



# Terms and conditions of investment business

For professional clients  
and eligible counterparties

Macquarie Europe  
May 2020



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# 1. Defined terms

**"Additional Terms"** means additional terms which form part of these Terms of Business as annexed hereto and are applicable to services and transactions that we may carry out with or for you from time to time;

**"Affiliate"** means any entity controlled, directly or indirectly, by us, any entity that controls, directly or indirectly, us, or any entity directly or indirectly under common control with us. For this purpose, **"control"** of any entity or person means ownership of a majority of the voting power of the entity or person;

**"Agreement"** means any agreement other than these Terms of Business in place between you and us;

**"Applicable Privacy Law"** means all applicable national data protection laws and regulations to which you or we are subject, including the General Data Protection Regulation (EU) 2016/679 (**"GDPR"**);

**"Applicable Regulations"** means:

- (a) all applicable laws, rules, regulations, instruments and provisions in force from time to time;
- (b) the rules of a relevant market in which we may carry on business on your behalf; and
- (c) rules, principles and codes of practice of any regulatory authority to which the parties are subject, including the Rules;

**"APRA" or "Australian Prudential Regulation Authority"** means the Australian Prudential Regulation Authority and any successor body thereto;

**"ASIC"** means the Australian Securities and Investments Commission;

**"Bail-in Legislation"** means the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289/2015), as amended from time to time, or any other relevant law, regulation, rule or requirement which at any time implements the BRRD in Ireland and the instruments, rules and standards created thereunder;

**"Bail-in Powers"** means any write-down, conversion, transfer, modification or suspension power existing from time to time under, and exercised in compliance with, any law or regulation in effect relating to the transposition of the BRRD, including but not limited to the Bail-in Legislation and Regulation (EU) No 806/2014 (where applicable) and the instruments, rules and standards created thereunder, pursuant to which: (a) any obligation of a bank or investment firm or affiliate of a bank or investment firm can be reduced, cancelled, modified or converted into shares, other securities, other obligations or other instruments of ownership of such entity or any other person (or suspended for a temporary period); (b) any right in a contract governing an obligation of a bank or investment firm or affiliate of a bank or investment firm may be deemed to have been exercised; (c) the power to cancel debt instruments issued by an institution under resolution except for secured liabilities subject to Article 44(2) of the BRRD; and (d) the power to amend or alter the maturity of debt instruments and other eligible liabilities issued by an institution under resolution or amend the amount of interest payable under such instruments and other eligible liabilities, or the date on which the interest becomes payable, including by suspending payment for a temporary period, except for secured liabilities subject to Article 44(2) of the BRRD;

**"Branch Rules"** means the provisions of MiFID2 as applicable in the relevant EU member state in which Macquarie has established a branch (**"territory"**), and which apply to the provision of services by such branch within that territory;

**"BRRD"** means Directive 2014/59/EU (as may be amended or re-enacted) establishing a framework for the recovery and resolution of credit institutions and investment firms;

**"BRRD Liability"** means any liability referred to in the relevant Bail-in Legislation in respect of which the relevant Bail-in Powers may be exercised;

**"Business Day"** means a day which is not a Saturday or Sunday and upon which banks are open for business in London and, where you contract with MBE DAC, Dublin;

**"CBI"** means the Central Bank of Ireland and any successor body thereto;

**"CBI Rules"** means the rules, guidance, principles and regulations made by the CBI from time to time;

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**"Client Money Rules"** means the applicable provisions of: (i) where you contract with MBIL, MBL London Branch or MCEL, the Client Assets Sourcebook in the FCA Rules relating to client money; and (ii) where you contract with MBE DAC, the Irish Client Asset Rules relating to client funds;

**"ECB"** means the European Central Bank;

**"Effective Date"** means 29<sup>th</sup> May 2020;

**"Eligible Counterparty"** has the meaning given in the Rules;

**"Event of Default"** has the meaning given to it in Appendix 2 to these Terms of Business;

**"FCA"** or **"Financial Conduct Authority"** means the UK Financial Conduct Authority and any successor body thereto;

**"FCA Rules"** means the rules, guidance, principles and regulations made by the FCA from time to time;

**"Irish Client Asset Rules"** means the provisions of the Irish Rules applicable to client assets, including Part 6 of the Irish Investment Firm Regulations, Schedule 3 of the Irish MiFID Regulations and the provisions of Commission Delegated Regulation 2017/565 relating to client financial instruments or funds, insofar as they apply to MBE DAC;

**"Irish Investment Firm Regulations"** means the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (S.I. No. 604 of 2017) including any amendments to or replacement thereof;

**"Irish MiFID Regulations"** means the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017) including any amendments to or replacement thereof;

**"Irish Rules"** means the provisions of MiFID2 (as applicable in Ireland), the Irish MiFID Regulations and the CBI Rules;

**"Market"** means any Regulated Market, MTF or OTF or any other third country trading facility determined be equivalent to a Regulated Market, MTF or OTF pursuant to the relevant provision of MiFID2;

**"MBE DAC"** means Macquarie Bank Europe Designated Activity Company;

**"MBIL"** means Macquarie Bank International Limited;

**"MBL London Branch"** means Macquarie Bank Limited, London Branch;

**"MCEL"** means Macquarie Capital (Europe) Limited;

**"MiFID2"** means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and any delegated regulations, technical standards, guidelines, questions and answers made under or in relation to such directive and regulation;

**"MTF"** or **"Multilateral Trading Facility"** has the meaning given in the Rules;

**"Order Execution Policy"** means the Macquarie order execution policy as amended from time to time;

**"OTF"** or **"Organised Trading Facility"** has the meaning given in the Rules;

**"Potential Event of Default"** has the meaning given to it in Appendix 2 to these Terms of Business;

**"PRA"** means the Prudential Regulation Authority of the United Kingdom and any successor body thereto;

**"PRA Rules"** means the rules of the PRA as set out in the PRA rulebook and as amended from time-to-time;

**"Professional Client"** has the meaning given in the Rules;

**"RBA"** means the Reserve Bank of Australia;

**"Regulated Market"** has the meaning given in the Rules;

**"Relevant Resolution Authority"** means the resolution authority with the ability to exercise any Bail-in Powers with respect to Macquarie;

**"Retail Client"** has the meaning given in the Rules;

**"Rules"** means: (i) where you contract with MBIL, MBL London Branch or MCEL, the FCA Rules and PRA Rules and/or, to the extent applicable, the Branch Rules; and (ii) where you contract with MBE DAC, the Irish Rules and/or, to the extent applicable, the Branch Rules;

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"**Sanctions**" has the meaning given in Clause 27 of these Terms of Business; and

"**Terms of Business**" means these Terms and Conditions of Investment Business, together with any Additional Terms and accompanying documents, including the cover letter, as amended from time to time.

## 2. Regulation

2.1 These Terms of Business are issued to you by the following entities:

- (a) Macquarie Capital (Europe) Limited, a company registered in England and Wales (registered number 03704031) having its registered office at Ropemaker Place, 28 Ropemaker Street, London EC2Y 9HD;
- (b) Macquarie Bank International Limited, a company registered in England and Wales (registered number 06309906) having its registered office at Ropemaker Place, 28 Ropemaker St, London EC2Y 9HD;
- (c) Macquarie Bank Limited, a company registered in Australia which has its London branch (registered number BR002678) at Ropemaker Place, 28 Ropemaker Street, London EC2Y 9HD; and
- (d) Macquarie Bank Europe Designated Activity Company, a company registered in Ireland (registered number 634817) having its registered office at First Floor, Connaught House, 1 Burlington Road, Dublin 4, D04 C5Y6.

2.2 In these Terms of Business "**Macquarie**" means MBIL, MBL London Branch, MCEL or MBE DAC and any Affiliate, from time to time, of Macquarie Group Limited which operates in the United Kingdom or Ireland. References to "**we**", "**us**" and "**our**" are references to the Macquarie company which is providing services to, or is otherwise dealing with, you. Please refer to your trading documents which specify the Macquarie entity that you are trading with for any given transaction. Unless specified otherwise, MCEL will provide the services to, or will be dealing with, you in respect of any cash equities business.

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- (a) Macquarie Capital (Europe) Limited is authorised and regulated by the Financial Conduct Authority. Its firm reference number is 193905.
- (b) Macquarie Bank International Limited is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. Its firm reference number is 471080.
- (c) Macquarie Bank Limited is authorised and regulated by the Australian Prudential Regulation Authority in Australia. Macquarie Bank Limited, London Branch, is subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us on request. Its firm reference number is 170934.  

The FCA address is 12 Endeavour Square, London E20 1JN. The PRA address is 20 Moorgate, London, EC2R 6DA. Please check the respective regulator's website at [www.fca.org.uk](http://www.fca.org.uk) and [www.bankofengland.co.uk/pru/Pages/default.aspx](http://www.bankofengland.co.uk/pru/Pages/default.aspx) for up-to-date contact details before contacting them.
- (d) Macquarie Bank Europe Designated Activity Company is authorised and regulated by the Central Bank of Ireland. Its firm reference number is C402325. The Central Bank of Ireland address is New Wapping Street, North Wall Quay, Dublin 1, D01 F7X3. Please check the Central Bank of Ireland's website <https://www.centralbank.ie/home> for up-to-date contact details before contacting them.

2.4 The services that we provide to you pursuant to these Terms of Business are subject to Applicable Regulations so that:

- (a) if there is any conflict between these Terms of Business and any Applicable Regulations, the latter will prevail;
- (b) nothing in these Terms of Business shall exclude or restrict any duty or liability which we may have to you under Applicable Regulations;

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- (c) we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations;
  - (d) all Applicable Regulations and whatever we do or fail to do in order to comply with them will be binding on you;
  - (e) such actions that we take or fail to take for the purpose of compliance with any Applicable Regulations shall not render us or any of our directors, officers, employees or agents liable; and
  - (f) you agree to comply with all Applicable Regulations.
- 2.5 For further details about Macquarie, the services we provide and other information relevant to these Terms of Business, please refer to our website [www.macquarie.com](http://www.macquarie.com). Information on our website does not constitute part of the agreement between you and us.

## 3. Application and scope of these terms

- 3.1 These Terms of Business set out the terms of the investment business relationship between you and us.
- 3.2 When these Terms of Business take effect they supersede any other general terms of business for investment business that we may previously have sent you. You are also referred to Clause 30.11 of these Terms of Business for details of information we may make available to you via our website ([www.macquarie.com](http://www.macquarie.com)), such as risk warnings, costs and charges information and other important information about our services.
- 3.3 Where there are:
- (a) existing terms of business, on the same subject matter, already in force between you and us, these Terms of Business take effect on the Effective Date; or
  - (b) no existing terms of business, on the same subject matter, in force between you and us, these Terms of Business take effect on the first date we provide a service to you or you place an order, or otherwise agree to enter into a transaction, with us on or after the Effective Date,
- 3.4 These Terms of Business will continue until they are terminated in accordance with Clause 22 of these Terms of Business.
- 3.5 In the case of specific types of transactions, these Terms of Business may be supplemented by, and shall be deemed to include any Additional Terms which relate to such specific transactions. For the avoidance of doubt, such Additional Terms shall remain in full force and effect unless we notify you otherwise.
- 3.6 For some products and transactions, we will be unable to provide our services to you unless you have entered into another Agreement with us relating to those products and transactions. Subject to Clause 30.12 of these Terms of Business, in the event of any conflict or inconsistency between a provision contained in these Terms of Business and a provision of any such other Agreement that address the same subject matter, the provision of such other Agreement will prevail and take precedence with respect to that other Agreement (or any transactions thereunder) unless the other Agreement expressly provides that these Terms of Business prevail over such other Agreement. However, if there is any conflict between any provision contained in these Terms of Business which is required for us to comply with, or relates to, Applicable Regulations and any provision of any such other Agreement, the relevant provision set out in the Terms of Business will prevail and take precedence.
- 3.7 We are obliged by the Rules to comply with certain rules of conduct. However, we assume no greater responsibility nor owe you any fiduciary duty, other than those imposed by the Rules or the express terms of these Terms of Business.
- 3.8 For the avoidance of doubt, our obligations under Applicable Regulations are strictly regulatory and no reference to such obligations in these Terms of Business will create any contractual obligation owed by us to you with respect to such regulatory obligations.

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- 3.9 We may introduce you to an Affiliate for the purpose of providing any services or effecting any transactions envisaged by these Terms of Business. You agree that we may, from time to time, act as agent for any such Affiliate. If we agree, you may also pass orders directly to such Affiliates. Where you pass an order directly to an Affiliate based outside of the UK or, where you contract with MBE DAC, Ireland or you otherwise have a direct relationship with any such Affiliate, these Terms of Business will not apply to your relationship with that Affiliate which will be governed by such other terms as may be provided by, or agreed with, the Affiliate (if any). Such Affiliates may not be regulated by the FCA or CBI and, as a result, you may not have the benefit of the protections granted by the Rules. The regulatory system, including compensation arrangements, applying to such Affiliates may be different to that applicable in the UK or Ireland. We shall be entitled to delegate the performance of any of our obligations under the Terms of Business to any Affiliate or such other person or persons as we think fit, but shall remain responsible for the acts and omissions of any such delegate as if they were our own.

## 4. Your status

- 4.1 Based on the information available to us and as permitted by the Rules, we shall categorise you as either an "**Eligible Counterparty**" or as a "**Professional Client**" and notify you of this in the covering letter or electronic mail (as appropriate) that accompanies these Terms of Business (the "**Client Categorisation Notice**").
- 4.2 You have the right to request a different client categorisation.
- (a) If you request categorisation as an Eligible Counterparty and we agree to such categorisation, we would no longer be required by regulatory rules to provide certain protections granted to a Professional Client. However, notwithstanding the absence of applicable regulatory rules, we would endeavour to provide a service which is overall effective and commercially reasonable. The regulatory protections concerned include formal requirements in the following areas: (i) to act in accordance with your best interests; (ii) not to give or receive inducements; (iii) to achieve best execution in respect of your orders; and (iv) to execute orders subject to other constraints as regards timing and handling relative to other clients' orders. If you have been classified as an Eligible Counterparty, you have the right to request a different client categorisation offering a greater level of regulatory protection.
  - (b) Certain additional protections apply to Retail Clients. The regulatory protections concerned include formal requirements in the following areas: (a) not to provide certain incentives; and (b) a requirement on the firm to provide the Retail Client with certain information about financial instruments. Nevertheless, if you request to be categorised as a Retail Client, thereby requiring the highest level of regulatory protection, we would not be able to continue to provide our services to you.
  - (c) We can only treat you as an elective Professional Client if certain criteria are met and certain procedures are followed. For example, we would need to carry out an adequate assessment of your expertise, experience and knowledge in order to satisfy ourselves that, in light of the nature of the transactions or services envisaged, you are capable of making your own investment decisions and understanding the risks involved.
- 4.3 If we receive a request for a different client categorisation from you, we will inform you of whether or not we accept it. However, until we receive such a request, we shall deal with you on the basis of our original categorisation as set out in the Client Categorisation Notice.
- 4.4 You agree and acknowledge that you are responsible for keeping us informed about any change that could affect your categorisation as an Eligible Counterparty or Professional Client.
- 4.5 Even where you are categorised as an Eligible Counterparty, we may, at our initiative, treat you as a Professional Client for the purposes of the Rules. Where we do so, we will notify you of this re-categorisation accordingly.
- 4.6 Unless otherwise agreed by us, if you are acting on behalf of any other person when dealing with us, we will continue to treat you alone (rather than any such other person) as our client for the purposes of the Rules. However, if you act as agent on behalf of another person, you acknowledge and accept that you and your principal will be jointly and severally liable, each as if a principal, to us in respect of all of your obligations and liabilities pursuant to these Terms of Business.

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- 4.7 If you are acting on behalf of any other person when dealing with us, you agree that you will comply at all times with all relevant Applicable Regulations and you will be responsible for and will have undertaken all necessary identification and verification checks for the purposes of complying with all applicable statutory and regulatory anti-money laundering requirements in respect of each principal for whom you act.

## 5. Our services

- 5.1 The services we may provide under these Terms of Business, which may differ for each Macquarie entity, may include investment services and ancillary services in relation to financial instruments (as those terms are defined in the Rules), such as but not limited to, arranging, dealing and distribution services, and the arrangement of deals, together with related research in the following investments:
- (a) shares;
  - (b) debenture stock, loan stock, bonds, notes, certificates of deposit, commercial paper or other debt instruments, including government, public agency, municipal and corporate issues;
  - (c) warrants to subscribe for investments falling within (a) or (b) above ;
  - (d) depository receipts or other types of instrument relating to investments falling within (a), (b) or (c) above;
  - (e) units in regulated or unregulated collective investment schemes;
  - (f) futures and contracts for differences on commodities, securities, interest rate and debt instruments,
  - (g) stock or other indices, currencies and base and precious metals;
  - (h) spot and forward contracts on currencies, commodities, base and precious metals;
  - (i) options to acquire or dispose of any of the instruments falling within any of the above categories and options on options;
  - (j) notes, over-the-counter and other derivative products involving, referable to the value of, or granting rights or accepting obligations in respect of or by reference to one or more of the above categories together with commodities, freight, bullion, base and other precious metals; and
  - (k) investments which are similar or related to any of the foregoing.
- 5.2 We may also provide other services if agreed between us, either under these Terms of Business or under other terms of business.
- 5.3 In respect of all the above, we may enter into transactions with you as principal or as your agent. If we act as principal, a statement to that effect will, where required by Applicable Regulations, be included on the transaction confirmation provided by us in accordance with Clause 13 of these Terms of Business.
- 5.4 Subject to the foregoing, and unless agreed otherwise in writing, there are no restrictions on the markets or types of investment in which we may carry on business on your behalf.
- 5.5 We may also provide you with specific or general risk warnings in relation to some products or transactions, or types of products or transactions (for example in relation to contingent liability transactions which may commit you to further payment or liability beyond your initial outlay). You undertake to read such risk warnings and take them into account when deciding whether or not to instruct us in relation to the relevant products or transactions.
- 5.6 If you are a categorised as a Professional Client, in accordance with the Rules, we are entitled to assume that you have the necessary experience and knowledge in order to understand the risks involved in relation to the particular investment services or transactions, or types of transaction or product, for which we have classified you as a Professional Client. If you are an Eligible Counterparty, we are not required to consider whether a service, product or transaction is appropriate for you.
- 5.7 In respect of each transaction, we will deal with you solely on an execution only basis. We will not advise on the merits or suitability for you of that transaction or services, or its taxation or other consequences. Furthermore, we shall have no obligation to you to monitor (in respect of risk or otherwise) your execution only transactions.
- 5.8 We do not provide any investment advice or portfolio management services.



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- 5.9 If we effect a transaction with or for you, this shall not be taken to mean that we recommend, or concur on the merits of, the transaction or that the transaction is suitable for you. You are required to make your own assessment of any transaction that you are considering and should not rely on any information, proposal or other communication from us as being investment advice.
- 5.10 If we do agree to provide you with market commentary or other general advice or information:
- (a) we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the tax consequences of any transaction;
  - (b) this is incidental to your dealing relationship with us and provided solely to enable you to make your own investment decisions and does not amount to a personal recommendation or investment advice;
  - (c) we are also entitled to assume that where you are a per se Professional Client or an Eligible Counterparty, that you are financially able to bear any related investment risks consistent with your investment objectives in relation to the proposed products, transactions and services.
- 5.11 We may from time to time send published research reports and other publications to you. If the document contains a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on to any such person or category of persons. We give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the tax consequences of any transaction. We shall not be obliged to provide you with copies of any published research, either at the same time as it is provided to an Affiliate or third parties or at all. We may, subject to the Rules, effect own account transactions at any time in investments which are or have been the subject of such publications, or any related investments. No research shall constitute an offer by us or any Affiliate to buy or sell any investment. Any such published research reports may appear in one or more screen information service.

## 6. Instructions and communications

- 6.1 We may rely and act on any instructions, notices or requests of any person who is, or whom we reasonably believe to be, a person designated or authorised by you to give such instructions, notices or requests (whether given in writing or by telex, telephone, computer-based systems or other media) but we will not be obliged to do so. We will not be liable for any action we take in good faith, pursuant to receipt of instructions from you, nor will we be responsible for verifying the accuracy of instructions received from you. We may require (but shall not be obliged to require) written confirmation before acting on oral instructions. You shall provide us with a list of persons who are authorised, either alone or with others, to act on your behalf in the giving of instructions and performance of any other acts, discretions or duties under these Terms and Conditions together with specimens of their signatures if written instructions are to be given. You warrant that any such list(s) of persons named by you will be correct at the date thereof. You shall notify us immediately of any amendments to such list(s) and provide specimen signatures of new signatories.
- 6.2 You shall promptly give us confirmation of any instructions to us which we may require in respect of any transaction or proposed transaction. If you do not provide confirmation of such instructions promptly or following reasonable efforts by us, we are unable to contact you, we may, in our absolute discretion, take such steps at your cost as we consider necessary or desirable for our or your protection. If you do not provide us with notice of your intention to exercise an option at the time stipulated by us, we may treat the option as abandoned by you and, if so, will notify you.
- 6.3 If, after instructions are received, we believe it is not reasonably practicable to act upon such instructions within a reasonable time, we may defer acting upon those instructions until it is, in our reasonable opinion, practicable to do so or notify you that we are refusing to act upon such instructions. We can only cancel instructions if we have not acted upon them and instructions may only be withdrawn or amended by you with our consent. We shall not be liable for any losses resulting from such deferral, cancellation, amendment or refusal.
- 6.4 We are not obliged to accept any particular order or agree to enter into a transaction with you or carry out an instruction received from you. If we decline to enter into a proposed transaction, we shall not be obliged to give a reason but shall promptly notify you accordingly.

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- 6.5 We have, at our absolute discretion, the right (but no obligation) to set limits and/or parameters to control your ability to place orders. Such limits and/or parameters may be amended, increased, decreased, removed or added to by us at our absolute discretion. Any limits and/or parameters are solely for our protection and we have no responsibility for monitoring or ensuring your compliance with limits and/or parameters. You agree and acknowledge that such limits and/or parameters are not a guide or recommendation of acceptable trading levels for you and that you rely on your own financial and risk assessments to determine internal limits and/or parameters. Furthermore, we have no responsibility for monitoring or ensuring your compliance with your internal policies and procedures, including in respect of risk.
- 6.6 We shall not be liable for any loss, expense, cost or liability (including consequential loss) suffered or incurred by you as a result of instructions being given, or any other communications being made, via the internet or other electronic medium. You will be solely responsible for all orders, and for the accuracy of all information, sent via the internet or other electronic medium using your name or personal identification number. We will not execute an order until we have verified the order to you and transmission of an order shall not give rise to a binding contract between us and you.
- 6.7 You confirm and provide your consent that we may minute face to face meetings and may use voice recording procedures for the purposes of monitoring, training, checking instructions, verifying your identity and ensuring that we are meeting our service standards and requirements under Applicable Regulations. These recordings and minutes may be used as evidence if there is a dispute. Telephone conversations may be recorded with or without the use of an automatic warning device. Our voice records shall be and remain our sole property and will be conclusive evidence of the orders, instructions or conversations so recorded. A copy of the recording will be available for a period of five years and, where requested by the FCA or CBI (as applicable) or other relevant regulatory authority, for a period of up to seven years. You agree that we may charge you a commercially reasonable cost for providing such records.
- 6.8 Subject to Applicable Regulations, any electronic communication between us shall be binding as if it were in writing. Orders or instructions given by you via e-mail or other electronic means will constitute evidence of the orders or instructions given. Your communications with us will be recorded. A copy of the record will be available on request for a period of five years and, where requested by the FCA or CBI (as applicable) or other relevant regulatory authority, for a period of up to seven years. You agree that we may charge you a commercially reasonable cost for providing such records.
- 6.9 You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with your record keeping obligations, although records may be made available to you on request at our absolute discretion.
- 6.10 You agree to keep adequate records in accordance with Applicable Regulations to demonstrate the nature of orders submitted and the time at which such orders are submitted.
- 6.11 Under Applicable Regulations, we may be obliged to make information about certain transactions public and/or to report them to a competent authority, such as the FCA or CBI (as applicable). You agree and acknowledge that any and all proprietary rights in such transaction information are owned by us and you waive any duty of confidentiality attaching to the information which we reasonably disclose. For the purpose of transaction reporting, prior to entering into a relevant transaction, you should notify us: (a) of your legal entity identifier ("**LEI**") code; and (b) as to whether you are engaging in short selling. Where you do not notify us of your LEI code, we may be unable to execute a transaction on your behalf. Where you do not notify us as to whether you are engaged in short selling, we may be obliged to report that we have been unable to ascertain this information from you.
- 6.12 Where required by Applicable Regulations, you must notify us prior to entering into a relevant transaction whether you are engaging in short selling or not. Where you do not notify us that your order is a short sale: (1) we may be unable to execute the order for you; (2) we may be obliged to report that we have been unable to ascertain this from you; or (3) where permitted by Applicable Regulations, we may treat your order as a long sale. Where you do notify us that you are engaging in short selling, we may be required to flag the order as a short sale and/or disclose the short sale in any post-trade transaction report. We may, in our sole discretion, refuse to accept or execute a short sale.

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## 7. Execution of orders

- 7.1 If you are a Professional Client, the Rules on best execution will apply where we are executing an order on your behalf or receiving and transmitting your order. Our current Order Execution Policy, as relevant to Professional Clients, has been made available on our website, together with certain other policies, in accordance with Clause 30.11 of these Terms of Business. By agreeing to these Terms of Business and by providing instructions to us, you confirm that you have read and agree to the terms of our Order Execution Policy. In particular you expressly consent to us effecting transactions on your behalf outside a Regulated Market, Multilateral Trading Facility or Organised Trading Facility. You acknowledge that when executing certain transactions we will not be executing orders on your behalf and will not be subject to the best execution obligation under the Rules to take all sufficient steps to obtain the best possible result taking into account the relevant execution factors (as set out in the Rules). The circumstances in which we will not be executing orders on your behalf are set out in our Order Execution Policy.
- 7.2 Orders may be executed by us or passed to any Affiliate, third party broker or agent for execution. We may arrange for a transaction to be executed, either in whole or in part, by selling an investment to you from another client, or a client of an Affiliate of ours, or vice-versa. We shall not give you prior notice if we arrange for a transaction to be executed in this manner. Transactions are subject to, where relevant:
- (a) Applicable Regulations;
  - (b) the terms and conditions of any Affiliate, third party broker or agent;
  - (c) the customs and regulations of the relevant market, exchange and clearing house ("**Market Rules**");
  - (d) any other terms covering any particular transaction under the rules of any market or other trading platform;
  - (e) any separate agreement between you and us; and
  - (f) the terms set out in Appendix 4 to these Terms of Business with respect to requests for information in relation to equity derivatives transactions.
- 7.3 We shall take all sufficient steps to execute each order promptly, but in accepting your orders we do not represent or warrant that it will be possible to execute such order or that execution will be possible according to your instructions. We shall execute an order only when the relevant market is open for dealings, and shall deal with any instructions received outside market hours as soon as possible when that relevant market is next open for business (in accordance with the rules of that market).
- 7.4 Where you provide us with specific instructions, including specifying the characteristics of a bespoke product, either relating to an order or a particular aspect of an order, we will execute the order in accordance with those instructions. You should be aware that providing specific instructions to us in relation to the execution of a particular order may prevent us from taking steps that we have designed and implemented in the Order Execution Policy to give best execution. Where it is permissible to do so under Applicable Regulations, we will deem orders received via direct market access systems to be specific instructions. Where we agree to provide you with direct market access, the terms upon which we agree to provide that service will be set out in a specific agreement between you and us.
- 7.5 In order to ensure that position limits and position management controls are complied with, we may require you to limit, terminate or reduce the open positions which you may have with us at any time and we may in our sole discretion close out, at your cost, any one or more transactions.
- 7.6 We may (but are not obliged to) take or omit to take any action which we consider necessary or desirable in order to ensure compliance with any of the above or the Applicable Regulations. We shall not be liable for any loss suffered by you as a result of our taking or omitting to take any such action or as a result of the acts or omissions of any market, exchange or clearing house.
- 7.7 In relation to the services that we provide to you under these Terms of Business, we may also set out and communicate to you appropriate trading and position limits to mitigate and manage our own counterparty, liquidity, operational and other risks.
- 7.8 Where you place a client limit order in respect of shares admitted to trading on a Regulated Market or traded on a Regulated Market, Multilateral Trading Facility or Organised Trading Facility, and the order is not immediately executed under prevailing market conditions, you expressly instruct us that you do not wish us to make the order public in a manner which is easily accessible to other market participants.

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- 7.9 Under Applicable Regulations we are required to publish on an annual basis information on the top five execution venues in terms of trading volume for all executed client orders per class of financial instrument. We are also required to summarise and publish on an annual basis information, for each class of financial instruments, regarding: (i) the top five firms (in terms of trading volumes) to which we have routed your orders for execution; and (ii) the quality of execution obtained. The Applicable Regulations do not require us to provide this information for counterparties to whom we do not owe a duty of best execution. We are required to provide this information separately for securities financing transactions, such as stock lending. This information will be published on our website in accordance with Applicable Regulations but we may also provide this to you directly.
- 7.10 If we act in the capacity of a systematic internaliser and we make public firm quotes in certain instruments traded on a Regulated Market, MTF or OTF, in accordance with Applicable Regulations, you agree that we may limit: (i) the number of transactions that we undertake to enter into with you at the published quote; and (ii) the total number of transactions that we undertake to enter into with other clients at the published quote. You can view a copy of our commercial policy on our website, in accordance with Clause 30.11 of these Terms of Business, which sets out the basis on which we exercise such limits. Where we grant access to quotes provided by us in our capacity as a systematic internaliser, and the quoted size is at or below the size specific to the financial instrument, we may enter into a Transaction with any other client to whom the quote is made available, in accordance with Applicable Regulations.

## 8. Our responsibilities at settlement

- 8.1 Where you contract with MCEL, you authorise MCEL to enter into an agreement with Pershing Securities Limited ("**Pershing**") of Royal Liver Building, Pier Head, Liverpool, L3 1LL on your behalf to settle Covered Transactions (as defined below) executed by MCEL for you on any Relevant Market (as defined below) ("**Relevant Transactions**").
- 8.2 Where you contract with MCEL, you agree to the Model B Settlement Supplement (which can be viewed at <http://www.macquarie.com/uk/about/disclosures/uk-and-eu-disclosures>), which sets out the main terms of your agreement with Pershing (the "**Pershing Terms**").
- 8.3 Any obligations owed by you to MCEL in the context of settling Relevant Transactions under these Terms of Business will be construed as an obligation owed by you to Pershing, and Pershing may take action against you directly in the event that you fail to fulfil any of your settlement obligations or fail to pay any amount due under these Terms of Business. You will hold MCEL harmless from loss, liability of expense arising from any breach by you of your settlement obligations to Pershing.
- 8.4 You acknowledge that MCEL has no obligation to you with respect to the settlement of a Relevant Transaction and that your sole right of recourse in respect of the settlement of a Relevant Transaction is to Pershing, in accordance with the agreement with Pershing.
- 8.5 For the purposes of this Clause 8, a "**Covered Transaction**" means any order in respect of shares or equity-like instruments such as ETFs and depositary receipts executed by MCEL on a Relevant Market, other than a trade with MCEL's market making desk.
- 8.6 For the purposes of this Clause 8, "**Relevant Market**" means Austria, Belgium, Czech Republic, Denmark, Egypt, Euroclear (internal and domestic), Finland, France- ESES, Germany, Greece, Hungary, Ireland, Morocco, Netherlands- ESES, Norway, Poland, Portugal, Qatar, Russia, Spain, Sweden, Switzerland, Turkey, UAE, UK and any other market that MCEL may prescribe from time to time.
- 8.7 In respect of transactions that are not Relevant Transactions, we are not obliged to settle transactions or account to you unless and until we (or our settlement agents) have received all necessary documents or money from you and/or a counterparty (as appropriate).
- 8.8 Where MCEL undertakes transactions (including Covered Transactions entered into by MCEL) for you, delivery or payment is entirely at your risk except to the extent that any failure of delivery or payment is a result of our negligence, wilful default or fraud. In the case of securities which have already been assented to an offer, settlement may be delayed if the transaction can only be completed with securities issued by the offeror. Ownership of securities will not pass to you until all settlement obligations have been satisfied and settlement has completed.
- 8.9 Settlement of transactions may be administered by one of our Affiliates and you agree that we may pass all relevant information to any such Affiliate to enable it to administer such settlement.

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## 9. Your responsibilities at settlement

- 9.1 You will be responsible for the due performance of every transaction which we enter into with or for you, whether you are dealing as principal or as agent for another person. You will deliver any money or property due under a transaction carried out pursuant to these Terms of Business in accordance with the terms of the transaction or otherwise in accordance with our reasonable requests.
- 9.2 Where you contract with MCEL and the transaction is a Relevant Transaction, you will deliver any money or property due in accordance with the terms of the settlement agreement with Pershing or otherwise in accordance with MCEL's or Pershing's reasonable requests.
- 9.3 We (and, in respect of Relevant Transactions, Pershing) may buy investments or property to cover any liabilities of yours to deliver investments or property to us (and, in respect of Relevant Transactions, Pershing). Your account(s) may be debited for any loss suffered and/or cost we or Pershing may incur in this way.

## 10. Our charges

- 10.1 Our charges for the services described in these Terms of Business will be disclosed to you in accordance with the Applicable Regulations. You will pay the charges prevailing at the time the services are provided. All charges are exclusive of VAT or GST, which will be charged in addition, where relevant. Any alteration to charges will be notified to you before the time of the change.
- 10.2 You will be responsible for payment of all taxes (including VAT/GST), brokerage, transfer fees, registration fees, stamp duty and all other liabilities, charges, costs and expenses payable or incurred by us and/or a custodian in connection with the services described in these Terms of Business except to the extent that such liabilities, charges, costs and expenses arise from our negligence, wilful default or fraud. We may deduct from sums due to you or withhold any such estimated or actual charges at our reasonable discretion. Any difference between such estimated amounts and the final confirmed liability shall be promptly credited or debited to your account.
- 10.3 You acknowledge the possibility that other taxes or costs may exist that are not paid through or imposed by us.
- 10.4 You acknowledge that Macquarie Securities (Australia) Limited is acting as a resident agent of MCEL pursuant to an agreement entered into under section 57-7 of A New Tax System (Goods and Services Tax) Act 1999, and that GST will apply on our charges in relation to the brokerage services provided to Australian residents over securities listed or quoted on an exchange or quotation system located in Australia.
- 10.5 All payments to us under these Terms of Business shall be made in same day funds in such currency as we may from time to time specify to the bank account designated by us for such purposes. All such payments shall be made by you without any deduction or withholding.
- 10.6 When we are providing our services under these Terms of Business we are required to comply with the Rules in relation to inducements.
- 10.7 In the course of providing services to our clients, we may pay or receive fees, commissions, rebates or other non-monetary benefits to or from third parties (including any Affiliate(s)). Where we pay or receive such amounts, we will disclose the existence, nature and amount of the payment or benefit, or where the amount cannot be ascertained, the method for calculating that amount, separately to you in accordance with Applicable Regulations. Minor non-monetary benefits that we may provide or receive may be described in a generic way. Where we receive on-going inducements in relation to a service provided to you, where required by Applicable Regulations, we will inform you at least annually about the actual amount of payments or benefits received or paid.

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- 10.8 Where we have or have had an ongoing relationship with you during the year, we will, where required by Applicable Regulations, provide you with an annual report. This report will include costs and charges information on any financial instruments and any investment or ancillary services that we have provided you. We may provide more frequent reports or ad hoc reports on request at our discretion. Where we provide you with an aggregated costs and charges disclosure you may request an itemised breakdown from us. We will provide such breakdown to you where we are required to by Applicable Regulations or otherwise at our discretion. Where permitted under Applicable Regulations we may agree with you a more limited disclosure in relation to costs and charges.

## 11. Aggregation of orders

- 11.1 We may combine your order with our own orders, orders of Affiliates and persons connected with us and orders of other clients. Where you are a Professional Client, aggregation will only take place if we believe it is likely that the aggregation will not work overall to your disadvantage. However, the effect of aggregation may work on some occasions to your disadvantage in relation to a particular order.
- 11.2 Please also refer to our conflicts of interest policy which has been made available on our website, in accordance with Clause 30.11 of these Terms of Business.

## 12. Your money

- 12.1 MBL London Branch is an approved bank (as such term is defined under the FCA Rules) and MBIL is a CRD credit institution (as such term is defined under the FCA Rules), and, subject to Clause 12.6 of these Terms of Business, where any money is held by either of these entities in an account on your behalf: (a) such money will be a deposit with such entity, and will be held by such entity as banker and not as trustee under the Client Money Rules; and (b) in the event of the insolvency of (or any equivalent procedure in relation to) such entity, the section of the Client Money Rules comprising client money distribution and transfer rules (the "**Client Money Distribution and Transfer Rules**") will not apply to such money, and you will not be entitled to share in any distribution under the Client Money Distribution and Transfer Rules.
- 12.2 MBE DAC is authorised as a credit institution (as such term is defined under the Irish Rules) and is not subject to the Irish Investment Firm Regulations, including the client asset requirements included therein. Subject to Clause 12.6 of these Terms of Business, where any money is held by MBE DAC in an account on your behalf, such money will be held by MBE DAC as a deposit and not deposited as client funds under the Irish Client Money Rules.
- 12.3 Interest will not be payable to you on money held for you by MBL London Branch, MBIL and MBE DAC unless otherwise agreed between you and us.
- 12.4 Each of MBL London Branch, MBIL and MBE DAC may (but shall not in any circumstances be obliged to) convert any monies held for you into such other currency as it considers necessary or desirable to cover your obligations and liabilities in that currency at such rate of exchange as it shall select, and shall be entitled to charge and retain for its own account such administration fee for arranging such conversion as it may from time to time specify.
- 12.5 MCEL is not a bank, and, subject to Clause 12.6 of these Terms of Business, where any money is received by MCEL for your account, MCEL will hold such money for you in accordance with the terms set out in Appendix 3 to these Terms of Business.
- 12.6 Where you transfer full ownership of money to MBIL, MBL London Branch, MCEL or MBE DAC under a title transfer arrangement in order to provide Collateral (as defined in Appendix 1 hereto) for obligations to such entity, whether pursuant to these Terms of Business, or under another Agreement entered into with any such entity, you agree that such entity receives full ownership of such money and will not hold such money for you, whether as banker or subject to the Client Money Rules or otherwise.

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## 13. Confirmations

- 13.1 Unless (i) we agree to categorise you as an Eligible Counterparty and subsequently enter into a separate agreement with you regarding content and timing of confirmations, or (ii) a confirmation is provided to you by an Affiliate or a third party, for example by a broker through whom we deal, we will provide you with confirmations as soon as possible after execution, but in any event no later than as required by the Applicable Regulations. You have the right to receive confirmations and other statements either in paper form or in another durable medium. In this respect, you specifically request that we send confirmations to you via an electronic platform, an electronic portal or via such other durable electronic media as we may, from time to time, agree.
- 13.2 In addition to providing you with confirmations, you may request information about the status of any of your orders.
- 13.3 It is your responsibility to inform us of any change to your e-mail address, the non-receipt of confirmation, or whether any confirmations are incorrect before settlement. Subject to Applicable Regulations, we may send you a single confirmation in respect of a series of transactions unless agreed otherwise. All confirmations and other statements which we send to you will be conclusive and binding on you unless you notify us in writing within five (5) Business Days of despatch to you that you disagree with its contents, or we notify you of an error in the confirmation within the same period.

## 14. No custody of your investments

- 14.1 We shall not be obliged to, and shall not, provide to you, or arrange for the provision to you of, any custody services in respect of your investments. All investments purchased by you through us and requiring registration will be registered in your name or as you may request, in the name of an eligible nominee or eligible custodian appointed by you. We accept no liability for any act or omission of any nominee or custodian appointed by you.
- 14.2 Where you contract with MBIL, MBL London Branch or MCEL, you agree that where we receive and hold your investments, for no longer than three (3) Business Days following the date of payment or delivery by you, in connection with a delivery versus payment transaction for your account settled by us for you through a commercial settlement system (in our capacity as a direct member or participant in such system, or where we are sponsored by a direct member or participant in such system), such investments will not be held by us as custodian.

## 15. Rights issues, takeovers, etc.

- 15.1 Unless we accept your specific instructions as regards investments which we are holding on your behalf, we shall not be responsible for:
- (a) taking up any rights;
  - (b) exercising any conversion or subscription rights;
  - (c) dealing with takeover or other offers or capital reorganisations;
  - (d) exercising voting rights; or
  - (e) exercising any other rights which are conferred by any investments held by us or to our order for your account.
- 15.2 In the event that we hold investments on your behalf, we shall endeavour to advise you of the occurrence of any such rights, offers or capital reorganisations upon becoming aware of the same.
- 15.3 For the avoidance of doubt, MBE DAC will not hold such investments on behalf of clients.

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## 16. Customer warranties, representations and covenants

### 16.1 You warrant and represent that:

- (a) you have capacity and are not under any legal disability with respect to, and are not subject to any law or regulation which prevents your performance of, these Terms of Business or any transaction contemplated by these Terms of Business;
- (b) you have obtained all necessary consents, authority, powers, licences and authorisations to enable you lawfully to enter into and perform your obligations under these Terms of Business and to grant the security interests and powers referred to in these Terms of Business;
- (c) all orders and instructions provided by you will be compliant with all of your internal policies and procedures and shall require no enquiry in this respect on our part;
- (d) investments or other property supplied by you shall, subject to these Terms of Business, at all times be free from any charge, lien, pledge or encumbrance other than one which is routinely imposed on all securities in a clearing system in which such investments or property may be held;
- (e) unless otherwise agreed by us, you act as principal and sole beneficial owner (but not as trustee) under these Terms of Business and each transaction;
- (f) these Terms of Business, each transaction contemplated by them and the obligations created under them are binding upon you and enforceable against you 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 are bound, or any internal policy or procedure that you have in place;
- (g) no Event of Default or a Potential Event of Default has occurred and is continuing with respect to you;
- (h) any information which you provide or have provided to us in respect of your financial position, domicile or other matters, including but not limited to your LEI, is accurate and not misleading in any material respect;
- (i) you are willing and financially able to sustain a total loss of funds resulting from transactions under these Terms of Business and trading in such transactions is a suitable investment vehicle for you;
- (j) to the best of your knowledge and belief, you are in compliance with all laws to which you are subject including, without limitation, all tax laws and regulations, exchange control requirements and registration requirements that would affect the enforceability of these Terms of Business or the transactions contemplated by them; and
- (k) you have full responsibility for monitoring and ensuring your compliance with your internal policies and procedures, including in respect of risk.

### 16.2 The warranties and representations in this Clause 16 shall be deemed to be repeated each time you provide instructions, or investments to us and also on the date of each transaction.

### 16.3 You covenant to us that:

- (a) you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this Clause 16;
- (b) you will promptly notify us if you become or cease to be a systematic internaliser in any financial instruments (and in the absence of such notifications we may (i) use publicly available information to ascertain this; or (ii) assume that you are not a systematic internaliser);
- (c) you will promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to you or any provider of credit support to you;
- (d) you will (i) comply with all Applicable Regulations in relation to these Terms of Business and any transaction, so far as they are applicable to you; and (ii) use all reasonable steps to comply with all Applicable Regulations in relation to these Terms of Business and each transaction, where such Applicable Regulations do not apply to you but your cooperation is needed to help us comply with our obligations;



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- (e) you will not send orders or take any action that could create a false impression of the demand or value for a financial instrument, or send orders which you have reason to believe are in breach of Applicable Regulations. You shall observe the standard of behaviour reasonably expected of persons in your position and not take any step which would cause us to fail to observe the standard of behaviour reasonably expected of persons in our position;
  - (f) upon demand, you will provide us with such information as we may reasonably require to evidence the matters referred to in this Clause 16 or to comply with any Applicable Regulations; and
  - (g) where we or our Affiliates have received an enquiry from a relevant regulatory authority or an exchange, you agree to, immediately upon request by us, provide such regulatory authority or exchange with the identity, address, occupation, contact and other details requested by the regulatory authority of (i) the person for whose account or with whom the transaction was effected and (ii) the person with the ultimate beneficial interest in the transaction and/or of the person who was ultimately responsible for originating the transaction, or provide the information to us, to provide it to the regulatory authority.

## 17. Conflict of interests

- 17.1 Macquarie has established and implemented a conflicts policy at group level (which may be revised and updated from time to time) (the "**Conflicts Policy**") pursuant to the Rules, which sets out how we must seek to identify, manage and prevent all potential or actual conflicts of interest.
- 17.2 You agree that we may transact business in circumstances where we have, or which give rise to, and may maintain, such an interest, relationship or arrangement without prior reference to you and retain all benefits received there from. In addition, we may provide advice and other services to third parties whose interests may be in conflict or competition with your interests. We, our Affiliates and our or their employees may take positions opposite to you or may be in competition with you to acquire the same or a similar position. We will not deliberately favour any person over you but will not be responsible for any loss which may result from such competition. Where we are unable to manage a conflict of interest, we will disclose that conflict to you before providing the relevant service. We may also decline to act where we believe that there is no other practicable way of treating you (or, where applicable, your principal or principals) and our other clients fairly. If you object to us acting where we have disclosed that we have a conflict, you should notify your usual contact at Macquarie in writing. Unless so notified, we will assume that you do not object to our so acting.
- 17.3 Such conflicting interests or duties may arise because:
  - (a) we may be dealing as principal or agent or be registered as a market maker in the investments that are the subject of a transaction or providing services to other persons with interests in or proposing to acquire such investments;
  - (b) we may be a financial adviser or lending banker to the issuer of such investments;
  - (c) we may be dealing as agent on your behalf with a person connected with us or conducting an "**agency cross**" by matching your order with the order of another party (who may be a person connected with us) or receive a commission or other payment from the counterparty or broker to any transaction which we carry out on your behalf;
  - (d) a transaction may be in units in a unit trust or collective investment scheme of which a person connected with us is a manager or trustee or in investments where the issuer is a person connected with us or in investments in which we or a person or persons connected with us have undertaken or underwritten an issue within a period of 12 months before the date of the transaction;
  - (e) a transaction may be in investments in respect of which we or a person or persons connected with us are contemporaneously trading or have traded on our own account or have either a long or short position;
  - (f) we may have acted upon or used our, or a third party's (including another client's, or their client's), published research recommendations (or the conclusions which the recommendations expressed or the research or analysis on which the recommendations are based) before the recommendations have been published to our (or the third party's) customers; or

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- (g) we may deal with you as principal in a foreign exchange transaction.
- 17.4 You should also understand that we or persons connected with us may carry on corporate finance business for clients. In such circumstances you may receive or see an investment publication or other document communicated or approved by us, or containing invitations, offers, recommendations or advice from us, or persons with whom we are associated, to the public or a class of persons in which you are included. However, you should not treat that as representing advice from us to you as a customer about suitability or otherwise. Before entering into any commitment in such a case, you are recommended to seek specific advice on the merits and suitability of the proposed transaction.

## 18. Indemnity and liability

- 18.1 You shall fully indemnify us and keep us fully indemnified against all losses, expenses, costs and liabilities (together "**Losses**") which arise as a result of or in connection with your breach of these Terms of Business, the settlement agreement with Pershing (where applicable) or the proper provision by us of the services or the exercise of any rights envisaged by these Terms of Business or the settlement agreement with Pershing (including, for the avoidance of doubt, any fines which may be imposed upon us as a result of late settlement of any transaction and any costs incurred in enforcing our rights or defending any action or claim brought by a third party or any losses arising from acting on your instructions, or instructions reasonably believed to be given by you or on your behalf).
- 18.2 Neither we nor our directors, officers, employees or agents shall be liable for any Losses whether arising out of negligence, breach of contract, misrepresentation or otherwise, suffered or incurred by you under these Terms of Business (including any transaction or where we have declined to enter into a proposed transaction) unless such Losses arise directly from our or their respective gross negligence, wilful default or fraud. In no circumstance, shall we have any liability for losses suffered by you or any third party for any special or consequential damage, loss of profits, loss of goodwill or loss of business opportunity arising under or in connection with these Terms of Business, whether arising out of negligence, breach of contract, misrepresentation, the failure of any third party to perform its obligations to us, or otherwise. Nothing in these Terms of Business will limit any of our liability for death or personal injury resulting from our negligence.
- 18.3 Without limitation, we do not accept liability for any adverse tax implications of any transaction whatsoever.
- 18.4 Without limitation, we do not accept any liability by reason of any delay or change in market conditions before any particular transaction is effected.
- 18.5 Without limitation, we do not accept any liability by reason of any processes, systems or controls that you may operate, or any failure thereof.
- 18.6 We shall not be in breach of these Terms of Business and shall not be liable or have responsibility of any kind for any loss or damage incurred by you as a result of our failure to perform any or all of our obligations, where such failure arises from or is attributable to either acts, events or omissions or accidents beyond our reasonable control, including but without limitation any breakdown, delay, malfunction or failure of transmission, act of God, war, terrorism, malicious damage, civil commotion, failure of any communication or computer system, interruptions of power supplies, industrial action, acts and regulations of any governmental or supra national bodies or authorities or the failure by the relevant intermediate broker or agent, agent or principal of our custodian, sub-custodian, dealer, market, or regulatory or self-regulatory organisation, for any reason, to perform its obligations. Nothing in these Terms of Business will exclude or restrict any duty or liability we may have to you under Applicable Regulations, which may not be excluded or restricted thereunder.
- 18.7 You acknowledge that you have not relied on or been induced to enter into these Terms of Business by a representation other than those expressly set out in these Terms of Business. We will not be liable to you (in equity, contract or tort under the UK Misrepresentation Act 1967 (where you contract with MBIL, MBL London Branch or MCEL) or the Irish Sale of Goods and Supply of Services Act 1980 (where you contract with MBE DAC) or otherwise) for a representation that is not set out in these Terms of Business and that is not fraudulent.

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- 18.8 Macquarie Capital (Europe) Limited, Macquarie Bank International Limited and Macquarie Bank Europe Designated Activity Company are not authorised deposit-taking institutions for the purposes of the Banking Act 1959 (Commonwealth of Australia), and their obligations do not represent deposits or other liabilities of Macquarie Bank Limited ABN 46 008 583 542. Macquarie Bank Limited does not guarantee or otherwise provide assurance in respect of the obligations of Macquarie Capital (Europe) Limited, Macquarie Bank International Limited and Macquarie Bank Europe Designated Activity Company.

## 19. Interest

- 19.1 If you fail to pay any amount when it is due, we reserve the right to charge interest (both before and after judgment) on such unpaid amount calculated at the rate reasonably determined by us to be the reasonable cost of funding such overdue amount. Such interest shall accrue and be calculated daily from the due date to the date of payment and shall be compounded monthly.

## 20. Complaints procedure

- 20.1 We have internal procedures for handling complaints fairly and promptly. Details of how to submit a complaint and our complaints procedures are available on our website, in accordance with Clause 30.11 of these Terms of Business.

## 21. Changes to these terms of business

- 21.1 We may amend these Terms of Business or the settlement agreement with Pershing (where applicable) by sending you a written notice describing the relevant changes or identifying the place on our website where such changes are described. Such changes will become effective on a date to be specified in the notice.
- 21.2 Any changes to these Terms of Business proposed by you will become effective only once they have been agreed by us in writing.
- 21.3 Any changes to the settlement agreement with Pershing proposed by you will become effective only after MCEL has advised you in writing that such changes have been agreed.

## 22. Termination

- 22.1 Unless required by Applicable Regulations, either party may terminate these Terms of Business (and the relationship between us) by giving five (5) days written notice of termination to the other. Notwithstanding the preceding sentence, on an Event of Default or at any time after we have determined, in our absolute discretion, that you have not performed (or we reasonably believe that you will not be able or willing in the future to perform) any of your obligations to us, in addition to any rights under Appendix 2 to these Terms of Business, we shall be entitled without prior notice to you, to terminate these Terms of Business immediately.

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- 22.2 Upon terminating these Terms of Business, all amounts payable by you to us will become immediately due and payable including (but without limitation): all outstanding fees, charges and commissions; any dealing expenses incurred by terminating these Terms of Business; and any losses and expenses realised in closing out any transactions or settling or concluding outstanding obligations incurred by us on your behalf. Termination of these Terms of Business will not affect any outstanding order or transaction under these Terms of Business or any legal rights or obligations which may already have arisen.

## 23. Confidentiality

- 23.1 Subject to Clauses 24 and 25 of these Terms of Business, neither party to these Terms of Business shall, without the prior written consent of the other, use or disclose any information relating to the business, investments, customers and their data or data relating to them or about them, finances or other matters of a confidential nature of the other party (including data derived from such data) except to the extent that such use or disclosure:
- (a) is required by Applicable Regulations or is desirable for the purposes of, or to enable the disclosing party to properly perform its obligations under, these Terms of Business;
  - (b) is to an Affiliate of the disclosing party;
  - (c) in the case of our use or disclosure of your information, is reasonably necessary to the provision of our services to you or on your instructions; or
  - (d) is disclosure to any person acting on our behalf or providing a service to us (including any person to whom we are permitted to delegate any of our functions under these Terms of Business), a credit reference or fraud prevention agency, a person to whom we transfer our relationship with you, or any regulator or governmental agency (where there is a public duty to disclose or our interests, as determined by us, require disclosure), in each case in any jurisdiction.
- 23.2 Neither we nor any Affiliate is obliged to disclose to you or to take into consideration or utilise for your benefit any fact, matter or thing:
- (a) if in our or its opinion disclosure of the information would or might be a breach of duty or confidence to any other person or render our or its employees liable to criminal or civil proceedings; or
  - (b) which comes to the notice of an officer, employee or agent of ours or of any Affiliate but does not come to the actual notice of the individual or individuals with whom you are dealing.
- 23.3 The obligations in this Clause 23 shall not apply to any confidential information lawfully in a party's possession otherwise than as a result of the Terms of Business or coming into the public domain otherwise than by breach by any party of its obligations contained in the Terms of Business. For the avoidance of doubt, we and our Affiliates will be entitled to disclose confidential information if we are required or requested to disclose such information by a relevant regulatory authority or pursuant to any Applicable Regulations.
- 23.4 The provisions of this Clause 23 shall continue to bind you and us after termination of these Terms of Business.

## 24. Reporting and disclosure

- 24.1 Notwithstanding anything to the contrary in these Terms of Business or any other Agreement between you and us, you hereby consent to the disclosure of information, either directly or via a third party service provider:

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- (a) to the extent required or permitted by any applicable law, rule or regulation which mandates reporting and/or retention of transaction and similar information or to the extent required by any order or directive regarding reporting and/or retention of transaction and similar information issued by any authority or body or agency (including, without limitation, the U.S. Commodity Futures Trading Commission, the European Securities and Markets Authority, FCA, PRA, ECB, CBI, RBA, APRA and ASIC) in accordance with which we are required or accustomed to act ("**Reporting Requirements**"); or
- (b) to and between the our head office, branches or affiliates, or any persons or entities who provide services to us or our head office, branches or affiliates, in each case, in connection with such Reporting Requirements.
- 24.2 You waive any rights you may have to confidential treatment of the information provided by you under applicable law, these Terms of Business or under any Agreement, to the extent necessary to enable us or any third party service provider to make such reports or to provide such information to a trade repository or regulator.
- 24.3 You acknowledge and agree that:
- (a) any other Agreement between you and us to maintain confidentiality of information in relation to derivatives shall continue to apply to the extent that such Agreement is not inconsistent with the disclosure of information as set out in this Clause 24;
- (b) the provisions of this Clause 24 are without prejudice to any other consent to disclosure you may have given us;
- (c) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for the purposes of such law;
- (d) disclosures made pursuant to this Clause 24 may include (without limitation) the disclosure of trade information such as party names, addresses, corporate affiliation, identifiers and economic terms to any swap or trade data repository or one or more systems or services operated by any trade repository and any relevant regulators (including, without limitation, the U.S. Commodity Futures Trading Commission, the European Securities and Markets Authority, FCA, PRA, ECB, CBI, RBA, APRA and ASIC);
- (e) disclosure of the type referred to in (d) may also be made to a third party provider for the purpose of portfolio reconciliation and such information may subsequently be disclosed to a trade repository and vice versa;
- (f) disclosures made pursuant to this Clause 24 may lead to anonymous transaction data and pricing information becoming available to the public;
- (g) in order to comply with regulatory reporting obligations, we may use a third party service provider to transfer trade information into a trade repository and a trade repository may engage the services of a global trade repository regulated by one or more governmental regulators; and
- (h) disclosures made in accordance with this Clause 24 may be made to persons incorporated in a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for personal and other data as our or your jurisdiction.
- 24.4 You acknowledge that pursuant to global regulatory reform initiatives, regulators require reporting of trade data to increase market transparency and enable regulators to monitor systemic risk to ensure safeguards are implemented globally.
- 24.5 You represent and warrant that any third party to whom you owe a duty of confidence in respect of the information which may be disclosed pursuant to this Clause 24 has consented to the disclosure of that information.

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## 25. Privacy and data protection

- 25.1 For the purposes of this Clause 25, the terms "**data controller**", "**data processor**", "**data subject**", "**personal data**", "**processing**", and "**supervisory authority**" shall have the meaning given in the GDPR or any other Applicable Privacy Laws.
- 25.2 You and we agree that we are each a data controller with respect to the personal data used or otherwise processed in the course of providing the services contemplated by these Terms of Business.
- 25.3 You and we agree that we will comply with our respective obligations under the GDPR and any Applicable Privacy Laws as these apply to our respective organisations.
- 25.4 Before providing us with any personal data or any other information about or relating to identifiable living individuals in connection with these Terms of Business you must ensure that those individuals are aware:
- (a) of our identity and contact details (privacy@macquarie.com for the attention of the General Counsel Privacy and Data);
  - (b) of the categories of their information that you are providing to us;
  - (c) that we may use, store or otherwise process their personal data and any information for the purposes of providing the services to you pursuant to these Terms of Business, marketing financial services and products provided by us or third parties (to you or your employees, agents or representatives) and complying with Applicable Regulations and for credit control and fraud prevention purposes;
  - (d) that this may involve disclosing this data to those third parties identified at Clause 23.1(a), 23.1(b) and 23.1(c) of these Terms of Business;
  - (e) that, with limited exceptions (for example, we will only market financial services to your employees or individual agents by email with their prior consent), we are entitled to process the personal data of the data subjects for the purposes in Clause 25.4(c) of these Terms of Business to comply with legal obligations or regulatory requirements that we are subject to, including, in relation to reporting transactions to protect against fraud or to pursue our legitimate interests in providing you with the required or agreed services, developing our business, controlling credit risk and preventing fraud;
  - (f) that we are entitled to process the personal data of data subjects' for the purposes of addressing our risk management functions and any other matters as noted in the Macquarie Group Privacy Policy (available at macquarie.com/uk/about/disclosures/privacy-and-cookies) as amended from time to time;
  - (g) that this may involve transfer of their personal data to any country, including countries outside the European Economic Area (the "**EEA**"), but that in those cases, (except where we are making the transfers on your instructions), we will take steps to ensure that it is protected in a manner that is (in our opinion) consistent with how your personal data will be protected by us in the EEA, which can be achieved in a number of ways, for instance:
    - i. the country that we send the data to might be approved by the European Commission;
    - ii. the recipient might have signed up to a contract based on "model contractual clauses" approved by the European Commission, obliging them to protect your personal data (copies of these contracts are available from us on request); or
    - iii. where the recipient is located in the US, it might be a certified member of the EU-US Privacy Shield scheme.Where this level of protection cannot reasonably be applied we will only make such transfers in compliance with data protection law;
  - (h) that we will keep their personal data for such length of time as set out in our retention policy (a copy of which is available from us on request), or as required under Applicable Regulations;
  - (i) that they have rights of access to, erasure or correction of, restriction of processing of or portability of their personal data as provided for under GDPR or other Applicable Privacy Laws which they may exercise by contacting us in writing;
  - (j) that, if they are unhappy with the way that we are using their information, they may lodge a complaint with either: (i) where contracting with MBIL, MBL London Branch or MCEL, the UK Information Commissioner's Office (www.ico.org.uk); and (ii) where contracting with MBE DAC, the Irish Data Protection Commission (www.dataprotection.ie); and

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- (k) that if they do not wish to receive information from us, then they should contact us in writing using the details provided in these Terms of Business.
- 25.5 We may analyse and use the personal data and information we hold about you, your Affiliates and any data subject in connection with these Terms of Business to enable us to give you information (by post, SMS, telephone, email or other medium, using the contact details you have given us) about products and services offered by us (or by our Affiliates or selected third parties) which we believe may be of interest to you. If you or the relevant data subject do not wish to receive the marketing information, please let us know by contacting us in writing.

## 26. Anti terrorism, anti corruption and bribery

- 26.1 Each party represents and warrants that in relation to the performance of its obligations under these Terms of Business:
- (a) it is in compliance with all laws, rules and regulations applicable to anti-terrorism, anti-corruption and bribery, including, but not limited to, the United Kingdom's Bribery Act 2010 and Ireland's Criminal Justice (Corruption Offences) Act 2018 (as applicable), and has instituted and maintains policies and procedures designed to prevent terrorism, bribery and corruption by it and by persons associated with it;
  - (b) it has not, and no officers, employees, shareholders, representatives or agents associated with it, directly, or indirectly, has, either in private business dealings or in dealings with the public sector, offered, given, received or agreed to offer, give or receive (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of these Terms of Business, or engaged in any other activity or conduct, which would violate any anti-terrorism, anti-bribery or anti-corruption laws or regulations applicable to it, including (without limitation) the United Kingdom's Bribery Act 2010 and Ireland's Criminal Justice (Corruption Offences) Act 2018 (as applicable); and
  - (c) it shall ensure that all persons associated with the party or other persons who are performing services in connection with these Terms of Business comply with this Clause 26.
- 26.2 Each of these representations and warranties is deemed to be given on each date that these Terms of Business are in effect.

## 27. Sanctions

- 27.1 You represent that neither you nor any of your subsidiaries (collectively, the "**Company**") or, to the knowledge of the Company, any director, officer, employee, affiliate, agent or representative of the Company, or any client or other third party on whose behalf the Company is acting in connection with the transactions, is an individual or entity ("**Person**") that is, or is owned or controlled by a Person that is:
- (a) currently a target of, or otherwise a subject of, any economic or financial sanctions or trade embargoes administered or enforced by the Office of Foreign Assets Control of the U.S. Department of Treasury (OFAC), the U.S. Departments of State or Commerce or any other U.S. government authority, or any other U.S. economic sanctions, or any European Union, United Nations, Irish, United Kingdom or Australian economic sanctions (collectively, "**Sanctions**");
  - (b) located, organised or resident in a country or territory that is the subject of Sanctions; or
  - (c) engaged in any activity or conduct that might reasonably be foreseen to cause it to become a subject of Sanctions.
- 27.2 The Company represents that, to the knowledge of the Company, no Person, country or territory that is a target of, or otherwise a subject of, Sanctions has any participation in or derives any other financial or economic benefit from activity or transactions that the Company undertakes with Macquarie.
- 27.3 The Company covenants that:

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- (a) no Person that is a subject of Sanctions will have any property interest in any funds remitted or commodities transferred by the Company in connection with a transaction, that any commodities transferred by the Company in connection with a transaction will not originate or come from any country or territory that is the subject of Sanctions, and that the Company will not allow any Person, country or territory that is a subject of Sanctions to have any participation in or derive any other financial or economic benefit from transactions it undertakes; and
  - (b) it will not engage in any activity or conduct that might reasonably be foreseen to cause it to become a subject of Sanctions.

27.4 Each of these representations and covenants is deemed to be given on each date that these Terms of Business are in effect.

27.5 If at any time we are aware, or suspect on reasonable grounds, that you are in breach of any of the representations, warranties or covenants in Clause 26 of these Terms of Business or this Clause 27: (i) we are entitled to treat such breach as an Event of Default for the purposes of Appendix 2 to these Terms of Business, and/or to suspend provision of any or all services under these Terms of Business until we are satisfied that the breach has been remedied; (ii) we shall have no liability for the consequences of the application of Appendix 2 to these Terms of Business or any suspension of services in accordance with this Clause 27.5; and (iii) for the avoidance of doubt, we shall be entitled to claim under Clause 18 of these Terms of Business for any losses incurred by us as a result of any such breach, suspected breach, or Event of Default or suspension of services occurring pursuant to this Clause 27.5.

## 28. Assignment

28.1 These Terms of Business shall be for the benefit of and binding upon you and us, and our respective successors and assigns. You may not assign, charge, delegate or otherwise transfer or purport to assign, charge, delegate or otherwise transfer any of your rights or obligations under these Terms of Business or any interest in these Terms of Business, without our prior written consent, and any purported assignment, charge, delegation or transfer in violation of this Clause 28 shall be void.

## 29. Delay or omission

29.1 The rights and remedies provided under these Terms of Business are cumulative and not exclusive of those provided by law. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. No delay or omission in exercising any right, power or remedy provided by law or under these Terms of Business (including any transaction), or partial or defective exercise thereof, shall prevent further or other exercise of, or operate as a waiver of, such right, power or remedy. No waiver of any breach of any term of these Terms of Business shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.

## 30. General

30.1 These Terms of Business and all non-contractual obligations and other matters arising from them or in connection with them shall be governed by and construed in accordance with English law and each party submits to the exclusive jurisdiction of the English Courts.

30.2 If at any time any provision of these Terms of Business is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Terms of Business under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected.



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- 30.3 A person who is not a party to these Terms of Business has no right under the Contracts (Rights of Third Parties) Act 1999.
- 30.4 Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future and irrespective of the currency) owed by you to us (including margin, fees and commission), even though arising in a different transaction, against any amount (whether actual or contingent, present or future and irrespective of the currency) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained. Where such amounts being set off are expressed in different currencies, we shall be entitled at your expense to convert any sums owing to you into the currency of your debt to us for the purpose of effecting the said set off.
- 30.5 Time shall be of the essence in respect of all your obligations under these Terms of Business (including any transaction).
- 30.6 These Terms of Business are supplied to you in English, and we will continue to communicate with you, and you will continue to communicate with us, in English.
- 30.7 Where we agree to act as a general clearing member for you, the terms upon which we agree to act will be set out in a separate written agreement between you and us.
- 30.8 We shall be entitled to communicate with you by telephone, fax, e-mail or by post. You may communicate with us by post at the address given in Clause 2.1 of these Terms of Business, telephone, fax or electronic mail, unless you are obliged to communicate in writing under these Terms of Business, in which case you may communicate with us by letter delivered by post or personal delivery to that address.
- 30.9
- (a) MBIL and MBL London Branch are members of the Financial Services Compensation Scheme (the "**FSCS**") in the United Kingdom. The FSCS is only available to certain types of claimants and claims. Payments to eligible claimants under the FSCS will vary depending on the type of protected claim you hold with us. For example, at the date of publication of these Terms of Business, the maximum level of compensation for claims against firms declared in default on or after 1 January 2010, in respect of investments, is GBP 50,000, and the maximum compensation sum payable for the aggregate eligible deposits of each depositor is GBP 85,000 (save that additional compensation may be payable in certain circumstances). Further details of the FSCS are available from us on request, or at the FSCS's official website at [www.fscs.org.uk](http://www.fscs.org.uk). Please refer to the website for the most up to date compensation limits.
  - (b) MBE DAC is a member of the Investor Compensation Scheme (the "**ICS**", together with the FSCS, the "**Schemes**") in Ireland, established under the Investor Compensation Act 1998 (the "**ICA**"), which provides for the payment, in certain circumstances, of compensation to certain clients of firms in Ireland. Under the ICS, compensation may be payable where money or investment instruments owed or belonging to clients and held, or in the case of investment instruments, administered or managed by a firm cannot be returned and there is no reasonably foreseeable opportunity of being able to do so. The ICS is only available to 'eligible investors' (as defined in the ICA) which excludes certain clients (including Professional Clients), if it transpires that the firm is not in a position to return client money or investment instruments owed or belonging to clients of the firm and to the extent that the client's loss is recognised for the purposes of the ICA. The maximum compensation that can be paid pursuant to the ICS is 90% of an eligible investor's recognised loss up to a maximum of €20,000. Further details of the ICS are available from us on request or at the official website of the ICS at [www.investorcompensation.ie](http://www.investorcompensation.ie). Please refer to the ICS website for the most up to date compensation limits.
  - (c) MBE DAC is a covered institution for the purposes of the Irish deposit guarantee scheme ("**DGS**"). The DGS, subject to certain exceptions, protects eligible deposits, up to a maximum of EUR 100,000 per person per institution, of certain types of depositors in the event of a bank, building society and or credit union authorised by the CBI being unable to repay deposits. Further details of the DGS are available from us on request, or at the DGS's official website at [www.depositguarantee.ie](http://www.depositguarantee.ie). Please refer to the website for the most up to date compensation limits.
- 30.10 If you are situated outside England and Wales, process by which any proceedings in England are begun may be served on you by being delivered to the address in England or Wales nominated by you to us for this purpose. This does not affect our right to serve process in another manner permitted by law.

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30.11 You specifically consent to us providing you with information via our website, where this is permitted by the Applicable Regulations, or by electronic message. Such information on our website is available at [www.macquarie.com](http://www.macquarie.com) or such other website as we may from time to time notify to you. Information available on such website will be up to date and will be accessible continuously for such a period of time as you may reasonably need to inspect it.

You agree that we may provide the following information to you via a website or via electronic message, where relevant and in accordance with Applicable Regulations:

- (a) terms and conditions in relation to trading products covered by these Terms of Business;
- (b) a summary description of the steps which we take to ensure protection of your client assets, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to us by virtue of our activities in a member state of the European Union;
- (c) a description of the conflicts of interest policy maintained by us and, upon request, further details of that conflicts of interest policy;
- (d) any changes to the methods of communication to be used between us, including but not limited to how we receive orders or requests for quotes;
- (e) the nature, frequency and timing of the reports on the performance of the service to be provided by us to you under Applicable Regulations;
- (f) a general description of the nature and risks of financial instruments;
- (g) in relation to any client money and client assets held by us:
  - i. whether such money or assets may be held by a third party on our behalf, including where this is held in an omnibus account;
  - ii. whether such money or assets may be held in accounts that are subject to the law of a state other than the state in which the contracting Macquarie is located, or of a non-EEA country, including whether your rights and protections are different as a result;
  - iii. whether such money or assets may be subject to any security interest, lien or set-off rights, either in our or a depositary's favour;
  - iv. our obligations and responsibilities with respect to the use of financial instruments for securities financing transactions;
- (h) costs and charges including but not limited to, where relevant, aggregated costs and charges related to the financial instrument, the investment or ancillary service and any third party payments, currency conversion rates and costs and illustrations of costs and charges;
- (i) details of our Order Execution Policy;
- (j) details of our complaints procedure;
- (k) details of our commercial policy relating to quotes we provide for financial instruments where we are a systematic internaliser; and
- (l) other information where permissible under Applicable Regulations or these Terms of Business.

30.12 Notwithstanding and to the exclusion of any other term of these Terms of Business or any other agreements, arrangements, or understanding between you and MBE DAC, you acknowledge, agree and accept that a BRRD Liability arising under or in connection with these Terms of Business may be subject to the exercise of Bail-in Powers by the Relevant Resolution Authority, and you acknowledge, accept, and agree to be bound by:

- (a) the effect of the exercise of the Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of MBE DAC to you, that (without limitation) may include and result in any of the following, or some combination thereof:
  - i. the reduction of all, or a portion, of the principal amount or outstanding amount due (including without limitation, any accrued but unpaid interest) in respect of any BRRD Liability;
  - ii. the conversion of all, or a portion, of any BRRD Liability into shares, other securities, other obligations or other instruments of ownership of MBE DAC or another person and the issue to or conferral on you of such shares, other securities, other obligations or other instruments of ownership;
  - iii. the cancellation of any BRRD Liability; or

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- iv. the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which payments are due, including by suspending payment for a temporary period; and
  - (b) the variation of the terms of these Terms of Business or any other agreements between you and MBE DAC, as deemed necessary to give effect to the exercise of the Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability.

This Clause 30.12 applies in the event of the United Kingdom becoming a third country (for the purposes of the Bail-In Legislation).

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## Appendix 1. Additional terms

This Appendix 1 is supplementary to the Terms of Business which you may receive from time to time and relates to any transaction in which you will or may be liable to make further payments or deliveries, other than charges, taxes, commissions and fees ("**margin**ed transactions") for your account. Where another Agreement is in effect relating to the provision of security, margin or collateral then such other Agreement shall prevail to the extent there is any conflict between such Agreement and this Appendix 1.

1. Margins, collateral and payment
  - (a) In respect of any margined transaction for your account, you shall transfer to us on demand:
    - i. such sums of money as initial or variation margin as we may require being, in the case of a transaction effected on an exchange, not less than the amount or percentage stipulated by the relevant exchange; and
    - ii. such sums of money as we may from time to time require as collateral for your obligations to us, including unmet past obligations and future settlements of transactions (our "**margin requirement**").
  - (b) With our prior written agreement on each occasion, you may transfer securities, cash or other assets ("**Collateral**") to us or provide us with a guarantee or indemnity from a person and in a form acceptable to us instead of Collateral for the purpose of complying with your obligations under this Appendix 1. Any Collateral so transferred may be held on our behalf by an intermediate broker who will be responsible for claiming and receiving all interest payments, income and other rights accruing to you. We accept no responsibility whatsoever for the acts or omissions of any intermediate broker and shall not be liable to you for any losses resulting directly or indirectly from such acts or omissions.
  - (c) Where we have agreed to accept securities or other assets as Collateral, you shall transfer to us such Collateral with full title guarantee free from any adverse interest (other than a lien routinely imposed on all securities in a clearing system in which such securities may be held). Such Collateral will not be held as custody assets in accordance with the Client Assets Sourcebook in the FCA Rules relating to client money or as client assets in accordance with the Irish Client Asset Rules and it will not be registered in your name. We also do not accept responsibility for the safe custody of documents of title or certificates evidencing title nor for any act or omission of any person who is nominee holder or, or who directly or indirectly holds, or is responsible for the safe custody of documents of title or certificates evidencing title to, such Collateral. Where we agree to accept cash as Collateral, you shall transfer us full ownership of such Collateral so that all rights, title and interest in and to such cash will pass to us outright. Such Collateral will not be held as client money or client funds in accordance with the Client Money Rules.
  - (d) We will return Collateral of the same type, nominal value, currency and amount as that provided by you to us in the following circumstances: (a) if we determine, in our sole discretion, that our margin requirement has been reduced; or (b) provided that none of your obligations to us are then outstanding, upon termination of these Terms of Business.
  - (e) We will monitor the level of Collateral against your positions and if we determine that our margin requirement has been reduced we may contact you from time to time to confirm your Collateral balances and / or arrange for the return of any excess Collateral. In the event that you elect to continue to hold excess Collateral with us on your account, to secure any future positions you may wish to enter into, you do so at your sole discretion.
  - (f) We shall not be obliged to account to you for any income received as a result of carrying out any of these activities.
  - (g) If you fail to provide any Collateral, margin, deposit or other sum due under these Terms of Business we may close out any open position without prior reference to you and apply any proceeds thereof to payment of any amounts due to us.
  - (h) You may not withdraw or substitute any property which we hold as margin or Collateral without our prior consent.

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- (i) Upon an Event of Default, we will be entitled to close out any open positions and set-off the value of the Collateral provided by you (as reasonably determined by us) to us against any sums due to you from us, in accordance with the provisions of Appendix 3 to these Terms of Business. Where the proceeds of sale of the Collateral exceed the amount owed by you to us, the excess amount will be returned to you.
  - (j) All payments from you under this Appendix 1 will be made free of and without withholding or deduction for any taxes, duties, assessments or governmental charges of whatsoever nature imposed, withheld or assessed by any relevant tax authority, unless required by law, in which case you shall pay such additional amounts as will result in the receipt by us of an amount which we would have received had no deduction or withholding been made.
  - (k) You shall, immediately upon request, execute all documents and do all such things as we may reasonably request in order to enable us to exercise our rights under this Appendix 1.

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## Appendix 2. Events of default

This Appendix 2 is supplementary to the Terms of Business, which you may receive from time to time. Where another Agreement is in effect relating to the provisions of this Appendix 2 then such other Agreement shall prevail to the extent there is any conflict between such Agreement and this Appendix 2.

For the purposes of this Appendix 2, the following terms are defined:

**"Automatic Close-Out Event"** means the occurrence of any of the events specified in paragraphs (a) to (h) in the definition of an Insolvency Event;

**"Event of Default"** means:

- (a) failure by you to make any payment or delivery to us under these Terms of Business or to Pershing under the Pershing Terms, including, but not limited to, payment for your investments and the delivery of collateral or margin;
- (b) failure by you to perform any of your other obligations under these Terms of Business or the Pershing Terms;
- (c) an Insolvency Event occurring in respect of you;
- (d) any representations, warranties or undertakings made by you being incorrect, untrue or ceasing to be true in any material respect when made or repeated or deemed to have been made or repeated;
- (e) an admission by you that you are unable to, or intend not to, perform any of your obligations under these Terms of Business or the Pershing Terms, or the occurrence of an event of default, termination event or other similar event (however described) under any competent documentation forming part of these Terms of Business, any other Agreement between us and you or the Pershing Terms; and
- (f) a breach by you of any terms of these Terms of Business or the Pershing Terms;

**"Insolvency Event"** means the occurrence of any of the following at any time:

- (a) you are dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) you become insolvent or you are unable to pay your debts or fail or admit in writing the inability generally to pay your debts as they become due;
- (c) you make a general assignment, arrangement or composition with or for the benefit of your creditors;
- (d)
  - i. you institute or have instituted against you, by a creditor or a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over you in the jurisdiction of your incorporation or organisation or the jurisdiction of your head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for your winding-up or liquidation by you or such creditor, regulator, supervisor or similar official; or
  - ii. you have instituted against you a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for either parties winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in (d)(i) above and either –
    - A. results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for your winding-up or liquidation; or
    - B. is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof;
- (e) you have a resolution passed for your winding-up, dissolution, administration, examinership or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise), official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) you seek or become subject to the appointment of an administrator (whether out of court or otherwise), provisional liquidator, liquidator, conservator, receiver, trustee, custodian, compulsory manager, examiner or other similar official for all or substantially all or any material part of your assets;

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- (g) you have a secured party take possession of all or substantially all your assets or have a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all your assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) days thereafter;
  - (h) you cause or become subject to any event with respect to you which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Clauses (a) to (g) above (inclusive);  
or
  - (i) you take any action in furtherance of, or indicating your consent to, approval of, or acquiescence in, any of the foregoing acts;

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

1. Netting and set off

- (a) On the occurrence of an Event of Default we shall be entitled at any time to retain or make deductions from or set-off amounts or credit balances (whether or not contingent and regardless of the currency) which we owe to you or which you owe to us (including, without limitation, the proceeds of any sale), in order to meet any liabilities which you may have incurred to us or which we may have incurred on your behalf under these Terms of Business including, for example, when appropriate:
  - i. sums to be paid in settlement of transactions;
  - ii. settlement of fees, commissions or charges or any other amounts referred to in Clause 10 (Our Charges) of these Terms of Business or any liabilities or costs incurred when exercising rights under this Appendix 2, or any other provision of these Terms of Business; and
  - iii. any interest payable to it.
- (b) For the purposes of cross-currency set-off, we may convert an obligation in one currency to another currency at a market rate reasonably determined by us.
- (c) Until you have paid or discharged in full all monies and liabilities owed to us, any monies, payable from you to us from time to time, may be used to exercise rights of set-off.
- (d) Each obligation of us to make payments or deliveries under each transaction or otherwise under these Terms of Business is subject to the conditions precedent that (1) no Event of Default or Potential Event of Default with respect to you has occurred and is continuing and (2) no Termination Date has occurred or been effectively designated.

2. Default

- (a) If at any time an Event of Default occurs then:
  - i. if such Event of Default is an Automatic Close-Out Event, a termination date will be deemed to occur as of the time immediately preceding the institution of the relevant proceeding, case or procedure or the presentation of the relevant petition ("**Automatic Termination Date**"); and
  - ii. if such Event of Default is not an Automatic Close-Out Event, we may, by notice to you, specify the relevant Event of Default and designate a date as the termination date ("Termination Date") for the termination and liquidation of transactions in accordance with the provisions of Clause 2(c) of this Appendix 2.
- (b) Upon the occurrence or effective designation of an Automatic Termination Date or Termination Date determined in accordance with Clause 2(a) of this Appendix 2:
  - i. neither Party shall be obliged to make any further payments or deliveries under any transactions and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Close-Out Amount (such term as defined in Clause 2(b)(iii) of this Appendix 2);

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- ii. on or as soon as reasonably practicable after the Termination Date (or, in the case of an Automatic Close-Out Event, as soon as reasonably practicable after we first become aware of the Automatic Termination Date) we shall determine, in respect of each transaction, the total cost, loss or (as the case may be) gain as a result of the termination, in each case expressed in the currency agreed by us in writing or, failing such agreement, the lawful currency of the United States of America (the "**Close-Out Currency**") at the prevailing rate at the Termination Date (or the Automatic Termination Date, as the case may be) and, if appropriate, including any loss of bargain, cost of funding or, without duplication, cost, loss or (as the case may be) gain as a result of the termination, liquidation, obtaining, performing or re-establishing of any hedge or related trading position, pursuant to these Terms of Business, of each payment or delivery which would otherwise have been required to be made under such transaction; the Close-Out Amount (such term as defined in Clause 2(b)(iii) of this Appendix 2) shall be determined as of the Termination Date (or the Automatic Termination Date, as the case may be) or, if that would not be commercially reasonable, as of the date or dates following the Termination Date (or the Automatic Termination Date, as the case may be) as would be commercially reasonable in making such determination, we shall act in accordance with commercially acceptable principles of valuation including, where appropriate, obtaining quotations from market makers (selected in good faith) in the relevant markets for the cost of entering into a replacement transaction that would have the effect of preserving the economic equivalent of the payment or delivery which would otherwise have been required to be made under the relevant transaction; and
  - iii. we shall treat each cost or loss to us, determined as above, as a positive amount and each gain by us, so determined, as a negative amount and aggregate all of such amounts to produce a single, net positive or negative amount, denominated in the Close-Out Currency (the "**Close-Out Amount**").
- (c) If the Close-Out Amount is a positive amount, you shall pay the Close-Out Amount to us and, if it is a negative amount, we shall pay an amount equal to the absolute value of the Close-Out Amount to you. We shall notify you of the Close-Out Amount, and by which party it is payable, immediately after the calculation of such amount. The amount payable by one party to the other party pursuant to this clause shall be payable by the close of business on the 10th Business Day immediately following the day on which notice of such Close-Out Amount is effective (the "**Due Date**").
  - (d) Notwithstanding the provisions of this Appendix 2, insofar as any transaction between you and us is documented under the terms of a market standard master netting agreement, such transactions shall be netted in accordance with the terms of such market standard master netting agreement.
3. Power of sale over your investments
- (a) All investments (including collateral) which we hold or are entitled to receive on your behalf shall be a continuing security for the payment and satisfaction of all sums which may at any time be or become due from you to us, including any interest payable to us hereunder and reasonable costs, charges and expenses paid or incurred in perfecting or enforcing our security or otherwise.
  - (b) You hereby irrevocably authorise us at any time after the occurrence of an Event of Default, if any amount due to us from you has not been paid when due (or on demand, if so payable), at any time after demand made on you, without prior notice, to sell all or any of such investments at such price and in such manner as we may in our reasonable discretion decide without being responsible for any loss or diminution in price and apply any proceeds of such sale in or towards:
    - i. discharge of the costs of such sale; and
    - ii. discharge of the sums secured by clauses in this Appendix 2.
  - (c) If, at any time, we have any reason to believe that you may be unable or unwilling to meet any liabilities which you have incurred to us or which we may have incurred on your behalf or to comply with any other obligations under these Terms of Business or on the occurrence of an Event of Default under these Terms of Business, we shall be entitled (and are irrevocably authorised by you to take all or any of the following actions without prior notice to you: close out or require you to close out immediately any open positions and/or buy any investment or other property where this is, or is in our reasonable opinion likely to be, necessary in order for us to fulfil our obligations under any transaction entered into as a result of your instructions (you shall reimburse us for the full amount of the purchase price plus any associated costs and expenses) and/or treat any outstanding transactions as cancelled and terminated.
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## Appendix 3. Client money

This Appendix 3: (a) is supplementary to the Terms of Business which you may receive from time to time; (b) subject to Clause 12.6 of the Terms of Business, applies whenever money is held for you by MCEL; and (c) provides a description of the steps taken by MCEL to protect Client Money held for you.

For the purposes of this Appendix 3, references to "Client Money" mean client money (as defined in the FCA Rules).

1. We will treat your money as Client Money and hold it in accordance with the Client Money Rules. While the holding of Client Money is not a feature of Macquarie's business model, in certain circumstances Macquarie may find itself holding funds on your behalf. In such instances, any Client Money we receive will be deposited in an account in our name or that of our nominee, in trust for your benefit, with a bank in accordance with the Client Money Rules. Among other things, this means that your money can be separately identified from our own money. The purpose of using client money accounts is to protect you should we become insolvent.

The Client Money may be held in a pooled account or in a segregated individual client asset account with the relevant bank. Our selection of the bank holding your Client Money and our agreement with and oversight of the bank is in accordance with the Client Money Rules.

2. Subject to the limits from time to time applicable under the FCA Rules, we may hold any of your Client Money on your behalf with a bank (which may be one or more of Macquarie Bank Limited or MBIL (which are part of the same group of companies as MCEL) or any other bank) in a client bank account located within or outside the United Kingdom or other EEA jurisdiction.

The banks that we use may be subject to change and clients will be notified of any such change.

We will not be responsible for any loss or damages suffered by you because of any error or action taken or not taken by any third parties holding your money in accordance with the Client Money Rules, unless such loss or damage arises because we have been negligent or acted fraudulently. Should any third party holding your money become insolvent, and if that third party cannot repay all the persons it owes money to, any shortfall may have to be shared proportionally between all its creditors (including you). In such circumstances, you may be eligible to claim under a compensation scheme. Where you contract with MCEL, the relevant compensation scheme is the FSCS. Further information about the FSCS is available from us on request or directly from the FSCS as set out at Clause 30.9 above.

3. We may allow a third party, such as an exchange, a clearing house or an intermediate broker, whether within or outside the United Kingdom or other EEA jurisdiction, to hold Client Money which we hold for you for the purpose of effecting one or more transactions for you in accordance with your instructions through or with that third party or to meet your obligations to provide collateral for a transaction. We will not be liable for the insolvency, or any acts or omissions, of any third party whom we allow to hold Client Money we hold for you in accordance with this clause.
4. Where your money is held with a bank or third party in an account located outside an EEA jurisdiction, your money will be held subject to the laws of that third country. The legal and regulatory regime applying to such entity may be different from that of an EEA jurisdiction, and, in the event of the insolvency (or other analogous event) affecting such entity, money may be treated in a different manner from that which would apply if the money were held by such an entity in an account in an EEA jurisdiction.
5. Interest will not be payable to you on Client Money held for you unless otherwise agreed between you and us.
6. We may (but shall not in any circumstances be obliged to) convert any monies held for you into such other currency as we consider necessary or desirable to cover your obligations and liabilities in that currency at such rate of exchange as we shall select. We shall be entitled to charge and retain for our own account such administration fee for arranging such conversion as we may from time to time specify. MCEL will maintain at least one pooled Client Money account. The base currency for each Client Money account maintained by MCEL will vary at our discretion.  
Upon receipt of Client Money in a currency for which Macquarie does not maintain a Client Money account, that Client Money will be paid into a Client Money account selected by us and converted into the base currency of the Client Money account at the prevailing exchange rate on the day of receipt.

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The value of Client Money held in any Client Money account is calculated on a daily basis, when required using the prevailing exchange rate that day to the base currency of that Client Money account on the day of calculation.

As set out at paragraph 1, MCEL may hold your money in a pooled account which means that your money may be held in the same account as that of our other clients. Each entity holds client money as part of a common pool of money, so, in any insolvency event, you would not have a claim against a specific amount in a specific account. Rather, you would make your claim against the client money pool in general. Pooled property in omnibus accounts held by us may be used for the account of any of our relevant clients.

In the event of an insolvency of the bank with which Client Money is deposited, there is a risk that the designation of the pooled account as Client Money may not be recognised by a liquidator of that institution or that the acknowledgement of such designation will be delayed.

By accepting these Terms of Business you consent to Client Money being held in a pooled account with a third party bank appointed by us.

- 7.
- (a) You agree that where money held by us for you would otherwise be required to be treated as Client Money, such money need not be treated as Client Money where held in connection with a delivery versus payment transaction settled by us for you through a commercial settlement system (in our capacity as a direct member or participant in such system, or where we are sponsored by a direct member or participant in such system), unless delivery or payment by us does not occur by the end of the third Business Day following the date of payment or delivery by you.
  - (b) Where there has been no movement on your Client Money balance (disregarding any payment or receipt of interest, charges or similar items) for a period of six (6) years, you agree that we may pay such Client Money to the registered charity of our choice: (a) provided that we have taken reasonable steps to trace you and to return the Client Money balance, and in such case we hereby unconditionally undertake that, where any of your Client Money has been paid to charity in accordance with this sub-clause (a), and you subsequently claim against us for such amount of Client Money, we shall pay you a sum equal to the amount paid to charity; or (b) where the amount of Client Money is GBP 100 or less, provided we have made at least one attempt to contact you to return the Client Money balance, using the most up-to-date contact details we have for you, and you have not responded to such communication within 28 days of the communication having been made.
8. Where any obligations owing to us under any Agreement from you are due and payable to us, we shall cease to treat as Client Money the amount of any Client Money held on your behalf as equals the amount of those obligations in accordance with the Client Money Rules. You agree that we may apply that money in or towards satisfaction of all or part of those obligations due and payable to us. For the purposes of these Terms of Business, and in accordance with any such Agreement, any such obligations become immediately due and payable, without notice or demand by us, when incurred by you or on your behalf.
9. As a continuing security for the payment and discharge of your obligations under these Terms of Business, you grant to us, with full title guarantee, a first fixed security interest in all your money that we may hold for you as Client Money in accordance with the Client Money Rules. You agree that we shall be entitled to enforce that security by applying that money in or towards satisfaction of all or any part of your obligations which are due and payable to us but unpaid.
10. (a) Except where (b) applies, you agree that we may transfer to a third party any Client Money held for you as part of transferring all or part of our business to that third party, provided that: (i) the third party will hold the Client Money transferred to it in accordance with the Client Money Rules; or (ii) we will exercise all due skill, care and diligence in assessing whether the third party to whom your Client Money is transferred will apply adequate measures to protect those sums.
- (b) Where the amount of Client Money held for you by us is GBP 100 or less, as permitted by the Client Money Rules, we may transfer to a third party any Client Money held for you as part of transferring all or part of our business to that third party without your consent, provided that: (i) the Client Money relates to the business being transferred; and (ii) the third party is subject to an obligation to return your Client Money to you as soon as practicable upon your request.
11. Where your money is transferred to a third party, that third party may have a security interest or lien over, or right or set-off in relation to, such money. Any such security interest, lien or right of set-off will only be granted to the extent permitted by the Client Money Rules.

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## Appendix 4. Requests for information in relation to equity derivative transactions

This Appendix 4 is supplementary to the Terms of Business which you may receive from time to time. Where another agreement or general terms are in effect relating to the provisions of this Appendix 4 then such other agreement or general terms shall prevail to the extent there is any conflict between such agreement or terms and this Appendix 4.

### 1. Requests for Information

From time to time, you (either as principal or for and on behalf of your clients) may wish to enter into contracts for differences and / or other forms of equity swap transactions (together, "Equity Swap Transactions") with entities other than MCEL (such entities, "Third Party Equity Swap Providers").

You may request that MCEL provides you with certain information (such information may include, but is not limited to, illustrative pricing, market data, availability, liquidity and capacity) with respect to certain equity securities to assist you in arranging such Equity Swap Transactions (a "Request for Information").

A Request for Information may be delivered to MCEL, and MCEL may provide a response to a Request for Information, by telephone call or electronic messaging system. The response to a Request for Information may be transmitted to you in one or more messages during the trading day.

At the time of making the relevant Request for Information, you may wish to enter into, or be negotiating the terms of, one or more Equity Swap Transactions with one or more Third Party Equity Swap Providers. You will advise MCEL of the identity of the relevant Third Party Swap Equity Provider(s) at the same time as, or as soon as is reasonably practical after, making the Request for Information, but in no event later than the end of the same trading day on which the Request for Information was made.

MCEL acknowledges that the disclosure of the identity of the Third Party Swap Equity Provider(s) is merely provided for the purpose of identifying a person or persons who may be interested in purchasing or selling a cash equity position and that you do not have the authority to enter into any cash equities transactions on behalf of any Third Party Swap Equity Provider(s).

If you wish to enter into a cash equities transaction with MCEL on your account or on behalf of your clients you must advise MCEL at the time of first contacting us with respect to the cash equities transaction or in no event later than the end of the same trading day that you wish such transactions to be treated as a request to enter such transactions on your account or for your clients. In such circumstances, you and MCEL will not regard such transactions as being subject to the other terms of this Appendix 4. In the absence of MCEL receiving such advice, you acknowledge and agree that MCEL will regard such transactions as being subject to the terms of this Appendix 4.

### 2. Broker trades

Following its receipt of a Request for Information, MCEL may subsequently, but does not undertake to do so and has no requirement or obligation to do so:

- (a) source a cash equity position in relation to the equity securities that are the subject of the Request for Information; and/or
  - (b) offer to enter into a cash equities transaction in respect of such cash equity position with the relevant Third Party Equity Swap Provider as a ready hedge to the Equity Swap Transaction that you have entered into or are negotiating with such Third Party Equity Swap Provider (an "Offer").
- If MCEL takes any such steps it shall do so at its sole discretion, acting as principal.

### 3. No other agreement or understanding

In relation to any Requests for Information and all related communications, you and MCEL each agree and acknowledge that:

- (a) neither the Request for Information nor MCEL's provision of information in response thereto will in any way constitute an agreement between you, any of your clients and MCEL, or between MCEL and any third party (including, without limitation, any Third Party Equity Swap Provider) to enter into an Equity Swap Transaction, a cash equities transaction or any other transaction or contract;

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- (b) in the event that MCEL executes a cash equities transaction that corresponds to any Request for Information, it does so on its own account as principal and there is no understanding or agreement between you, any of your clients and MCEL with respect thereto and any such transaction shall be solely at the risk of, and solely for the account of, MCEL; and
  - (c) there is no obligation on any Third Party Equity Swap Provider to accept any Offer that MCEL may make. Consequently, there will be no understanding or agreement between MCEL and such Third Party Equity Swap Provider in relation to any cash equities transaction which is the subject of an Offer unless and until such Offer has been accepted by such Third Party Equity Swap Provider in accordance with MCEL's requirements with respect to the execution of cash equities transactions.