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October 20, 2022

Filed Electronically

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

Attention: Secretary

Dear Sirs and Mesdames:

Re: BrokerTec Europe Limited – Application for Exemption from Recognition as an Exchange

We are filing this application with the Ontario Securities Commission (the “**Commission**”) on behalf of BrokerTec Europe Limited (the “**Applicant**”) to request the following relief (the “**Requested Relief**”) in relation to its operation of a multilateral trading facility (“**MTF**”) in the province of Ontario:

- (a) an order exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the *Securities Act* (Ontario) (the “**Act**”) pursuant to section 147 of the Act; and
- (b) exempting the Applicant from the requirements in National Instrument 21-101 *Marketplace Operation* (“**NI 21-101**”) pursuant to section 15.1 of NI 21-101, the requirements of National Instrument 23-101 *Trading Rules* (“**NI 23-101**”) pursuant to section 12.1 of NI 23-101 and National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (“**NI 23-103**”) pursuant to section 10 of NI 23-103.

This application is divided into the following Parts I to V. Part III describes how the Applicant satisfies the criteria for exemption of a foreign exchange, that allows customers to trade the instruments listed in Annexes A and B, from recognition as an exchange set by the Commission.



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PART I INTRODUCTION

1. Description of the Applicant’s Services

- 1.1 The Applicant has been authorised and regulated by the UK Financial Conduct Authority (the “**FCA**”) since 2001 to operate an MTF. The Applicant currently operates the BrokerTec EU MTF for trading in certain fixed income products on the BrokerTec trading platforms (the “**BrokerTec EU MTF**”), and began operating a separate MTF starting on September 12, 2022 for foreign exchange (“**FX**”) over-the-counter (“**OTC**”) derivatives, such as non-deliverable forwards (“**NDFs**”) (operating under the internal name of the “**EBS UK MTF**”).
- 1.2 The subjects of this Application are the BrokerTec EU MTF and the EBS UK MTF (each a “**Facility**”, and together the “**Facilities**”). The BrokerTec EU MTF comprises a central limit order book (“**BrokerTec CLOB**”) and a request for quote trading platform (“**BrokerTec Quote**”). At launch, the EBS UK MTF offers trading on a central limit order book (“**EBS Market**”). Participants of the BrokerTec EU MTF are able to trade the financial instruments listed in Annex A (the “**BrokerTec EU MTF Instruments**”). The financial instruments available for trading on the EBS UK MTF are listed in Annex B (the “**EBS UK MTF Instruments**”, and together with the BrokerTec EU MTF Instruments, the “**MTF Instruments**”). Additional products may be made available for trading on the Facilities by the Applicant in the future, subject to obtaining the required regulatory approvals.

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BrokerTec EU MTF

- 1.3 The BrokerTec CLOB platform is the core BrokerTec liquidity pool where fixed income products are traded on a CLOB (central limit order book). The prices are displayed on the BrokerTec CLOB anonymously. BrokerTec CLOB is a fully electronic platform, with all orders entered by participants directly either via an Application Programming Interface (“**API**”) or via a Graphical User Interface (“**GUI**”). Both the BrokerTec API and GUI display the security (the financial instrument), term (e.g., Overnight, Tom-Next), Bid size, Bid price, Offer price and Offer size.
- 1.4 The Globex technology platform used to provide the BrokerTec CLOB is provided and supported pursuant to an agreement between the Applicant and Chicago Mercantile Exchange Inc. (“**CME Inc.**”). The Applicant maintains access to systems and both critical and general shared services through agreements with CME Inc.
- 1.5 Participants must be a member of at least one CCP and able to access LCH Limited (“**LCH**”) as the main CCP to join the BrokerTec EU MTF. Once transactions are formed, the Applicant passes the trade information to LCH. The counterparties remain anonymous to each other post-trade. The Applicant does not become the party to the transaction or get involved in the settlement of the transaction.
- 1.6 The BrokerTec Quote platform is a dealer-to-client (“**D2C**”) request for quote (“**RFQ**”) trading solution for repo instruments. RFQ sessions can be commenced by participants (usually clients of dealer banks) in relevant instruments, setting out the parameters of the session, instruments and settlement methodology (cleared or bilateral trading). Recipients (usually dealer banks) then respond with executable quotes which can then be traded on by the initiator of the RFQ session. The RFQ solution enables automated execution in a D2C market where flow is largely executed through voice. BrokerTec Quote is a fully electronic platform which leverages a technology platform provided by an external vendor, Adaptive Financial Consulting Limited (“**Adaptive**”).
- 1.7 BrokerTec Quote is provided to participants via a web delivered GUI or FIX (Financial Information eXchange) API integration. API integration seeks to provide participants with a fully integrated service into their internal

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systems, minimizing touch points, and allowing quoting and execution automation. The flexible BrokerTec RFQ protocol captures the nuances of repo negotiation, as well as bringing operational and audit efficiencies. BrokerTec Quote aims to allow participants to select their preferred settlement methodology (i.e., bilateral, CCP-cleared or sponsored clearing) at an RFQ level.

EBS UK MTF

- 1.8 The EBS UK MTF provides for trading certain instruments listed in Annex B on EBS Market. EBS Market is the platform on which on-swap execution facility (“SEF”)/on-MTF NDFs are made available for trading by NEX SEF Limited. The rationale for setting up the EBS UK MTF is to make available for non-US customers an off-SEF/on-MTF NDF offering.
- 1.9 EBS Market can be accessed through a GUI or API. The Globex technology platform used to provide the BrokerTec CLOB is also used to provide EBS Market on the EBS UK MTF and is provided and supported pursuant to an agreement between the Applicant and CME Inc. The Applicant maintains access to systems and both critical and general shared services through agreements with CME Inc.
- 1.10 Prices available on EBS Market are executable but anonymous, i.e., neither party to the transaction will know the identity of the other until after the transaction has been completed. Each institution which uses EBS Market will be able to determine in advance with whom and, in each case, to what credit limit, it is prepared to deal by setting credit limits within the system for each other participant. The prices that are available to a dealer have been pre-screened for credit on a bilateral basis (i.e., each participant has to have made a credit limit available to the other) so that the price that will appear available to a particular dealer is the best price available in the EBS Market at which they can deal.
- 1.11 Once a bid or offer has been entered into the system by a participant it will be displayed to all potential counterparties which have bilateral credit available on the system with the institution making the bid or offer. Other participants may complete a deal by entering a “buy” or “sell” instruction. Alternatively, if another participant has entered a bid or offer at a matching price, the system will automatically match the offers and bids and a deal will be completed.

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- 1.12 Once bids or offers have been input into the system by participants, all deals will be completed electronically according to the pre-determined rules (price, time priority) and not in consequence of any person's decision or judgment. No participant is preferred in this process, which is based firstly on credit availability. If credit exists, deals are completed on the basis of the first participant to enter a quote or an order. The prices on the system will be anonymous so that counterparties do not know who is offering a price before they deal. This information will be disclosed after the deal is completed.
- 1.13 Settlement takes place between the counterparties to a deal. Although the EBS Market rules require counterparties to settle any deals, the Applicant is not involved in settlement or clearing – it provides deal information to counterparties so that they are able to make their own arrangements with respect to settlement and clearing. There is no central counterparty for EBS Market (as there would be for an exchange, for example) and there is no arrangement on EBS Market for margin or other deposit payments. There is no obligation to clear trades on EBS Market and the Applicant is never principal to a trade. Furthermore, the Applicant is not aware of how many trades are cleared post-trade bilaterally away from the EBS UK MTF platform, nor does it assist with this process.
- 1.14 Customers are also given the ability to access and deal on EBS Market prices even though they may not have sufficient credit lines in the market to deal directly with counterparties on EBS Market. This capability is known as EBS Prime and is aimed at smaller banks and financial institutions with limited credit lines and the professional trading community, generally defined as including hedge funds, investment funds and similar, professional and high volume trading entities. It allows customers with less than adequate credit to trade using credit given by an EBS Prime Bank (referred to as a “PB”) according to pre-agreed restrictions and subject to the payment of fees which are set by the PB and agreed with the customer. The PBs are EBS customers with exceptional credit in the relevant markets (either globally or regionally) who are in the best position to offer this service to smaller customers – EBS Prime Customers. The Applicant does not offer EBS Prime to participants in Ontario and has no plans to make EBS Prime available at this time.
- 1.15 The Applicant seeks the Requested Relief to make the Facilities available to participants located in Ontario, including participants with their headquarters or legal address in Ontario (e.g., as indicated by a participant's Legal Entity Identifier

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(LEI)) and all traders conducting transactions on its behalf, regardless of the traders' physical location (inclusive of non-Ontario branches of Ontario legal entities), as well as any trader physically located in Ontario who conducts transactions on behalf of any other entity ("**Ontario Participants**"). All Ontario Participants will be "permitted clients" as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. None of the instruments listed in Annexes A and B 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.

- 1.16 The Applicant further seeks the Requested Relief to offer direct access to trading on the BrokerTec EU MTF and the EBS UK MTF to Ontario Participants that satisfy the criteria for being a "professional client" ("**PC**") or an "eligible counterparty" ("**ECP**") as defined in the FCA Rules (as defined herein) and set forth in Annex D, as described in Rule 4 (Eligibility) of the BrokerTec EU MTF's rulebook (the "**BrokerTec EU MTF Rulebook**")¹, Rule 3 (Eligibility criteria) of the BrokerTec EU MTF Rulebook Repo Appendix (the "**Repo Appendix**")², Rule 4 (Eligibility Criteria) of the EBS UK MTF's rulebook (the "**EBS UK MTF Rulebook**")³ and as further described in Part III below. Most participants of the Facilities are banks, registered dealers and advisers and other large financial institutions, or large corporates. However, the Facilities offer impartial access; for example, a pension fund or hedge fund that meets the PC or ECP definition could be a member of the Facilities.

¹ The BrokerTec EU MTF Rulebook is available online at: <https://www.cmegroup.com/trading/market-tech-and-data-services/files/brokertec-eu-mtf-rulebook-20210118.pdf>.

² The Repo Appendix is available online at: <https://www.cmegroup.com/trading/market-tech-and-data-services/files/brokertec-eu-mtf-rulebook-repo-appendix-20220817.pdf>.

³ The EBS UK MTF Rulebook has been finalized by BrokerTec Europe Limited and has been approved as part of the FCA's approval of the new MTF. It is available online at <https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-uk-mtf-rulebook-general-terms-20220307.pdf> (General Terms) and <https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-uk-mtf-rulebook-ebs-market-appendix-20220325.pdf> (EBS Market Appendix). Updates to the EBS UK MTF Rulebook and appendices are made available on the EBS Regulatory Documents page at <https://www.cmegroup.com/trading/market-tech-and-data-services/ebs/regdocs.html#mtf-uk>.



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- 1.17 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 is a private limited company organized under the laws of England & Wales. The ultimate parent company of the Applicant is CME Group Inc.⁴ (“**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 Affiliates of the Applicant, namely Chicago Mercantile Exchange Inc., Board of Trade of the City of Chicago, Inc., Commodity Exchange, Inc., New York Mercantile Exchange, Inc., NEX SEF Limited and CME Amsterdam B.V., currently operate under an exemption from the exchange recognition requirement in Ontario.

2. Products Traded on the Facilities

- 2.1 As of the date of this application, the Applicant provides participants with transaction execution services for all instruments listed in Annex C and seeks the Requested Relief to cover trading of all financial instruments listed in Annexes A

⁴ CME Group is the parent company of the four CME Group Exchanges (CME Inc., 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, operated by EBS Service Company Limited, NEX SEF Limited, CME Amsterdam B.V. and BrokerTec Europe Limited for the products set out at <https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-legal-and-regulatory-structure-schedule.pdf> and BrokerTec (for fixed income, operated by BrokerTec Americas LLC, BrokerTec Europe Limited and CME Amsterdam B.V. for the products set out at <https://www.cmegroup.com/trading/market-tech-and-data-services/files/brokertec-legal-and-regulatory-structure-schedule.pdf>) (of which the Applicant forms a part). Access to these products is dependent on a participant’s status in its local jurisdiction and the regulatory approval or status of the relevant entity in the jurisdiction in which access to the relevant platform is offered.

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and B by Ontario Participants. Additional products may be added in the future, subject to obtaining any required regulatory approvals.

3. Participants

- 3.1 Clients are able to access the BrokerTec EU MTF and the EBS UK MTF directly as a participant.
- 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 Facilities must qualify as an ECP or PC.
- 3.3 The Facilities' 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 and securities, from recognition as an exchange.

1. Regulation of the Exchange

- 1.1 **Regulation of the Exchange – The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (“Foreign Regulator”).**
 - 1.1.1 The Applicant is an operator of an MTF as defined in Article 25D of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (“**RAO**”) and the relevant laws, rules and regulations of the UK.
 - 1.1.2 Article 3 of the RAO and Article 2.1.14A of the retained EU law version of the Markets in Financial Instruments Regulation (600/2014) (“**UK MiFIR**”) define an MTF as a “*multilateral system... that brings together multiple third-party buying and selling interest in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract*”.

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- 1.1.3 On December 1, 2001, the FCA authorised the Applicant to act as the operator of an MTF in the UK and commenced supervision and regulation of the Applicant on an ongoing, active basis. All financial instrument types for which the Applicant has received approval from the FCA to offer on an MTF are set forth in Annex C.
- 1.1.4 Firms that are authorised by the FCA to operate an MTF must comply with the Financial Services and Markets Act 2000 (“**FSMA**”), the UK MiFIR, the rules pertaining to the legislation and the applicable guidance from the FCA (the “**Applicable Rules**”), particularly those in the Market Conduct (“**MAR**”) section of the FCA Handbook (the “**FCA Rules**”):
- a. MAR 5.3: Trading processing requirements;
 - b. MAR 5.3A: Systems and controls for algorithmic trading;
 - c. MAR 5.4: Finalisation of transactions;
 - d. MAR 5.5: Monitoring compliance with the rules of the MTF;
 - e. MAR 5.6: Reporting requirements;
 - f. MAR 5.6A: Suspension and removal of financial instruments;
 - g. MAR 5.7: Pre- and post-trade transparency requirements; and
 - h. MAR 5.10: Operation of an SME growth market.
- 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 FCA supervision in conducting its activities for which it is permissioned as set out in paragraph 1.1.3 above. In undertaking those activities, the Applicant is required to comply with the Applicable Rules and the FCA 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 FCA 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 FCA.

- 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 the FCA's Principles for Businesses ("**PRIN**"), as set out in PRIN 2.1.1R, which require the Applicant to act honestly, fairly and professionally and refrain from actions that are detrimental to the integrity of the market. Additionally, 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 FCA in an open and cooperative way and must disclose to the FCA anything relating to the Applicant of which the FCA 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 and Risk Officer and Sales force. The Applicant outsources the provision of support functions to a CME Group service company, thereby ensuring operational continuity of the relevant businesses, including Operations and IT. 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 the laws of England & Wales, with both Executive Directors and a Non-Executive Director. The Applicant's Board of Directors (the "**Board**") has not established any committees at the Applicant entity level; however, an outsourcing committee has been adopted by the Applicant, as well as other CME Group subsidiaries, to demonstrate oversight of critical and important outsourced services.
- 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. An example of a CME Group strategic decision would be the decision to replace the legacy technology for the BrokerTec EU MTF with CME's own Globex technology. An example of an operational decision made by the Applicant would be regarding the oversight of the outsourcing relating to that Globex technology. 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, regulation and supervision by the FCA, 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 FCA.
- 2.1.6 Under the FCA's Senior Managers and Certification Regime ("**SM&CR**"), the integrity of the Applicant's "Senior Managers" must be beyond doubt, and each Senior Manager must be accountable for their function.
- 2.1.7 The following persons (natural persons) are considered to be Senior Managers under SM&CR:
- (a) all of the Applicant's Executive Directors;
 - (b) the individual who is responsible for the Applicant's compliance oversight; and



(c) the Applicant's Money Laundering Reporting Officer.

2.1.8 Before appointing a Senior Manager, the Applicant must obtain written approval from the FCA. To obtain the FCA's approval, the Applicant is required to submit the appropriate evidence of the Senior Manager's fitness and propriety to the FCA. The Applicant will have regard to a number of factors when assessing the fitness and propriety of a person to perform a Senior Manager Function. The key considerations will be the person's:

- (a) honesty, integrity and reputation: To determine the honesty, integrity and reputation of staff, the Applicant will check for criminal and civil offences including any settlement in civil proceedings. The Applicant will have regard to whether the person has been the subject of any disciplinary proceedings, of any complaints relating to regulated activities, or has contravened any regulatory standards or requirements. The Applicant contacts previous employers to obtain regulatory references in order to assist with the relevant determinations.
- (b) competence and capability: In determining a person's competence and capability, the Applicant will have regard to whether the person has demonstrated, by experience and training, that they are suitable to perform the function they are intended to perform and whether the person has adequate time to perform the function in question.
- (c) financial soundness: Financial soundness is assessed with reference to whether the person has been the subject of any judgement debt or award or has been the subject of any bankruptcy restrictions. The Applicant will use a combination of background checks and self-declarations to carry out these assessments.

The FCA will generally have regard to substantially the same factors as those outlined above when determining whether or not to approve a person to perform a Senior Management Function.

2.1.9 Underlying the SM&CR is the concept of an individual meeting certain standards of fitness and propriety. The regulators will take the following into account when assessing fitness and propriety:



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- (a) Honesty, integrity and reputation. An individual must be open and honest in their dealings and able to comply with the requirements imposed on them.
- (b) Competence and capability. An individual must have the necessary skills to carry on the function they are to perform.
- (c) Financial soundness. In assessing a person's financial soundness, the regulators will have regard to factors such as whether the person has been the subject of any judgment debt or award or been declared bankrupt.

Once a senior manager is approved, as with certification employees, it is the firm's responsibility to certify that they are suitable to do their jobs at least once a year.

2.1.10 The FCA has a range of powers at their disposal that can be used to take enforcement action against individuals under the SM&CR. Action can be taken against an individual based on the following:

- (a) Breach of the FCA individual conduct rules.
- (b) Breach of the FCA senior manager conduct rules.
- (c) Failure of an individual to be fit and proper.
- (d) Breach of duty of responsibility.
- (e) Criminal offence relating to the failure of a firm. This is only relevant to senior managers of UK banks, building societies and PRA-designated investment firms.
- (f) Being "knowingly concerned" in a breach of a relevant requirement by a firm.

In addition, there are enforcement risks for firms in relation to the SM&CR.

2.1.11 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

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(i.e., the risk that the Applicant fails to comply with its obligations under the Applicable Rules and the FCA Rules).

2.1.12 CME Group has established an enterprise risk management program (“ERM”) to identify potential events that may affect the enterprise, manage and report on the associated risks and opportunities, and provide reasonable assurance that risks are managed in accordance with the company’s risk appetite and business objectives. 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,

2.1.13 The Applicant is committed to ensuring the integrity of the Facilities 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,

2.1.14 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 Board Members has



considerable experience in their chosen area of focus, which will provide for considerable oversight of such activities.

2.1.15 The Applicant is not required to have independent directors under the FCA Rules. Whilst the Board does not have independent directors, when acting on behalf of the Applicant, directors have regard to their duties under applicable law. On September 1, 2021, the composition of the Board changed to consist of three Executive Directors and one Non-Executive Director (i.e., a director who is not registered as a Senior Manager with the FCA and whose role is to provide an objective and constructive view of the Board's plans and decisions).

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

2.1.16 The Applicant has adopted all applicable CME Group policies, including the Conflicts of Interest Policy. The Applicant is required to maintain and operate effective organizational 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 the Applicable Rules, 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.

2.1.17 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 the law of England and Wales.

2.1.18 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.

2.1.19 Any violation of the Conflicts of Interest Policy may result in disciplinary action against the Board member or employee.



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2.1.20 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 exercise consistent standards for customers, 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;⁵

⁵ 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.



- (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.

2.1.21 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.

2.1.22 The Applicant's Compliance 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.**

2.1.23 *Qualifications:* See the preceding paragraphs of Section 2.1 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.

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

2.1.25 *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 Facilities 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**



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 FCA, as further described in Section 2.1 above. The FCA 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 FCA that the relevant individual is fit to perform the role applied for.
- 2.2.2 As described in Section 2.1 above, FCA-approved persons are directly subject to obligations under the FCA’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 the operator of an MTF, the Applicant requires specific permission from the FCA to offer the Facilities in respect of each class of financial instrument traded on the Facilities. FCA permission is granted either through an initial authorisation process or through a subsequent “variation of permission” process. The Applicant does not have issuer admission or disclosure obligations nor do the instruments available for trading on the Facilities have contract specifications similar to CME Group’s Designated Contract Markets. The Applicant may require that certain instruments are cleared under its rules and designate the relevant clearing house. Any change, suspension or removal of instruments is done in accordance with the terms of the BrokerTec EU MTF Rulebook or the EBS UK MTF Rulebook. FCA approval is not required for the Applicant to change, suspend or remove instruments that are traded, (unless the Applicant is proposing to add a new class of financial instruments for trading on the MTF in which case a variation of permission is required as set out above), but the Applicant will notify the FCA of any changes or removals of instruments through updates to the instrument reference data lists that are required to be submitted daily.



- 3.1.2 The Applicant currently holds a permission with the FCA to make available for trading on the Facilities the instrument types listed in Annex C. For the purposes of this application, the Applicant seeks the Requested Relief to cover trading of the products listed in Annexes A and B.
- 3.1.3 Once an instrument is made available to trade on a UK trading venue such as the Facilities, it is included in the Financial Instruments Reference Database (“**FIRDS**”), a database of instruments that are being traded on FCA-regulated markets. This has ramifications for participants because it 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 part of the Applicant’s authorisation by the FCA, the Applicant identified the types of instruments that it intended to make available for trading on an MTF. The FCA has authorised the Applicant to provide the instrument types listed in Annex C. The BrokerTec EU MTF Rulebook and the EBS UK MTF Rulebook designate the instruments which its participants may trade.
- 3.2.2 The FCA’s requirements for authorisation of an MTF do not make reference to usual commercial customs and practices. Instead, the Applicable Rules focus on maintaining and implementing transparent and non-discriminatory rules, based on objective criteria. The BrokerTec EU MTF Rulebook and the EBS UK MTF Rulebook are 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 Facilities are generally accepted and understood by participants.
- 3.2.3 In accordance with the Applicable Rules, the Facilities are required to provide the FCA 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 Facilities must be in the form prescribed by retained 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**



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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 BrokerTec EU MTF Rulebook and the EBS UK 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 Facilities 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 MTF operators, the Applicant will suspend or halt trading in specific instruments on the Facilities if and when such instructions are communicated to the Applicant by the FCA. The Applicant can suspend, remove or change the instruments made available on the Facilities as described at paragraph 3.1.1 above.

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.**

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- (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.**

4.1.1 MAR 5.3.1R 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 Facilities 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. Rule 4 (Eligibility) of the BrokerTec EU MTF Rulebook and Rule 4 (Eligibility Criteria) of the EBS UK MTF Rulebook set out the admission and eligibility criteria that participants must meet. Specifically, to be eligible for admission as a participant, participant applicants must demonstrate to the satisfaction of the Applicant that they:

- (a) satisfy the Facility's internal client on-boarding requirements;
- (b) are investment firms or credit institutions (each as defined in the FCA Rules) or other persons who:
 - (i) are of sufficiently good repute;
 - (ii) have a sufficient level of trading ability, competence and experience; and
 - (iii) have sufficient resources for their role as a participant;
- (c) have the legal and regulatory capacity to undertake trading in the relevant products on an MTF;



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- (d) comply with the Facility's operational parameters;
 - (e) have adequate arrangements for entering into Transactions, order management, clearing (if relevant) and settlement of all orders submitted to the Facility;
 - (f) have adequate organizational procedures and controls to limit Error Trades and the submission of erroneous orders to the Facility;
 - (g) meet the technical specifications and standards required by the Facility; and
 - (h) satisfy any Eligibility Criteria set out by the Facility.
- 4.1.2 The Applicant conducts an annual risk-based assessment of participants' compliance with the Applicant's participation requirements and undertakes additional due diligence as required. In addition, routine monitoring of all participant activity is performed relating to market conduct and trading.
- 4.1.3 Rule 5 (Participant obligations) of the BrokerTec EU MTF Rulebook contains the following provisions with respect to access by a participant's authorised employees, officers, agents or designees ("**Authorised Users**"):
- (a) a Participant shall be responsible for all the acts, omissions, conduct and activity of its Authorised Users (Rule 5.5);
 - (b) a Participant is responsible for complying with any security measures and procedures for authentication requested by the Applicant from time to time and ensuring that only Authorised Users have access to the BrokerTec EU MTF (Rule 5.10);
 - (c) a Participant must ensure its Authorised Users have sufficient training, are adequately supervised, and have adequate experience, knowledge, competence and qualifications to participate on the BrokerTec EU MTF in accordance with the BrokerTec EU MTF Rulebook (Rule 5.6); and
 - (d) a Participant shall be bound by all Orders or commands and/or other input information received from its Authorised Users. The Participant shall only

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submit Orders to the BrokerTec EU MTF with the intention to enter into Transactions (Rule 9.2.1).

4.1.4 Rule 5 (Participant Obligations) of the EBS UK MTF Rulebook contains the following provisions with respect to access by a participant's authorised employees ("Authorised Employees"):

- (a) a Participant shall be responsible for all the acts, omissions, conduct and activity of its Authorised Employees (Rule 5.15);
- (b) a Participant is responsible for complying with any security measures and procedures for authentication requested by the Applicant from time to time and for ensuring that only Authorised Employees and Administrators have access to the EBS UK MTF (Rule 5.3);
- (c) a Participant must ensure its Authorised Employees have sufficient training, are properly supervised and have adequate experience, knowledge and competence to participate on the EBS UK MTF in accordance with the Customer Agreements, the EBS UK MTF Rulebook and Applicable Law (Rule 5.17); and
- (d) a Participant shall be bound by any and all Orders submitted and any resultant Transactions entered into by its Authorised Employees. A Participant shall further be responsible for its obligations under any Transaction or any other contract or arrangement made in respect of any Transaction using valid login details issued to the Participant, whether or not the effecting of such Transaction was by its Authorised Employees or within the express authority of the relevant Authorised Employee or Customer Agreement, and irrespective of whether such Transaction was concluded as a result of the Participant's or its Authorised Employee's error. An Authorised Employee's ID and password must be kept confidential and used by that Authorised Employee only⁶ (Rule 5.18).

⁶ This requirement is also set out in section 5 of CME Inc's Terms of Use, available online at: <https://www.cmegroup.com/files/terms-of-use.pdf>. The Terms of Use are referenced when creating a CME Group Account.

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- 4.1.5 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.
- 4.1.6 Pursuant to its obligations under the Applicable Rules and the FCA 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.
- 4.1.7 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. Persons who are denied trading privileges or have their access limited can file a complaint to the Applicant regarding the denial or limitation pursuant to the Applicant's complaints procedures (set out in Rule 26 (Complaints) of the BrokerTec EU MTF Rulebook and Rule 12.2 of the EBS UK MTF Rulebook). Additionally, such persons can file a complaint with the Financial Ombudsman Service once they have exhausted the Applicant's complaints procedure.⁷

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**

⁷ See the "How to complain" webpage on the FCA's website at <https://www.fca.org.uk/consumers/how-complain>. The Financial Ombudsman Service was created by the UK Parliament and is an independent service for settling disputes between financial services firms and their customers.



conduct, and appropriately disciplining them for violations of exchange requirements.

- 5.1.1 As required by the FCA Rules, the BrokerTec EU MTF Rulebook and the EBS UK MTF Rulebook set 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 Facilities. The applicable general rules are primarily located in Rule 8 (Products), Rule 9 (Trading rules), and Rule 10 (Credit setting and restrictions) of the BrokerTec EU MTF Rulebook; in Rule 5 (Participant Obligations), Rule 6 (General Dealing Rules) of the EBS UK MTF Rulebook, and in the EBS UK MTF Rulebook – EBS Market Appendix, Rules 2.3 (Dealing on EBS Market), 2.4 (Orders), 2.6 (EBS Market – The Matching Process) and 2.10 (Credit and Settlement).
- 5.1.2 The Applicant is dedicated to safeguarding the integrity of the Facilities and has policies and procedures that are designed to ensure that the Facilities are 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 Facilities with the knowledge that they remain open and transparent.
- 5.1.3 Further, the BrokerTec EU MTF Rulebook and the EBS UK MTF Rulebook, which govern 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 BrokerTec EU MTF Rulebook and the EBS UK MTF Rulebook, the Applicant would have remedies available to it under Rule 6.2 of the BrokerTec EU MTF Rulebook and Rule 9 (Conduct Rules) of the EBS UK 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 on the Facilities and use the services of CME Group’s Market Regulation department to identify any potential violations of the BrokerTec EU MTF Rulebook or the EBS UK MTF Rulebook and to monitor compliance with



market manipulation rules through the use of proprietary monitoring tools. The Applicant captures and 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 National Crime Agency, the competent authority for anti-money laundering oversight in the UK, 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 Applicable Rules and the FCA Rules).
- 5.1.7 The Applicant has a wide range of tools for enforcing participants' compliance with the BrokerTec EU MTF Rulebook and the EBS UK 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 Facilities. Please see Rule 14 (Suspension or termination of participation) of the BrokerTec EU MTF Rulebook and Rule 10 (Suspension, Termination, Resignation) of the EBS UK MTF Rulebook.
- 5.1.8 Pursuant to the FCA Rules, the Applicant will report to the FCA (i) significant breaches of the Facilities' Rules, (ii) disorderly trading conditions, and (iii) conduct that may involve market abuse. The Applicant will also notify the FCA when a participant's access is terminated as a result of a significant rule infringement, and may notify the FCA when a participant is temporarily suspended or subject to condition(s). The FCA 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.**

6.1.1 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 BrokerTec EU MTF Rulebook and EBS UK MTF Rulebook. 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.**



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6.1.2 The BrokerTec EU MTF Rulebook and the EBS UK MTF Rulebook are subject to the standards and requirements outlined by the Applicable Rules. At a high level, the BrokerTec EU MTF Rulebook and the EBS UK MTF Rulebook seek to ensure fair and orderly markets accessible to all eligible participants that meet the criteria listed in the BrokerTec EU MTF Rulebook and the EBS UK 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 BrokerTec EU MTF Rulebook and EBS UK MTF Rulebook govern participant and membership requirements and includes requirements that participants will continue to comply with the BrokerTec EU MTF Rulebook, the EBS UK 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.** Rule 5 (Participant obligations) of the BrokerTec EU MTF Rulebook and Rule 5 (Participant Obligations) of EBS UK MTF Rulebook prescribe 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 Facilities are available to all participants on a non-discriminatory basis. Throughout the BrokerTec EU MTF Rulebook and the EBS UK MTF Rulebook, the Applicant has established transparent and objective standards for access to and trading on the Facilities to foster competitive and open market participation. The Applicant believes that compliance with the

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BrokerTec EU MTF Rulebook, the EBS UK 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.** Rule 25 (Co-operation with regulatory authorities) of the BrokerTec EU MTF Rulebook and Rule 10 (Suspension, Termination, Resignation), Rule 11 (Product, Settlement, STP) and Rule 12 (Miscellaneous) of the EBS UK MTF Rulebook authorise the Applicant to provide full assistance and information to the FCA, and any other regulatory authority, 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 Facilities. Each participant is also required to cooperate with the Applicant and any relevant regulator during any investigation that is conducted in relation to access to and trading on the Facilities, 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 Rule 6 (Conduct rules) of the BrokerTec EU MTF Rulebook and Rule 9 (Conduct Rules) of the EBS UK 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 Rule 6 (Conduct rules) and Rule 14 (Suspension or termination of participation) of the BrokerTec EU MTF Rulebook and Rule 9 (Conduct Rules) and Rule 10 (Suspension,

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Termination, Resignation) of the EBS UK 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 Facilities 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.**

7.1.1 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 4 or if the Applicant considers that accepting that person as a participant may prevent the Applicant from complying with applicable law. Under Rule 6 (Conduct rules) and Rule 14 (Suspension or termination of participation) of the BrokerTec EU MTF Rulebook, and Rule 9 (Conduct Rules) and Rule 10



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(Suspension, Termination, Resignation) of the EBS UK 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. Disciplinary decisions may be contested through the Applicant's complaints procedures, or the Financial Ombudsman Service as discussed in paragraph 4.1.7 above.

- 7.1.2 As an FCA-authorized firm, all complaints that relate to the operation of the Facilities fall within the scope of PRIN 2.1.1R (6) (also referred as the Treating Customers Fairly Principle (the "**TCF Principle**")) complaints regime.
- 7.1.3 Participants may raise a complaint regarding a variety of matters including, but not limited to, BrokerTec EU MTF Rulebook and EBS UK MTF Rulebook violations, any potential fraudulent acts, dishonorable or dishonest conduct, access to the Facilities 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 of the Applicant.
- 7.1.4 The Applicant maintains records of all investigations conducted by the Applicant in accordance with its recordkeeping policy. For example, Rule 22.1 of the BrokerTec EU MTF Rulebook and Rule 12.10 of the EBS UK MTF Rulebook provide 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 The BrokerTec EU MTF has in place a clearing agreement with LCH to clear the MTF Instruments listed in item (a) of Annex A (the MTF Instruments listed at items

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(b) and (c) are settled bilaterally). For CLOB trading, the participant must be authorised by LCH to enter into Repo Transactions on the BrokerTec EU MTF. For the RFQ Trading Protocol, the participant must either be authorised by LCH to enter into Repo Transactions on the BrokerTec EU MTF or maintain an agreement with an LCH Agent Member for the clearing of Repo Transactions on the BrokerTec EU MTF. Rule 19 (Clearing and settlement) of the BrokerTec EU MTF Rulebook outlines the rules in relation to clearing and settlement.

8.1.2 For EBS Market, settlement will take place between the counterparties. Although the Facility’s rules will require counterparties to settle any deals, the Applicant will not be involved in, nor is it responsible for, settlement or clearing and counterparties will make their own bilateral arrangements. The Applicant does not engage in any counterparty disputes arising from clearing or settlement.

8.1.3 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 An MTF must submit all trades that are required to be cleared to a clearing house for clearing. The Applicant provides direct connectivity to LCH for clearing the MTF Instruments listed in item (a) of Annex A. LCH is recognized as a clearing agency in Ontario.

8.2.2 LCH is recognized by the European Securities and Markets Authority (“ESMA”) as a third-country central counterparty (“CCP”),⁸ and registered as a designated clearing organization (“DCO”) with the U.S. Commodity Futures Trading

⁸Please see ESMA’s “List of third-country central counterparties recognised to offer services and activities in the Union” which is available at: www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf.



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Commission (“CFTC”), and subject to the regulation and jurisdiction of ESMA and the CFTC.⁹

- 8.2.3 A UK CCP recognised by ESMA must comply with applicable technical standards (which prescribe capital requirements and records to be maintained by CCPS)¹⁰ (which prescribe records to be maintained by CCPs) by the Bank of England and other requirements imposed by the UK version of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018 and supplementing regulations.¹¹ A CCP is required to have adequate and appropriate risk management capabilities, systems safeguards, emergency procedures and plan for disaster recovery.
- 8.2.4 As a DCO, LCH must comply with the “DCO Core Principles,” established in Section 5b of the CEA, including CFTC Regulation 39.13 – *Risk management*, CFTC Regulation 39.10 – *Compliance with core principles*, and CFTC Regulation 39.18 – *System safeguards*. A DCO registered with the CFTC is required to have adequate and appropriate risk management capabilities, systems safeguards, emergency procedures and plan for disaster recovery.

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,**

⁹Please see the CFTC’s list of Derivatives Clearing Organizations, which is available at: <https://sirt.cftc.gov/sirt/sirt.aspx?Topic=ClearingOrganizations>.

¹⁰Please see the Technical Standards (European Market Infrastructure) (Amendment Etc.) (EU Exit((no. 1) Instrument 2019, which is available at: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

¹¹Please see the UK version of Regulation (EU) No 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories, which is available at: <https://www.legislation.gov.uk/eur/2012/648/contents>.



- (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 BrokerTec Quote operates on technology developed and provided by Adaptive. With regard to BrokerTec Quote, Adaptive is classified as a Critical/Tier 1 vendor which requires annual due diligence and ongoing monitoring by CME Group's Third Party Risk Management process. BrokerTec CLOB and EBS Market operate on CME Globex-based trading platforms (the "**Globex Platforms**")¹².

9.1.2 The Facilities have appropriate internal controls (that cover all of the critical systems which support functions (a) to (i) listed in Section 9.1 above) designed to provide for completeness, accuracy, integrity and security of information, and, in addition, have sufficient capacity and a business continuity plan to enable the Facilities to properly carry on their businesses.

9.1.3 The Applicant has put safeguards in place to protect the critical data and system components of its Facilities 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, such as: (i) a significant price movement during a short period of time in a financial instrument on a regulated market or a related market, and (ii) disorderly trading conditions. These market conditions are discussed in more detail in the BrokerTec EU MTF Operational

¹² EBS Market migrated to a Globex-based trading platform on May 16, 2022.



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Parameters Annex (the “**BrokerTec EU MTF Parameters Annex**”).¹³ Please refer to the Applicant’s responses to Section 9.2 below for additional information.

- 9.1.4 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.
- 9.1.5 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.
- 9.1.6 The Applicant conducts regular performance and capacity tests in a production test environment which matches production in its size, scope and infrastructure.
- 9.1.7 The Applicant maintains business continuity arrangements as described in paragraph 9.2.8 below.
- 9.2 **System Capability/Scalability – 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;**
- 9.2.1 The Facility makes capacity estimates by regularly monitoring its systems usage as well as maintaining constant communications between internal parties whenever

¹³ The BrokerTec EU MTF Parameters Annex is available at: <https://www.cmegroup.com/trading/market-tech-and-data-services/files/brokertec-eu-mtf-operational-parameters-annex-final-jan-21.pdf>.



new business or possible changes in the market may increase capacity on the systems.

(b) **conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;**

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 9.1.4 above.

(c) **reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;**

9.2.3 See the response to clause (d) below.

(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;**

9.2.4 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).

9.2.5 With regard to the Globex Platforms, 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. GIS has based its information security program on accepted industry frameworks and guidelines including the US NIST Cybersecurity Framework, which is a risk-based set of industry standards and best practices to help organizations manage

cyber security risks¹⁴ in addition to ISO 27001, which is an international standard on how to manage information security. CME Group has chosen to implement the standard and is ISO 27001 certified. 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; 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 unauthorised 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

¹⁴ National Institute of Standards and Technology: Framework for Improving Critical Infrastructure Cybersecurity, Version 1.1, April 16, 2018



his commitments. The Operations and Execution role is also responsible for Security Education and Awareness, which trains CME Group personnel regarding information security related risks, practices, policies, and standards via a Security Education and Awareness Program. The Education and Awareness team also trains users to respond appropriately to security threats.

- (e) **ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;**

9.2.6 See the response to clause (f) below.

- (f) **maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and**

9.2.7 The Applicant reviews and keeps current development and testing methodologies for its systems in accordance with relevant policies and procedures. To identify and control the risks related to system development projects, a set of processes are implemented and include obtaining the necessary approvals for planning, designing, development, testing, and deploying information systems and is referred to as the System Development Life Cycle (SDLC). The implementation of the SDLC program is supported by the Corporate Obligations and Governance (COG) framework in addition to the Change and Release Management process.

- (g) **maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.**

9.2.8 The Business Continuity Management program (“BCM”) is a comprehensive program that serves to mitigate potential impacts to CME Group’s markets (including the Facilities’), customers, assets and employees, and to safeguard the effective availability of essential products and services. 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 lines of business.

9.2.9 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:



- 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;
- identifying opportunities for enhanced resilience; and
- establishing collaborative relationships with external entities, partnerships and agencies.

9.2.10 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 lines of 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 BrokerTec EU MTF Rulebook, including:

- (a) Rule 23.1: 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.

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- (b) Rule 9.5.1: The Applicant shall automatically reject orders which exceed pre-determined volume and price thresholds or are clearly erroneous (“**Pre-Trade Controls**”).¹⁵
- (c) Rule 9.5.5: 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.
- (d) Rule 9.8.2: The Applicant may suspend or remove from trading any product which no longer complies with the BrokerTec EU MTF Rulebook (unless suspension would likely cause significant damage to the interests of Participants or the orderly functioning 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 The EBS UK MTF Rulebook contains similar provisions, including:

- (a) Rule 5.20: Each Participant shall carry out appropriate testing of algorithms to ensure that algorithms used to access the EBS UK MTF cannot create or contribute to Disorderly Trading Conditions on the EBS UK MTF.

¹⁵ 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.



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- (b) Rule 6.5: The Applicant shall automatically reject orders which exceed pre-determined volume and price thresholds or are clearly erroneous (“**Pre-Trade Controls**”).
 - (c) Rule 6.10: The Applicant may suspend or remove from trading any product which no longer complies with the EBS UK MTF Rulebook (unless suspension would likely cause significant damage to the interests of Participants or the orderly function of the EBS UK MTF) 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 EBS UK MTF 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 EBS UK MTF 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 the EBS UK MTF to perform its functions without systems failures, outages or errors in matching.
- 9.3.3 CME Group has established the ERM to identify potential events that may affect the enterprise, manage and report on the associated risks and opportunities, and provide reasonable assurance that risks are managed in accordance with the company’s risk appetite and business objectives. The ERM is led by a Managing Director, ERM and Global Chief Compliance Officer.
- 9.3.4 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).
- 9.3.5 CME Group’s Confidentiality and Data Protection Policy and Corporate Information Security Policy govern the Applicant. CME Group maintains a vulnerability management program that applies to the Globex Platforms, which provides ongoing cyclical management of vulnerabilities, including coordination of identification, classification, remediation, mitigation, and metrics.

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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 periodic financial reports to the FCA.

10.1.2 The Applicant is capitalized in excess of regulatory requirements and will maintain any future minimum capital amounts needed to meet FCA 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:** MAR 5.3.1R 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:** MAR 5.3A.1R requires the Applicant to “ensure that the systems and controls, including procedures and arrangements, used in the performance of its activities are adequate, effective and appropriate for the scale and nature of its business.” MAR 5.3A.1R applies in particular to systems and controls concerning: (1) the resilience of the firm’s trading systems; (2) its capacity to deal with peak order and message volumes; (3) the ability to ensure orderly trading under conditions of severe market stress; (4) the effectiveness of business continuity arrangements to ensure the continuity of the MTF’s services if there is any failure of its trading systems, including the testing of the MTF’s

systems and controls; (5) the ability to reject orders that exceed predetermined volume and price thresholds or which are clearly erroneous; (6) the ability to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the trading venue; (7) the ability to ensure any disorderly trading conditions which do arise from the use of algorithmic trading systems are capable of being managed, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the MTF's trading system by a member or participant; (8) the ability to ensure the flow of orders is capable of being slowed down if there is a risk of system capacity being reached; (9) the ability to limit and enforce the minimum tick size which may be executed on the MTF; and (10) the requirement for members and participants to carry out appropriate testing of algorithms, including providing environments to facilitate that testing.

- (c) **Trading practices that are not contrary to the public interest:** 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 MAR 5.3.1R and the TCF Principle under PRIN 2.1.1R).

11.1.2 The BrokerTec EU MTF Rulebook and EBS UK MTF Rulebook address MTF trading practices, incorporate the Applicable Rules requirements outlined above and are 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 to all participants and the Applicant's system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.2.2 The BrokerTec EU MTF governs the use of its electronic order systems through:

Pre-Trade Controls (please see paragraph 9.3.1(b) above)



Post-Trade Controls

- **Unexecuted Orders to Transactions Ratio:** Unexecuted orders to transaction ratios are monitored against the maximum thresholds, which are determined taking into account the nature and liquidity of instruments on the BrokerTec EU MTF and normal trading patterns.

11.2.3 The rules pertaining to order size and limits are described in more detail in Rule 1 (Definitions and interpretation) of the BrokerTec EU MTF Parameters Annex.

11.2.4 Rule 6.5 of the EBS UK MTF Rulebook describes the pre-trade controls utilized by EBS UK MTF and provides that EBS UK MTF shall automatically reject bids/offers which exceed pre-determined volume and price thresholds or are clearly erroneous. Further details on the EBS UK MTF pre-trade controls are provided in the EBS UK MTF Operational Parameters Annex, which is available on EBS UK MTF's website.

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 Facilities publish pre- and post-trade transparency data as required by the FCA Rules.

11.3.2 In accordance with FCA Rules, the Facilities publish all necessary pre- and post-trade information in real-time on a reasonable commercial basis and free of charge with a 15-minute delay via <https://mifidmarketdata.cmeregreporting.com/>. Rule 20 (Pre and post trade transparency) of the BrokerTec EU MTF Rulebook provides further rules on pre- and post-trade transparency as set out below:

20. Pre and post trade transparency

20.1. The Applicant shall, in accordance with applicable regulatory rules, make public, on reasonable commercial terms to non-participants, on a continuous basis, both information about the Order Book and, as close to real time as it is reasonably able so to do, information about the price, volume and time of Transactions. For the avoidance of doubt, this does not



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restrict any rights granted to the Applicant by the participant in the Agreements.

- 20.2. Notwithstanding Rule 20.1, under certain conditions, the FCA may grant a trading venue permission not to make public current Bid and Offer prices for any Product and the depth of trading interest at those prices (a “**Waiver**”) or the time, price, volume and venue of executed Transactions (a “**Deferral**”). The Applicant will publish on its website the details of any such Waiver or Deferral obtained from the FCA.

11.3.3 Similarly, Rule 5.12 of the EBS UK MTF Rulebook provides the following:

- 5.12 Each Participant which is subject to UK MiFIR is responsible for complying with the transaction reporting requirements under Article 26 UK MiFIR. The Applicant shall report to the relevant Regulator details of Transactions executed through the EBS Dealing Service by Participants who are not subject to UK MiFIR. Such Participants will provide to the Applicant immediately upon request such information as is necessary to make such reports.

11.3.4 Under certain conditions, the FCA may grant a trading venue permission not to make public current Bid and Offer prices for a Contract and the depth of trading interest at those prices (a “**Waiver**”). EBS UK MTF will notify Participants of any such Waiver obtained from the FCA (Rules 6.12 and 6.13 of the EBS UK MTF Rulebook).

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 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 MAR 5.6.1R, the Applicant is required to report to the FCA (a) significant breaches of BrokerTec EU MTF Rulebook and EBS UK MTF Rulebook, (b)

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disorderly trading conditions, and (c) conduct that may involve market abuse. The Applicant will also notify the FCA when a participant's access is terminated and may notify the FCA when a participant is temporarily suspended or subject to condition(s). The FCA 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 FCA when required and will also assist the FCA 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 Facilities, 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 Facilities' rulebooks and applicable law.

12.2.2 Sections 5 and 6 of this application describe the resources available to the Applicant to investigate breaches of the BrokerTec EU MTF Rulebook and the EBS UK 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 Rule 24.1 of the BrokerTec EU 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:

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24.1.3 disclosure is required by law or any tax authority or Regulator having jurisdiction;

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

12.3.2 Rule 12.3 of the EBS UK 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 EBS UK MTF, except where compelled to do so by valid legal process, if required by a regulatory agency, or if such disclosure is necessary to give effect to the EBS UK MTF Rulebook (such as where necessary in order to effect a transaction on the EBS UK MTF).

12.3.3 Rule 25 (Co-operation with regulatory authorities) of the BrokerTec EU MTF Rulebook and Rules 12.6, 12.7 and 12.8 of the EBS UK MTF Rulebook specifically addresses cooperation with regulators:

- 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.
- The Applicant will provide full assistance to and may also supply any relevant information without delay to, the relevant Regulator.
- The Applicant will comply with all relevant laws and regulations, and any request of the relevant Regulator.

12.3.4 Please also see Section 16 below.

13. Record Keeping

13.1 **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.**



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- 13.1.1 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 FCA to monitor it. The Applicant has implemented policies designed to ensure that the FCA has ready access to the Applicant's records that it is required to maintain under the FCA Rules, from which the FCA should be able to reconstruct each key stage of a transaction on the Facilities if required.
- 13.1.2 Rule 22.1 of the BrokerTec EU MTF Rulebook and Rule 12.10 of the EBS UK MTF Rulebook provide that the Applicant "may record conversations and retain copies of electronic communications between officers, employees or agents of the Applicant and the Participant or any Authorised User. A copy of the recordings of such conversations and communications are available upon request for a period of five (5) years (and, where requested by the relevant Regulator, for a period of up to 7 years)".
- 13.1.3 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 FCA 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

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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 an MTF operator supervised and regulated by the FCA Rules, the Applicant's fee structure, including any execution fees, ancillary fees and rebates, is required to be transparent, fair and non-discriminatory. Under the FCA Rules, 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 the FCA Rules, 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 the FCA Rules 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. The FCA Rules also require 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. The Applicant's fee schedule is available at:



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- (a) For BrokerTec CLOB and BrokerTec Quote:
<https://www.cmegroup.com/trading/market-tech-and-data-services/files/brokertec-eu-mtf-fee-schedule.pdf>
- (b) For the EBS UK MTF:
- (i) EBS NDF Price Sheet - Asian NDF-Daily BEL:
<https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-ndf-price-sheet-asian-ndf-daily-bel.pdf>;
- (ii) EBS NDF Price Sheet - Asian NDF-Annual BEL:
<https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-ndf-price-sheet-asian-ndf-annual-bel.pdf>;
- (iii) EBS Latam NDF MTF.:
<https://www.cmegroup.com/trading/market-tech-and-data-services/files/ebs-latam-ndf-mtfl.pdf>; and
- (iv) Middle East and African NDF – BEL:
<https://www.cmegroup.com/trading/market-tech-and-data-services/files/middle-east-and-african-ndf-bel.pdf>.¹⁶

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

¹⁶ The EBS UK MTF fee schedules and any updates appear on the EBS Regulatory Documents website at: <https://www.cmegroup.com/trading/market-tech-and-data-services/ebs/regdocs.html#mtf-uk>.



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documents. All inquiries and other communications from the Commission will be referred immediately to the Applicant's legal and compliance departments.

16.1.2 Rule 25 (Co-operation with regulatory authorities) of the BrokerTec EU 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 Rule 5.12 of the BrokerTec EU 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.

16.1.3 Rules 12.7, 12.8 and 5.8 of the EBS UK 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 Rule 5.8 of the EBS UK 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 FCA:

- (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 in Ontario, and the FCA became a signatory on March 10, 2003. The

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IOSCO MMOU establish an international benchmark for cooperation and information sharing for the purpose of regulatory enforcement of securities and derivatives markets.

- (b) The memoranda of understanding entered into between the Commission (together with the Alberta Securities Commission and the British Columbia Securities Commission) and each of the UK Financial Conduct Authority and the Bank of England (the “**MoUs**”). The MoUs came into effect on August 21, 2013 and provide a comprehensive framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of cross-border regulated entities and enhance the Commission’s ability to supervise these entities.
- (c) The Co-operation agreement concerning innovative Fintech businesses with the UK Financial Conduct Authority (the “**Agreement**”). The Agreement provides a comprehensive framework for cooperation and information sharing and referrals related to the innovation functions which were launched in each jurisdiction. The Agreement is subject to the approval of the Minister of Finance (Ontario). The Agreement was delivered to the Minister of Finance (Ontario) on February 27, 2017.
- (d) The IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the “**IOSCO Enhanced MMoU**”). The IOSCO Enhanced MMoU came into effect on September 17, 2018 in Ontario and the FCA became a signatory on May 4, 2018. The IOSCO Enhanced MMoU will foster greater cross-border enforcement cooperation and mutual assistance among securities regulators, enabling them to respond to the risks and challenges posed by globalization and advances in technology.
- (e) The amended and restated supervisory Memorandum of Understanding entered into between the Commission, together with the Autorité des marchés financiers, Alberta Securities Commission and British Columbia Securities Commission (the “**Canadian Authorities**”) and the UK Financial Conduct Authority (the “**Amended Supervisory MoU**”). The Amended Supervisory MoU came into effect on November 14, 2019 and facilitate consultation, cooperation and the exchange of information related



to the supervision of alternative investment fund managers that operate on a cross-border basis in the jurisdictions of both the FCA and Ontario.

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 FCA Rules.

PART IV SUBMISSIONS BY THE APPLICANT

1. Submissions Concerning the Requested Relief

1.2 The MTF Instruments that the Applicant makes, or intends to make, available to trade on the Facilities fall under the definition of “derivative” or “security” as set forth in subsection 1(1) of the Act. The Facilities operated by the Applicant fall under the definition of “marketplace” set out in subsection 1(1) of the Act because they bring together buyers and sellers of securities and derivatives and use established, non-discretionary methods under which orders interact with each other.

1.3 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.

1.4 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 provides, or will provide, Ontario Participants with direct access to trading of the MTF

Instruments on the Facilities, 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.

- 1.5 Pursuant to Canadian Securities Administrators (“CSA”) Staff Notice 21-328 – *Regulatory Approach to Foreign Marketplaces Trading Fixed Income Securities (“CSA SN 21-328”)*, the CSA have developed a framework for granting exemptions from the exchange recognition requirements to foreign alternative trading systems (“ATSS”) and foreign MTFs in respect of trading foreign fixed income securities. With respect to foreign MTFs, the CSA states that they will consider allowing foreign MTFs to trade foreign fixed income securities under the current exemption regime applicable to derivatives trading by foreign derivatives exchanges, swap execution facilities and MTFs, but will include additional terms and conditions where appropriate.
- 1.6 The Applicant notes that exemptive relief in respect of trading foreign fixed income securities has been granted to the following foreign ATS applicants pursuant to the regulatory framework described in CSA SN 21-328: (i) *In the Matter of Trumid Financial, LLC* (February 24, 2021), and (ii) *In the Matter of ICE Bonds Securities Corporation* (June 19, 2020).
- 1.7 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 Facilities, as they would have access to trading a range of securities and derivatives with counterparties that otherwise may not be available in Ontario. Stringent FCA oversight of the Facilities, 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.
- 1.8 Based on the foregoing, we submit that it would not be prejudicial to the public interest to grant the Requested Relief.



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PART V OTHER MATTERS

1. Confidentiality, Consent and Information

- 1.2 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,

BROKERTEC EUROPE LIMITED

DocuSigned by:
Adrienne Seaman
DC8762BCAE1D407...

Name: Adrienne Seaman

Title: Director

cc: Terence Doherty, Gawain Chan and Sheri Wang, Osler, Hoskin & Harcourt LLP

ANNEX A

The Applicant seeks the Requested Relief to allow Ontario Participants to trade the following instruments on the BrokerTec EU MTF:

- a. Repurchase agreements collateralised by UK gilts and UK covered bonds (“**Gilt Repo**”);
- b. Repurchase agreements collateralised by Australian government bonds (“**Australian Repo**”); and
- c. Repurchase agreements collateralised by corporate bonds (“**Corporates**”).

ANNEX B

The Applicant seeks the Requested Relief to allow Ontario Participants to trade the following instruments on the EBS UK MTF:

- a. Foreign exchange non-deliverable forwards (“**FX NDFs**”).

ANNEX C

The Applicant is authorised by the FCA to allow trading of the instrument types set forth in this Annex C, but only the products set out in Annexes A and B will be available to Ontario Participants.

- a. Certificates representing certain security;
- b. Commodity Future;
- c. Commodity option and option on commodity future;
- d. Contract for Differences (excluding a spread bet and, a rolling spot forex contract and a binary bet);
- e. Debenture;
- f. Future (excluding a commodity future and a rolling spot forex contract);
- g. Government and public security;
- h. Option (excluding a commodity option and an option on a commodity future);
- i. Rights to or interests in investments (Contractually Based Investments);
- j. Rights to or interests in investments (Security);
- k. Unit; and
- l. Warrant.

ANNEX D

This Annex D provides the definition of an “Eligible Counterparty” and a “Professional Client,” as defined by the FCA in COBS 3 Client Categorisation of the FCA Rules.

DEFINITION OF ELIGIBLE COUNTERPARTIES

Eligible counterparties are considered to be the most sophisticated investor or capital market participant. Consequently, the client categorisation regime provides a “light-touch” regulatory regime for investment firms that enter into, or bring about, transactions with eligible counterparties in relation to eligible counterparty business.

There are two types of eligible counterparty:

- Per se eligible counterparty.
- Elective eligible counterparty.

Generally, the eligible counterparty regime will only apply where investment firms enters into transactions with an eligible counterparty in the course of carrying out eligible counterparty business. This involves the following activities:

- Executing orders on behalf of customers.
- Dealing on own account.
- Reviewing and transmitting orders.

Eligible counterparty business also includes any ancillary service directly related to the above list, or arranging in relation to business that is not MiFID or equivalent third country firm business.

The following entities can be categorised as eligible counterparties for the purposes of the FCA Rules: a properly constituted government of any country, a central bank or other national monetary authority of any country and a recognised investment exchange, regulated market or clearing house.

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

Firms that are automatically treated as eligible counterparties are referred to as per se eligible counterparties.

The following may be categorised as a per se eligible counterparty (including an entity that is not from the UK that is equivalent to any of the below):

- An investment firm.
- A credit institution.
- An insurance company.
- A CIS authorised under the UK provisions that implemented the Undertakings for Collective Investment in Transferable Securities Directive 2009 (2009/65/EC), or its management company.
- A pension fund or its management company.
- Another financial institution authorised or regulated under UK legislation. This includes regulated institutions in the securities, banking and insurance sectors.
- A national government or its corresponding office, including a public body that deals with the public debt.
- A central bank.
- A supranational organisation.

II. Clients who may be Treated as Eligible Counterparties on Request

A per se professional client may, in certain circumstances, be opted up to be an elective eligible counterparty.

DEFINITION OF PROFESSIONAL CLIENTS

Professional clients are considered to possess the experience, knowledge and expertise to make their own investment decisions and assess the risks inherent in their decisions. There are two types of professional client:

- Per se professional client.
- Elective professional client.

I. Categorises of Clients who are Considered to be Professionals

MiFID recognises certain persons as having the relevant requirements for a professional client and automatically classifies them as per se professional clients. Each of the following may be categorised as a per se professional client:

- An entity required to be authorised or regulated (either in the UK or a third country) to operate in the financial markets. For example:
- a credit institution;

- an investment firm;
- any other authorised or regulated financial institution;
- an insurance company;
- a collective investment scheme (CIS) or the management company of such a scheme;
- a pension fund or the management company of a pension fund;
- a commodity or commodity derivatives dealer;
- a local authority; and
- any other institutional investor.

To confirm whether an entity is authorised in the UK, firms can check the financial services register on the FCA's website.

In relation to MiFID or equivalent third country business, a large undertaking meeting two of the following size requirements on a company basis:

- balance sheet total of EUR20 million;
- net turnover of EUR40 million; or
- own funds of EUR2 million;

In relation to business that is not MiFID business or equivalent third country business, a large undertaking meeting any of the following conditions:

- a body corporate (including a limited liability partnership) that has (or any of whose holding companies or subsidiaries has) (or has had at any time during the previous two years) called up share capital or net assets of at least £5 million (or its equivalent in any other currency at the relevant time);
- an undertaking that meets (or any of whose holding companies or subsidiaries meets) two of the following tests: a balance sheet total of EUR12.5 million, a net turnover of EUR25 million or an average number of employees during the year of 250;
- a partnership or unincorporated association that has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited partnership without deducting loans owing to any of the partners;
- a trustee of a trust (other than an occupational pension scheme, small self-administered scheme (SSAS), personal pension scheme or stakeholder pension scheme) that has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the case and designated investment forming part of the trust's assets, but before deducting

its liabilities; or

- a trustee of an occupational pension scheme or SSAS, or a trustee or operator of a personal pension scheme or stakeholder pension scheme where the scheme has (or has had at any time during the previous two years) at least 50 members, and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time).
- A national or regional government, a public body that manages public debt, a central bank, an international or supranational institution (such as the World Bank, the International Monetary Fund, the European Central Bank) or other similar international organisations.
- Another institutional investor whose main activity is to invest in financial instruments (in relation to the firm's MiFID or equivalent third country business) or designated investments (in relation to the firm's other business). This includes entities dedicated to the securitisation of assets or other financing transactions.

A firm must categorise a local public authority or municipality that (in either case) does not manage public debt as a retail client, unless it is permitted to treat such a person as an elective professional client. Consequently, a local public authority or municipality that (in either case) does not manage public debt should not be treated as a per se professional client.

II. Clients who may be Treated as Professional on Request

Retail clients or eligible counterparties can request treatment as professional clients.

A firm may treat a client, other than a local public authority or municipality, as an elective professional client if:

- It undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in the light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved (referred to as the “qualitative test”). If the client is an entity, the qualitative test should be performed in relation to the person authorised to carry out transactions on its behalf (COBS 3.5.4R of the FCA Rules). In practice, a firm is likely to carry out the qualitative test as part of its client on-boarding process.
- In relation to MiFID or equivalent third country business, in the course of carrying out the qualitative test, at least two of the following criteria are 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 deposit and financial instruments, exceeds EUR500,000; and/or

- the client works or has worked in the financial sector for at least one year in a professional position, that requires knowledge of the transactions or services envisaged.
- This is referred to as the “quantitative test”.
- It can be hard for certain firms to meet the quantitative test. For example, a newly established firm may be unable to evidence the frequency at which it has carried out transactions if it has been in business for less than a year, or it may be difficult for a person to provide evidence of a professional position if in the industry concerned, there are not clear qualification requirements.
- In addition to the qualitative and quantitative tests, the following procedure must be followed:
 - the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;
 - the firm must give the client a clear written warning of the protections and the investor compensation rights the client may lose; and
 - the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.