Custody Assets which are in registrable form may be registered in your name or in the name of a nominee company. You agree that registrable Custody Assets may also be registered in the name of our sub-custodian, a third party or in our name, but only if, the particular Custody Asset is subject to the law or market practice of an overseas jurisdiction and due to the nature of the law or market practice of that overseas jurisdiction, it is in your best interests or is not feasible to do otherwise and (i) if registering in the name of a third party, we are prevented from registering the Custody Assets in your name or the name of a nominee company, or (ii) if registering in our name, we are prevented from registering the Custody Assets in your name, the name of a nominee company or in the name of a third party.

### 3 SUB-CUSTODIANS

- 3.1 **Use of Third Parties:** We may from time to time delegate to sub-custodians, nominees, agents, depositories, clearing houses and clearing systems inside or outside the United Kingdom and which may include entities within the same group as us any of our duties under these custody terms including (without limitation) the safekeeping of the Custody Assets (together "Third Parties"). We are not generally liable for acts or omissions or insolvency of any Third Party, except that we accept responsibility to you for any nominee company controlled by us, or controlled by any of our Affiliated Companies, to the extent required by the FCA Rules. Consequently, if the Third Party becomes insolvent, there may be some risk to your Custody Assets.
- 3.2 **Holding by sub-custodians:** Sub-custodians may hold the Custody Assets at your risk and on such terms and conditions as the sub-custodian may require. In addition, sub-custodians shall hold Custody

Assets subject to Applicable Regulations and usages including, without limitation, any Applicable Regulations applicable to the sub-custodian. Subject to paragraph 4, we shall be entitled to grant to sub-custodians, and sub-custodians may have, liens and/or other security interests over the Custody Assets.

3.3 ***Custody Assets held by Third Parties:*** Your Custody Assets may be held overseas by a Third Party on our behalf. Furthermore:

- (a) Your Custody Assets may be held in an omnibus account by the Third Party, and there is a risk that your Custody Assets could be withdrawn or used to meet obligations of other persons, or that the balance of assets held by the Third Party does not reconcile with the quantity which the Third Party is required to hold, and you may not in such circumstances receive your full entitlement of Custody Assets;
- (b) In some jurisdictions it may not be possible to identify separately the Custody Assets which a Third Party holds for clients from those which it holds for itself or for us, and there is a risk that your Custody Assets could be withdrawn or used to meet the obligations of the Third Party, or lost altogether if the Third Party becomes insolvent;
- (c) An account containing your Custody Assets may be subject to the laws of a non-EEA jurisdiction, and in such case your rights in relation to those Custody Assets may be different from your rights to Custody Assets held in an account subject to the laws of an EEA jurisdiction; and
- (d) We may use a Third Party in a country which is not an EEA state and where the holding and safekeeping of financial instruments is not regulated. We will only do so when the nature of the Custody Assets or of the services provided to you connected with those Custody Assets requires them to be deposited with such a Third Party or where you have requested us in writing to deposit Custody Assets with a Third Party in the relevant non-EEA state.

#### **4 LIENS AND SET-OFF RIGHTS:**

4.1 ***Third Party security interests:*** Where any of your Custody Assets are held with a Third Party (including a depository), such Third Party may have a security interest, lien or similar rights over your Custody Assets. We may create (or allow to be created) a security interest, lien or right of set-off in favour of a Third Party (a "Third Party Security Interest") over or in respect of your Custody Assets where the creation of such Third Party Security Interest is permitted by CASS 6 of the FCA's Client/Counterparty Assets Sourcebook.

4.2 ***Default risk:*** Where Third Party Security Interests are created there is the risk that where we (or any other person whose obligations are secured by, or set-off against pursuant to, such Third Party Security Interests) defaults on our obligations towards the relevant Third Party, or in other circumstances, including without limitation, where the Third Party anticipates that such obligor may default on its obligations (including, for example, due to the onset or potential onset of insolvency proceedings), then such Third Party may enforce its rights over (or set-off its obligations against) your Custody Assets and, as a consequence, you may lose and not be able to recover such assets from us or from the Third Party, regardless of whether you are in actual or potential default of your obligations to us or any other person.

4.3 ***Consent:*** You agree that a Third Party Security Interest may be created (or may already have been created) and that a person, entity or undertaking other than us may therefore have a security interest,

lien or (if applicable) right of set-off over your Custody Assets where allowed under Applicable Regulation.

## 5 INSTRUCTIONS

- 5.1 **Authorised Persons:** You shall provide us with a list of the officers, employees or agents who have authorised, either alone or with others, to act on your behalf in the giving of Instructions (as defined below) and performance of any other acts, discretions or duties under these custody terms ("Authorised Person(s)") together with specimens of their signatures if written instructions are to be given. We shall be entitled to rely upon the continued authority of an Authorised Person for those purposes until we receive notice from you to the contrary.
- 5.2 **Instructions:** Notwithstanding any agreement between you and us, we may act upon instructions ("Instructions") in respect of the safe custody service provided by us to you under these custody terms from an Authorised Person received by us via telephone, telex, facsimile transmission or other teleprocess or electronic instruction system acceptable to us and transmitted with such testing or authentication as we may specify. Instructions shall continue in full force and effect until cancelled or superseded. If any instructions are received by us by telephone you shall confirm them before the close of business on the same day by another method acceptable to us. We shall be authorised to follow Instructions notwithstanding your failure to confirm them in writing.
- 5.3 **Acting on Instructions:** We may in our absolute discretion refuse to act on Instructions. If any Instructions are incomplete, unclear, ambiguous, and/or in conflict with others we may in our absolute discretion and without any liability on our part, act upon what we believe in good faith then to be or refuse to act on them until any incompleteness, unclarity, ambiguity or conflict has been resolved to our satisfaction. Any Instruction shall be conclusively deemed to be a valid Instruction from you to us if we believe it to be genuine. You are responsible for any loss, claim or expense incurred by us for following or attempting to follow any Instructions.
- 5.4 **Actions not requiring Instructions:** You agree that we may without any further Instructions from you carry out the following actions relating to the Custody Assets:
- (a) to collect and receive, for your account, any payments (whether income or capital) and distributions in respect of the Custody Assets, and to take any action necessary and proper in connection with them, including (without limitation) the presentation of coupons and other interest items and the endorsement for collection of cheques, drafts and other negotiable instruments and the deduction or withholding of any sum on account of any tax (i) required or which in our view is required to be so deducted or withheld or (ii) for which it is or is in our view liable or accountable by law or practice of any relevant revenue authority of any jurisdiction;
  - (b) to execute in your name such ownership and other certificates as may be required to obtain payment in respect of the Custody Assets; and
  - (c) to exchange interim or temporary documents of title to Custody Assets for definitive ones.

## 6 SCOPE OF OUR RESPONSIBILITY

- 6.1 **Dividends and other income:** We shall as soon as reasonably practicable pay to you all dividends, interest payments or other entitlements accruing to you in relation to the Custody Assets, subject to deductions and the exercise of any of our rights under these custody terms.

- 6.2 **Corporate actions:** Provided we receive the relevant information, we will use reasonable endeavours to notify you of all matters in respect of which you have voting rights and of all calls for redemption, grants or expirations of conversion rights, takeovers, grants or expirations of subscription rights, mergers, offers, consolidations, reorganisations and capitalisations or such other corporate actions or any other administrative or supervisory matters affecting the Custody Assets. Unless otherwise agreed with you in writing, we will not take any action in relation to such matters except in accordance with Instructions.

## 7 LIEN

- 7.1 **General lien over Custody Assets:** In addition to any general lien or other rights to which we may be entitled under any applicable law, we shall have a general lien over the Custody Assets until the satisfaction of all liabilities and obligations (whether actual or contingent) owed by you to us (whether under these custody terms or otherwise). The lien is a continuing security regardless of any intermediate payment or settlement of account.
- 7.2 **Realising Custody Assets:** If you fail to pay any sum or liability you owe to us, we are entitled at any time, without notice to you and without prejudice to any other right or remedy which we may have, to sell all or any of the Custody Assets in such manner and at such price as we may deem expedient without being responsible for any loss and to apply the net proceeds thereof in or towards payment or discharge of any sum or liability as we may think fit. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to these custody terms or to any exercise by us of our power of sale.
- 7.3 **Further Assurance:** You agree to execute such further documents and to take such further steps as we may reasonably require to perfect our security interest over, be registered as owner of or obtain legal title to Custody Assets, secure further liabilities and obligations (whether actual or contingent) owed by you to us, enable us to exercise our rights.

## 8 SECURITIES LENDING AND OTHER USE OF CUSTODY ASSETS

- 8.1 **Authority to lend:** You agree that we may use your Custody Assets for the purposes of any Securities Loan to us, an Affiliated Company, to another client of ours, or to a third party. Where we arrange a Securities Loan in respect of your Custody Assets, title to the assets lent will be transferred to the borrower, and the assets returned to you will be equivalent but not identical to the assets lent.
- 8.2 **Authority to use:** You also agree that we may use your Custody Assets for other purposes, but in each case we shall do so on terms equivalent to a Securities Loan where we are the borrower.
- 8.3 **Borrowers:** Securities Loans shall be entered into with any of a list of borrowers selected by you. We do not accept liability for the default of any borrower.
- 8.4 **Terms and conditions:** Securities Loans shall be documented on market standard documentation. You authorise us to negotiate and execute such documentation on your behalf. We shall require that cash or securities collateral is provided to us, for your benefit, in respect of each Securities Loan, including where we ourselves act as borrower. You do not require us to provide collateral from our own resources where the value of collateral provided to us falls below that of the lent Custody Assets, except where we ourselves are borrower.
- 8.5 **Measures to prevent unauthorised use:** In order to prevent the unauthorised use of your Custody Assets for our own account or the account of any other person: (a) we shall closely monitor all deliveries of Custody Assets requiring settlement by us on your behalf, and promptly request delivery to us for your

account of any securities where we are aware that delivery is due but not yet made; and (b) if under this Agreement we are required to settle a delivery of Custody Assets on your behalf but on the relevant settlement date there are, or we consider that there will be, insufficient Custody Assets available for delivery, we shall, at your expense: (i) if it is reasonably practicable to do so, delay settlement until sufficient Custody Assets are available for delivery; and/or (ii) arrange for a loan (by us or a third party) to you of appropriate securities to enable such settlement to occur. Any loan of securities for this purpose shall be documented on market standard documentation, shall involve the transfer of collateral on your behalf to the lender, and you authorise us to negotiate and execute such documentation on your behalf.

8.6 **Definition:** "Securities Loan" means a loan or borrower of securities, and includes sale-and-repurchase (repo) transactions, a reverse repo, a buy/sell-back and a sell/buy back.

## 9 DVP EXEMPTION

9.1 **DVP exemption:** You agree that assets will not be treated as Custody Assets in respect of any delivery versus payment transactions where we settle through (in our capacity as a direct member or participant or where we are sponsored by such a direct member or participant) a system commercially available to firms that are members or participants, a purpose of which is to facilitate the settlement of transactions using assets held on one or more settlement accounts, if:

- (a) in respect of a purchase, we intend the asset in question to be due to you within one business day following the fulfilment of your payment obligation to us; or
- (b) in respect of a sale, we intend the asset in question to be due to us within one business day following the fulfilment of our payment obligation to you,(the "**DVP exemption**"),

provided that we will stop using the DVP exemption in respect of any particular Transaction if the relevant payment or delivery by us to you has not occurred by the close of business on the third business day following the date on which we make use of the DVP exemption in respect of that Transaction.

## AGENCY ANNEX

### 1 APPLICATION AND SCOPE

- 1.1 **Scope of these terms:** These terms set out the basis on which we will provide the services referred to in the Agreement to you where you are acting as agent for each Counterparty. Where you are acting for your own account the supplemental terms set out in this Annex shall not apply.
- 1.2 **Notification:** You will notify us before placing any order on behalf a Counterparty that you are acting as agent for that Counterparty and inform us of the identity, address and any other details which we require in respect of each Counterparty to enable us to form a credit and counterparty risk assessment in respect of any Transaction.
- 1.3 **Instructions:** You may give us oral and written instructions and orders. We shall not accept nor act upon any instructions received by anyone other than persons duly authorised by you ("Authorised Persons"). Authorised Persons shall be those identified by you to us in writing from time to time. If we refuse to act on any instruction or order, we shall notify you as soon as practicable of our refusal.
- 1.4 **Capacity:** Each Transaction will be entered into by you as agent for and on behalf of the Counterparty specified by you (whether by code name or otherwise) in accordance with term 1.5 below. Unless we agree otherwise in writing, we shall treat you alone as our customer and we shall not treat any Counterparty as our customer for the purposes of the Rules of the Relevant Regulators.
- 1.5 **Nature of Counterparties:** You represent, warrant and undertake on your own behalf and as agent for the Counterparties that no Counterparty will be a state or a separate entity within the meaning of the State Immunity Act 1978 and that a Counterparty shall, at the time an instruction is given in respect of it, have the characteristics and conform to any criteria agreed between us from time to time.
- 1.6 **Counterparty accounts:** We shall, in respect of each Counterparty, establish and maintain one or more separate sub-accounts (each a "Counterparty Account"). You undertake, as agent or the relevant Counterparty and on your own behalf, in respect of each instruction given, to specify within two hours of giving an instruction (or such other time as we may reasonably specify) the Counterparty Account to which the relevant instruction relates. Until you specify a specific Counterparty Account you shall be personally liable, as principal, in respect of the relevant Transaction. You further undertake, as agent for each Counterparty and on your own behalf, to notify us immediately if any two or more Counterparty Accounts relate to the same Counterparty.
- 1.7 **Separate administration:** We shall, subject to these terms, administer Counterparty Accounts which we reasonably believe relate to different Counterparties separately, including for the purposes of calculating any margin requirement. We shall not exercise any power to consolidate accounts or set off amounts owing between Counterparty Accounts relating to different Counterparties.
- 1.8 **Documentation:** You agree to forward to a Counterparty any documentation in relation to such Counterparty that we are required to provide under the Rules of the Relevant Regulators and which we make available to you for that purpose.

### 2 ADVICE

- 2.1 **Limitations:** You, as agent for the Counterparties and on your own behalf, retain full responsibility for making all investment decisions with respect to any Counterparty. We will not be responsible for judging the merits or suitability of any Transaction to be entered into on behalf of a Counterparty. Unless otherwise required under Applicable Regulations, we shall have no responsibility for your or

any Counterparty's compliance with any laws or rules governing or affecting your conduct or that of any Counterparty, or for your or any Counterparty's compliance with any laws or rules governing or affecting Transactions.

### **3 REPRESENTATIONS, WARRANTIES AND COVENANTS**

3.1 ***The Agreement:*** Clause 11 of the Terms of Business shall not apply to you.

3.2 ***Representations and warranties:*** As agent for each Counterparty and on your own behalf, you represent and warrant to us as of the date these terms come into effect and as of the date of each Transaction that:-

(a) you and the Counterparty each have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform these terms, the Agreement and each Transaction and to grant the security interests and powers referred to in the margin arrangements annex and elsewhere in these terms and the Agreement;

(b) the person(s) entering into these terms, the Agreement and each Transaction have been duly authorised to do so;

(c) these terms, the Agreement, each Transaction and the obligations created under each of them are binding upon, and are enforceable against, you and/or the Counterparty (as applicable) in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, order, charge or agreement by which you or the Counterparty is bound;

(d) no Event of Default or Potential Event of Default has occurred and is continuing with respect to you or the Counterparty;

(e) each of you and the Counterparty is permitted under its constitution and any applicable law or regulation and is financially able to sustain any loss which may result from Transactions, and that entering into Transactions is a suitable investment vehicle for the Counterparty;

(f) the relevant Counterparty owns, with full title guarantee, all investments, margin (or collateral) deposited with, transferred to us or charged in our favour, by you acting as agent for the Counterparty and such investments, margin (or collateral) are free from any prior mortgage, charge, lien or other encumbrance whatsoever and neither you acting as agent for the relevant Counterparty, nor the Counterparty itself, will further pledge or charge such investments, margin (or collateral) or grant any lien over them while it is pledged or charged to us except with our prior written consent; and

(g) any information which you provide or have provided to us in respect of your or the Counterparty's financial position, domicile, or other matters is accurate and not misleading in any material respect.

3.3 ***Covenants:*** You, as agent for each Counterparty and on your own behalf, covenant to us that you will:

(a) ensure at all times that you and the Counterparty obtain and comply with the terms of and do all that is necessary to maintain in full force and effect all authority, powers, consents, licences and authorisations referred to above;

(b) promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to yourself or the Counterparty;



(c) provide to us on request such information regarding your and the Counterparty's financial or business affairs as we may reasonably require to evidence the authority, powers, consents, licenses and authorisations referred to above or to comply with any Applicable Regulations;

(d) provide to us on request copies of the relevant sections of the Counterparty's constitutive documents relating to its capacity to enter into Transactions and appoint an agent to act on its behalf and that any such extract will, to the best of your knowledge, be true and accurate in all material respects and you will not omit or withhold any information which would render the information so supplied to be false or inaccurate in any material respect;

(e) either: (i) execute as agent for the Counterparty where you are duly authorised to do so, or, in each other case: (ii) procure that the Counterparty executes, as applicable, on our request all such transfers, powers of attorney and other documents as we may require to vest any assets or otherwise grant any security interest or other interest referred to in the Agreement in us, our nominee, a purchaser or transferee; and

(f) immediately notify us if you cease to act for any Counterparty or if the basis upon which you act on behalf of the counterparty alters to an extent which would affect this Agreement or any Transaction made thereunder; and immediately notify us in writing if at any time any of the warranties, representations or undertakings in this annex are or become or are found to be incorrect or misleading in any material respect.

#### **4 ANTI- MONEY LAUNDERING**

4.1 **Anti-money laundering:** You represent, warrant and undertake that you are now and will be at all material times in the future in compliance with all Applicable Regulations concerning money-laundering. We are required to follow the Applicable Regulations concerning money-laundering relating to the identification of the Counterparty unless clause 4.2 applies, and if satisfactory evidence of identity has not been obtained by us within a reasonable time period, we reserve the right to cease to deal with you.

4.2 **If you are:** a UK or EU regulated credit or financial institution, or a regulated financial sector firm from a FATF country (i.e. a member of the Financial Action Task Force), we shall deal with you on the understanding that you are complying with EU regulations (or the local equivalent) concerning money-laundering and that evidence of the identification of any Counterparty will have been obtained and recorded under procedures maintained by you.

#### **5 MARGINING ARRANGEMENTS AND DISCHARGE**

5.1 **Margin:** References to "you" in the Agreement shall all be deemed to be references to you acting as agent on behalf of each Counterparty in respect of which you provide margin to us from time to time.

5.2 **Discharge:** Where under any term any payment or other performance (including the delivery of securities or any other property) is due from us, it shall be a discharge of our obligation to make such payment or performance to you notwithstanding that any Counterparty shall be interested (whether beneficially or otherwise) in such payment or performance.

#### **6 NETTING**

6.1 **Events of Default:** References to "Party" in the Agreement shall be deemed to be references to you acting on your own behalf and to each Counterparty. If any Event of Default occurs in respect of you or a Counterparty we shall be entitled to exercise our rights under the Agreement in accordance with

the following sentences of this term and the expression "Defaulting Party" shall be construed accordingly. In respect of an Event of Default which occurs in respect of you (as opposed to any Counterparty), our rights under the Agreement shall apply separately in respect of each Counterparty Account. If an Event of Default occurs in respect of a Counterparty, our rights under the Agreement shall be limited to the relevant Counterparty Account(s).

## **7 INDEMNITY**

- 7.1 **Indemnification:** Notwithstanding that you may act as agent you undertake as principal to indemnify us in respect of any liabilities, costs, damages and losses incurred in relation to any Transaction effected by you as agent on behalf of any Counterparty.

## **8 INTERPRETATION**

**Definitions:** In this Annex, the following terms have the following meanings:

**"Counterparty"** means any counterparty agreed to in writing by us from time to time on behalf of which you are to enter as agent into Transactions with us; and where a counterparty does not constitute a single legal person, means the trustees, individuals or other persons who are the primary representatives of the organisation, trust or fund on whose behalf they are dealing.

## MARGINING ARRANGEMENTS ANNEX

1. **Application:** The provisions of this Annex are subject to any specific terms agreed separately between us relating to margin payments contemplated by this Agreement.
2. **Margin call:** You agree to pay us on demand such sums by way of margin as are required from time to time under the Rules of any relevant Exchange or Market (if applicable) or as we may in our discretion reasonably require for the purpose of protecting ourselves against loss or risk of loss on present, future or contemplated Transactions under this Agreement.
3. **Form of margin:** Unless otherwise agreed, margin must be paid in cash. The currency of the cash margin you pay to us shall be specified in the Individually Agreed Terms Schedule. Cash margin is paid to us as an outright transfer of title and you will not retain any interest in it. Cash margin received by us will be recorded by us as a cash repayment obligation owed by us to you.
4. **Non-cash margin:** Where we agree to accept non-cash collateral, it must be in a form acceptable to us as specified in the Individually Agreed Terms Schedule. The value of the non-cash collateral and the proportion of that value to be taken into account for margin purposes shall be determined by us in our absolute discretion and specified in the Individually Agreed Terms Schedule.
5. **Right of retention:** If there is an Event of Default or this Agreement terminates, we will not be obliged to repay any cash margin for so long as it is required under the Rules of any relevant Exchange or Market or to the extent that you owe, or may owe, obligations to us. In determining the amounts of cash margin, your obligations, and our obligation to you, we may apply such methodology (including judgements as to the future movement of markets and values) as we consider appropriate, consistent with Applicable Regulations.
6. **Set-off on default:** If there is an Event of Default or this Agreement terminates, we may set off the balance of cash margin owed by us to you against your obligations (as reasonably valued by us) as they become due and payable to us and we shall be obliged to pay to you (or entitled to claim from you, as appropriate) only the new balance after all obligations have been taken into account. The net balance, if any, shall take into account the Liquidation Amount payable under the netting provisions in clause 12 of this Agreement ("Events of Default, Termination of Agreement, and Netting").
7. **Transfer of non-cash collateral:** This paragraph 7 and paragraphs 8 to 11 shall not apply if we have sent you a notification contemplated under paragraph 12. You agree that all right, title and interest in and to any non-cash collateral shall vest in us free and clear of any liens, claims, charges or encumbrances or any other interest of you or of any third party. Neither this paragraph, nor paragraphs 8 or 9 create a security interest in the non-cash collateral.
8. **Use of non-cash collateral:** On the basis that we are the owner of the non-cash collateral as set out in paragraph 7 above, you agree and acknowledge that until such time as the conditions in paragraph 9 are met, we shall have full right, title and interest in the non-cash collateral including, without limitation, the right to use at any time and from time to time, the non-cash collateral in the conduct of our own business, including, in particular but without limitation, the right to:
  - (a) sell, pledge, rehypothecate, assign, invest, use, commingle, or otherwise dispose of, or otherwise use in our business any non-cash collateral, free from any claim or right of any nature whatsoever of yours;

- (b) register any non-cash collateral in our name or in the name of our custodian or nominee (which may be one of our affiliates);
  - (c) combine any of the non-cash collateral with our other property or that of any of our customers or both, as the case may be from time to time so long as a record is kept of the non-cash collateral which has been so combined;
  - (d) pledge any of the non-cash collateral as security for our indebtedness to any other person or persons;
  - (e) loan any of the non-cash collateral in the form of securities to ourselves or any of our affiliates for use by us or them for our/their own business purposes on the basis that such loan would constitute a securities lending arrangement and would be effected in a manner which is consistent with such an arrangement in the relevant market for similar securities to the non-cash collateral;
  - (f) use any of the non-cash collateral for making delivery against a sale, whether a short sale or otherwise.
9. ***Obligation to transfer equivalent collateral:*** You shall be entitled to have equivalent non-cash collateral transferred to you or at your direction in accordance with this paragraph 9 and paragraphs 10 and 11 if (1) you have discharged in full the Secured Obligations relating to any such non-cash collateral or to which such non-cash collateral relates, and (2) have requested that any equivalent non-cash collateral be transferred by us for any reason. Upon meeting these two conditions you shall be entitled to have all right, title and interest in the non-cash collateral transferred to you or to a third party on your behalf.
10. ***Transfer of securities collateral:*** Where the non-cash collateral comprises securities, we may fulfil our obligation under paragraph 9 to transfer such non-cash collateral by delivering Fungible Securities, it being understood and agreed that the Fungible Securities may not be and do not need to be identical investments to the original securities and need only meet the definition of Fungible Securities set out in paragraph 24.
11. ***Transfer of Commodity Securities:*** Where the non-cash collateral comprises Commodity Securities ("Commodity Securities Collateral"), we may fulfil our obligation under paragraph 9 to transfer such non-cash collateral by delivering Equivalent Collateral having a Value as of the date of the transfer equal to that of the Commodity Securities Collateral. Where, on the date of a transfer of Equivalent Collateral, the Value of a Commodity Security transferred by us as Equivalent Collateral is greater than the mean per lot Value (as calculated by us at the date of transfer of Equivalent Collateral) of the Commodity Securities Collateral provided to us (the "Mean Value"), we shall on that day pay to you the difference in Value; where the Value of a Commodity Security so transferred is less than the Mean Value, you shall on that day pay to us the difference in Value; and all such differences shall be aggregated so that only the balance is payable by the party with the greater net payment obligation under this paragraph.
12. ***Security interest:*** We may notify you in writing (either in the Individually Agreed Terms Schedule or otherwise) at any time that paragraphs 7 to 11 above are not applicable and that the provisions of this paragraph 12 shall apply in their place. If we give you such notification, as a continuing security for the performance of the Secured Obligations under or pursuant to this Agreement, you grant to us, with full title guarantee, a first fixed security interest in all non-cash margin now or in the future provided by you to us or to our order or under our direction or control or that of an Exchange or Market or

otherwise standing to the credit of your account under this Agreement or otherwise held by us or our Associates or our nominees on your behalf.

13. **Commodity Securities represented by Warrants:** The transfer of any Commodity Security represented by a Warrant held within SWORD under the provisions of this Annex shall be effected by delivery to the recipient's account within SWORD or to that of the recipient's duly appointed bailee being an Account Holder within the meaning of SWORD Regulations; and in any other case, physical delivery of the Warrant representing the Commodity Security to the recipient or to its order.
14. **Further assurance:** You agree to execute such further documents and to take such further steps as we may reasonably require to perfect our security interest over, be registered as owner of or obtain legal title to the margin, secure further the Secured Obligations, enable us to exercise our rights or to satisfy any market requirement.
15. **Power to charge:** You agree that we may, to the extent that any of the margin constitutes "financial collateral" and this Agreement and your obligations hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "Regulations")), free of any adverse interest of yours or any other person, grant a security interest over margin provided by you to cover any of our obligations to an intermediate broker, Exchange or Market, including obligations owed by virtue of the positions held by us or other of our clients.
16. **Power of sale:** If an Event of Default occurs, we may exercise the power to sell all or any part of the margin. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to any exercise by us of our rights to consolidate mortgages or our power of sale. We shall be entitled to apply the proceeds of sale or other disposal in paying the costs of such sale or other disposal and in or towards satisfaction of the Secured Obligations.
17. **Power of appropriation:** To the extent that any of the margin constitutes "financial collateral" and this Agreement and your obligations hereunder constitute a "security financial collateral arrangement" under the Regulations, we shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations. For this purpose, you agree that the value of such financial collateral so appropriated shall be the amount of the margin, together with any accrued but unposted interest, at the time the right of appropriation is exercised. The parties further agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.
18. **Substitution:** You may on any Business Day by notice inform us that you wish to transfer to us non-cash collateral specified in that notice ("New Collateral") in exchange for certain non-cash collateral specified in that notice and which has either been transferred to us under paragraph 7 or over which you have granted us a security interest under paragraph 12 ("Original Collateral"). If we notify you that we consent to the proposed exchange, such consent not to be unreasonably withheld, (a) you will be obliged to transfer the New Collateral to us on the second Settlement Day following the date on which you receive notice (which may be by telephone) from us of our consent and (b) we will be obliged to transfer to you the Original Collateral (or Fungible Securities where the Original Collateral comprises securities or Equivalent Collateral where the Original Collateral comprises Commodity Securities Collateral) not later than the Settlement Day following the date on which we receive the New Collateral, provided that we will only be obliged to transfer equivalent collateral with a value as of the date of transfer as close as practicable to, but in any event not more than, the value of the New Collateral as of that date.

19. **Distributions:** We shall transfer to you no later than the Settlement Day following each Distribution Date cash, securities or other property of the same type, nominal value, description and amount as the relevant Distributions received by us or such amount after any additional deductions required by any applicable law.
20. **Negative pledge:** You undertake neither to create nor to have outstanding any security interest whatsoever over, nor to agree to assign or transfer, any of the cash or non-cash margin transferred to us, except a lien routinely imposed on all securities in a clearing system in which such securities may be held.
21. **General lien:** In addition and without prejudice to any rights to which we may be entitled under this Agreement or any Applicable Regulations, we shall have a general lien on all property held by us on your behalf, whether directly or indirectly through our Associates, nominees or other Third Parties, until the satisfaction of the Secured Obligations.
22. **Effect of title transfer collateral arrangements:** Where you provide cash margin to us under a title transfer collateral arrangement (such as the arrangement pursuant to paragraph 3):
- (a) you will not have a proprietary claim over such cash margin (even where we act as your agent) and will have an unsecured contractual claim against us for repayment of an equivalent amount subject to the terms of the relevant agreement;
  - (b) such cash margin will not be held by us as banker or in accordance with the Client Money Rules (and among other things, will not be segregated from our assets or held subject to a trust);
  - (c) in the event of our insolvency, you will have an unsecured claim against us in respect of such cash margin and, you may not recover the full value thereof if there is insufficient cash to satisfy your claims and those of all other clients with claims against the relevant cash; and
  - (d) you will not be entitled to receive any interest that may have otherwise been payable in respect of such cash (subject to any contractual rights that you may have otherwise agreed with us to the contrary).

This information set out in paragraph 22 is provided for your information only, as required by Applicable Regulation, and is not intended to constitute a contractually binding part of this Agreement, not intended to be relied upon as legal, tax or other advice.

23. **Taxes and tax forms:** You shall at all times be fully responsible for the payment of any taxes arising from this Annex, including but not limited to any stamp, registration, documentation or similar taxes levied or imposed or any other deduction or withholding taxes or any additional amounts required by any applicable law. Upon reasonable demand, you will deliver any form or document that may be required or reasonably requested in writing in order to make any payment under this Annex without any deduction for or on account of any tax or with such deduction or withholding at a reduced rate.
24. **Dispute resolution**
- 24.1 **Disputed valuation:** If you reasonably dispute any Value calculated under this Annex, then:
- a. you will notify us not later than the close of business on the Business Day following the date on which the disputed calculation was received by you;
  - b. the parties will consult with each other in an attempt to resolve the dispute expeditiously; and

- c. if they fail to resolve the dispute by the end of the Business Day following the Business Day mentioned in a. then we will re-calculate the Value of any Commodity Security Collateral or Equivalent Collateral as of the date of the transfer of the relevant collateral.
- 24.2 **Re-notification:** The appropriate party will upon demand following notification by us of any recalculations under this paragraph make the appropriate transfer.
- 24.3 **Recalculation fee:** We may charge you a fee for recalculations carried out under this paragraph.
- 24.4 **No Event of Default:** The failure by a party to make a transfer of any amount which is the subject of a dispute to which this paragraph applies will not constitute an Event of Default so long as the procedures set out in this paragraph are being carried out.

25. **Definitions:**

"Commodity Security" means at any time one unit of commodity, being the minimum amount tradable under Exchange Rules, which (alone or together with other Commodity Securities):

- (i) is the subject of a Warrant;
- (ii) is of tenderable quality under Exchange Rules and for which (where applicable) a current grading certificate exists; and
- (iii) is free from encumbrances.

"Distributions" means, with respect to any non-cash collateral consisting of securities, all principal, interest and other payments and distributions of cash or other property to which a holder of securities of the same type, nominal value, description and amount would be entitled from time to time.

"Distribution Date" means, with respect to any non-cash collateral consisting of securities, each date on which a holder of such securities is entitled to receive Distributions or, if that date is not a local Business Day, the next following local Business Day.

"Equivalent Collateral" means Commodity Securities of the same type, description and amount (subject to variations in quality and weight as is permitted under Exchange Rules) as the non-cash collateral comprising Commodities Securities transferred to us under paragraph 7 or over which you have granted us a security interest under paragraph 12.

"Exchange Rules" means, in relation to any commodity, rules of the Exchange applicable to contracts for the sale and purchase of that commodity;

"Fungible Securities" means securities of equivalent value (in the aggregate) (i) of which any unit is, by nature or usage of trade, the equivalent of any other like unit of securities, or (ii) of the kind which would qualify as margin pursuant to this Agreement.

"Individually Agreed Terms Schedule" means any specific terms agreed separately between us and evidenced in writing which shall be treated as being additional provisions of this Agreement.

"Obligations" means obligations present or future, actual or contingent or prospective, owing or which may become owing by you to us under any Transaction or designated by us for these purposes in writing.

"Secured Obligations" means all Obligations owed by you to us after the application of any rights of set-off arising under this Agreement or by operation of law.

"Settlement Day" means, in relation to a date, (i) with respect to a transfer of cash or other property (other than securities) the next local Business Day and (ii) with respect to a transfer of securities, the first local Business Day after such date on which settlement of a trade in the relevant securities, if effected on such date, would have been settled in accordance with customary practice when settling through the clearance system agreed between the parties for delivery of such securities or, otherwise, on the market in which such securities are principally traded (or, in either case, if there is no customary practice, on the first local Business Day after such date on which it is reasonably practicable to deliver such securities).

"SWORD" means the system by that name for electronic transfer of entitlement to LME Warrants.

"Value" means, in respect to Equivalent Collateral, for any date for which Value is calculated, an amount expressed in our Base Currency and reasonably determined by us by reference where reasonably practicable to independent price sources, as reflecting the value of such Equivalent Collateral.

"Warrant" means a warehouse warrant issued in circumstances regulated by an Exchange which evidences entitlement to a commodity, and "LME Warrant" means such a Warrant where the Exchange is the London Metal Exchange.



## EQUITIES SECURITIES ANNEX

### 1 SCOPE

- 1.1 **Transactions:** The clauses in this Annex apply to Transactions in Equity Securities. For these purposes, "Transaction" means a transaction relating to an Equity Security under which delivery of an Equity Security is contemplated upon its formation falling within paragraphs (i) to (iv) of the definition of "Transaction" in the Interpretation Annex of the Terms of Business.

### 2 DEALING AS PRINCIPAL

- 2.1 **Execution and capacity:** Unless we agree otherwise in which case Clause 3 shall apply, every order which we may take is accepted and executed on the basis that we act on our own account as principal and not as agent for you.

### 3 DEALING AS AGENT

- 3.1 **Application:** This clause 3 shall apply only where we have expressly agreed to act as your agent, in which case clause 2 above shall not apply.
- 3.2 **Execution and capacity:** We may in certain circumstances agree to act as your agent in relation to a Transaction in Equity Securities. In such circumstances orders will, subject to Applicable Regulations, be executed by us as your Agent.
- 3.3 **Settlement of agency trades:**

(a) Where we act as your agent, we accept no responsibility to you for settlement of your obligations in respect of Transactions in Equity Securities. You will notify us of your clearing agent or other person who will procure settlement of your Transaction in Equity Securities. The provisions of Clause 14 of this Agreement shall apply in respect of any liability of ours where, notwithstanding this clause, under Applicable Regulations we assume a responsibility to any other person for performance of your Transactions.

(b) Delivery or payment (as the case may be) by the other party to the Transaction shall be entirely at your own risk and our obligations to pay or deliver investments to you or to your order on account of a Transaction shall be conditional upon receipt by us of Equity Securities or sale proceeds (as the case may be) from the other party or parties to the Transaction.

(c) Any cash received by us in respect of a Transaction shall be a debt owed by us to you until paid by us to you or otherwise discharged, and we shall owe you no fiduciary duty in relation thereto.

### 4 TRADING PROCEDURES

- 4.1 **Our quotes:** You acknowledge that any prices displayed by us are, or may be, indicative only. Therefore in certain market conditions the market price may have moved between the sending and the actual execution of a Transaction. Such movement may be in your favour or against you.
- 4.2 **Cut-off times:** We may establish cut-off times for instructions which may be earlier than the times established by the particular Exchange and/or any clearing house involved in any Transaction, and you shall have no claims against us arising out of the fact that an order was not placed by you ahead of our cut-off time.

- 4.3 **Corporate Actions:** Where an order is given to us in respect of any Equity Security for which a Corporate Action is imminent we may decline to accept your instructions.
- 4.4 **Our duty in respect of Corporate Actions:** If, where, in respect of any Equity Securities held by us for your account or deliverable to us for your account, any Corporate Actions occur, we shall not be obliged to undertake any action, even if you specifically instruct us, unless we expressly consent in writing.

## 5 OFF-EXCHANGE AND GREY MARKET INVESTMENTS

- 5.1 **Off Exchange Transactions:** If we sell you any securities which are not quoted on an investment exchange recognised or designated by the Relevant Regulators or an EEA Exchange, then, unless we specify a longer period, we shall, to the extent required by law, ensure the availability to you of a reasonable repurchase price for such securities for three months after the original sale to you. You may find it difficult to sell such securities after the end of such period due to their nature and possible illiquidity.
- 5.2 **Suspended and grey market investments, etc:** We may enter into Transactions for or with you in:
- (a) an investment whose listing on an Exchange is suspended, or the listing of or dealings in which have been discontinued, or which is subject to an Exchange announcement suspending or prohibiting dealings; or
  - (b) a grey market investment, which is an investment for which application has been made for listing or admission to dealings on an Exchange where the investment's listing or admission has not yet taken place (otherwise than because the application has been rejected) and the investment is not already listed or admitted to dealings on another investment exchange.
- 5.3 **Transparency:** It is possible that there may be insufficient published information on which to base a decision to buy or sell such Equity Securities as referred to in the two preceding clauses.

## 6 SHORT-SELLING

- 6.1 **Sales presumed not to be Short Sales:** Unless your instructions specify to the contrary, all sale instructions are accepted by us on the understanding that you own the Equity Securities sold. We shall not accept any instruction for a Short Sale Transaction if no satisfactory arrangements for making available the relevant Equity Securities for delivery have been agreed with us (which may include your entering into a securities lending arrangement with us or a third party or your agreement to our doing so on your behalf).
- 6.2 **Short Sale Instructions:** Upon our acceptance of a Short Sale instruction, we shall record the position as if you had sold the Equity Securities to us as principal. We shall in respect of any Short Sale Transaction effect delivery of the Equity Securities on or before the settlement date. To do so we may borrow Equity Securities from a third party or lend them to you ourselves. Unless you advise us that you have arranged for us to borrow the Equity Securities from a particular lender (in which case we shall, subject to whatever conditions have been previously agreed between us and you, seek to confirm such arrangements), we shall have absolute discretion in the selection of lenders.
- 6.3 **Rolled Transactions:** Where Equity Securities have been borrowed by you or on your behalf to cover settlement obligations, each Short Sale will be closed out upon notice, by you or us, of not less than the standard settlement period for the relevant Market or clearing organisation. When a Short Sale is closed out, you shall deliver or procure delivery of the relevant Equity Securities in accordance with our directions. Notice shall be deemed to have been given by you under this sub-clause, specifying delivery

after expiry of such standard settlement period, if an Event of Default occurs or this Agreement is terminated.

- 6.4 **Income:** If we are required to pay income in respect of any Equity Securities subject to a Short Sale to any person from which such Equity Securities have been borrowed on your behalf, we shall debit a sum of money from your account equivalent to the amount necessary to enable us to make an equivalent payment to such person in relation to the applicable loan of the Equity Securities together with such expenses or fees as may apply.

## 7 LIMIT ORDERS

- 7.1 **Sufficient Funds:** If you instruct us in respect of a Limit Order for the purchase of any Equity Securities, you will ensure that there are sufficient funds in your account to meet that Limit Order. We will not restrict you from subsequently entering further instructions which may result in insufficient funds for a Limit Order to be executed.

- 7.2 **Our role as principal:** Any Limit Order in respect of an Equity Security in which we act as market-maker or otherwise as principal will be given by you on the understanding that:

(a) the order will not be executed unless and until we bid for the Equity Security at the same or a higher price than that specified in the order (in the case of a sell order) or offer it at the same or a lower price than that specified in the order (in the case of a buy order) with a view to purchasing or selling (as the case may be) the Equity Security concerned in the amount of the order; and

(b) until execution, you may buy the Equity Security (where the order you gave was to buy) at a price equal to or lower than stated in the order, or sell it (where the order was to sell) at a price equal to or higher than that stated in the order. Any such purchase or sale may be from or to any third party and for our own account or for that of any Affiliated Company.

- 7.3 **Cancellation:** If you wish to cancel a Limit Order before its execution or expiry, subject to Applicable Regulations the order remains valid until you receive a confirmation of cancellation of that order from us.

- 7.4 **Partial fills:** No partial fill of a Limit Order will be executed. We accept no responsibility if the order is not filled.

- 7.5 **Publication:** Unless you expressly instruct us to the contrary, we shall not immediately make public any Limit Order in respect of shares admitted to trading on a regulated market or traded on a Trading Venue which is not immediately executed under prevailing market conditions.

## 8 SETTLEMENT AND OWNERSHIP

- 8.1 **Purchases:** You shall pay for any Equity Securities purchased for you on or before the settlement date. If, by the time due for settlement of a Transaction (as determined by us), there is insufficient cash in your account to enable us to meet the settlement obligations, we shall not be obliged to settle the Transaction. Where there is insufficient cash in your account and we do proceed to settlement, we may accept delivery of the Equity Securities, charge your account for the payment to satisfy your obligation, sell the Equity Securities at a price we believe to be reasonable, and credit your account with the net proceeds thereof (after deduction of commission and other costs).

- 8.2 **Trust:** If in any Transaction we deliver securities or pay money to you or to your order when you are obliged to pay money or transfer securities to us at that time or subsequently and your obligations are

not performed simultaneously with or prior to our obligations, then you shall hold on trust for us any securities or money received from us until your own obligations to us are fully performed.

- 8.3 **Sales:** You shall make Equity Securities sold by you available for settlement on or before the settlement date. If, by the time due for settlement of a Transaction (as determined by us), there are insufficient Equity Securities held for your account, we shall not be obliged to settle the Transaction. Where there are insufficient Equity Securities in your account and we do proceed to settlement, we may buy the Equity Securities required for delivery at a price we believe to be reasonable, charge your account for the cost thereof, deliver the Equity Securities to satisfy the delivery obligation, and credit your account with the net proceeds thereof (after deduction of commission and other costs).
- 8.4 **Title:** If in any Transaction we deliver Equity Securities or pay money on your behalf, but your obligations in respect of that Transaction are not performed simultaneously with or prior to our own delivery or payment, then we shall not be obliged to credit your account with any Equity Securities or money received by us from any third party until your own obligations to us are fully performed; and any such Equity Securities or money received by us shall be our property not yours.
- 8.5 **Finality:** We shall owe no payment or delivery obligation and shall not be deemed to hold any property belonging to you as a result of settlement of a Transaction until we have received, with finality, the cash or Equity Securities to which you are entitled.
- 8.6 **Contractual Settlement:** We may, in our discretion, provisionally credit and debit your account on the due date of settlement as if the Transaction had settled on that date even where, under Applicable Regulations, the Transaction has not settled in your favour or our favour with finality. We may, however, in our absolute discretion reverse any such provisional debits and credits at any time until we receive payment (on sale) or delivery (on purchase) on your behalf with finality. We shall not be liable to you in respect of income or any other rights relating to the Equity Securities which would have accrued on the monies or investments if settlement had taken place on the contractual settlement date.
- 8.7 **CREST:** Where you instruct us to effect settlement by accepting the transfer of Equity Securities to our nominated **CREST** account you accept that payment obligations upon settlement will be dealt with through a settlement bank and that the creation of a settlement bank payment obligation will to the extent of such obligation discharge payment due from us.
- 8.8 **Non-DvP Markets:** In some securities markets, delivery of Equity Securities and payment may not be made simultaneously. In such markets we may make payment or delivery of Equity Securities at such time and in such manner as is in accordance with relevant local law and practice or with the customs prevailing in the relevant market. You shall bear the risk that the counterparty to the Transaction may not pay or perform on time or at all.
- 8.9 **Aggregation for settlement:** Settlements in respect of executed Transactions may, in our discretion, be netted to the lowest number of movements for each type of Equity Security reasonably possible, subject to Applicable Regulations.

## 9 STABILISATION

- 9.1 **Stabilisation Activity:** We may effect Transactions in Equity Securities that may be the subject of stabilisation, a price supporting process that may take place in the context of new issues. The effect of stabilisation can be to make the market price of the new issue temporarily higher than it would otherwise be. We shall owe you no duties in respect of legitimate stabilisation activities which we undertake.

## 10 DEFINITIONS

*Definitions:* In this Annex, the following terms have the following meanings:

"*Account*" means an external or internal facility by which securities and cash may be credited, debited or transferred.

"*Corporate Action*" means any step taken by an issuer of Equity Securities with reference to holders of its Equity Securities, and includes: capital reorganisation; capitalisation; change in listing; consolidation; conversion; delisting; de-merger; alteration in ranking; redemption; rights issue; scheme of arrangement; takeover; or any equivalent or analogous step under the law of any relevant jurisdiction.

"*Limit Order*" means an order to buy or sell an Equity Security at its specified price limit or better and for a specified size.

"*Short Sale*" means a Transaction for the sale of equities not owned by you at the time scheduled for settlement of the Sale Transaction.

## FIXED INCOME SECURITIES ANNEX

### 1 SCOPE

- 1.1 **Transactions:** The clauses in this Annex apply to Transactions in Fixed Income Securities. For these purposes, "Transaction" means a transaction relating to a Fixed Income Security under which delivery of a Fixed Income Security is contemplated upon its formation.

### 2 DEALING AS PRINCIPAL

- 2.1 **Execution and capacity:** Every order which we may take is accepted and executed on the basis that we act on our own account as principal and not as agent for you.

### 3 TRADING ARRANGEMENTS

- 3.1 **Bond market liquidity:** You acknowledge that fixed income instruments may be illiquid and that the market price of any particular instrument may be difficult to ascertain. In accordance with our Best Execution Policy you accept that price may not be the primary factor in determining whether best execution has been achieved for orders we execute on your behalf.
- 3.2 **ICMA Rules and Recommendations:** All Transactions in "international securities" as that term is defined in the Rules and Recommendations of the International Capital Market Association and unless agreed otherwise at the time of trade in non-US debt or convertible instruments shall be subject to such Rules and Recommendations, which are included within the meaning of "Applicable Regulations" for the purposes of this Annex.

### 4 SETTLEMENT AND OWNERSHIP

- 4.1 **CREST:** Where you instruct us to effect settlement by accepting the transfer of investments to our nominated **CREST** account you accept that payment obligations upon settlement will be dealt with through a settlement bank and that the creation of a settlement bank payment obligation will to the extent of such obligation discharge payment due from us or any company which is a member of our group
- 4.2 **Purchases:** You shall pay for any Fixed Income Securities purchased for you on or before the settlement date. If, by the time due for settlement of a Transaction (as determined by us), there is insufficient cash in your account to enable us to meet the settlement obligations, we shall not be obliged to settle the Transaction. Where there is insufficient cash in your account and we do proceed to settlement, we may accept delivery of the Fixed Income Securities, charge your account for the payment to satisfy your obligation, sell the Fixed Income Securities at a price we believe to be reasonable, and credit your account with the net proceeds thereof (after deduction of commission and other costs).
- 4.3 **Trust:** If in any Transaction we deliver securities or pay money to you or to your order when you are obliged to pay money or transfer securities to us at that time or subsequently and your obligations are not performed simultaneously with or prior to our obligations, then you shall hold on trust for us any securities or money received from us until your own obligations to us are fully performed.
- 4.4 **Sales:** You shall make Fixed Income Securities sold by you available for settlement on or before the settlement date. If, by the time due for settlement of a Transaction (as determined by us), there are insufficient Fixed Income Securities held for your account, we shall not be obliged to settle the Transaction. Where there are insufficient Fixed Income Securities in your account and we do proceed to settlement, we may buy the Fixed Income Securities required for delivery at a price we believe to be reasonable, charge your account for the cost thereof, deliver the Fixed Income Securities to satisfy the

delivery obligation, and credit your account with the net proceeds thereof (after deduction of commission and other costs).

- 4.5 **Title:** If in any Transaction we deliver Fixed Income Securities or pay money on your behalf, but your obligations in respect of that Transaction are not performed simultaneously with or prior to our own delivery or payment, then we shall not be obliged to credit your account with any Fixed Income Securities or money received by us from any third party until your own obligations to us are fully performed; and any such Fixed Income Securities or money received by us shall be our property not yours.
- 4.6 **Finality:** We shall owe no payment or delivery obligation and shall not be deemed to hold any property belonging to you as a result of settlement of a Transaction until we have received, with finality, the cash or Fixed Income Securities to which you are entitled.
- 4.7 **Non-DvP Markets:** In some securities markets, delivery of Fixed Income Securities and payment may not be made simultaneously. In such markets we may make payment or delivery of Fixed Income Securities at such time and in such manner as is in accordance with relevant local law and practice or with the customs prevailing in the relevant market. You shall bear the risk that the counterparty to the Transaction may not pay or perform on time or at all.

## 5 OFF-EXCHANGE AND GREY MARKET INVESTMENTS

- 5.1 **Suspended and grey market investments, etc:** We may enter into Transactions for or with you in:
- (a) an investment whose listing on an Exchange is suspended, or the listing of or dealings in which have been discontinued, or which is subject to an Exchange announcement suspending or prohibiting dealings; or
  - (b) a grey market investment, which is an investment for which application has been made for listing or admission to dealings on an Exchange where the investment's listing or admission has not yet taken place (otherwise than because the application has been rejected) and the investment is not already listed or admitted to dealings on another investment exchange.
- 5.2 **Restrictions:** It is possible that there may be insufficient published information on which to base a decision to buy or sell such investments as are referred to in the two preceding clauses.

## 6 DEFINITIONS

**Definition:** In this Annex securities terms, "securities" means investments within articles 76 to 80 of the Financial Services and Markets Act 2000 (regulated activities) order 2001.

"**Account**" means an external or internal facility by which securities and cash may be credited, debited or transferred.

## FUTURES AND OPTIONS ANNEX

### 1 SCOPE

- 1.1 **Transactions:** The clauses in this Annex apply to transactions in futures, and options. In this Annex, "Transaction" means a transaction listed in sub-clauses (i)-(iv) of the definition of Transaction in the Interpretation annex of the Terms of Business, which constitutes a "Future" or an "Option" (as defined in articles 83 and 84 respectively of The Financial Services and Markets Act 2000 (Regulated Activities) Order (2001) and traded on an Exchange.

### 2 MARKET DISRUPTION

- 2.1 In the event of severe market disruption and/or price volatilities which may result or may have resulted in the current market value of a product which is the subject-matter of any outstanding Transaction moving to an unusual level, we reserve the right to take one or more of the following courses of action:
- (a) to close out any Transaction where significant loss has occurred or is expected by us;
  - (b) to require an immediate delivery of additional product;
  - (c) to decline to renew maturing, or enter into new, Transactions.
- 2.2 **Business on a Market:** Trading may from time to time be suspended or restricted in the interests of, inter alia, maintaining a fair and orderly market. In such circumstances we may be unable to enter into or close out Transactions.

### 3 TRADING ARRANGEMENTS

- 3.1 **Matching trades:** In respect of every Transaction made between us subject to the Rules of an Exchange or Market, we shall, unless otherwise agreed in writing in relation to a particular Exchange or Market, act as principal in any Transaction with you. We shall have make (or arranged to make through an intermediate broker who may be an associate) on a principal-to-principal basis a matching Transaction on the relevant Exchange or Market or accept the allocation to us of such a Transaction.
- 3.2 **LME Contracts:** We agree to act as your agent in respect of Transactions to be effected for your account in respect of LME Contracts.
- 3.3 **Give-up:** In respect of every Transaction made between us and given up to be cleared by another broker or dealer as specified by you:
- (a) if such broker or dealer accepts the give-up, we shall (without prejudice to any claim we may have for commission or other payment) upon such acceptance cease to be a party to the Transaction and shall have no obligation to you for its performance;
  - (b) if such other broker or dealer declines to accept the give-up, we shall be entitled at our option either to confirm the Transaction with you or to liquidate it by such sale, purchase, disposal or other Transaction or cancellation as we may in our discretion determine, whether on the relevant Exchange or Market or by private contract or any other feasible method (including taking it over ourselves or transferring it to an associate); and any balance resulting from such liquidation shall be promptly settled between us but without prejudicing our rights under this Agreement or otherwise.



- 3.4 ***International Uniform Give-up Agreement:*** You authorise us to enter into and execute any International Uniform Give-up Agreement on your behalf. Where you and we are party to an International Uniform Give-up Agreement, in the event of any inconsistency the provisions of this agreement shall prevail over such Agreement.
- 3.5 ***Allocation on delivery or exercise:*** Where the relevant Exchange or intermediate broker does not specify a particular Transaction when making a delivery or exercising an option, we may allocate randomly or in a way which seems to us to be most equitable
- 3.6 ***Transaction given up to us for clearing:*** Subject to the Rules of any relevant Exchange or Market, this clause applies where there is a give-up agreement between you, us and a third party executing broker, and the reference number or mnemonic applicable to you is quoted by such executing broker when a Transaction is submitted to us for clearing. In acting as your clearing broker we shall accept a Transaction given up to us for clearing only if we have agreed with you to clear Transactions of such a description and the acceptance thereof would not breach any position or other limits applicable to your account with us. Notwithstanding any provision contained in the relevant give-up agreement, if we accept such Transaction for clearing, such Transaction shall be binding and conclusive on you immediately on its acceptance for clearing by us whether or not the details of such Transaction have previously been confirmed to us by you. We shall not be liable to you for any losses, costs, expenses or damages arising from any discrepancy between details in your instructions to such executing broker and details of Transactions submitted to us for clearing. Any dispute relating to a Transaction given up or attempted to be given up to us for clearing shall be determined under applicable arbitration rules of the relevant Exchange or Market.
- 3.7 ***Fees paid to executing broker:*** Subject to the Rules of any relevant Exchange or Market, if a give-up agreement between you, us and a third party executing broker provides that the executing broker will invoice us directly for its commissions in relation to the execution of an order, then we shall be entitled to rely on the details specified in any invoice presented to us by such executing broker and, notwithstanding that the amounts specified in the invoice may be incorrect, you shall fully reimburse us for any sum paid to the executing broker in respect of that invoice. We shall have no liability to you for any losses, costs, expenses or damages incurred or suffered by you as a result of an incorrect amount being specified in an invoice.
- 3.8 ***Exercise of options:*** You understand that Exchange or Markets have established exercise cut-off times for the tender of instructions in relation to exercise of options and that options will become worthless in the event that you do not deliver instructions by such expiration time. You also acknowledge that we may establish exercise cut-off times which may be earlier than the exercise cut-off times established by the relevant Exchange or Market, and you shall have no claims against us arising out of the fact that an option was not exercised, save in circumstances where the option was not exercised as a direct result of our negligent failure to inform you of our own exercise cut-off time in respect of the particular option.
- 3.9 ***Deemed exercise of options:*** Where by virtue of Exchange Rules an option is exercised automatically under a back-to-back Transaction which has been entered into by us on your instructions, the corresponding Transaction to which you and we are both party will be deemed to have been automatically exercised at the same time.
- 3.10 ***Correction of order:*** You understand that Exchange or Markets may from time to time sanction the making of contracts by us off-exchange in order to satisfy your order, where there has been an error in the execution of your order on-exchange. Where a better price (an improvement) can be obtained, we may seek to secure and offer that improvement to you. Where, in response to your order, we have bought or sold in accordance with the instruction in your order to buy or, as the case may be, to sell but

have traded the wrong delivery/expiry month or wrong exercise price of the relevant contract, then we may in accordance with the Rules of any relevant Exchange offset any loss arising from that trade against any improvement achieved for you in the course of correctly satisfying your order, thus offering you only the net improvement, if any.

- 3.11 **Market intervention:** You understand that business on a market operated by an Exchange may from time to time be suspended or restricted or the market may from time to time be closed for a temporary period or for such longer period as may be determined in accordance with the rules of any relevant Exchange or Market on the occurrence of one or more events which require such action to be taken in the interests of, maintaining a fair and orderly market. Any such action may result in our being unable, and through us, you being unable to enter into Transactions in accordance with the rules of the relevant Exchange or Market. Furthermore we, and through us, you may from time to time be prevented from or hindered in entering into contracts in accordance with the rules of the relevant Exchange or Market as a result of a failure of some or all market facilities. We shall have no liability to you for any losses, costs, expenses or damages incurred or suffered by you as a result of any of the circumstances or occurrences referred to above.

#### **4 FINANCIAL FUTURES REQUIRING NON-CASH SETTLEMENT**

- 4.1 **Sales:** You shall make securities deliverable by you available for settlement on or before the settlement date. Where there are insufficient securities in your account and we do proceed to settlement, we may buy the securities required for delivery at a price we believe to be reasonable, charge your account for the cost thereof, deliver the securities to satisfy the delivery obligation, and credit your account with the net proceeds thereof (after deduction of commission and other costs).
- 4.2 **Settlement Agent:** You will notify us of all relevant details required by us of your settlement agent in respect of Transactions which may be subject to securities delivery obligations. You will procure that your settlement agent enters into such other documentation as may be necessary to ensure that the clearing and settlement of such Transactions takes effect without liability to us.

#### **5 EXCHANGE FOR PHYSICAL (EFP) TRANSACTIONS**

- 5.1 **EFPs:** Subject to the terms of any particular EFP Transaction, in relation to each EFP Transaction, upon our becoming bound to Futures Contracts entered into in replication of the Physical Contract, the Physical Contract shall be automatically discharged.
- 5.2 **Reverse EFPs:** Subject to the terms of any particular Reverse EFP Transaction, in relation to each Reverse EFP Transaction, the Physical Contract with you shall arise automatically upon the closing out (including by creation of opposite positions, on the relevant Exchange or Market) of the Futures Contracts which the Physical Contract is intended to replace.
- 5.3 **Existence of Transactions:** The existence of an EFP Transaction or Reverse EFP Transaction is conditional on registration of the Futures Contracts (or, as the case may be, contracts effecting close-out) occurring on the date specified in the confirmation relating to the Transaction.
- 5.4 **Payment:** We will notify you of the amount of any payment due between us as a result of entering into an EFP Transaction or Reverse EFP Transaction, to whom it is payable and when.

#### **6 DEFINITIONS**

**Definitions:** In this Annex:

**"EFP Transaction"** means a transaction between us which comprises a Physical Contract which is intended to be replaced by Futures Contracts.

**"Futures Contract"** means a contract on terms prescribed by an Exchange.

**"Physical Contract"** means a Transaction the terms of which are comparable with the terms of Futures Contract, which is not entered into on or back-to-back with a transaction entered into by us on a Exchange.

**"Reverse EFP Transaction"** means a transaction between us which comprises a Physical Contract which is intended to replace Futures Contracts.

## METALS AND SOFT COMMODITIES ANNEX

### 1 SCOPE

- 1.1 **Transactions:** The clauses in this Annex apply to Transactions in commodities. For these purposes, "Transaction" means a transaction relating to, or under the terms of which delivery is contemplated of, any base metal, precious metal or physical commodity.

### 2 MARKET DISRUPTION

- 2.1 In the event of severe market disruption and/or price volatilities which may result or may have resulted in the current market value of a commodity which is the subject-matter of any outstanding Transaction moving to an unusual level, we reserve the right to take one or more of the following courses of action:

(a) to close out any Transaction where significant loss has occurred or is expected by us;

(b) to require an immediate delivery of additional commodity;

(c) to decline to renew maturing, or enter into new, Transactions.

- 2.2 **Business on a Market:** Trading may from time to time be suspended or restricted in the interests of, inter alia, maintaining a fair and orderly market. In such circumstances we may be unable to enter into or close out Transactions.

### 3 TITLE AND QUALITY

- 3.1 **Title Guarantee:** You covenant that you will deliver all commodities with full title guarantee. Without limitation any transfer of a commodity pursuant to a Transaction shall be free of any right of retention, pledge, lien, other encumbrance or any other third party right including a warehouse's lien. As an exception we agree that commodities held in a warehouse may be transferred to us subject to the warehouse's general lien, without prejudice to your obligation to pay rent and other charges or liabilities due to the warehouse which accrue up to and including the date of delivery.

- 3.2 **Representation:** You represent and covenant that there is no encumbrance, nor will you create or permit to exist any encumbrance in respect of any commodity which is in our possession or delivered to us by you under any Transaction. You repeat this representation as of the time of entry into any Transaction relating to any commodity.

- 3.3 **Passing of title:** Property in any Warrant-based Commodity shall pass at the time the Warrant is delivered. In any other case, unless otherwise agreed in writing, property shall pass upon delivery of the commodity. Notwithstanding the foregoing, in any Transaction under which we sell a commodity to you, property in the commodity shall remain with us until we have received full payment for it.

- 3.4 **Quality:** Unless otherwise agreed, any commodity to be delivered under a Transaction shall be delivered in accordance with the requirements of applicable Market rules or the market by reference to which such commodity is described.

- 3.5 **Statutory conditions:** When we transfer a commodity to you all statutory and implied conditions and warranties as to title, correspondence to description, quality and fitness for purpose are excluded.

## 4 DELIVERY

- 4.1 **Delivery:** Delivery of any Warrant-based Commodity shall be effected by transfer of Warrants. Where we hold Warrants in our physical possession for you, delivery by you to us shall be effected by our appropriating the requisite number and amount of Warrants. Delivery by us to you of any Warrant-based Commodity where we hold Warrants in our physical possession shall be effected by us immediately segregating the requisite number and amount of Warrants held by us, after which we shall hold them and (insofar as within our control) the commodity to which they relate to your order.
- 4.2 **SWORD deliveries:** Where Warrants are capable of being held in SWORD, transfer of Warrants shall be effected by transfer to or from our SWORD account. If you do not have a SWORD account, and we hold your Warrants in our client account in SWORD, transfer of appropriate Warrants from our client account shall constitute delivery. In any other case where we hold your Warrants in SWORD, and subject to contrary written agreement between you and us, transfer to us shall be deemed to occur at 10am London time on the prompt date applicable to the Transaction.
- 4.3 **Risk:** The risk in any commodity bought by you will pass to you on delivery. Where a commodity is in your possession before the property in it has passed to you, you agree fully to preserve, or procure the full preservation of, its condition and make good any damage or deterioration that may occur, or fully compensate us for any such damage or deterioration
- 4.4 **Delivery Costs:** Unless otherwise agreed in writing between us, any costs incurred by us in effecting physical delivery of any commodity (including, without limitation, costs in respect of collection, packaging, shipment, storage, warehousing or insurance) shall be borne by you.
- 4.5 **Place of Delivery:** Any commodity which is required to be delivered physically by you to us will be delivered by you at your expense to such location as we may specify.

## 5 CUSTODIANSHIP

- 5.1 **Commodities purchased by you:** We may, from time to time, at your request but in our discretion, agree to hold on your behalf any commodity or documents of title to commodities which you have acquired from us pursuant to a Transaction. Such commodity or documents will be segregated from any like commodity or documents in our ownership but otherwise will be subject to the same custody and insurance arrangements as our own property. We shall owe you no fiduciary duty in respect of any such commodity or documents and our responsibility shall be limited to taking reasonable care to restore such commodity or documents to you upon your giving us reasonable notice. We reserve the right to make a reasonable charge for this service.
- 5.2 **SWORD Warrants:** Where a Warrant is capable of being held in SWORD we shall hold such a Warrant physically for you only for temporary periods. We may give you reasonable notice to collect any such Warrants or to cause them to be lodged in SWORD in accordance with the SWORD Regulations.
- 5.3 **Collection of Warrants:** Where you have Warrants which are in our physical possession and have authorised a person to collect Warrants from us, we shall not verify the identity of any person claiming to be so authorised, and we owe you no duties to operate any specific security procedures unless separately agreed in writing between you and us.
- 5.4 **Rent:** You will in due time pay rent and other charges applicable to any commodity represented by any Warrant held by us for you.
- 5.5 **Liability:** Our liability to you in respect of any Warrant held by us for you is limited as follows: we shall have no liability for any damage, loss, expenses or liability of any nature which you may suffer as

a result of any act or omission by us except to the extent of direct losses or expenses attributable to our fraud or wilful default or negligence. In the event of such direct losses or expenses our liability is limited to issuing an indemnity in respect of the market value of the Warrant at the time of discovery of the loss.

- 5.6 **Storage and Insurance:** If you deposit commodities, documents of title to commodities, or other tangible assets with us as margin or otherwise, we reserve the right (but have no obligation) to insure them, to charge you and debit your account with the costs of storage and insurance either periodically or when we return the assets to you, and to refuse withdrawal until such costs have been paid. If we collect, deliver or hold commodities or other tangible assets on your behalf, we do so at your risk.

## 6 HOLDING YOUR WARRANTS IN SWORD

- 6.1 **Bailment:** Where you do not have a SWORD Account we may hold Warrants on your behalf in SWORD. If we do so we act as bailee and owe you no fiduciary duty, and we do not undertake the responsibilities of a trustee or any other duties in relation to such Warrants not implied by the law of bailment.
- 6.2 **Warrant lodgment:** You consent for the purposes of the SWORD Regulations to us lodging Warrants with the Depository and to our dealing with the Warrants on the terms of the SWORD Regulations. Where we have lodged a Warrant on your behalf, you represent and warrant to us that the Warrant and the commodity to which it relates are beneficially owned by you and free of encumbrances and that all requirements of the SWORD Regulations for lodgment are satisfied.
- 6.3 **Warrant withdrawal:** If you wish to withdraw Warrants which we are holding for you in SWORD, you will give us reasonable notice to enable us to comply with the SWORD Operating Procedures, and we shall not be responsible other than to take reasonable steps to comply with your request insofar as it is practicable.

## 7 BULLION

- 7.1 **VAT:** Where we are treated by applicable law or fiscal practice to make a supply for VAT purposes to any person by virtue of our or any custodian for us relinquishing control of any precious metal, and VAT is or becomes chargeable on such supply, you shall on demand pay to us a sum equal to the amount of such VAT.
- 7.2 **Delivery:** Bullion to be delivered to us shall be delivered to or account. Bullion to be delivered by us to you shall be delivered as soon as reasonably practicable to an account at a custodian specified by you in writing, and any bullion held by us for you shall be held on an unallocated basis. Delivery to us or by us shall be deemed effective at the moment when we confirm receipt or despatch to you.
- 7.3 **Title:** In relation to all deliveries of bullion to an unallocated account, all covenants and warranties as to title (including those specified elsewhere in these terms) are excluded, save that it is warranted by the party effecting delivery that, as of the moment when delivery is effected, the person with whom the account is held owes an obligation to the recipient to deliver the relevant amount of bullion, subject to the terms and conditions of the account and any rights of set-off exercisable by that person
- 7.4 **Quality:** All deliveries of bullion by you to us shall as a minimum meet the specifications and requirements of London good delivery or equivalent market standard laid down from time to time by the London Bullion Market Association or the London Platinum and Palladium Market

**Definition:** In this clause, "bullion" means gold, silver, palladium or platinum

## 8 INTERPRETATION

In this Annex:

"**SWORD**" means the system for electronic transfer of entitlement to Warrants of certain descriptions regulated by the LME;

"**SWORD Regulations**" means the LME's regulations governing the operation of SWORD, and unless otherwise expressly defined, any term defined in the SWORD Regulations has the same meaning;

"**Warrant**" means a warehouse warrant issued in circumstances regulated by a Market which evidences entitlement to a commodity;

"**Warrant-based Commodity**" means a commodity which, under the rules of a Market, is capable of being delivered by transfer of a Warrant.

## OTC DERIVATIVES ANNEX

### 1 SCOPE

- 1.1 **Transactions:** The clauses in this Annex, except to the extent inconsistent with Applicable Regulations, apply to OTC Transactions. OTC Transactions shall be deemed to be included in the definition of "Transaction" as set out in the Terms of Business.

### 2 MASTER CONTRACT

- 2.1 **Netting:** Clause 12 of the Terms of Business does not apply to Master Transactions.
- 2.2 **Conflict:** If there is a conflict between the terms of the Master Contract and terms of the Agreement, the terms of the Master Contract will prevail.

### 3 INTERPRETATION

In this Annex:

**"Master Contract"** means an ISDA Master Agreement, FEOMA, IFEMA or any other contract (including but not limited to confirmations) between the parties, apart from this Agreement, the effect of which is to close out or accelerate transactions or obligations upon the occurrence of an event of default and cause that only a net sum is payable in respect of them by one party to the other;

**"FEOMA"** means Foreign Exchange and Options Master Agreement;

**"IFEMA"** means International Foreign Exchange Master Agreement;

**"ISDA"** means the International Swaps and Derivatives Association, Inc.;

**"Master Transaction"** means an OTC Transaction subject to the terms of a Master Contract; and

**"OTC Transaction"** means any over the counter derivative transaction, any Master Transaction, and any other over the counter transaction we agree in the applicable confirmation to treat as an OTC Transaction for the purposes of this Annex.



## **ELECTRONIC TRADING ANNEX**

### **1 SCOPE**

- 1.1 These clauses apply to your use of any Electronic Services. They are supplemental to and subject to any separate terms agreed between us or as notified to you in connection with any specified service.

### **2 DIRECT ELECTRONIC ACCESS**

- 2.1 This Annex details the essential rights and obligations of you and us in relation to the provision by us of DEA Services. We retain responsibility for our obligations arising pursuant to the Applicable Regulations implementing MiFID2 in connection with the DEA Services. We are responsible for ensuring that you comply with MAR and with the rules of any applicable Trading Venue in connection with the DEA Activities.

- 2.2 You shall, in relation to the DEA Activities:

- (a) comply with (and shall not cause us to fail to comply with) all Applicable Regulations and such rules, regulations and procedures of a Trading Venue as may be applicable from time to time. Links to such Trading Venue rules may be found at <https://www.rbccm.com/en/policies-disclaimers.page>; and
- (b) not exceed (or cause us to exceed) any credit, trading and position limits or thresholds as may be set or otherwise imposed by the Trading Venue from time to time (whether or not such limits or thresholds are specified as applying directly to you, us or any other person).

- 2.3 We may:

- (a) cancel or modify (or procure the cancellation or modification of) any Transaction, or order for a Transaction, submitted by or on behalf of you pursuant to the DEA Activities;
- (b) impose and modify such restrictions (including, without limitation, price collars, order blocking mechanisms, throttles, circuit breakers, access withdrawals and suspensions) upon or in respect of the DEA Activities and any Transactions, or orders for Transactions, effected or proposed to be effected by or for you through or pursuant to such DEA Activities;
- (c) procure that any Trading Venue performs or imposes, or take any action that shall or may result in a Trading Venue performing or imposing, any of the measures referred to in the foregoing Clauses 2.3(a) and 2.3(b); and
- (d) conduct monitoring and surveillance activities in respect of the DEA Activities,

in each case as we in our absolute discretion deem appropriate or reasonably require for the purposes of ensuring that we and you comply with any Applicable Regulations (including, without limitation, MiFID2 RTS 6) and the rules, regulations and procedures of any applicable Trading Venue with any credit, trading and position limits or thresholds as may be set or otherwise imposed thereby.

### **2.4 Due diligence measures in respect of DEA Services**

- (a) We shall conduct such due diligence assessments of you and your systems and trading activities as we consider appropriate for the purposes of ensuring you comply with Applicable Regulation

(including, without limitation, MiFID2 RTS 6) or the rules, regulations and procedures of any applicable Trading Venue ("**DEA Due Diligence**").

- (b) You shall commence, as soon as reasonably practicable following a request, providing to us such information and access to information as we may reasonably require to conduct such DEA Due Diligence.
- (c) You shall from time to time (and as soon as practicable following such time as you become aware of the relevant developments or facts) notify us of any material developments or facts that may occur or arise and which may reasonably be expected to impact our DEA Due Diligence assessment.
- (d) We may refuse to provide, cease or suspend your access to the DEA Services or block, cancel or refuse to execute any Transaction or order for Transaction in connection therewith, where you have failed to satisfy such DEA Due Diligence, or have not provided such information as we may reasonably require to conduct such DEA Due Diligence.

2.5 **Delegated access for DEA Services:** You may not sub-delegate access to any direct market access facilities (or other electronic access facilities) provided or sponsored by us or otherwise allow any other person (other than your employees and agents, in the course of acting for you).

### 3 ACCESS

3.1 Once you have gone through the security and client on-boarding procedures associated with an Electronic Service provided by us, you will get access to such service, unless agreed otherwise or stated on our website. We may change our security procedures at any time and we will tell you of any new procedures that apply to you as soon as possible.

### 4 RESTRICTIONS ON SERVICES PROVIDED

4.1 There may be restrictions on the number of Transactions that you can enter into on any one day and also in terms of the total value of those Transactions when using an Electronic Service. You acknowledge that some Markets place restrictions on the types of orders that can be directly transmitted to their electronic trading systems. These types of orders are sometimes described on synthetic orders. The transmission of synthetic orders to the Market is dependent upon the accurate and timely receipt of prices or quotes from the relevant Market or market data provider. You acknowledge that a Market may cancel a synthetic order when upgrading its systems, trading screens may drop the record of such an order, and you enter such orders at your own risk. You also acknowledge that we have the right (but not the obligation) to set other limits and/or parameters to control your ability to use an Electronic Service at our absolute discretion. Such limits and/or parameters may be amended, increased, decreased, removed or added to by us at our absolute discretion and may include (without limitation): (i) controls over maximum order amounts and maximum order sizes; (ii) controls over our total exposure to you; (iii) controls over prices at which orders may be submitted (to include (without limitation) controls over orders which are at a price which differs greatly from the market price at the time the order is submitted to the order book); (iv) controls over the System (to include (without limitation) any verification procedures to ensure that any particular order or orders has come from you); or (v) any other limits, parameters or controls which we may be required to implement in accordance with Applicable Regulations.

### 5 RIGHT OF ACCESS

5.1 **In respect of any Market:** to which we allow you to submit orders or receive information or data using the Electronic Services, we may at any time or times, on reasonable notice (which, in certain

circumstances, may be immediate) enter (or to instruct our or the Market's subcontractors to enter) your premises and inspect your System to ensure that it complies with the requirements notified by us to you from time to time and that you are using the Electronic Services in accordance with this Agreement and any requirements of any relevant Market or Applicable Regulations.

- 5.2 **Access requirements:** You will be responsible for providing the system to enable you to use an Electronic Service. You will use each Electronic Service solely at your business premises for your own internal business and commercial purposes;
- 5.3 **Virus detection:** You will be responsible for the installation and proper use of any virus detection/scanning program we require from time to time.
- 5.4 **Use of information, data and software:** In the event that you receive any data, information or software via an Electronic Service other than that which you are entitled to receive pursuant to this Agreement, you will immediately notify us and will not use, in any way whatsoever, such data, information or software.

## 6 MAINTAINING STANDARDS:

When using an Electronic Service you must:

- i. ensure that your System is maintained in good order and is suitable for use with such Electronic Service;
  - ii. run such tests and provide such information to us as we shall reasonably consider necessary to establish that your System satisfies the requirements notified by us to you from time to time;
  - iii. carry out virus checks on a regular basis;
  - iv. inform us immediately of any unauthorised access to such Electronic Service or any unauthorised Transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to cease; and
  - v. not at any time leave the terminal from which you have accessed such Electronic Service or let anyone else use the terminal until you have logged off such Electronic Service.
- 6.1 **System defects:** In the event you become aware of a material defect, malfunction or virus in the System or in an Electronic Service, you will immediately notify us of such defect, malfunction or virus and cease all use of such Electronic Service until you have received permission from us to resume use.
- 6.2 **Intellectual Property:** All rights in patents, copyrights, design rights, trade marks and any other intellectual property rights (whether registered or unregistered) relating to the Electronic Services remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify the Electronic Services or any part or parts thereof unless expressly permitted by us in writing; reverse compile or disassemble the Electronic Services; nor purport to do any of the same or permit any of the same to be done, except in so far as such acts are expressly permitted by law. Any copies of the Electronic Services made in accordance with law are subject to the terms and conditions of this Agreement. You shall ensure that all the licensors' trademarks and copyright and restricted rights notices are reproduced on these copies. You shall maintain an up-to-date written record of the number of copies of the Electronic Services made by you. If we so request, you shall as soon as reasonably practical, provide to us a statement of the number and whereabouts of copies of the Electronic Services.

## **7 LIABILITY AND INDEMNITY:**

- 7.1 Without prejudice to any other terms of this Agreement, relating to the limitation of liability and provision of indemnities, the following clauses shall apply to our Electronic Services.
- 7.2 **Responsibility:** You will be responsible for all orders entered on your behalf via the System and you will be fully liable to us for the settlement of any Transaction arising therefrom.
- 7.3 **Proof of receipt of order:** We shall only be responsible for the execution of orders in circumstances where you have received a notification generated by us or the relevant Market (as appropriate) to the effect that your order has been received by that Market. You will bear the risk of any order which has been inaccurately or erroneously transmitted or which has been lost during transmission, for any reason whatsoever (including, but not limited to malfunctions of the System).
- 7.4 **System errors:** We shall have no liability to you for damage which you may suffer as a result of transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, malicious blocking of access by third parties, internet malfunctions, interruptions or other deficiencies on the part of internet service providers. You acknowledge that access to Electronic Services may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to Electronic Services for this reason.
- 7.5 **Delays:** Neither we nor any third party software provider accepts any liability in respect of any delays, inaccuracies, errors or omissions in any data provided to you in connection with an Electronic Service.
- 7.6 **Viruses from an Electronic Service:** We shall have no liability to you (whether in contract or in tort, including negligence) in the event that any viruses, worms, software bombs or similar items are introduced into your System via an Electronic Service or any software provided by us to you in order to enable you to use such Electronic Service, provided that we have taken reasonable steps to prevent any such introduction.
- 7.7 **Viruses from your System:** You will ensure that no computer viruses, worms, software bombs or similar items are introduced into our computer system or network and will indemnify us on demand for any loss that we suffer arising as a result of any such introduction.
- 7.8 **Unauthorised use:** We shall not be liable for any loss, liability or cost whatsoever arising from any unauthorised use of the Electronic Service. You shall on demand indemnify, protect and hold us harmless from and against all losses, liabilities, judgements, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using an Electronic Service by using your designated passwords, whether or not you authorised such use.
- 7.9 **Markets:** We shall not be liable for any act taken by or on the instruction of a Market, clearing house or regulatory body.
- 7.10 **Exclusions:** To the fullest extent legally permissible, except as otherwise expressly stated in this Agreement, all conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to any Electronic Service are excluded. This clause shall not be affected by the termination of this Agreement.
- 7.11 **Suspension or permanent withdrawal with notice:** We may suspend or permanently withdraw an Electronic Service, by giving you 10 days' written notice.
- 7.12 **Immediate suspension or permanent withdrawal:** We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use any Electronic Service, or any part

thereof, without notice, where we consider it necessary or advisable to do so, for example due to your non-compliance with the Applicable Regulations, breach of any provisions of this Agreement, on the occurrence of an Event of Default, network problems, failure of power supply, for maintenance, or to protect you when there has been a breach of security. In addition, the use of an Electronic Service may be terminated automatically, upon the termination (for whatever reason) of (i) any licence granted to us which relates to the Electronic Service; or (ii) this Agreement. The use of an Electronic Service may be terminated immediately if an Electronic Service is withdrawn by any Market or we are required to withdraw the facility to comply with Applicable Regulations.

- 7.13 ***Effects of termination:*** In the event of a termination of the use of an Electronic Service for any reason, upon request by us, you shall, at our option, return to us or destroy all hardware, software and documentation we may have provided you in connection with such Electronic Service and any copies thereof.

## APPENDIX

Revised June 2017

### A GUIDE TO THE STRUCTURE, MARKET TERMINOLOGY AND ORDER EXECUTION OF THE LONDON METAL EXCHANGE

#### INTRODUCTION AND PURPOSE

1. This document is designed to provide market participants on the London Metal Exchange (LME), and particularly Clients of Members, with an overview of the structure of the LME, market terminology, and order execution. It is not a comprehensive trading guide, nor a complete guide to market terminology. Market participants should always ensure that their requirements are explained in detail to the Member responsible for order execution.
2. This document is not a substitute for reading the LME Rulebook, relevant Notices, or the terms of business agreed between Clients and Members. It is not binding on the LME and is provided by way of guidance only.
3. Capitalised terms not otherwise defined herein shall have the meaning ascribed to them in the LME Rulebook, as amended from time to time.

#### THE LME

##### Execution Venues

4. Trades on the LME may be agreed on any of the LME's three trading venues: by open outcry in the Ring (during ring and kerb sessions), between Members in the inter-office market, and over the Exchange's electronic trading system, 'LMEselect'.

##### The Ring

5. Only Category 1 Members may trade in the Ring.
6. Clients can follow the market activity by monitoring quoted and traded prices disseminated via the LME market data dissemination system, or by listening to the simultaneous floor commentary provided by Member(s). The LME market



data dissemination system publishes prices traded during ring and kerb sessions on price vendor information services such as Reuters.

7. Members can continue to 'make a market' when requested by a Client during the ring and kerb sessions, although this is entirely at the Member's discretion. Alternatively, the Client can decide whether to place an order using the 'order styles' mentioned below.

### **Inter-office**

8. Inter-office trading is conducted between Members, or between Members and their Clients, by telephone or by electronic means. On contacting a Member for a quote, Clients will usually be provided with the Member's current bid and offer. The Client may trade on this quote, call another Member in an attempt to improve the quote, leave a resting order with a Member, or wait and monitor prices on the LME market data dissemination system.

### **LMEselect**

9. Category 1, 2, 3 and 4 Members may be LMEselect participants and enter into Contracts ('LME Contracts') on LMEselect.
10. LMEselect allows LMEselect participants to trade LME Contracts, including (but not limited to) Futures Contracts, Metal Options, Traded Average Price Options, Monthly Average Price Futures, LMEmini Contracts and Index Futures. Some brokers offer their Clients an order-routing facility via an API where they can view LMEselect prices, execute trades, and place resting orders. All trading on LMEselect is in US dollars.
11. Depending on the time of day, it is possible for Members to deal by telephone or electronically in the inter-office, by LMEselect, or in the Ring. Clients should specify which mechanism their broker should use to effect an order, where they have a preference.
12. Information vendors will display, amongst other things, firm prices of the best bid and offer available on LMEselect, the total volumes available at these prices, and the price and volume of each trade. Clients may effect back-to-back Client Contracts with Category 1, 2 and 4 Members based upon prices



available on LMEselect, whether on the telephone or via electronic order-routing systems.

13. Where a Member permits a Client to use the order-routing facility of the LME Select API, this will give rise to a Client Contract as well as one or more Cleared Contracts. The Client Contract must be on the same commercial terms as the relevant Cleared Contract (save that it may be marked up or down to reflect a commission payable by the Client). The Clearing Member must ensure that the Client Contract and the relevant Cleared Contracts are input into the Matching System.

### **Contract Formation & Clearing**

14. Trades agreed on the LME shall give rise either to (a) Cleared Contracts, or (b) Cleared Contracts and back-to-back Client Contracts. Each Trading Member is responsible for the input into the Exchange's Matching System, 'LMEsmart', of all Agreed Trades by it in relation to Contracts.
15. Cleared Contracts are cleared by the LME's appointed clearing house, LME Clear. LME Clear clears LME Contracts on an open offer basis. The Clearing House will make an offer to each party to the trade: it will offer to act as the buyer to the party who wishes to be the seller, and it will offer to act as the seller to the party who wishes to be the buyer. On acceptance of the Clearing House's offer by each party, two Cleared Contracts will be formed: one between LME Clear and the seller; another between LME Clear and the buyer. The time of execution will depend on the venue:
  - transactions (i.e. Agreed Trades) agreed in the Ring – the Cleared Contracts will arise at the time the trade is agreed in the Ring;
  - Agreed Trades arising in LMEselect – the execution time of the Cleared Contracts will be the point at which LMEselect confirms that the Agreed Trade has been matched and that the pre-execution checks have been satisfied; and
  - Agreed Trades in the inter-office telephone market – these will initially form "Contingent Agreements to Trade", the particulars of which the parties must then submit to the LME Matching System. The time of





execution of the Cleared Contracts will be at the point that the Matching System confirms that the trades have been matched and that the pre-execution checks have been satisfied.

16. Where an Agreed Trade is made with a Client, upon execution of the Agreed Trade a Cleared Contract shall be formed between the responsible Clearing Member and LME Clear and a back-to-back Client Contract shall automatically and immediately come into effect between the Client and the Member on the same terms as the Cleared Contract<sup>1</sup>.
17. In order to maintain the smooth and orderly operation of the market, the LME and LME Clear will carry out a number of pre-trade and post-trade checks. Further, Members must have adequate processes in place to ensure both they and their Clients have sufficient collateral in place before entering into trades.

### **Principal Nature**

18. All LME Contracts are between parties acting as principals. This prevents any party entering into an LME Contract as agent for someone else but does not prevent an agent arranging a Contract between two parties if the resulting LME Contract is between disclosed parties, each acting as a principal. It is an essential requirement of an LME Client Contract that one party must be a Category 1, 2 or 4 Member. A list of Members is on the LME website: [www.lme.com](http://www.lme.com). A principal relationship does not mean that Members do not take on quasi-fiduciary responsibilities when they execute trades for Clients. In particular, if a Member undertakes to deliver a particular service, for example deal a specific number of lots 'in the Ring', then it should take care to ensure that it complies with all the terms of such a transaction.
19. In respect of Agreed Trades between Members, an LME broker buying metal from another LME broker cannot do so as agent for its Client. Where an LME broker buys metal from another LME broker with a view to selling that metal to its Client, this is achieved by entering into a back-to-back Client Contract with the Client. Brokers and Clients can agree the conditions that apply to their Client Contracts. For example, a Client may make it a condition of its Client Contract that the broker must enter into a back-to-back Agreed Trade with

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<sup>1</sup> There are specific arrangements where the Client is a Category 4 Member or LMEprecious Non-Clearing Member. These are covered by LME Notice 17/184 dated 25 May 2017.



another Member for the metal being bought or sold. This does not make the Client a party to the Agreed Trade with the other Member (or the resulting Cleared Contract with the Clearing House) but does create additional duties and obligations owed by the broker under the Client Contract.

20. Clients should be clear about the conditions that apply to their Client Contracts and about the obligations and duties that the broker owes as a result of those conditions.
21. Brokers should be clear about the duties and obligations they owe as a result of conditions attaching to their Client Contracts. They should also be clear about the duties they owe to their Clients under the FCA's Conduct of Business Rules (COB).
22. Only Category 1, 2 and 4 Members may issue Client Contracts. Open position statements issued to Clients must state clearly 'THIS IS AN LME REGISTERED CLIENT CONTRACT'. Contract criteria relating to LME Contracts, including metal specifications, acceptable currencies, prompt dates, option strike prices for metals etc. are detailed in the LME Rulebook and appropriate Notices.
23. Where Members enter into 'over-the-counter' (OTC) contracts in respect of LME deliverable metal, the contract should clearly state that 'THIS IS NOT AN LME REGISTERED CLIENT CONTRACT'. Members and other third parties who reference LME prices or other LME proprietary information in OTC contracts or otherwise use LME proprietary information must ensure that they have entered into the appropriate licences with the LME.

### **Dual Capacity**

24. Members may act both in the capacity of market maker and broker. They may act in a particular manner, depending on a number of circumstances, including the size of the order, the liquidity of the market at the time the order was placed, and, not least, the Client's instructions. Client orders may be filled directly from a Member's 'book' or following the purchase/sale of metal in the LME market. Furthermore, Client orders may be offset, amalgamated, broken-up or netted for execution. These methodologies apply equally to orders



whether any resulting Agreed Trades are effected in the Ring, in the inter-office market, or on LMEselect.

25. Clients with specific order requirements must make these known to the Member at the time the order is placed. Clients wishing to know how their order was executed should request such information from the Member.

## **ORDER STYLES**

26. The principal order styles for Client orders are summarised below. These order styles do not represent all possible methods of order execution on the LME. Members and Clients should ensure that orders are communicated in meaningful terms that deliver the required execution in accordance with LME Rules.

### **Ring**

27. Client orders are not traded in the Ring, so an order using the term 'in/on/during the ring/kerb' will be executed on the basis of the prices traded/quoted during the particular session. If a Client requires their order to be 'shown' or traded across the ring/kerb then they should make this requirement known to their executor, who may or may not accept this as a term of the order. The equivalent Member-Member Agreed Trade for a Client order might not replicate its terms. As the Client is not a party to any Cleared Contracts which arise from Agreed Trades made in the Ring, in specifying ring/kerb, the Client is merely identifying a pricing mechanism. A Member which undertakes to match a price traded in the ring/kerb is not necessarily undertaking that it will trade during that ring/kerb, only that it may do so. However, a Client may place an order with the specific request that the Member trades an Agreed Trade in the Ring replicating its order. In such circumstance the Category 1 Member can only trade this order by open outcry in the Ring.
28. If a Client trades at the prevailing market quote proffered in the ring/kerb, their executor is not necessarily obliged to effect an Agreed Trade in the Ring at the same price. This can lead to situations where the Client has traded at the prevailing market quote, without that same price trading in open outcry across the Ring. However, if the instructions from the Client are to achieve a specific



price i.e. close of ring 2, then this is the price that should be given, if that specific order is accepted.

### **Market**

29. In normal circumstances a market order is one executed on a timely basis at the prevailing market price. As mentioned above, at certain times of the business day, trading is taking place simultaneously in the ring or kerb, on LMEselect, and in the inter-office market. Traditionally, when open outcry trading is in session, the market tends to be led by activity within the ring/kerb. At other times, the market is split between inter-office trading and trading on LMEselect. During LMEselect trading periods, firm prices are available on LMEselect and the LMEselect page on information vendors' systems.

### **Best**

30. Order styles on the LME using the word 'best' confer some discretion upon the Members when executing the order, requiring them to use their 'best endeavours' on the Client's behalf. The extent of the discretion is fixed by the terms of the order. This type of order is distinct from 'best execution' as defined by the FCA.

31. Best orders may be executed both on the Ring, inter-office market and on LMEselect. Inter-office trades rely upon the Members' skill in determining the level of the market at any particular time. Best orders received during ring/kerb times may not result in the Client receiving the 'best' price achieved during the session if the price improves after the Member has booked the metal intended to fill the order. At any given time, the best price on LMEselect will be displayed on the system and by the information vendors. Clients should be aware that depending on market conditions, the best price may move during the period from when the order was placed and when it was executed.

### **Close**

32. Most orders placed 'on the close' are for either the close of the second ring (official LME prices) or the final kerb (closing prices). Both of these prices are published. Closing prices for other sessions are harder to determine, although the LME does publish unofficial prices which are established at the close of the fourth ring. In all circumstances, Clients and Members need to agree the style



of execution i.e. bid/offer, mean or traded price. Members may not always be able to guarantee execution (price or volume) due to prevailing market conditions. A closing price on LMEselect is the last price traded before the system closes.

## **Open**

33. Clients placing orders to trade on the opening of a market session must provide clear instructions to the Member which indicate how this order should be activated i.e. basis the opening bid/offer or basis the first trade in the session. Clients will also need to inform their executor of their requirements if the executor is unable to fill the order basis the 'opening' price in its entirety, due to market constraints such as insufficient liquidity. Clients may place orders with Members for LMEselect that can be placed into the system for activation when the market opens.

## **Resting Orders**

34. When placing resting orders such as 'good 'til cancelled' ('GTC', or any derivations thereof) or stop loss orders, Clients should ensure that they are in agreement with their executor's definition of the 'trigger' point of the order. Usually, this is interpreted as being the point when the order price is seen to be trading in the market, but it is possible to request the order be activated when the order level is either bid or offered as appropriate, via the prevailing market quote. Stop loss orders become market orders when a trade, or a bid or an offer triggers the stop, with Members then executing the order at the current market price.
35. It is possible for a Client not to receive a 'fill' on a resting order despite the 'trigger' point being 'touched'. This could be due to a number of circumstances such as order priority, illiquidity, prevailing market conditions etc. Whatever the reason, the executor should be able to provide the Client with a full explanation of why it was unable to fill the order.
36. Clients should be aware that resting orders might be activated during periods of illiquidity in the market. As previously mentioned, this could result in the trade not being filled, or for 'stop' orders, a worse fill than anticipated ('slippage'). Clients should ensure the executor is fully aware of their



requirements regarding the execution of an order, and adheres to any limitations, especially if the Client is not in contact with the market / Member when the trigger point is reached.

## **LMEselect**

37. It is possible for Clients to ask Members to place resting orders in LMEselect. Where the broker has an order-routing system into LMEselect, Clients will be able to place orders through that order routing system. The system accepts GTC orders (for Cash and 3 month prompt dates only) and will also permit other variations such as 'Good for Day'. There are also certain other LMEselect-specific order types such as 'Iceberg'<sup>2</sup>, 'Discretionary'<sup>3</sup>, 'Scaling'<sup>4</sup> and 'Fill or Kill' orders<sup>5</sup>.

## **SEGREGATION & PORTABILITY**

### **Segregation**

38. When registering Agreed Trades in the Matching System, a Clearing Member must specify which account at the Clearing House the resulting Cleared Contracts should be allocated. Where any Cleared Contract is to be allocated to a "client account" (because there is an accompanying back-to-back Client Contract) the registration must align the Contract to a specific "omnibus" or "individually segregated" account at LME Clear. Members are required to offer Clients a choice of either type of account. The distinguishing factor between the two is: either (i) an "omnibus" account which has assets and positions

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<sup>2</sup> Iceberg orders allow a trader to place an order without disclosing the full order quantity to the market. The trader specifies the open quantity amount seen by the market and the subsequent open order amounts at the time of the order placement. Any subsequent amendments to open quantity amount only take affect with the next order quantity to be placed, the current open quantity seen by the market does not change.

<sup>3</sup> A discretionary order allows a trader to place an order with a discretionary price. This discretionary price remains hidden from view by the market. A discretionary 'Bid' order will only trade when an opposing order is placed with an order price equal to or less than the discretionary price. For an 'Ask' order the opposing order price must equal to or exceed the discretionary order price.

<sup>4</sup> A scaling order allows the user to automatically place repeat orders for an outright valid prompt date with a scaled order price. i.e. scaled down buying or scaled up selling; although the user is not forced to change the order price and therefore can enter repeat order at the same price level. This function will place an order with the same quantity and prompt date with an adjusted order price if desired, once the previous order has traded in the LMEselect system.

<sup>5</sup> A Fill and Kill Order is entered at a specific price with the intention to execute immediately and therefore fill all or part of, the order and immediately cancel any unfulfilled balance.



allocated to it for multiple Clients; or (ii) an “individually segregated” account which has assets and positions allocated to it for a single Client.

### **Portability**

39. Where there is an Event of Default in relation to a Member and a Client wishes to transfer its positions from an account maintained with the defaulting Member to a solvent Member, it must notify LME Clear in accordance with the procedures set out by LME Clear from time to time. Failure to adhere to the procedures of LME Clear within the prescribed timescales may result in the positions of a Client being closed out by the clearing house. The LME Rules contain provisions to ensure that, where any Cleared Contract is ported in accordance with LME Clear’s Rules, the back-to-back Client Contracts shall also port.



## **Information Statement in accordance with Article 15 of the Securities Financing Transactions Regulation**

**This Information Statement is provided for information purposes only and does not amend or supersede the express terms of any Transaction, Collateral Arrangement or any rights or obligations you may have under applicable law, create any rights or obligations, or otherwise affect your or our liabilities and obligations.**

**The Information Statement with Appendices 1 and 2 has been prepared by the International Swaps and Derivatives Association, Inc., the Association for Financial Markets in Europe, the Futures Industry Association, Inc., the International Capital Market Association and the International Securities Lending Association. Appendix 3 by the International Swaps and Derivatives Association, Inc., the Association for Financial Markets in Europe, the Futures Industry Association, Inc. and SIFMA.**

**The information Statement with all its Appendices has been drafted in English language and can be used by market participants, who can amend it, including removing the trade association logos, as long as the following copyright notice remains unchanged and is included in the final version used.**

**In case of translation of the Information Statement and its Appendices in other languages and in the event of any inconsistencies between the English version and the translated version, the English version shall always prevail and the International Swaps and Derivatives Association, Inc., the Association for Financial Markets in Europe, the Futures Industry Association, Inc., the International Capital Market Association and the International Securities Lending Association and SIFMA do not accept any liability for any translation made.**



## 1. Introduction

You have received this Information Statement because you have entered into or may hereafter enter into one or more title transfer collateral arrangements or security collateral arrangements containing a right of use (together, "**Collateral Arrangements**") with us.

This Information Statement has been prepared to comply with Article 15 of the Securities Financing Transactions Regulation by informing you of the general risks and consequences that may be involved in consenting to a right of use of collateral provided under a security collateral arrangement or of concluding a title transfer collateral arrangement ("**Re-use Risks and Consequences**"). The information required to be provided to you pursuant to Article 15 of the Securities Financing Transactions Regulation relates only to Re-use Risks and Consequences, and so this Information Statement does not address any other risks or consequences that may arise as a result of your particular circumstances or as a result of the terms of particular Transactions.<sup>1</sup>

This Information Statement is not intended to be, and should not be relied upon as, legal, financial, tax, accounting or other advice. Unless otherwise expressly agreed in writing, we are not providing you with any such legal, financial, tax, accounting or other advice and you should consult your own advisors for advice on consenting to a right of use of collateral provided under a security collateral arrangement or on concluding a title transfer collateral arrangement, including the impact on your business and the requirements of, and results of, entering into any Transaction.

Appendix 2 sets out an indicative (but not exhaustive) list of types of agreement that may constitute Collateral Arrangements.

Appendix 3 sets out alternative disclosures that are applicable if we are (1) a U.S. broker-dealer or futures commission merchant or (2) a U.S. bank or U.S. branch or agency office of a non-U.S. bank.

In this Information Statement<sup>2</sup>:

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<sup>1</sup> Note: Firms that have given other disclosures in relation to Collateral Arrangements (e.g., under Art 39 EMIR) may wish to cross-refer to those disclosures here.

<sup>2</sup> Note: Defined terms will need to be modified where the disclosure statement is included as an annex to an agreement.

- "we", "our", "ours" and "us" refer to the provider of this Information Statement that may conduct Transactions with you (or, where we are acting on behalf of another person, including where that person is an affiliate, that person);
- "you", "your" and "yours" refer to each of the persons to which this Information Statement is delivered or addressed in connection with entering into, continuing, executing or agreeing upon the terms of Transactions with us (or, where you are acting on behalf of other persons, each of those persons);
- "right of use" means any right we have to use, in our own name and on our own account or the account of another counterparty, financial instruments received by us by way of collateral under a security collateral arrangement between you and us;
- "Securities Financing Transactions Regulation" means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (as amended from time to time);
- "Transaction" means a transaction entered into, executed or agreed between you and us under which you agree to provide financial instruments as collateral, either under a security collateral arrangement or under a title transfer collateral arrangement;
- "financial instruments", "security collateral arrangement" and "title transfer collateral arrangement" have the meaning given to those terms in the Securities Financing Transactions Regulation. These are set out in Appendix 1 for reference.

## 2. Re-use Risks and Consequences

- a) Where you provide financial instruments to us under a title transfer collateral arrangement or if we exercise a right of use in relation to any financial instruments that you have provided to us by way of collateral under a security collateral arrangement containing a right of use, we draw your attention to the following Re-use Risks and Consequences:<sup>3</sup>
  - i. your rights, including any proprietary rights that you may have had, in those financial instruments will be replaced by an unsecured contractual claim for delivery of equivalent financial instruments subject to the terms of the relevant Collateral Arrangement;

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<sup>3</sup> As noted above, Appendix 3 sets forth the risks and consequences that may arise in connection with re-use of financial instruments by a U.S. broker-dealer, U.S. futures commission merchant, or U.S. bank or U.S. branch or agency office of a non-U.S. bank.

- ii. those financial instruments will not be held by us in accordance with client asset rules, and, if they had benefited from any client asset protection rights, those protection rights will not apply (for example, the financial instruments will not be segregated from our assets and will not be held subject to a trust);
- iii. in the event of our insolvency or default under the relevant agreement your claim against us for delivery of equivalent financial instruments will not be secured and will be subject to the terms of the relevant Collateral Arrangement and applicable law and, accordingly, you may not receive such equivalent financial instruments or recover the full value of the financial instruments (although your exposure may be reduced to the extent that you have liabilities to us which can be set off or netted against or discharged by reference to our obligation to deliver equivalent financial instruments to you);
- iv. in the event that a resolution authority exercises its powers under any relevant resolution regime in relation to us any rights you may have to take any action against us, such as to terminate our agreement, may be subject to a stay by the relevant resolution authority and:
  - a) your claim for delivery of equivalent financial instruments may be reduced (in part or in full) or converted into equity; or
  - b) a transfer of assets or liabilities may result in your claim on us, or our claim on you, being transferred to different entities

although you may be protected to the extent that the exercise of resolution powers is restricted by the availability of set-off or netting rights;

- v. as a result of your ceasing to have a proprietary interest in those financial instruments you will not be entitled to exercise any voting, consent or similar rights attached to the financial instruments, and even if we have agreed to exercise voting, consent or similar rights attached to any equivalent financial instruments in accordance with your instructions or the relevant Collateral Arrangement entitles you to notify us that the equivalent financial instruments to be delivered by us to you should reflect your instructions with respect to the subject matter of such vote, consent or exercise of rights, in the event that we do not hold and are not able to readily obtain equivalent financial instruments, we may not be able to comply (subject to any other solution that may have been agreed between the parties);

- vi. in the event that we are not able to readily obtain equivalent financial instruments to deliver to you at the time required: you may be unable to fulfil your settlement obligations under a hedging or other transaction you have entered into in relation to those financial instruments; a counterparty, exchange or other person may exercise a right to buy-in the relevant financial instruments; and you may be unable to exercise rights or take other action in relation to those financial instruments;
  - vii. subject to any express agreement between you and us, we will have no obligation to inform you of any corporate events or actions in relation to those financial instruments;
  - viii. you will not be entitled to receive any dividends, coupon or other payments, interests or rights (including securities or property accruing or offered at any time) payable in relation to those financial instruments, although the express written terms of the relevant Collateral Arrangement or Transaction may provide for you to receive or be credited with a payment by reference to such dividend, coupon or other payment (a "manufactured payment");
  - ix. the provision of title transfer collateral to us, our exercise of a right of use in respect of any financial collateral provided to us by you and the delivery by us to you of equivalent financial instruments may give rise to tax consequences that differ from the tax consequences that would have otherwise applied in relation to the holding by you or by us for your account of those financial instruments;
  - x. where you receive or are credited with a manufactured payment, your tax treatment may differ from your tax treatment in respect of the original dividend, coupon or other payment in relation to those financial instruments.
- b. Where we provide you with clearing services (whether directly as a clearing member or otherwise), we draw your attention to the following additional Re-use Risks and Consequences<sup>4</sup>:
- i. if we are declared to be in default by an EU central counterparty ("**EU CCP**") the EU CCP will try to transfer ("**port**") your transactions and

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<sup>4</sup> Note: Firms which have provided separate disclosure on these risks (e.g., under Article 39 EMIR) may wish to cross refer to that disclosure or indicate where that disclosure can be found.

assets to another clearing broker or, if this cannot be achieved, the EU CCP will terminate your transactions;

- ii. in the event that other parties in the clearing structure default (e.g., a central counterparty, a custodian, settlement agent or any clearing broker that we may instruct) you may not receive all of your assets back and your rights may differ depending on the law of the country in which the party is incorporated (which may not necessarily be English law) and the specific protections that that party has put in place;
- iii. in some cases a central counterparty may benefit from legislation which protects actions it may take under its default rules in relation to a defaulting clearing member (e.g., to port transactions and related assets) from being challenged under relevant insolvency law.

## Appendix 1

Defined terms for the purposes of the Securities Financing Transactions Regulation:

**"financial instrument"** means the instruments set out in Section C of Annex I to Directive 2014/65/EU on markets in financial instruments, and includes without limitation:

- 1) Transferable securities;
- 2) Money-market instruments;
- 3) Units in collective investment undertakings.

**"title transfer collateral arrangement"** means an arrangement, including repurchase agreements, under which a collateral provider transfers full ownership of financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations.

**"security collateral arrangement"** means an arrangement under which a collateral provider provides financial collateral by way of security in favour of, or to, a collateral taker, and where the full ownership of the financial collateral remains with the collateral provider when the security right is established.

## Appendix 2

We have set out below examples of the types of agreements to which this Information Statement applies. These examples are for illustrative purposes only and should not be relied upon as a legal determination of the characterisation of each agreement. The fact that an agreement is grouped with Title Transfer Collateral Agreements below does not preclude its characterisation as a Security Collateral Arrangement with a right of use and vice versa. Moreover, the characterization of an agreement may be different under U.S. and European law.

### Title Transfer Collateral Arrangement

Such arrangements may include without limitation:

- Overseas Securities Lender's Agreement
- Global Master Securities Lending Agreement
- Global Master Repurchase Agreement
- SIFMA Master Repurchase Agreement
- An ISDA Master Agreement incorporating an English Law ISDA Credit Support Annex
- An ISDA/FIA Client Cleared OTC Derivatives Addendum which provides for title transfer collateral arrangements and in particular where entered into in connection with an English law governed ISDA Master Agreement which includes the English law CSA Collateral Terms as set out in Appendix 1 thereto, or when entered into in connection with a relevant FIA client clearing agreement
- Master Gilt Edged Stock Lending Agreement
- Master Equity and Fixed Interest Stock Lending Agreement
- Prime brokerage agreements which provide for title transfer collateral arrangements
- FIA client clearing agreements for exchange traded and other cleared derivatives which provide for title transfer collateral arrangements
- FIA Clearing Module which provides for title transfer collateral arrangements
- Any bespoke agreements granting security by way of transfer of title to the secured party

### Security Collateral Arrangement containing a right of use

Such arrangements may include without limitation:

- An ISDA Master Agreement incorporating a New York Law ISDA Credit Support Annex
- An ISDA/FIA Client Cleared OTC Derivatives Addendum which provides for security collateral arrangements and in particular where entered into in connection a New York law governed ISDA Master Agreement including the New York law CSA Collateral Terms as set out in Appendix 2 thereto, or when entered into in connection with a relevant FIA client clearing agreement
- An ISDA Master Agreement in respect of which an English Law ISDA Credit Support Deed incorporating a right of use is a credit support document
- Prime brokerage agreements which provide for the creation of security over financial instruments
- FIA client clearing agreements for exchange traded and other cleared derivatives which provide for a creation of security over financial instruments
- FIA Clearing Module which provides for a creation of security over financial instruments
- Security arrangements in relation to margin loan documentation and associated custody agreements
- SIFMA Master Securities Lending Agreement (this agreement is generally a security collateral arrangement with respect to collateral delivered to the lender; the borrower takes title to the borrowed securities)
- Any bespoke security agreements creating security in respect of financial instruments with rehypothecation rights or a right of use over the financial instruments in favour of the secured party



### Appendix 3

#### **U.S. BROKER-DEALER, U.S. FUTURES COMMISSION MERCHANT, or U.S. BANK:**

This Appendix describes the Re-use Risks and Consequences that may arise under Collateral Arrangements with a bank chartered under U.S. federal or state law, a U.S. branch or agency office of a non-U.S. bank (any such bank, branch, or agency office, a “**U.S. banking organization**”), a U.S. entity that is registered as a broker-dealer with the U.S. Securities and Exchange Commission (“**broker-dealer**”), or a U.S. entity that is registered as a futures commission merchant with the Commodity Futures Trading Commission (“**FCM**”). A single U.S. entity can operate, and be regulated, as both a broker-dealer and an FCM, but it remains subject to separate regulatory requirements with respect to its separate activities.

U.S. law draws a distinction between financial instruments delivered to a broker-dealer or FCM and treated as customer assets (“**Customer Assets**”), financial instruments held by a U.S. banking organization in a trust or custodial capacity (“**Custodial Assets**”), and financial instruments delivered or pledged to a U.S. banking organization, broker-dealer, or FCM in a principal (non-customer) capacity (“**Non-Customer Assets**”). Customer Assets held by a broker-dealer or FCM are subject to mandatory segregation requirements under the rules of the SEC and CFTC, respectively, and special-purpose insolvency regimes under which segregated assets, *i.e.*, Customer Assets and cash required to be held in segregated accounts, are distributed to customers. Custodial Assets held by a U.S. banking organization are generally segregated on an account- or customer-specific basis, while in some circumstances broker-dealers and FCMs are permitted to segregate Customer Assets on an omnibus basis for all customers.

Financial instruments held in a securities account at a broker-dealer or delivered to an FCM as margin (or “performance bond”) for a cleared derivative generally constitute Customer Assets. On the other hand, securities delivered to us under a repurchase or securities lending agreement generally do not constitute Customer Assets. If, with respect to Customer Assets received by us as a broker-dealer, you separately agree to lend financial instruments to us under a securities lending agreement, or agree to sell financial instruments to us under a repurchase agreement, then the financial instruments are removed from your account and are no longer eligible for customer protection. Any financial instruments delivered to us under such transactions are Non-Customer Assets. *If you are uncertain whether a financial instrument pledged or delivered to us is a Customer Asset, please obtain legal advice.*

With respect to Customer Assets received by us as an FCM in connection with your CFTC-regulated transactions, we generally cannot use such Customer Assets other than to margin, guarantee or secure those transactions. That is, we may transfer such assets to segregated or secured accounts established by us with banks, clearing houses and clearing brokers, which

acknowledge, via rules or written agreements, that such Customer Assets are the property of the FCM's customers and can be utilized solely to margin, guarantee or secure customer transactions. In addition, an FCM may, pursuant to repurchase agreements, substitute such segregated Customer Assets, subject to very strict CFTC regulations, including the requirement that such substitution is made on a "delivery versus delivery" basis, and the market value of the substituted securities is at least equal to that of the Customer Assets being substituted. To the extent segregated assets were found to be insufficient to satisfy customer claims in full, customers would continue to have a claim against the proprietary assets of the FCM.

With respect to Customer Assets received by us as a broker-dealer in connection with your SEC-regulated transactions, we generally can use such Customer Assets only with your consent and subject to regulatory usage limits that are imposed both at the account level (by reference to the amount of your obligations to us) and across all customers (by reference to the amount of all customer obligations to us). The SEC requires that broker-dealers perform a daily valuation of Customer Assets (including related customer obligations) and maintain in segregation either Customer Assets or cash or other high-grade assets such that the value of segregated assets will at all times exceed the value of all Customer Assets net of customer obligations to the broker-dealer. Further, to the extent segregated assets were to be insufficient to satisfy customer claims in full, customers would continue to have a claim against the proprietary assets of the broker-dealer.

Notwithstanding point (b) of paragraph 2 of Article 15 of the Securities Financing Transactions Regulation, when we use your Customer Assets, they continue to be included on your account statement reflecting their status as Customer Assets, and we may not identify to you the financial instruments that we have used.

If we are a broker-dealer or FCM, our exercise of our right to use Customer Assets has no effect on the nature of your property interest in the financial instruments or on your rights as a customer in the event of our insolvency. The amount of your customer claim in a broker-dealer or FCM insolvency proceeding is a function of the value of assets held in your account and the amount of your obligations to us, if any. In a broker-dealer or FCM insolvency proceeding, all customers generally receive the same pro rata share of their claims based on Customer Assets (and customer cash), regardless of whether their financial instruments were subject to use or were used by the broker-dealer or FCM. (In the case of an FCM insolvency, customers are separated into several account classes based on product type, and recoveries may vary across account classes. Customers within the same account class receive the same pro rata share of all customer claims within that class.)

In the insolvency of a U.S. banking organization, Custodial Assets are generally returned to their owners to the extent such assets are available for distribution. Your consent to our use of

your financial instruments may prevent them from being treated as Custodial Assets, and it may jeopardize your right to obtain their return in the event of our insolvency.

Collateral Arrangements with respect to Non-Customer Assets can take a variety of forms with differing legal characterizations and practical consequences. Generally, a title transfer collateral arrangement entitles you only to a creditor claim for the return of your financial instruments. Under a security collateral arrangement, in some cases you may retain a property interest in the financial instruments delivered to us as collateral, but your property right (if any) may be subject to superior rights of our creditors or of a party to which we have transferred the financial instruments. Additionally, in the event of our insolvency, you may lose your property interest if you are unable to identify your property as distinct from our other assets, and our use of your financial instruments may impair your ability to do so.

This Appendix is not intended to provide a complete description of the treatment of Collateral Arrangements under U.S. law or the U.S. customer protection system, and you should not rely on it for that purpose.

If we are a U.S. broker-dealer, U.S. FCM, or U.S. banking organization, Sections 2(a)(i) through (v) of the Information Statement do not apply. Instead, where you provide financial instruments to us under a title transfer collateral arrangement or if we exercise a right of use in relation to any financial instruments that you have provided to us by way of collateral under a security collateral arrangement containing a right of use, we draw your attention to the following Re-use Risks and Consequences:

#### Risks in Connection with Financial Instruments That Are Customer Assets

If we are a U.S. broker-dealer or FCM and your financial instruments are Customer Assets, then we are permitted to use your financial instruments (i) to post as margin in respect of CFTC-regulated products with a clearing organization or other intermediary, and (ii) as otherwise permitted within the limits imposed by U.S. customer protection rules. When we use your Customer Assets, we may not hold them in segregation or trust, depending on the applicable U.S. regulation, but we continue to report them on your account statement reflecting their status as Customer Assets. As a result of our use of your Customer Assets, those assets are subject to the Re-use Risks and Consequences listed in Sections 2(a)(vi) through (x) of the Information Statement. In addition, if we provide you with clearing services (whether directly as a clearing member or otherwise), Customer Assets are subject to the Re-use Risks and Consequences listed in Section 2(b) of the Information Statement.

Moreover, as a result of our use of those financial instruments (including, in some cases, your ceasing to have a proprietary interest in those financial instruments), or the failure of a third party to deliver to us financial instruments, you may not be entitled to exercise any voting, consent or similar rights attached to the financial instruments, and even if we have agreed to

exercise voting, consent or similar rights attached to any equivalent financial instruments in accordance with your instructions or the relevant Collateral Arrangement entitles you to notify us that the equivalent financial instruments to be delivered by us to you should reflect your instructions with respect to the subject matter of such vote, consent or exercise of rights, in the event that we do not hold and are not able to readily obtain equivalent financial instruments, we may not be able to comply (subject to any other solution that may have been agreed between the parties).

However, our right to use Customer Assets and our actual use of Customer Assets do not present any insolvency-related Re-use Risks and Consequences. This is because, as described above, in the event of our insolvency your claim for Customer Assets would be calculated according to a formula that does not take our use of assets into account.

In the event that a receiver, conservator or other insolvency official exercises its powers under an insolvency regime in relation to us, any rights you may have to take any action against us, such as to terminate our agreement, may be subject to a stay by the relevant authority and a transfer of assets or liabilities may result in your claim on us, or our claim on you, being transferred to different entities. However, this risk exists regardless of whether we have used your financial instruments or you have consented to their use.

#### Risks in Connection with Financial Instruments That Are Non-Customer Assets

Non-Customer Assets are not protected by the U.S. customer protection rules that apply to Customer Assets. If we are a U.S. broker-dealer or FCM and your financial instruments are Non-Customer Assets, or we are a U.S. banking organization, and you have granted us a right to use your financial instruments, then we will not hold such financial instruments in segregation or trust. Your rights, including any proprietary rights that you may have had, in those financial instruments may be replaced by a contractual claim (which would be unsecured unless otherwise agreed) for the delivery of equivalent financial instruments subject to the terms of the relevant Collateral Arrangement. As a result of our use of your Non-Customer Assets, those assets are subject to the Re-use Risks and Consequences listed in Sections 2(a)(vi) through (x) of the Information Statement.

If we are a U.S. banking organization, as a result of your consent to our use of your financial instruments, those financial instruments may not be held by us in accordance with the rules that apply to Custodial Assets, and, if they had benefited from any protections as Custodial Assets, those protection rights may not apply (for example, the financial instruments will not be segregated from our assets and will not be held subject to a trust).

Moreover, as a result of our use of financial instruments (including, in some cases, your ceasing to have a proprietary interest in those financial instruments), or the failure of a third party to deliver to us financial instruments, you may not be entitled to exercise any voting,

consent or similar rights attached to the financial instruments, and even if we have agreed to exercise voting, consent or similar rights attached to any equivalent financial instruments in accordance with your instructions or the relevant Collateral Arrangement entitles you to notify us that the equivalent financial instruments to be delivered by us to you should reflect your instructions with respect to the subject matter of such vote, consent or exercise of rights, in the event that we do not hold and are not able to readily obtain equivalent financial instruments, we may not be able to comply (subject to any other solution that may have been agreed between the parties).

In the event of our insolvency your rights in financial instruments that we have used may be replaced by a general claim (which would be unsecured unless otherwise agreed) against us for equivalent financial instruments or the value of those financial instruments, and you may not receive such equivalent financial instruments or recover the full value of the financial instruments (although your exposure may be reduced to the extent that we have provided collateral to you or you have liabilities to us which can be set off or netted against or discharged by reference to our obligation to deliver equivalent financial instruments to you). To the extent you retain a property interest in financial assets we have used, our use of the financial instruments may give other parties superior rights in them and may interfere with your ability to identify the financial instruments for the purpose of obtaining their return.

In the event that a receiver, conservator or other insolvency official exercises its powers under an insolvency regime in relation to us, any rights you may have to take any action against us, such as to terminate our agreement, may be subject to a stay by the relevant authority and a transfer of assets or liabilities may result in your claim on us, or our claim on you, being transferred to different entities. However, this risk exists regardless of whether we have used your financial instruments or you have consented to their use.