

February 14, 2020

Filed Electronically

Ontario Securities Commission
20 Queen Street West, 19th Floor
Toronto, Ontario M5H 3S8

Attention: Secretary

Dear Sirs and Mesdames:

Re: CME Amsterdam B.V. – Application for Exemption from Recognition as an Exchange

Pursuant to section 147 of the *Securities Act* (Ontario) (the “**Act**”), we are filing an application to the Ontario Securities Commission (the “**Commission**”) on behalf of CME Amsterdam B.V. (the “**Applicant**”) to request a decision exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act (the “**Requested Relief**”) in relation to its operation of a multilateral trading facility (“**MTF**”) in the province of Ontario.

This application is divided into the following Parts I to V, Part III of which describes how the Applicant satisfies criteria for exemption of a foreign exchange that allows customers to trade OTC derivatives from recognition as an exchange set by staff of the Ontario Securities Commission (the “**Commission**”).

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PART I INTRODUCTION

1. Description of the Applicant's Services

- 1.1 The Applicant is authorised by the Dutch Minister of Finance and supervised and regulated by the Autoriteit Financiële Marketen of the Netherlands (the “**AFM**” or “**Foreign Regulator**”) to operate an MTF (the “**Facility**”) for, among other things, trading foreign exchange (“**FX**”) derivatives. The Facility is made up of different trading platforms, but the subjects of this Application are the EBS Direct and EBS Institutional FX platforms which trade the financial instruments listed on Annex A (the “**MTF Instruments**”). Additional products may be made available for trading on the Facility by the Applicant in the future, subject to obtaining the required regulatory approvals.
- 1.2 The EBS Direct platform (“**EBS Direct**”) is a relationship based bilateral trading platform that offers curated liquidity to its participants, where participants are explicitly identified as makers or takers. The price maker (a “**Liquidity Provider**”) electronically quotes a price to the taker (a “**Liquidity Consumer**”). Participants on EBS Direct interact not only based on credit path, but also via explicit permissioning put in place by the Applicant (as the Market Operator) where trades

matched are typically fully disclosed. However, EBS Direct may offer pre-trade and/or post-trade “non-disclosed tagging” of participants. Liquidity Providers can have one to over a dozen such non-disclosed tags (e.g., to segment Liquidity Consumers to appropriate pricing/spreads based on their trading needs).

- 1.3 EBS Direct enables Liquidity Consumers to view and access prices streamed to the platform from Liquidity Providers with whom they have a trading relationship. The ability to execute on EBS Direct prices is managed by Liquidity Consumers. In addition, Liquidity Providers may check credit within their own systems on a real time basis at point of execution (as is common on other direct/relationship-based trading offerings).
- 1.4 EBS Direct enables the Liquidity Providers to provide prices to their chosen counterparties, the Liquidity Consumers, based on their assessment of the client relationship. This helps Liquidity Providers to manage operational and credit risk in the context of those bilateral relationships. EBS Direct allows Liquidity Providers to provide a price directly to their customers (similar to their own single dealer platform price) via the EBS trading interfaces. EBS Direct gives Liquidity Providers the ability to identify their counterparty prior to the execution of the trade and allows them to accept or reject a bilateral trade. This feature is standard on direct/bilateral relationship-based trading offerings in the market today. From a Liquidity Customer standpoint, they are able to see an aggregated view of the liquidity provided by their chosen Liquidity Providers. EBS Direct also allows Liquidity Consumers to trade using the credit of a prime bank.
- 1.5 EBS Direct offers request for Stream/Request for Quote (RFS/RFQ) – RFS/RFQ supports trading in spot FX (made available for trading through an affiliate of the Applicant), FX forward outright and FX swaps. Under RFS/RFQ, Liquidity Consumers indicate their pair, size and tenor, and then receive a streaming two-way price from relationship liquidity sources for a short period, typically two minute sessions.
- 1.6 The EBS Institutional FX platform (“**EBS Institutional**”) is another electronic trading platform, focused on asset managers, that offers bilateral/relationship based trading in FX derivatives in the same manner as described for EBS Direct above. It is a separate graphical user interface and technology back-end, but functionally operates the same way.
- 1.7 Both EBS Direct and EBS Institutional are market segments on the Facility.
- 1.8 Settlement takes place between the counterparties. Although the Facility’s rules require counterparties to settle any deals, the Applicant is not involved in settlement and counterparties make their own bilateral arrangements with respect to settlement.

- 1.9 The Applicant proposes to make the Facility available to participants located in Ontario (“**Ontario Participants**”) for trading the MTF Instruments. None of the instruments that the Applicant proposes to make available for trading by Ontario Participants are commodity futures contracts as defined in the *Commodity Futures Act* (Ontario), and the Applicant is not considered to be carrying on business as a commodity futures exchange in Ontario.
- 1.10 The Applicant offers direct access to trading on the Facility to Ontario Participants that satisfy the criteria for being a “professional client” (“**PC**”) or an “eligible counterparty” (“**ECP**”) as defined in MiFID (as defined herein) and set forth in Annex C, as described in section 4.1.3 of the Applicant’s rulebook (the “**EBS MTF Rulebook**”) and as further described in Part III below. Most participants of the Facility are banks, registered dealers and advisers and other large financial institutions, or large corporates. However, the Facility offers impartial access; for example, a pension fund or hedge fund that meets the PC or ECP definition could be a member of the Facility.
- 1.11 The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described herein.

PART II BACKGROUND OF THE APPLICANT

1. Ownership of the Applicant

- 1.1 The Applicant (formerly known as NEX Amsterdam B.V.) is a limited liability company organized under the laws of the Netherlands. The ultimate parent company of the Applicant is CME Group Inc.¹ (“**CME Group**”), a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market. CME Group acquired NEX Group plc and its group companies, including the Applicant, on November 2, 2018. CME Group provides electronic trading globally in futures, options, cash and over-the-counter markets and also offers clearing and settlement services across asset classes.
- 1.2 An affiliate of the Applicant, NEX SEF Limited, currently operates under an exemption from the exchange recognition requirement in Ontario.

2. Products Traded on the Facility

- 2.1 As of the date of this application, the Applicant provides non-Ontario participants with transaction execution services for all instruments listed on Annex B and proposes to provide Ontario Participants with transaction execution services for all

¹ CME Group is the parent company of the four CMEG Exchanges (Chicago Mercantile Exchange Inc. (“CME”), Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., and Commodity Exchange, Inc.), and the cash markets businesses of EBS (for FX) and BrokerTec (for fixed income) (of which the Applicant forms a part).

financial instruments listed on Annex A. Additional products may be added in the future, subject to obtaining any required regulatory approvals.

3. Participants

- 3.1 The Facility enables clients to access the Facility directly either to enter transactions on their own behalf or on behalf of other participants as an “EBS Prime Bank”. Clients seeking direct access to the Facility as a “Participant”, including those who want to trade on behalf of their “EBS Prime Customers” and the EBS Prime Customers themselves, must meet the Facility’s eligibility criteria, be authorised by the Applicant to participate on the Facility and enter into a Customer Agreement with the Applicant.
- 3.2 Participants include a wide range of sophisticated customers, including commercial and investment banks, corporations, proprietary trading firms, hedge funds and other institutional customers. Each customer of the Applicant that wishes to trade directly on the Facility must qualify as an ECP or PC.
- 3.3 The Facility’s Participant criteria are described in more detail in Part III, Section 4 below.

PART III APPLICATION OF EXEMPTION CRITERIA TO THE APPLICANT

The following is a discussion of how the Applicant meets the criteria of the Commission for exemption of a foreign exchange that allows Participants to trade OTC derivatives from recognition as an exchange.

1. **Regulation of the Exchange – The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (“Foreign Regulator”).**
 - 1.1 The Applicant is a “market operator” (“**Market Operator**”) as defined in the European Markets in Financial Instruments Directive 2004/39/EC and Directive 2014/65/EU (collectively, “**MiFID**”) and the relevant laws, rules and regulations of the Netherlands.
 - 1.1.1 The Applicant operates an MTF, which is a type of trading venue specified by MiFID, which defines an MTF as “*a multilateral system... which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract.*”
 - 1.1.2 On March 12, 2019, the Dutch Minister of Finance authorised the Applicant to act as the Market Operator of the Facility in the Netherlands and the AFM has commenced supervision and regulation of the Applicant on an ongoing, active basis. All financial instruments for which the Applicant has received approval from the AFM are set forth on Annex B.

- 1.1.3 Market Operators that are authorised by the Dutch Minister of Finance must comply with the Act of Financial Supervision (*Wet op het financieel toezicht*) (“**Wft**”), the Markets in Financial Instruments Directive 2014/65/EU of the European Parliament and of the Council (“**MiFID II**”), which was implemented on January 3, 2018, Regulation (EU) 600/2014 of the European Parliament and of the Council (“**MiFIR**”), the rules pertaining to this legislation and the applicable guidance from the AFM (the “**Applicable Rules**”), particularly those in:
- a. Chapter 1 of the Wft, which sets out the powers of investigation and enforcement of the AFM;
 - b. Chapter 2 of the Wft and the Decree on Market Access, which sets out the organisation requirements for Market Operators operating an MTF;
 - c. Chapter 3 of the Wft and the Decree on Prudential Supervision, which sets out the prudential requirements imposed on Market Operators and implement part of the 4th EU Capital Requirements Directive;
 - d. Chapter 4 of the Wft and the Decree on Conduct of Business Supervision, which sets out the conduct of business requirements imposed on Market Operators and implements MiFID II requirements related to the conduct of business; and
 - e. Chapter 5 of the Wft, which implements part of MiFID II as it relates to MTFs.

1.2 **Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.**

- 1.2.1 The Applicant is subject to regulatory supervision by the AFM in conducting its activities for which it is permissioned as set out in Section 1.1.2 above. In undertaking those activities, the Applicant is required to comply with the Applicable Rules, which include, among other things, rules on (i) the conduct of business (including rules regarding client categorization, communication with clients and other investor protections and client agreements) (ii) market conduct (including rules applicable to firms operating an MTF) and (iii) systems and controls (including rules on outsourcing, governance, record-keeping and conflicts of interest).
- 1.2.2 The AFM requires the Applicant to comply at all times with a set of threshold conditions for authorisation and ongoing requirements, including requirements that the Applicant has sound business and controlled business operations and that it has appropriate resources for the activities it carries on. Breach of a threshold condition could lead to enforcement action or the Applicant’s authorisation being revoked by the AFM and the Dutch Minister of Finance.

- 1.2.3 In addition to complying with detailed rules and guidance governing the organization and conduct of the Applicant's business, the Applicant is required to act in accordance with Section 4:90 of the Wft, which requires the Applicant to act honestly, fairly and professionally and refrain from actions that are detrimental to the integrity of the market. Additionally, pursuant to Section 4:14(2)(a) of the Wft, in conjunction with Article 29a(2) of the Decree on Conduct of Business Supervision (*Besluit Gedragtoezicht Financiële ondernemingen Wft*) and Article 15(5) of MiFID II, the Applicant must establish adequate risk management policies and procedures and adopt effective arrangements to manage the risks relating to its activities, processes and systems. The Applicant is also required to deal with the AFM in an open and cooperative way and must disclose to the AFM anything relating to the Applicant of which the AFM would reasonably expect notice.
- 1.2.4 The Applicant is subject to prudential requirements, including minimum regulatory capital and liquidity requirements, and is capitalized in excess of regulatory requirements.

2. Governance

2.1 Governance – The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the Exchange,

- 2.1.1 The Applicant has in place a Board of Directors/Management team (collectively, the "**Management Body**"), Compliance Officer, Risk Officer, Operations team, IT support and Sales force. The Applicant outsources the provision of any additional support functions to a CME Group service company, thereby ensuring operational continuity of the relevant businesses. The Management Body remains fully responsible for the tasks or functions that are outsourced or delegated; maintaining the ability to direct and control the relevant functions.
- 2.1.2 The Management Body defines and oversees the implementation of the governance arrangements of the Applicant, ensuring effective and prudent management of the Applicant, including the segregation of duties within the Applicant and the prevention of conflicts of interest, in a manner that promotes the integrity of the market. The Management Body is also responsible and accountable for the overall strategy of the Applicant, taking into account the Applicant's business and risk profile.
- 2.1.3 The Applicant maintains a one-tier board structure under Dutch law, with both Executive Directors and an independent Non-Executive Chairman. The Applicant's Board of Directors (the "**Board**") currently consists of two Executive Directors and one independent Non-Executive Chairman.

- 2.1.4 Consistent with CME Group’s approach, broader strategic decisions are made at the CME Group level and day-to-day operational decisions are made at the Applicant entity level. This model recognises that the Applicant operates within a wider group framework, and acknowledges that the Applicant’s Directors have obligations in relation to the Applicant, including its authorisation by the Dutch Minister of Finance and regulation and supervision by the AFM, and are able to exercise those obligations.
- 2.1.5 The Board is accountable to the Applicant’s shareholders and the relevant regulatory authorities with oversight over the Applicant, such as the Dutch Minister of Finance and the AFM.
- 2.1.6 As a Market Operator authorised by the Dutch Minister of Finance and supervised and regulated by the AFM, the integrity (*betrouwbaarheid*) of the Applicant’s “daily policymakers” (*dagelijks beleidsbepalers*, “**Daily Policymakers**”) must be beyond doubt, and each Daily Policymaker must be suitable (*geschikt*) for his, her or its function.
- 2.1.7 The following persons (natural persons or legal entities) are considered to be Daily Policymakers of the Applicant for purposes of Dutch financial regulatory law:
- (a) all of the Applicant’s statutory directors (i.e., all executive and non-executive directors registered as such with the Trade Register (*Handelsregister*) of the Dutch Chamber of Commerce (*Kamer van Koophandel*)); and
 - (b) all other persons effectively determining the daily policy of the Applicant.
- 2.1.8 Before appointing a Daily Policymaker, the Applicant must obtain written approval from the AFM. In other words, a person may not be appointed as a statutory director of the Applicant or otherwise act as a Daily Policymaker of the Applicant before first having obtained approval from the AFM. To obtain the AFM’s approval, the Applicant is required to submit the appropriate integrity screening and suitability screening documentation to the AFM.
- 2.1.9 The purpose of the AFM’s integrity screening is to assess whether there are facts or circumstances which show behaviour that is not in line with the integrity required for the position to be held by the person at a regulated entity. This concerns, for example, the criminal, financial, supervisory and tax history of the person. The AFM will also carry out background checks and will consult various sources to this end (e.g., tax authorities, the National Public Prosecutor, other financial regulatory authorities, public sources, media information). More details are provided in the Policy Rule Integrity Screening (*Beleidsregel betrouwbaarheidstoetsing*), available at: <https://wetten.overheid.nl/BWBR0017862/2006-01-29>.

- 2.1.10 The purpose of the AFM's suitability screening is to assess whether the person taking up a role at a regulated entity has sufficient knowledge and skills and displays the required professional behaviour to perform the role. A suitability screening is linked to a particular position/role. This means that a suitability screening is required for all prospective appointments. This also applies if an incumbent director who has been previously screened for suitability changes his or her position or remit within the same regulated entity. More details are provided in the Policy Rule Suitability 2012 (*Beleidsregel geschiktheid 2012*), available at: <https://wetten.overheid.nl/BWBR0031740/2016-04-06>.
- 2.1.11 The substantiation of the knowledge and experience of Daily Policymakers, and the choice with regard to the composition of the collective of Daily Policymakers, are key considerations within the AFM's suitability and integrity screening. The composition qualifications must be substantiated against the following factors:
- (a) managerial and hierarchical leadership;
 - (b) general and specific professional knowledge and experience; and
 - (c) knowledge and experience of business operations.
- 2.1.12 The Applicant is required to immediately report to the AFM new antecedent events and any changes in antecedent events of the Applicant's Daily Policymakers. The following are examples of changes in antecedent events: financial problems; bankruptcy; falsification of documents; embezzlement; and improper tax returns.
- 2.1.13 In response to the report about antecedent events, the AFM can decide to rescreen that person. This may lead to the outcome that the person's integrity is no longer beyond doubt and/or that the person is no longer deemed suitable.
- 2.1.14 If a Daily Policymaker is dismissed or decides to resign, this requires prior approval from the AFM. As part of the notification to the AFM, an updated suitability matrix will need to be submitted to enable the AFM to assess whether the collective of Daily Policymakers continues to meet the required level of expertise, knowledge and experience. The dismissal or resignation of a Daily Policymaker may not take place before the AFM has provided its written approval.
- 2.1.15 The Applicant maintains an independent compliance function, with a dedicated compliance officer. The compliance function is responsible for identifying, assessing, advising, monitoring and reporting on the Applicant's compliance risk (i.e., the risk that the Applicant fails to comply with its obligations under Dutch and European law, as well as the applicable standard set by the European Securities and Markets Authority ("ESMA") and the relevant Dutch competent authorities).
- 2.1.16 CME Group has established an enterprise risk management program ("ERM") to promote and facilitate the process to evolve, align, and sustain sound risk

management practices. The ERM is led by a Managing Director, ERM and Global Chief Compliance Officer.

(b) that business and regulatory decisions are in keeping with its public interest mandate,

2.1.17 The Applicant is committed to ensuring the integrity of the Facility and the stability of the financial system, and that its business and regulatory decisions align with its public interest mandate. The rules, policies and activities of the Applicant incorporate the Applicable Rules, which are designed to ensure best practices and fulfill this public interest mandate. Also, the Applicant has adopted rules and surveillance systems which are designed to ensure that trading by Participants is conducted in a manner consistent with applicable law and to detect and prevent market manipulation and disorderly trading conditions.

(c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:

(i) appropriate representation of independent directors, and

(ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,

2.1.18 The Applicant's Independent Non-Executive Chairman was appointed to provide independent supervision and oversight to the Executive team. The relevant individual has extensive Compliance and Risk experience, both in the Netherlands and the United Kingdom, and brings invaluable experience to ensure adequate systems, control and oversight are implemented.

2.1.19 As confirmed by the AFM, the relevant Board members were selected for their specific strengths, relevant business experience and market knowledge in relation to the relevant regulated activities, which brings balance to the Applicant. All Board members possess skills in each of the focus areas, thereby not overburdening one individual so that they can agree and direct matters as a knowledgeable and capable collective, yet at the same time challenge decisions that are being made in all areas to ensure adequate governance across the Board/senior management. Each of the Daily Policymakers has considerable experience in his, her or its chosen area of focus, which will provide for considerable oversight of such activities.

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and

2.1.20 The Applicant has adopted all applicable CME Group policies, including the Conflicts of Interest Policy. The Applicant is required to maintain and operate effective organisational and administrative arrangements with a view to taking all

reasonable steps to identify, monitor and manage all conflicts of interest including conflicts between itself and its customers. Pursuant to MiFID legislation, the Applicant maintains a stand-alone conflicts of interest register, identifying the inherent conflicts of interest within the firm, while setting out appropriate measures to manage and mitigate those conflicts.

- 2.1.21 The Applicant's Board members must abide by the Conflicts of Interest Policy, which sets out requirements governing, among other things, the disclosure of conflicts by Board members and the situations in which Board members are prohibited from participating in decisions of the Board. Furthermore, Board members are subject to duties imposed under Dutch law.
- 2.1.22 The Applicant's employees are also subject to applicable CME Group policies. The Applicant's employment contracts require that employees comply with all relevant policies and procedures of the Applicant.
- 2.1.23 Any violation of the Conflicts of Interest Policy may result in disciplinary action against the Board member or employee.
- 2.1.24 The Applicant is also required to implement numerous internal policies and procedures in order to avoid conflicts of interest. These include:
 - (a) ensuring that, in dealings with customers, its staff use the highest standard of integrity;
 - (b) taking all reasonable steps to achieve the best overall trading result for customers, exercise consistent standards, and operate the same processes across all markets, clients and financial instruments;
 - (c) disallowing staff from dealing the same way for personal account as a customer order or potential order before it is executed or where a customer's interest could be adversely affected or where a client order is pending;
 - (d) controlling or preventing the flow of information between CME Group business units and entities where the interests of customers may conflict with CME Group's own interests;
 - (e) insisting on strict customer confidentiality;
 - (f) disallowing staff from accepting non-minor gifts, entertainment or other inducement;
 - (g) informing customers of the relationship where the counterparty to the deal is another CME Group company or where the services of another CME Group company is recommended;

- (h) structuring remuneration such that relevant staff who are open to a conflict of interest are paid a basic salary independent of company performance, and may be paid a bonus linked to company performance, team performance or the individual's performance at the discretion of senior management;²
- (i) separately supervising those carrying out functions for customers whose interests may conflict, or where the interests of customers and CME Group may conflict, or preventing them from involvement where necessary;
- (j) maintaining effective controls to manage conflicts of interest between parts of the business responsible for the benchmark submission or contribution of data to third party benchmarks and those parts of the business who may use or have an interest in the benchmark rate and preventing or limiting any individual from exercising inappropriate influence over the benchmark submission or contribution of data.

2.1.25 In cases where there is no means of managing the conflict of interest or sufficiently protecting the interests of customers, the Applicant will disclose the conflict of interest to customers or decline to act for a customer.

2.1.26 The Applicant's Compliance Monitoring team is responsible for ensuring that the Conflicts of Interest Policy is adhered to.

- (e) **there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.**

2.1.27 *Qualifications:* See the preceding paragraphs of Section 2 above for information on the Applicant's Management Body members' qualifications. Members of the Applicant's Management Body are recruited for their particular position based upon their skills and expertise.

2.1.28 *Remuneration:* The Applicant's remuneration system aims to incentivize high-level performance and promote sound risk management.

2.1.29 *Limitation of liability:* The liability of the Applicant, its directors, officers and employees to any person in connection with the Applicant's operation of the Facility is limited.

2.2 **Fitness – The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer**

² Specifically, the (variable) remuneration of staff who are involved in the provision of services to clients is structured in such a way that it encourages responsible business conduct, fair treatment of clients and avoids conflicts of interest in the relationship with clients.

or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

- 2.2.1 Members of the Applicant's Management Body are approved by the AFM, as further described in Section 2.1 above. The AFM grants such approval only if it is satisfied that the candidate is fit to perform his or her responsibilities. Responsibility lies with the Applicant to satisfy itself and the AFM that the relevant individual is fit to perform the role applied for.
- 2.2.2 As described in Section 2.1 above, AFM-approved persons are directly subject to obligations under the AFM's regulatory regime.

3. Regulation of Products

3.1 Review and Approval of Products – The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

- 3.1.1 As a Market Operator, the Applicant requires specific permission from the AFM to offer the Facility in respect of each class of financial instrument traded on the Facility. AFM permission is granted either through an initial authorisation process or through a subsequent "variation of permission" process.
- 3.1.2 As part of its initial authorisation, the AFM granted permission on March 12, 2019 for the Applicant to offer the Facility in respect of FX swaps and forwards, FX non-deliverable forwards, interest rate swaps, forward rate agreements, basis swaps, inflation swaps and FX options. For the purposes of the present application, the Applicant seeks permission in respect of FX swaps and forwards and (in future development of the platforms) FX non-deliverable forwards.
- 3.1.3 The Applicant is currently authorised by the Dutch Minister of Finance to offer the Facility in relation to all instruments listed on Annex B. To the extent that the Applicant wishes to make available for trading additional classes of financial instruments on the Facility, it would require prior AFM approval via a "variation of permission" process.
- 3.1.4 Once an instrument is made available to trade on a European Union trading venue such as the Facility, it is included in the database of instruments of ESMA which are "traded on a trading venue" ("TOTV"). This has ramifications for Participants, as TOTV status triggers transparency/ transaction reporting requirements for trading in that instrument.

- 3.2 **Product Specifications – The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.**
- 3.2.1 As described in Part I of the Application, EBS Direct enables Liquidity Consumers to view and access prices streamed to the platform from Liquidity Providers. Via the platform, Liquidity Providers can provide a price directly to Liquidity Consumers (similar to their own single dealer platform). EBS Direct gives Liquidity Providers and Liquidity Consumers the ability to identify their counterparty prior to the execution of the trade and allows Liquidity Providers to reject a bilateral trade. This helps Liquidity Providers to manage operational and credit risk in the context of those bilateral relationships which results in better execution and increased liquidity.
- 3.2.2 EBS Direct enables the Liquidity Providers to provide prices to their chosen counterparties, the Liquidity Consumers based on their assessment of the client relationship. This helps Liquidity Providers to manage operational and credit risk in the context of those bilateral relationships. EBS Direct allows Liquidity Providers to provide a price directly to their customers (similar to their own single dealer platform price) via the EBS trading interfaces. EBS Direct gives Liquidity Providers the ability to identify their counterparty prior to the execution of the trade and allows them to accept or reject a bilateral trade. This feature is standard on direct/bilateral relationship-based trading offerings in the market today. From a Liquidity Customer standpoint, they are able to see an aggregated view of the liquidity provided by their chosen Liquidity Providers. EBS Direct also allows Liquidity Consumers to trade using the credit of a prime bank.
- 3.2.3 EBS Institutional is a specialist FX Execution Management System (“**EMS**”) designed for use by asset managers to manage their foreign exchange trading process. Asset managers can execute trades through this system predominantly through bilateral trades with their existing counterparty relationship banks. The Applicant will offer this platform in Ontario in respect of FX Forwards, FX Swaps and (in the future) Non-Deliverable Forwards.
- 3.2.4 As part of the Applicant’s Market Operator authorisation from the Dutch Minister of Finance, the Applicant identified to the AFM the types of instruments that it intended to make available for trading. The Dutch Minister of Finance has authorised the Applicant to provide the Facility for all types of instruments listed on Annex B. The EBS MTF Rulebook designates the instruments which the Applicant’s Participants may trade. Any changes to the EBS MTF Rulebook must be reviewed and approved by the AFM.
- 3.2.5 The Dutch Minister of Finance’s requirements for authorisation of Market Operators do not make reference to usual commercial customs and practices. Instead, the Dutch rules (which reflect requirements under MiFID) focus on maintaining and implementing transparent and non-discriminatory rules, based on

objective criteria. The EBS MTF Rulebook is drafted in accordance with these criteria, which aims to give Participants a clear understanding of the lifecycle of a trade. It is the Applicant's experience that the terms and conditions of the instruments that trade on the Facility are generally accepted and understood by Participants.

3.2.6 In accordance with MiFID II, the Facility is required to provide the ESMA, as delegated by the AFM, with reference data for all financial instruments that are admitted to trading or that are traded each trading day. The financial instrument reference data provided by the Facility must be in the form prescribed by EU law (e.g., ISIN identifiers must be provided per instrument).

3.3 Risks Associated with Trading Products – The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.

3.3.1 The Applicant's Market Support and Control teams maintain arrangements to prevent disorderly trading including real-time monitoring of pricing parameters and deal rejections/time-outs.

3.3.2 The Applicant's Compliance Department assesses Participants' compliance with the EBS MTF Rulebook on an ongoing basis on a risk-based proactive approach. The Applicant's Compliance Department also has the capability to suspend all trading on the Facility during emergency situations and to suspend trading of specific instruments or instruments of a specific asset class during a trading day, either in response to an emergency situation or by order of a regulator.

3.3.3 Consistent with other Market Operators, the Applicant will suspend or halt trading in specific instruments on the Facility if and when such instructions are communicated to the Applicant by the AFM.

4. Access

4.1 Fair Access

(a) **The exchange has established appropriate written standards for access to its services including requirements to ensure**

(i) **participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,**

(ii) **the competence, integrity and authority of systems users, and**

(iii) **systems users are adequately supervised.**

- (b) **The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.**
- (c) **The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.**
- (d) **The exchange does not**
 - (i) **permit unreasonable discrimination among participants, or**
 - (ii) **impose any burden on competition that is not reasonably necessary and appropriate.**
- (e) **The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.**

4.1.2 Section 4:91a(1) of the Wft requires the Applicant to establish transparent rules and procedures for fair and orderly trading and to establish objective criteria for the efficient execution of orders. Participant status, access to, and usage of, the Facility is available to all market participants that meet the criteria set forth by the Applicant. The Applicant vets prospective Participants against the Applicant's eligibility criteria as part of its Participant onboarding procedures. Section 4 (Eligibility Criteria) of the EBS MTF Rulebook sets out the admission and eligibility criteria that Participants must meet.³ Specifically, to be eligible for admission as a Participant, a Participant applicant must demonstrate to the satisfaction of the Applicant that it:

- (a) has entered into a valid and effective Customer Agreement with the Facility;
- (b) satisfies the Applicant's internal client on-boarding requirements including, but not limited to, "know your client" procedures;
- (c) is classified by the Applicant as an ECP or PC (each as defined in MiFID) (for the avoidance of doubt, retail clients are not permitted on the Facility);
- (d) agrees to adhere, on an on-going basis, to the terms of the EBS MTF Rulebook, the Customer Agreements, the User Guides and any guidance or other requirements of the Applicant;
- (e) has the legal and regulatory capacity to undertake trading in derivatives on an MTF;

³ The EBS MTF Rulebook is available online at: <https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-mtf-rulebook-general-terms.pdf>.

- (f) has adequate organisational procedures and controls to limit Error Trades and the submission of erroneous Orders to the Facility, including, but not limited to, the operation of a Kill Functionality;
 - (g) meets the technical specifications and standards required by the Applicant;
 - (h) is an investment firm or credit institution (each as defined by MiFID and Directive 2013/36/EU, respectively) or other person which (i) is of sufficiently good repute; (ii) has a sufficient level of trading ability, competence and experience; and (iii) has sufficient resources for their role as a Participant; and
 - (i) satisfies any additional eligibility criteria set out in any appendix to the EBS MTF Rulebook.
- 4.1.3 Section 5 of the EBS MTF Rulebook also contains the following provisions with respect to access by a Participant's authorised employees:
- (a) a Participant shall be responsible for all the acts, omissions, conduct and activity of its Authorised Employees (Section 5.16); and
 - (b) a Participant must ensure its Authorised Employees have sufficient training, are properly supervised and have adequate experience, knowledge and competence to participate on the Facility in accordance with the Customer Agreements and the EBS MTF Rulebook (Section 5.17).
- 4.1.4 In addition, all Ontario Participants will be required to be registered under Ontario securities laws, exempt from the registration requirements or not subject to the registration requirements. An Ontario Participant is also required to immediately notify the Applicant if it ceases to meet any of the above criteria represented by it on an ongoing basis.
- 4.1.5 Pursuant to its obligations under the Applicable Rules, the Applicant has implemented rules, policies and procedures that are designed to not permit unreasonable discrimination among Participants or impose unreasonable or unnecessary burdens on competition.
- 4.1.6 The Applicant may deny trading privileges or prevent a person from becoming or remaining a Participant, if in the Applicant's sole discretion, the person does not satisfy the eligibility criteria listed above or if the Applicant considers that accepting that person as a Participant may prevent the Applicant from complying with applicable law. The Applicant must assess such applications in an objective and non-discriminatory manner. The Applicant keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

5. Regulation of Participants on the Exchange

5.1 Regulation – The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

5.1.1 As required by the Wft, the EBS MTF Rulebook sets out transparent and non-discretionary rules and procedures for fair and orderly trading by Participants and objective criteria for efficient execution of orders. Participants are required to comply with a significant number of rules that govern trading on the Facility. The applicable general rules are primarily located in Section 6 (General Dealing Rules) and Section 10 (Products, Settlement, STP) of the EBS MTF Rulebook.⁴ There are rules specifically for EBS Direct regarding products made available for trading on the Facility and rules specific for EBS Institutional regarding products made available for trading on the Facility separately included in the EBS Direct Appendix and EBS Institutional Appendix, respectively.⁵

5.1.2 The Applicant is dedicated to safeguarding the integrity of the Facility, and has policies and procedures that are designed to ensure that the Facility is free from manipulation and other abusive practices. These efforts are a necessary component of efficiently working markets, and the Applicant is committed to ensuring that Participants are able to use the Facility with the knowledge that it remains open and transparent.

5.1.3 Further, the EBS MTF Rulebook, which governs participation in the Applicant's platforms, prohibit Participants from engaging in any act or course of conduct which is likely to harm the integrity, fairness, orderliness or reputation of the platforms. If the Applicant were to detect that a Participant was in breach of this obligation under the EBS MTF Rulebook, the Applicant would have remedies available to it under Rule 8.2 of the EBS MTF Rulebook (such as restriction of specific order types, suspension from specific instruments or suspension from the platforms altogether).

5.1.4 The Applicant's compliance personnel are responsible for trade surveillance and monitoring trading activity in conjunction with the Facility's dedicated Market Surveillance and Performance team through the use of proprietary monitoring tools to determine if there are any potential violations of the EBS MTF Rulebook and monitoring compliance with market manipulation rules. The Applicant captures and

⁴ The EBS MTF Rulebook is available online at: <https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-mtf-rulebook-general-terms.pdf>.

⁵ The EBS Institutional Appendix is available online at: <https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-mtf-rulebook-appendix-ebs-institutional-fx.pdf>. The EBS Direct Appendix is available online at: <https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-mtf-rulebook-appendix-ebs-direct.pdf>.

retains all audit trail data necessary to detect, investigate, and prevent market misconduct and disorderly trading. Such data shall be sufficient to reconstruct all trades and trade-related activity within a reasonable period of time and to provide evidence of any violations of the rules of the Applicant.

- 5.1.5 In addition to the above, front-office and operational teams are trained to detect and escalate unusual trading behaviour or patterns (including potential market abuse or market manipulation) to the Applicant's Compliance department.
- 5.1.6 The Applicant performs anti-money laundering and counter-terrorist finance checks as part of its participant onboarding procedures. Where there are reasonable grounds to suspect or where there is a suspicion of money laundering or terrorist financing which arises in the course of participant onboarding, this will be reported to the Financial Intelligence Unit (FIU) Nederland, the competent authority for anti-money laundering oversight in the Netherlands, which investigates and reports money laundering, terrorist financing and related offenses to the relevant law enforcement and investigative services, and to other relevant regulators as required by applicable regulation (including the AFM).
- 5.1.7 The Applicant has a wide range of tools for enforcing Participants' compliance with the EBS MTF Rulebook. These tools include issuing written warning letters, temporarily suspending access, imposing conditions on access or terminating a Participant's ability to access the Facility. Please see Section 9 (Suspension, Termination, Resignation) of the EBS MTF Rulebook.
- 5.1.8 Pursuant to Section 4:91b(3) of the Wft, the Applicant will report to the AFM (i) significant breaches of the Facility Rules, (ii) disorderly trading conditions, and (iii) conduct that may involve market abuse. The Applicant will also notify the AFM when a Participant's access is terminated, and may notify the AFM when a Participant is temporarily suspended or subject to condition(s). The AFM has the power to investigate and impose unlimited fines for market abuse, and to prosecute for market manipulation.

6. Rulemaking

6.1 Purpose of Rules

- (a) **The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.**

- 6.1.2 Pursuant to its obligations under the Applicable Rules, the Applicant has implemented rules, policies and procedures that are designed to not permit unreasonable discrimination among Participants or impose unreasonable or

unnecessary burdens on competition. The Applicant's rules are covered in the EBS MTF Rulebook, and in appendices for EBS Direct and EBS Institutional. The Applicant believes that its rules and policies that govern the activities of Participants are consistent with the rules and policies of other marketplaces, and therefore do not impose any burden on competition that is not reasonably necessary or appropriate.

- (b) The Rules are not contrary to the public interest and are designed to**
 - (i) ensure compliance with applicable legislation,**
 - (ii) prevent fraudulent and manipulative acts and practices,**
 - (iii) promote just and equitable principles of trade,**
 - (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,**
 - (v) provide a framework for disciplinary and enforcement actions, and**
 - (vi) ensure a fair and orderly market.**

6.1.3 The EBS MTF Rulebook is subject to the standards and requirements outlined by the Applicable Rules. At a high level, the EBS MTF Rulebook seeks to ensure fair and orderly markets accessible to all eligible Participants that meet the criteria listed in the EBS MTF Rulebook. This aim is accomplished by establishing rules that reflect the Applicable Rules, criteria that are not contrary to the public interest, and are designed to:

- (i) ensure compliance with applicable legislation.** The EBS MTF Rulebook governs participant and membership requirements and includes requirements that Participants will continue to comply with the EBS MTF Rulebook and applicable law. The Applicant is obligated to comply with the Applicable Rules and must implement rules that require compliance with the Applicable Rules by its Participants. The Applicant proactively monitors its Participants' compliance with applicable law and regulation, evidenced in part by its market surveillance systems designed to identify market abuse and prevent disorderly trading conditions.
- (ii) prevent fraudulent and manipulative acts and practices.** Section 5 (Participant Obligations) of the EBS MTF Rulebook prescribes trading practices and trading conduct requirements, including prohibited trading activities, and prohibits fictitious trades,

fraudulent activity and manipulation. The Applicant has instituted procedures to collect information, examine Participants' records, directly supervise the market, maintain sufficient compliance staff, conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system.

- (iii) **promote just and equitable principles of trade.** All systems of the Facility are available to all Participants on a non-discriminatory basis. Throughout the EBS MTF Rulebook, the Applicant has established transparent and objective standards for access to and trading on the Facility to foster competitive and open market participation. The Applicant believes that compliance with the EBS MTF Rulebook and related compliance procedures promote just and equitable principles of trade.
- (iv) **foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange.** Section 19 (Co-operation with Regulators) of the EBS MTF Rulebook authorises the Applicant to provide full assistance and information to the AFM, and any other regulatory authority (e.g., the Commission), as required by applicable law in connection with any investigation and prosecution of or enforcement action regarding any actual or suspected prohibited trading practice on the Facility. Each Participant is also required by Section 5.8 of the EBS MTF Rulebook to cooperate with the Applicant and any relevant regulator during any investigation that is conducted in relation to access to and trading on the Facility, which includes providing access to information, documents, and any other reasonable request within the control of the Participant, save to the extent the Participant may be restricted in doing so by applicable laws.
- (v) **promote a framework for disciplinary and enforcement actions.** Under Section 8 (Conduct Rules) of the EBS MTF Rulebook, the Applicant may take action against a Participant or its authorised trader(s) in circumstances including, but not limited to, where the Participant or its authorised trader(s): (i) engages in any conduct which gives or is likely to give a false or misleading impression as to the market in, or the price of, any product or which secures the price of one or several products at an abnormal or artificial level; or (ii) engages in any act or course of conduct which is likely to harm the integrity, fairness, orderliness or reputation of the Facility; (iii) breaches or attempts to breach the Facility rules or cause or contribute to a breach of the rules by another Participant; or (iv)

submit trade requests or orders on the Facility which are fictitious, or constitute any other form of deception or contrivance. Under Section 7 (Conduct Rules) and Section 8 (Suspension, Termination, Resignation) of the EBS MTF Rulebook, the Applicant may, in its sole discretion, issue a formal written notification of convention, restrict order types, impose systematic enforcements (minimum quote life or throttling of orders) or suspend specific instruments or a Participant's or authorised trader's ability to access the Facility.

- (vi) **ensure a fair and orderly market.** The Applicant has prescribed trading rules and collects and evaluates market activity data, maintains and audits its real-time monitoring program, and audits historical data to detect trading abuses. The Applicant periodically reviews its programs and procedures, including risk analysis, emergency planning, and systems testing. The Applicant regularly audits systems and technology tests both for technical and regulatory compliance. The Applicant's Compliance Department has the capability to suspend all trading on the Facility during emergency situations. The Applicant's Compliance Department also has the ability to suspend trading of specific instruments or instruments of a specific asset class during a trading day, either in response to an emergency situation or by order of a regulator. The Applicant believes that these measures and its rules are designed to ensure a fair and orderly market.

7. Due Process

7.1 Due Process – For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

- (a) **parties are given an opportunity to be heard or make representations, and**
- (b) **it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.**

7.1.2 The Applicant may prevent a person from becoming a Participant, if in the Applicant's sole discretion, the person does not satisfy the eligibility criteria listed in Section 2 or if the Applicant considers that accepting that person as a Participant may prevent the Applicant from complying with applicable law. Under Section 8 (Conduct Rules) and Section 9 (Suspension, Termination, Resignation) of the EBS MTF Rulebook, the Applicant may also, in its sole discretion, issue a formal written notification of convention, restrict order types, impose systematic enforcements (minimum quote life or throttling of orders) or suspend specific instruments or a Participant's or authorised trader's ability to access the Facility.

- 7.1.3 As a MiFID firm, the Applicant is subject to a complaints regime under MiFID when it provides MiFID services to its Participants (e.g., making available an MTF). MiFID services encompass all of the activities for which the Applicant has AFM authorisation, as well as ancillary services. As such, all complaints that relate to the operation of the Facility fall within the scope of the MiFID complaints regime.
- 7.1.4 Participants may raise a complaint regarding a variety of matters including, but not limited to, EBS MTF Rulebook violations, any potential fraudulent acts, dishonorable or dishonest conduct, access to the Facility or the ability (or inability) to interact with other Participants. Once received, any complaints must be promptly referred to the Compliance Department of the Applicant. In the event that a compliance officer is involved in the subject matter of the complaint, the complaint is referred to the Applicant's Chief Compliance Officer. If the Applicant's Chief Compliance Officer is the subject matter of the complaint, then the complaint will be referred to the Board or the Applicant's Head of Amsterdam office.
- 7.1.5 The Applicant maintains records of all investigations conducted by the Applicant in accordance with its recordkeeping policy. For example, Section 3.6 of the EBS MTF Rulebook provides that decisions with respect to an applicant's application for Participant status are communicated in writing to the applicant and Section 20.1 provides that the Applicant "will retain the books and records which it is required to keep pursuant to Applicable Law for at least five years (and, where requested by the relevant Regulator, for a period of up to 7 years)".

8. Clearing and Settlement

- 8.1 **Clearing Arrangements – The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.**
- 8.1.1 Settlement takes place between the counterparties. Although the Facility's rules require counterparties to settle any deals, the Applicant is not involved in settlement and counterparties make their own bilateral arrangements with respect to settlement.
- 8.1.2 Neither the Applicant nor any of its affiliates provides clearing, settlement or custodial facilities to Participants for trades executed on the Facility. Participants are required to have in place appropriate arrangements for the orderly clearance and/or settlement of trades. Participants must comply with any clearing obligation that applies to them under applicable law, including the laws of the province of Ontario.
- 8.2 **Risk Management of Clearing House – The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.**

8.2.1 All transactions in the MTF Instruments are settled bilaterally between the counterparties. No transactions of MTF Instruments occurring on the Facility are subject to a clearing obligation and the Applicant does not provide direct connectivity to any clearing houses.

9. Systems and Technology

9.1 **Systems and Technology – Each of the exchange’s critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:**

- (a) **order entry,**
- (b) **order routing,**
- (c) **execution,**
- (d) **trade reporting,**
- (e) **trade comparison,**
- (f) **data feeds,**
- (g) **market surveillance,**
- (h) **trade clearing, and**
- (i) **financial reporting.**

9.1.1 The Facility has appropriate internal controls designed to provide for completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and a business continuity plan to enable the Facility to properly carry on its business.

9.1.2 The Applicant has put safeguards in place to protect the critical data and system components of its Facility and reduce the potential risk of market disruptions, including but not limited to market restrictions that could pause or halt trading under market conditions prescribed by the Applicant.

9.1.3 The Applicant operates and provides to Participants a robust and scalable platform. Standard system monitoring metrics include capacity and performance level alerts. In addition to system level monitoring of capacity and performance of resources, the Applicant also conducts standardized application or platform capacity tests on a regular basis. This ensures the platform is well positioned to provide adequate responsiveness to customers. The data generated from these tests are used to

establish present and historical benchmarks to identify performance and/or capacity hot spots or deficiencies. Additional resources are deployed where appropriate to resolve performance or capacity issues outside of the benchmark to bring performance back in line with benchmark expectation.

9.1.4 The Facility makes capacity estimates by regularly monitoring its systems usage as well as maintaining constant communications between internal parties whenever new business or possible changes in the market may increase capacity on the systems.

9.1.5 The Applicant conducts regular performance and capacity tests in a production test environment which matches production in its size, scope and infrastructure.

9.1.6 Please refer to the Applicant's response in Section 9.2 below for additional information.

9.2 **Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:**

- (a) **makes reasonable current and future capacity estimates;**
- (b) **conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;**
- (c) **reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;**
- (d) **ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;**
- (e) **ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;**
- (f) **maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and**
- (g) **maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.**

- 9.2.1 The Facility makes capacity estimates by regularly monitoring its systems usage as well as maintaining constant communications between internal parties whenever new business or possible changes in the market may increase capacity on the systems.
- 9.2.2 The Applicant conducts regular performance and capacity tests in a production test environment which matches production in its size, scope and infrastructure. Testing is described in paragraph 9.1.3 above.
- 9.2.3 The Business Continuity Management program (“**BCM**”) serves to mitigate potential impacts to CME Group’s markets, customers, assets and employees, and to safeguard the effective availability of essential products and services. The program is designed to ensure CME Group, including the Applicant, can respond appropriately to incidents while protecting the interests of its stakeholders, ensuring the safety of employees and protecting its reputation and brand.
- 9.2.4 BCM designs and implements enterprise-wide strategies to manage risk and mitigate potential impacts to CME Group operations and stakeholders, including those of the Applicant, by:
- aligning with international standards;
 - implementing incident response, system resilience (DR) and business recovery strategies that are both flexible and agile;
 - building effective partnerships with other departments throughout the company that manage risk;
 - employing tested exercise models that evolve with our environment and architecture;
 - identifying opportunities for enhanced resilience;
 - establishing collaborative relationships with external entities, partnerships and agencies; and
 - continually monitoring and adjusting program components to reflect material changes to the business and to meet domestic and international regulatory requirements.
- 9.2.5 BCM plans for the unavailability of site, staff and systems, and as a result, is designed to withstand a variety of adverse scenarios. BCM is designed to be agile and quickly responds to events to minimize impacts to CME Group’s business.
- 9.3 **Information Technology Risk Management Procedures – The exchange has appropriate risk management procedures in place including those that handle**

trading errors, trading halts and respond to market disruptions and disorderly trading.

- 9.3.1 The Applicant has set out appropriate risk management procedures, including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading, in the EBS MTF Rulebook, including:
- (a) Section 5.20: Each Participant shall carry out appropriate testing of algorithms to ensure that algorithms used to access the Facility cannot create or contribute to Disorderly Trading Conditions on the Facility.
 - (b) Section 6.5: The Applicant shall automatically reject orders which exceed pre-determined volume and price thresholds or are clearly erroneous (“**Pre-Trade Controls**”).⁶
 - (c) Section 6.7: The Applicant may use the Kill Functionality (i.e., the ability to cancel unexecuted orders) in the following conditions: (i) upon request of a Participant, where the Participant is technically unable to delete its own orders; (ii) where the Facility contains erroneous duplicated orders; (iii) a suspension of trading on the Facility initiated either by the Applicant or the relevant regulator; or (iv) for any other reason, as determined by the Applicant in its absolute discretion from time-to-time.
- (a) Section 6.10: The Applicant may suspend or remove from trading any product which no longer complies with the EBS MTF Rulebook (unless suspension would likely cause significant damage to Participants or the orderly function of the Facility) or upon receiving a request by the relevant regulator. The Applicant may temporarily halt or constrain trading if there is a significant price movement in a product on the Facility or a related market during a short period and, in exceptional cases, cancel, vary or correct any transaction. The Applicant may adjust, wind down or shut down the Facility or take any other appropriate action which, in the sole discretion of the Applicant is necessary, in the event of a threat to the capacity of the Facility to perform its functions without systems failures, outages or errors in matching.
- 9.3.2 CME Group has established the ERM to promote and facilitate the process to evolve, align and sustain sound risk management practices for the enterprise. The ERM is led by a Managing Director, ERM and Global Chief Compliance Officer.

⁶ Pre-Trade Controls include, but are not limited to: (i) price collars, which block orders which do not meet pre-set price parameters set by the Applicant; (ii) controls on maximum order value which block orders with uncommonly large order value from entering the Facility by reference to notional values per financial instrument set by the Applicant; and (iii) controls on maximum order volume which block orders with an uncommonly large order size from entering the Facility.

- 9.3.3 CME Group’s Information Security Program’s (“GIS”) purpose is to safeguard the confidentiality, integrity, and availability of the company’s information and services through a structured program designed and operated to mitigate information security risks and threats to CME Group. The GIS department is led by the Managing Director and Chief Information Security Officer (“CISO”). The CISO directly reports to the Chief Information Officer, is part of the IT Management Team (ITMT).
- 9.3.4 The GIS is in the process of rolling out, in a risk-based manner, the CME Group policies, procedures, and tools across the Applicant’s environment as part of the ongoing integration efforts. CME Group’s Confidentiality and Data Protection Policy and Corporate Information Security Policy are in place and govern the Applicant. CME Group maintains a vulnerability management program that applies to the Applicant, which provides ongoing cyclical management of vulnerabilities, including coordination of identification, classification, remediation, mitigation, and metrics
- 9.3.5 The GIS department maintains a “Defense in Depth” strategy for information security that is designed to provide multiple and complimentary layers of proactive, preventative and detective security controls. Relevant components of GIS include:
- *Information Security Risk and Compliance:* CME Group’s Information Security Risk and Compliance function is aligned with the ERM framework. It includes the development and distribution of policy and security awareness training; assurance, risk management, and consulting; and metrics and reporting.
 - *Identity Access Management (“IAM”) Services:* The IAM Services function includes access and entitlement management, access control, and access administration.
 - *Cybersecurity Operations:* Cybersecurity Operations encompass network security, threat intelligence, vulnerability management, security incident response, data loss prevention, forensics investigations, and insider threat analysis and response. This function implements the controls and procedures for securing the network and perimeter from unauthorized data flows and transmissions.
 - *Security Architecture:* The Security Architecture function includes endpoint security, application penetration testing and validation services. This function recommends and architects the appropriate security controls and procedures for securing CME Group’s systems and endpoints (e.g., mobile devices, desktops, laptops).
 - *GIS Delivery:* The Project Execution function assists in developing, championing, and supporting GIS projects, including managing the

financial health of programs and projects and ensuring adherence to IT Division standards for compliance and metrics.

- *GIS Operations and Execution:* The Operations and Execution role enables the CISO to work most effectively with internal and external stakeholders and fulfil his commitments.

10. Financial Viability

10.1 Financial Viability – The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

10.1.1 The Applicant has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices. The Applicant is subject to prudential requirements, including minimum regulatory capital and liquidity requirements, and must submit financial reports to the AFM.

10.1.2 The Applicant is capitalized in excess of regulatory requirements and will maintain any future minimum capital amounts needed to meet AFM requirements.

11. Transparency

11.1 Trading Practices - Trading Practices are fair, properly supervised and not contrary to the public interest.

11.1.1 The Applicant is obligated to comply with the Applicable Rules and requirements which require trading practices that are fair, properly supervised and not contrary to the public interest. Specifically, the Applicable Rules, which the Applicant adheres to, provides:

- (a) **Fair trading practices:** Section 4:91(a) of the Wft requires the Applicant to have “transparent rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders.”
- (b) **Properly supervised trading practices:** Section 4:91b(1) of the Wft requires the Applicant to: “(1) establish and maintain effective arrangements and procedures for the regular monitoring of the compliance by its participants with its rules and (2) monitor the transactions sent, including cancellations and the transactions undertaken by its participants under its systems to identify infringements of those rules, disorderly trading conditions, conduct that may indicate behavior that is prohibited under the Code of Market Conduct or system disruptions in relation to a financial instrument.” In addition, the Applicant is required under EU Market Abuse Regulation Article 16(1) to “establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation.”

(c) **Trading practices that are not contrary to the public interest:** Under Section 4:26 of the Wft, the Applicant is required to report to the AFM where (a) there is a significant breach of the Applicant’s rules; (b) there are disorderly trading conditions or (c) the Applicant identifies conduct that may involve market abuse. Furthermore, the Applicant has established, publishes, maintains and implements transparent and non-discriminatory rules, based on objective criteria, governing access to its facility (as required under Article 18(3) of MiFID II). As noted above, the Facility is required under the EU Market Abuse Regulation Article 16(1) to “establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation.”

11.1.2 The EBS MTF Rulebook addresses MTF trading practices, incorporates the Applicable Rules requirements outlined above and is designed to ensure fair and orderly markets accessible to all eligible Participants and that such markets are properly supervised and operated in a manner consistent with the public interest.

11.2 **Orders - Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.**

11.2.1 The Applicant’s rules pertaining to order size and limits are fair and equitable between Liquidity Providers and Liquidity Consumers and the Applicant’s system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent between Liquidity Providers and Liquidity Consumers.

11.3 **Transparency – The exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.**

11.3.1 The Facility publishes pre- and post-trade transparency data as required by MiFIR.

11.3.2 The Facility makes all necessary pre- and post-trade information available to the public via the Approved Publication Arrangement (“**APA**”) operated by the Applicant. The APA publishes the data in real-time on a reasonable commercial basis and free of charge with a 15-minute delay via <https://apa.nexregreporting.com/>.

12. **Compliance, Surveillance and Enforcement**

12.1 **Jurisdiction - The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.**

- 12.1.1 The Market Operator of an MTF is required under the Applicable Rules to set rules, conduct compliance reviews, monitor Participants' trading activity and take enforcement action against Participants when appropriate.
- 12.1.2 Pursuant to Section 2:46 of the Wft, the Applicant is required to report to the AFM (a) significant breaches of EBS MTF Rulebook, (b) disorderly trading conditions, and (c) conduct that may involve market abuse. The Applicant will also notify the AFM when a Participant's access is terminated, and may notify the AFM when a Participant is temporarily suspended or subject to condition(s). The AFM may choose to take further action against a Participant in its discretion.
- 12.1.3 The Applicant will comply with its regulatory obligations and supply data and information to the AFM when required, and will also assist the AFM in any investigation conducted regarding trading on the Facility. Please also see Section 5.
- 12.2 Member and Market Regulation - The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.**
- 12.2.1 The Applicant has instituted procedures and controls to collect information, examine Participants' records, supervise trading on the Facility, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform automated real-time market monitoring and market surveillance and establish an automated trade surveillance system to evaluate Participants' compliance with the EBS MTF Rulebook and applicable law.
- 12.2.2 Sections 5 and 7 of this application describe the resources available to the Applicant to investigate breaches of the EBS MTF Rulebook and to enforce its rules.
- 12.3 Availability of Information to Regulators - The exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the Commission, on a timely basis.**
- 12.3.1 Section 17.1 of the EBS MTF Rulebook provides that the Applicant will treat as confidential any information received from a Participant, including, where applicable, any credit settings, in relation to its business on the Facility, except where ...
- 17.1.3 disclosure is required by law or any tax authority or Regulator having jurisdiction;

17.1.4 disclosure is made in the interests of co-operation with any regulatory investigation conducted by a relevant Regulator.

12.3.2 Section 19 of the EBS MTF Rulebook specifically addresses cooperation with regulators:

19.1 The Applicant will report any significant breaches of the Rules, Disorderly Trading Conditions, systems disruptions in relation to a financial instrument or conduct which gives rise to a suspicion of market abuse to the relevant Regulator.

19.2 The Applicant will provide full assistance to, and may also supply any relevant information without delay to, the relevant Regulator.

19.3 The Applicant will comply with all relevant laws and regulations, and any request of the relevant Regulator.

12.3.3 Please also see Section 16 below.

13. Record Keeping – The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

13.1 The Applicable Rules require the Applicant to keep orderly records of its business and internal organization, including all services and transactions undertaken by it to enable the AFM to monitor it. The Applicant has implemented policies designed to ensure that the AFM has ready access to the Applicant’s records that it is required to maintain under MiFID, from which the AFM should be able to reconstruct each key stage of a transaction on the Facility if required.

13.1.1 Section 20.1 of the EBS MTF Rulebook provides that the Applicant “will retain the books and records which it is required to keep pursuant to Applicable Law for at least five years (and, where requested by the relevant Regulator, for a period of up to 7 years)”.

13.1.2 The Applicant also keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access, along with a record of any breaches of Facility rules by its Participants.

14. Outsourcing

14.1 **Outsourcing – Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.**

14.1.1 The Applicant has entered into several licensing and services agreements with affiliates and unaffiliated third parties. The Applicant at all times retains responsibility for any functions delegated to any service provider and the ultimate decision-making authority.

14.1.2 Under the Applicable Rules, the Applicant must ensure when outsourcing critical or important operational functions that (among other things), (i) it takes reasonable steps to avoid undue additional operational risk and (ii) the outsourcing does not materially impair the quality of its internal control and the ability of the AFM to monitor its compliance with regulatory obligations. The Applicant remains fully responsible for discharging its obligations under the regulatory system and must ensure that the outsourcing does not alter its relationship and obligations towards Participants. The Applicant's procedures are designed to ensure that the relevant regulatory requirements are satisfied in connection with outsourcing of critical or important operational functions. All material outsourcing agreements require Board approval.

15. Fees

15.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

15.1.1 As a Market Operator supervised and regulated by the AFM and governed by the Applicable Rules, the Applicant's fee structure, including any execution fees, ancillary fees and rebates, is required by Section 4:91a(11) of the Wft in conjunction with section 5:30b(1)(d) of the Wft to be transparent, fair and non-discriminatory. Under MiFID, trading venues like MTFs are required to charge the same fees and provide the same conditions to all users of the same type of services based on objective criteria, and may only establish different fee structures for the same type of services where those fee structures are based on non-discriminatory, measurable and objective criteria. In accordance with the Applicable Rules and MiFID, similarly situated Participants are charged the same fees pursuant to the Applicant's fee structure.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

15.1.2 The Applicant is required by MiFID to ensure that its fee structure is sufficiently granular to allow users to predict the payable fees on the basis of at least the following elements: (a) chargeable services, including the activity which will trigger the fee, (b) the fee for each service, stating whether the fee is fixed or variable, and (c) rebates, incentives or disincentives. MiFID also requires the

Applicant to publish objective criteria for the establishment of its fees and fee structures, together with execution fees, ancillary fees, rebates, incentives and disincentives in one comprehensive and publicly accessible document on its website. On EBS Direct and EBS Institutional, only Liquidity Providers are charged fees, in line with the current industry approach. The Applicant's fee schedule is available at:

- (a) For EBS Direct Liquidity Providers: <https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-forwards-price-sheet-liquidity-provider.pdf>; and
- (b) For EBS Institutional Liquidity Providers: <https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-institutional-fx-price-sheet-liquidity-provider.pdf>.

16. Information Sharing and Oversight Arrangements

16.1 Information Sharing and Regulatory Cooperation – The exchange has mechanisms in place to enable it to share information and otherwise cooperate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.1.1 The Applicant has established a process that enables it to respond to requests from regulators regarding the Applicant in a timely manner. It is the Applicant's policy to respond promptly and completely to any proper regulatory inquiry or request for documents. All inquiries and other communications from the Commission will be referred immediately to the Applicant's legal and compliance departments.

16.1.2 Section 19 of the EBS MTF Rulebook provides that the Applicant will provide full assistance to, and may also supply any relevant information without delay to, the relevant regulatory authority (e.g., the Commission) and will comply with all relevant laws and regulations and any requests of relevant regulators. Each Participant is also required by Section 5.8 of the EBS MTF Rulebook to co-operate with the Applicant and any relevant regulatory authority during any investigation that is conducted in relation to access to and trading on the Facility. Such cooperation shall include providing access to information, documents, and any other reasonable request within the control of the Participant, save to the extent the Participant may be restricted in doing so by applicable laws.

16.2 Oversight Arrangements – Satisfactory information sharing and oversight agreements exist between the Ontario Securities Commission and the Foreign Regulator.

16.2.1 The Commission is party to the following memoranda of understanding with the AFM:

- (a) The IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the “**IOSCO MMOU**”). The IOSCO MMOU came into effect on December 5, 2002, and establishes an international benchmark for cooperation and information sharing for the purpose of regulatory enforcement of securities and derivatives markets.
- (b) The Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Managers of Alternative Investment Funds (the “**AIFM MOU**”). The AIFM MOU came into effect on July 22, 2013, and provides for mutual assistance in the supervision and oversight of managers of alternative investment funds operating on a cross border basis.
- (c) The Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities (the “**Cross-Border MOU**”). The Cross-Border MOU was executed on November 22, 2019 and is subject to approval by the Ontario Minister of Finance, and provides for mutual assistance in the supervision and oversight of regulated entities operating on a cross border basis.

17. IOSCO Principles

17.1 IOSCO Principles – To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).

17.1.1 The Applicant adheres to the standards of IOSCO to the extent that such standards are incorporated into the Wft.

PART IV SUBMISSIONS BY THE APPLICANT

1. Submissions Concerning the Requested Relief

1.1 The financial instruments that the Applicant intends to make available to trade on the Facility fall under the definition of “derivative” or “security” as set forth in subsection 1(1) of the Act. The Facility operated by the Applicant falls under the definition of “marketplace” set out in subsection 1(1) of the Act because it brings together buyers and sellers of securities and derivatives and uses established, non-discretionary methods under which orders interact with each other.

1.2 An “exchange” is not defined under the Act; however, subsection 3.1(1) of the companion policy to National Instrument 21-101 – *Marketplace Operation*

provides that a “marketplace” is considered to be an “exchange” if it, among other things, sets requirements governing the conduct of marketplace participants. An MTF has certain obligations to monitor participants’ trading activity. Because an MTF sets requirements for the conduct of its participants, it is considered by the Commission to be an exchange for purposes of the Act.

- 1.3 Pursuant to OSC Staff Notice 21-702 – *Regulatory Approach for Foreign-Based Stock Exchanges*, the Commission considers an exchange located outside Ontario to be carrying on business as an exchange in Ontario if it provides Ontario Participants with direct access to the exchange. Since the Applicant would provide Ontario Participants with direct access to trading of the MTF Instruments on the Facility, the Commission will consider the Applicant to be “carrying on business as an exchange” in Ontario, and therefore must either be recognised or exempt from recognition by the Commission.
- 1.4 The Applicant satisfies all the criteria for exemption from recognition as an exchange set forth by Commission Staff, as described under Part III of this application, for all of the MTF Instruments. Ontario Participants that trade in the MTF Instruments would benefit from the ability to trade on the Facility, as they would have access to trading a range of securities and derivatives with counterparties that, due to new requirements introduced with the adoption of MiFID II on January 3, 2018, otherwise may not be available in Ontario. Stringent AFM oversight of the Facility, as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the Applicant are designed to ensure that Ontario Participants are adequately protected in accordance with international standards set by IOSCO.
- 1.5 Based on the foregoing, we submit that it would not be prejudicial to the public interest to grant the Requested Relief.

PART V OTHER MATTERS

1. Confidentiality, Consent and Information

- 1.1 We request that this application be treated as confidential until such time as the Commission and the Applicant both agree to publish this application for public comment.

If you have any questions or require anything further, please do not hesitate to contact us.

Yours very truly,

CME AMSTERDAM B.V.

“Lorenzo Ruffatti”

Name: Lorenzo Ruffatti

Title: Director

cc: Terence Doherty/Gawain Chan, Osler, Hoskin & Harcourt LLP

ANNEX A

The Applicant proposes to allow Ontario Participants to trade the following instruments on the Facility:

- i. Foreign Exchange (“FX”) Derivatives (Forwards or Outrights);
- ii. FX Swaps; and
- iii. Non-Deliverable Forwards.

ANNEX B

The Applicant is authorised by the AFM to allow trading of the instruments set forth in this Annex B.

- i. Sovereign bonds;
- ii. FX Forwards and Swaps;
- iii. Non-Deliverable Forwards;
- iv. Interest Rate Swaps;
- v. Forward Rate Agreements;
- vi. Basis Swaps;
- vii. Inflation Swaps; and
- viii. FX Options.

ANNEX C

This Annex C provides the definition of an “Eligible Counterparty” as defined in Article 30 of Directive 2014/65/EU (MiFID) and a “Professional Client,” as defined in Annex II of MiFID “Professional Clients for the Purpose of this Directive”.

DEFINITION OF ELIGIBLE COUNTERPARTIES

I. Categorises of Clients who are Considered to be Eligible Counterparties

The following are recognised as eligible counterparties for the purposes of this Article.

1. Investment firms;
2. Credit institutions;
3. Insurance companies;
4. Collective investment schemes authorised under the UCITS Directive and their management companies;
5. Pension funds and their management companies;
6. Other financial institutions authorised or regulated under European Union law or under the national law of a European Economic Area Member State;
7. National governments and their corresponding offices including public bodies that deal with public debt at national level;
8. Central banks, and
9. Supranational organisations.

DEFINITION OF PROFESSIONAL CLIENTS

Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered to be professional client, the client must comply with the following criteria:

I. Categorises of Clients who are Considered to be Professionals

The following shall all be regarded as professionals in all investment services and activities and financial instruments for the purposes of the Directive.

1. Entities which are required to be authorised or regulated to operate in the financial markets. The list below shall be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a third country:
 - a. Credit institutions;

- b. Investment firms;
 - c. Other authorised or regulated financial institutions;
 - d. Insurance companies;
 - e. Collective investment schemes and management companies of such schemes;
 - f. Pension funds and management companies of such funds;
 - g. Commodity and commodity derivatives dealers;
 - h. Locals;
 - i. Other institutional investors;
2. Large undertakings meeting two of the following size requirements on a company basis:
 - a. balance sheet total: EUR 20 000 000
 - b. net turnover: EUR 40 000 000
 - c. own funds: EUR 2 000 000
 3. National and regional governments, including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.
 4. Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities referred to above are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the client of an investment firm is an undertaking referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the investment firm, the client is deemed to be a professional client, and will be treated as such unless the investment firm and the client agree otherwise. The investment firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

This higher level of protection will be provided when a client who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement shall specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

II. Clients who may be Treated as Professional on Request

II.1. Identification criteria

Clients other than those mentioned in section I, including public sector bodies, local public authorities, municipalities and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules.

Investment firms shall therefore be allowed to treat any of those clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. Those clients shall not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Section I.

Any such waiver of the protection afforded by the standard conduct of business regime shall be considered to be valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved.

The fitness test applied to managers and directors of entities licensed under Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.

In the course of that assessment, as a minimum, two of the following criteria shall be satisfied:

- the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters,
- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000,
- the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

Member States may adopt specific criteria for the assessment of the expertise and knowledge of municipalities and local public authorities requesting to be treated as professional clients. Those criteria can be alternative or additional to those listed in the fifth paragraph.

II.2. Procedure

Those clients may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

- they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product,
- the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose,
- they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1.

However, if clients have already been categorised as professionals under parameters and procedures similar to those referred to above, it is not intended that their relationships with investment firms shall be affected by any new rules adopted pursuant to this Annex.

Firms must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the investment firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm shall take appropriate action.