

## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

### 1. Scope

1.1 These terms of business (the "**ToB**") and any schedule(s), as amended from time to time, set out the terms on the basis of which MUFG Bank (Europe) N.V. ("**MUFG**") provides Investment Services to you.

1.2 These ToB apply to each contract made between you and MUFG in connection with the Investment Services provided to you by MUFG. If any provision in these ToB conflicts with or contradicts a provision in such contract relating to specific transactions, the latter provision shall prevail to the extent of such conflict or contradiction, and only insofar as it does not conflict with any duty or obligation under Applicable Regulations.

1.3 You should read the contents of the ToB carefully. If there is anything that you do not understand please let us know as soon as possible by contacting your relationship manager or account manager at MUFG.

1.4 Unless otherwise provided in these ToB, the General Banking Conditions shall apply to the Investment Services. In the event of any inconsistency between the provisions of these ToB and the General Banking Conditions, these ToB shall prevail.

### 2. Interpretation

The definitions and interpretations set out in Schedule 1 will apply, except where the context requires otherwise.

### 3. Information about us

3.1 MUFG is authorised and regulated by the European Central Bank, the Dutch Central Bank (*De Nederlandsche Bank*) and the Dutch Financial Markets Authority (*Autoriteit Financiële Markten*) (jointly: the "**Authorised Regulators**").

3.2 Unless otherwise notified by MUFG to you in writing, the contact details for MUFG are as follows: World Trade Center (Tower I,

5<sup>th</sup> Floor), Strawinskylaan 1887, 1077 XX Amsterdam; telephone +31 (0)20 573 7737 and e-mail [MiFID2@nl.mufg.jp](mailto:MiFID2@nl.mufg.jp).

3.3 For EMIR transaction reporting purposes, MUFG's Legal Entity Identifier (LEI) is 724500Q03K04L0479N30.

### 4. Investment Services

4.1 MUFG may provide the following investment services ("**Investment Services**") to you:

- (i) the reception and transmission of orders in relation to one or more Financial Instruments;
- (ii) the execution of orders in relation to one or more Financial Instruments on your behalf; and
- (iii) dealing on own account, meaning that we may enter into Transactions with you as a counterparty on a request for quotation (RFQ) basis.

4.2 MUFG may also provide other services than the Investment Services if agreed between you and MUFG.

4.3 We will ensure that you receive adequate reports on the Investment Services provided by us (including contract notes, confirmations and client asset statements on the basis set out in this ToB). Where we have had an ongoing relationship in the previous year, we shall provide you with an annual report including information on any Investment Services we have provided you, the Financial Instruments entered into, execution venues and all costs and related charges in accordance with our regulatory obligations. We may provide more frequent reports or ad hoc reports on request at our discretion. Where we provide you with an aggregated costs and charges disclosure you may request an itemised breakdown from us. We will provide such breakdown to you where we are required to by Applicable Regulations or otherwise at our discretion. Where

## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

permitted under Applicable Regulations we may agree with you on a more limited disclosure in relation to costs and charges.

4.4 In connection with providing Investment Services MUFG will make available to you on its website product fact sheet. These product fact sheet explain the nature of the specific type of the Financial Instrument concerned, the functioning and performance of the Financial Instrument in different market conditions, including both positive and negative conditions, as well as risks particular to that specific type of Financial Instrument in sufficient detail to enable you to take investment decisions on an informed basis, and may, if required by Applicable Regulations, also contain proposed investment strategies for you. You are required to read these product fact sheets prior to entering into Transactions. If we provide you with such product fact sheets this is no recommendation to acquire or sell the Financial Instruments described therein.

4.5 You acknowledge that you are aware of the risks relating to entering into Transactions and you accept these risks.

4.6 You will notify MUFG without delay of any changes in your situation as this could lead to a different investment objective or different preferences regarding risk taking.

4.7 Any products which fall within the scope of EMIR are subject to the provisions set out in Schedule 3.

4.8 You acknowledge that the Wholesale Foreign Exchange Global Terms of Dealing Transactions apply to dealings in foreign exchange products. The Wholesale Foreign Exchange Global Terms of Dealing Transactions will be available on our website. In case of a conflict between these ToBs and the Wholesale Foreign Exchange Global

Terms of Dealing Transactions, the terms of these ToBs prevail.

### **5. Capacity**

5.1 In providing Investment Services we generally act as principal and not as an agent on your behalf, but from time to time may act as your agent or arranger. If we act as your agent or arranger we will make this clear to you.

5.2 In your dealings with us you act as principal and not as an agent (or trustee) on behalf of someone else.

### **6. No advice**

6.1 We do not provide personal recommendations, particularly we do not provide investment advice or portfolio management investment services (as meant in Applicable Regulations) or any advice on the merits or suitability for you of particular Transactions or Investment Services, or their taxation consequences.

6.2 In asking us for Transaction related information, or where you enter into any Transaction with us, you represent that you have been solely responsible for making your own independent appraisal and investigations into the risks of the Transaction. You represent that you have sufficient knowledge, market sophistication, professional advice and experience to make your own evaluation of the merits and risks of any Transaction. We give you no warranty as to the suitability of the Transactions.

6.3 If you are an Eligible Counterparty then we are entitled to assume that you have the necessary experience and knowledge in order to understand the risks involved in relation to the particular Investment Services or Transactions, or types of Transaction or Financial Instrument, for which we have classified you as an Eligible Counterparty. If you are an Eligible Counterparty there is no

## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

requirement on us to consider whether any Investment Service, Financial Instrument or Transaction is appropriate for you. We will therefore not conduct an appropriateness assessment on you unless you are a Professional Client that we have opted up.

6.4 Where we provide general trading recommendations, market commentary or other general advice or information:

- (i) this is incidental to your relationship with us. It is provided solely to enable you to make your own investment decisions and does not amount to a personal recommendation or advice;
- (ii) we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the tax consequences of any Transaction;
- (iii) where information is in the form of a document containing a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on contrary to that restriction; and
- (iv) you accept that prior to despatch of Research, we may have acted upon it ourselves or made use of the information on which it is based. We do not make representations as to the time of receipt by you and cannot guarantee that you will receive such information at the same time as other clients. Any published Research or recommendations may appear in one or more screen information services.

### **7. Product governance**

If we act as manufacturer or distributor of a product, where you onward distribute that product you shall use reasonable endeavours to ensure that:

- (a) you distribute within any target market we have identified;
- (b) you ascertain the target market and provide the target market to any third party distributors you distribute that product to; and

(c) your distribution of that product is limited to the target market that we have provided or that you have identified and, where necessary, you will provide us with any relevant information required under Applicable Regulations.

### **8. Client Categorisation**

8.1 Your classification in all our dealings with you will be an Eligible Counterparty or a Professional Client, as stipulated in the covering letter, or electronic mail (as applicable), that accompanies these ToB.

8.2 If you have been classified by us as an Eligible Counterparty, you have the right to request a different client categorisation offering a greater level of regulatory protection. Such request should be made to us in writing.

8.3 If you have been classified by us as a Professional Client and you request to us in writing to treat you as an Eligible Counterparty and we agree to such categorisation, we would no longer be required by regulatory rules to provide certain protections granted to Professional Clients. The regulatory protections concerned include formal requirements in the following areas: (a) to act in accordance with your best interests; (b) in certain contexts to provide enhanced information to you before providing services; (c) to achieve Best Execution in respect of your orders; (d) to execute orders subject to other constraints as regards timing and handling relative to other clients' orders.

8.4 If you have been classified by us as an Eligible Counterparty or a Professional Client not based upon your request, you may request treatment as a Retail Client. To such a request we, upon our sole discretion, may or may not agree. If you request to be categorised as a Retail Client we will not provide Investment Services to you on the basis of these ToB.

## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

8.5 If you would otherwise be categorised as a Retail Client and we treat you as a Professional Client at your request (this is referred to as opting up), MUFG will provide Investment Services to you treating you as a Professional Client. We can only opt you up, upon your request, if certain criteria are met and certain procedures followed. We must carry out an adequate assessment of your expertise, experience and knowledge to satisfy ourselves that you are capable of making investment decisions and understanding the risks involved. Professional Clients typically have greater knowledge and experience of investing in financial markets and a higher appetite for risk, and are given a lesser degree of protection under Applicable Regulations. However even if we opt you up we do not assume that you have market knowledge and experience like Eligible Counterparties. You agree and acknowledge that you are responsible for keeping us informed about any change that could affect your categorisation as an opt-up Professional Client (former Retail Client). If you are classified as a Professional Client based on your request, you have a right to request MUFG in writing to change your client categorisation to a Retail Client, to which we will consent.

8.6 MUFG may require reasonable verification of your, or your employees', officers' or associates', identity, which you agree to provide. MUFG may also request or obtain (including but not limited to) additional information in relation to the ownership structure, credit standing and business conduct of you and those connected with you. If MUFG is not satisfied with the information provided, MUFG may request additional information. MUFG has no obligation to provide the Investment Services contemplated by these ToB and may not provide any such services until verification procedures have been completed to the satisfaction of MUFG. MUFG may in any event rely on any information provided by you and will not be

required to verify the correctness of such information.

8.7 You may, at any time, request MUFG in writing to change your client categorisation. Such a request must relate to the entire relationship with us. MUFG can reject the request if deemed inappropriate (unless you opt to be graded down) or if accepting such a request is not permitted by any applicable law.

8.8 You undertake to forthwith report any changes that lead to a change in your client categorisation, as it is described in the covering letter, or electronic mail (as applicable), to MUFG in writing.

8.9 Categorisation for the purposes of compliance with the requirements of the European Markets Infrastructure Regulation (EMIR) is addressed in Schedule 3.

### **9. Appropriateness assessment**

9.1 In accordance with Applicable Regulations, the provisions of this clause 9 apply solely to clients classified as Professional Clients and does not apply to Eligible Counterparties or any clients treated as Eligible Counterparties.

9.2 MUFG will obtain certain information from you and make an assessment of whether you have the necessary experience and knowledge in order to understand the risks involved in relation to the product or Investment Services you are seeking from us. If we are satisfied that you have the necessary experience and knowledge there is no requirement on us to communicate this to you. Where a bundle of Investment Services or products is envisaged between us then our assessment must consider whether the overall bundled package is appropriate for you.

9.3 You will undertake to provide to MUFG at its request all information regarding



## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

your knowledge and experience as to enable MUFG to assess the appropriateness of the Investment Services. In order to establish whether the Investment Services are appropriate for you, you may be required to fill out an appropriateness questionnaire.

9.4 You represent and warrant that all information provided for the above referenced assessment is complete and accurate in all material respects, otherwise MUFG will not be able to determine whether the Investment Services are appropriate for you.

### **10. Conflicts of interest**

10.1 MUFG has in place a written conflicts of interest policy. A summary of our conflicts of interest policy is set out in Schedule 2.

10.2 You acknowledge that MUFG provides services in respect of a range of investment related activities to a number of different clients and accordingly that MUFG may have an interest, relationship or arrangement that is material in relation to a transaction effected with or for you (or a Transaction) or that could give rise to a conflict of interest.

10.3 You agree that MUFG does not have a duty to disclose any matter which comes to its notice in the course of its business if doing so would constitute a breach of duty or confidentiality (as the case may be) owed under the terms of any other arrangement or agreement entered into with a third party (including another of MUFG's clients), or such disclosure would otherwise be in breach of any regulatory or legal obligations. In such circumstances MUFG may refuse to act in a situation where it is unable to resolve the conflict or disclose it to you.

10.4 You agree that MUFG and any Connected Company may therefore effect transactions in which MUFG or a Connected Company or another client of MUFG or a Connected Company has, directly or

indirectly, a material interest or relationship of any description with another party which involves or may involve a potential conflict with our duty to you, where that conflict has, in MUFG's reasonable opinion, been managed effectively.

### **11. Instructions**

11.1 You may give us instructions in writing, orally (including by telephone) or by other electronic communication received by us that has been transmitted subject to proper test or security procedures (including, for example, Bloomberg) unless we tell you that instructions can only be given in a particular way. If you give instructions by telephone, your conversation will be recorded, as set out in clause 20. Unless otherwise agreed, e-mail or other electronic messages in respect of each instruction for general trading will only be accepted if specifically acknowledged by us. With the exception of telex and SWIFT messages, no settlement instructions will be accepted by e-mail or other electronic means unless otherwise agreed. If any instructions are received by us by telephone, computer or other medium we may ask you to confirm such instructions in writing. We shall be authorised to follow instructions notwithstanding your failure to confirm them in writing. In these ToB "instructions" and "orders" have the same meaning.

11.2 You authorise MUFG to rely and to act without further enquiry on any order, instruction or communication (however received or by whatever means transmitted) which purports to have been given by you or your agents or employees and which has been reasonably accepted by us in good faith.

11.3 You agree that you will be responsible for and bound by any contract or obligations entered into by MUFG or assumed by MUFG on your behalf in consequence of or in connection with your order or instructions.

## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

11.4 We can only cancel your instructions if we have not acted upon those instructions. Instructions may only be withdrawn or amended by you with our consent.

11.5 MUFG may at any time, and without any liability on its part, refuse to act upon, execute or otherwise implement any instruction or request from you without giving any reason for such refusal. MUFG will notify you promptly of any such refusal.

11.6 MUFG may, at its sole discretion, act upon instructions given by you by telephone, provided that instructions by telephone shall promptly thereafter be confirmed in writing by you upon request by MUFG. You agree to indemnify and hold MUFG harmless for any failure by you to send such a confirmation in writing or the failure of such confirmation to confirm the telephone instructions received.

11.7 We have the right (but no obligation) to set limits and/or parameters to control your ability to place orders at our absolute discretion. Such limits and/or parameters may be amended, increased, decreased, removed or added to by us at our absolute discretion and may include (without limitation): (i) controls over maximum order amounts and maximum order sizes; (ii) controls over our total exposure to you; (iii) controls over prices at which orders may be submitted (to include (without limitation) controls over orders which are at a price which differs greatly from the market price at the time the order is submitted to the order book); (iv) controls over any electronic services (to include (without limitation) any verification procedures to ensure that any particular order or orders has come from you); or (v) any other limits, parameters or controls which we may be required to implement in accordance with Applicable Regulations.

### **12. Execution Arrangements**

12.1 In accordance with Applicable Regulations, the provisions of this Clause 12 apply solely to clients classified as Professional Clients.

12.2 MUFG has in place arrangements to enable MUFG to obtain the best possible result for clients, within the terms of MUFG's the "order execution policy", a summary of which is available in Schedule 4. Our order execution policy can be accessed on our website.

12.3 You confirm that you have read and accepted our order execution policy. We will notify you of any material changes to our order execution policy. We will not notify you of non-material changes to such policy.

12.4 Where we execute orders in Financial Instruments on your behalf, we will take all sufficient steps to obtain the best possible result by following our order execution policy, subject to any specific instructions received from you.

12.5 Where you provide us with specific instructions, including specifying the characteristics of a bespoke product, either relating to an order or a particular aspect of an order, we will execute the order in accordance with those instructions. Accordingly, our order execution policy will not apply. We will deem orders received via direct market access systems as specific instructions.

12.6 We shall use our reasonable endeavours to execute any order promptly, but in accepting your orders we do not represent or warrant that it will be possible to execute such order or that execution will be possible according to your instructions. We shall carry out an order on your behalf only when the relevant Market is open for dealings, and we shall deal with any instructions received outside Market hours as soon as possible when that relevant Market is next open for business (in accordance with the rules of that Market).

## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

Where required, you will agree that we may execute an order on your behalf outside a Market. MUFG only accepts orders on a very limited basis.

12.7 Please note that it is common market practice for banks such as MUFG when executing Transactions to deal with you on a proprietary basis by providing quotes at your request.

12.8 MiFID II requires us to request your consent to your orders relating to Financial Instruments being executed by us outside a regulated market, MTF or OTF. You are required to provide us with your consent by filling in and sending us the "Trading Off Trading Venue (TOTV) Form Of Consent" within one month upon receipt of the Trading Off Trading Venue (TOTV) Form Of Consent.

### **13. Aggregation and allocation**

MUFG may aggregate orders in Financial Instruments executed for your account with orders for the account of other clients or our Connected Companies or clients of our Connected Companies or for our own account. MUFG will allocate such transactions on a fair and reasonable basis subject to Applicable Regulations. You recognise that each individual aggregated transaction may operate to your advantage or disadvantage.

### **14. Confirmations**

14.1 MUFG will send you confirmations in accordance with Applicable Regulations for any Transactions that we have executed on your behalf, by electronic mail to the e-mail address on record for you, or by such other means agreed between you and us. In addition to providing you with confirmations we shall, on your request, provide you with information about the status of your order.

14.2 It is your responsibility to inform us of any change to your e-mail address, the non-receipt of a confirmation, or whether any

confirmations are incorrect before settlement. Confirmations shall, in the absence of manifest error, be conclusive and binding on you, unless we receive from you objection in writing within two business days of despatch to you or we notify you of an error in the confirmation within the same period.

14.3 In accordance with Applicable Regulations we will also provide you with post-trade reports for any Transactions that we have executed on your behalf, either with your confirmation or as a separate document. Such reports will be provided as soon as possible after execution but in any event no later than as required by Applicable Regulations or where relevant following our receipt of a confirmation from a third party. Where you are treated as an Eligible Counterparty we may agree different terms with you in relation to post-trade reports.

### **15. Performance and settlement**

15.1 You will promptly deliver any instructions, money, documents or property deliverable by you under a Transaction in accordance with that Transaction as modified by any instructions given by us for the purpose of enabling us to perform our obligations under the relevant matching Transaction on a Market or with an intermediate broker.

15.2 In relation to Transactions with MUFG only, all Transactions are settled on an actual settlement basis. We are not obliged to settle transactions or account to you unless and until we (or our settlement agents) have received all necessary documents or money. Where we settle transactions for you, delivery or payment by the counterparty is entirely at your risk. Unless otherwise specifically agreed with you, settlement shall be carried out in accordance with market practice and Applicable Regulations.

15.3 We may require you to limit the number of open positions which you may have

## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

with us at any time and we may in our sole discretion close out any one or more Transactions in order to ensure that such position limits are maintained.

15.4 Under Applicable Regulations we will publish annually information on the top five execution venues we have used in terms of trading volume for classes of Financial Instruments when executing client orders. We will provide similar information for the top five third parties (i.e. brokers) to which we have routed your orders, where relevant, and any other information relating to execution venues required by Applicable Regulations. We will provide this information separately for securities financing transactions, such as stock lending. This information will be published on our website in accordance with Applicable Regulations but we may also provide this to you directly.

15.5 If we act in the capacity of a systematic internaliser and we make public firm quotes in certain Transactions, in accordance with Applicable Regulations, you agree that we may limit: (i) the number of Transactions that we undertake to enter into with you at the published quote; and (ii) the total number of Transactions that we undertake to enter into with other clients at the published quote. Where we grant access to quotes provided by us in our capacity as a systematic internaliser, and the quoted size is at or below the size specific to the financial instrument, we may enter into a Transaction with any other client to whom the quote is made available, in accordance with Applicable Regulations.

### **16. Charges**

16.1 You shall pay our charges; any taxes imposed by any competent authority on any account opened or Transaction effected by or cleared for you; any fees or other charges imposed by a Market or any clearing organisation; interest on any amount due to us at the rates then charged by us; and any other

value added or other applicable taxes of any of the foregoing, including any withholding tax. Any alteration to charges will be notified to you at or before the time of the change. You should be aware of the possibility that other taxes or costs may exist that are not paid through or imposed by us.

16.2 MUFG has a fee sharing arrangement in place with MUSE whereby commission payable by Professional Clients and Eligible Counterparties to MUSE is shared where MUFG refers you to MUSE. MUFG will only refer you to MUSE in circumstances where MUFG is unable to facilitate for you an investment in a Financial Instrument that MUSE can provide. You are free to decline the services of MUSE. The proportion which MUFG receives is worked out according to how much MUFG has contributed towards providing you with the service which you receive from MUSE.

16.3 In addition to the costs referred to in clause 16.1, additional costs as agreed with you from time to time in writing may be payable by you by virtue of the fact that a contract is entered into via email, telephone or by other electronic means.

16.4 In accordance with Applicable Regulations, the provisions of this clause 16.4 apply solely to clients classified as Professional Clients. MUFG is not permitted to accept or retain any fees, commissions, monetary or non-monetary benefits (each an inducement) paid or provided by a third party in relation to Investment Services provided by us to you. We are similarly not allowed to pay or provide any inducement to any third party in relation to the provision of Investment Services to you. We can only accept or retain or pay or provide such inducements if they meet certain conditions. The inducement must not impair compliance of our duty to act honestly, fairly and professionally in



## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

accordance with the best interest of its clients and it must enhance the quality of the relevant service to you. We must also make disclosures about the inducement to you before we provide the relevant Investment Service to you. Before we provide you with Investment Services we will disclose to you information on inducements and this will include a generic description of minor non-monetary benefits. Other non-minor benefits will be priced and disclosed separately. If we cannot ascertain in advance the amount of any payment or benefit to be received or paid, we can disclose to you the method of calculating that amount and we will provide you with information on the exact amount after the payment of the benefit after it has been paid or received. We will also inform you at least once a year on an individual basis about the actual amount of payments or benefits received or paid.

16.5 Where permitted by Applicable Regulations, we may receive remuneration from, or share charges with, an associate or other third party in connection with Transactions. Where such arrangements directly affect the business you undertake with us, we will notify you of the nature and amount of such fees, commissions or benefits, excluding minor non-monetary benefits.

16.6 Any charges due to us plus any applicable value added tax may be deducted from any funds held by MUFG on your behalf or, at our discretion, shall be paid by you as stated in the relevant contract note or advice at settlement.

16.7 All amounts payable will automatically be debited from your Cash Account on the due date if applicable, unless otherwise agreed upon between you and MUFG.

16.8 If you fail to pay any amount on the date on which it is due and payable to us,

MUFG reserves the right to charge you interest on any such amount from the date of such failure to pay until the date of actual payment. Interest will accrue on a daily basis and will be due and payable by you as a separate debt.

16.9 Interest will not be payable to you in respect of any money that MUFG holds for you (including, in particular, funds received in advance of the due date for settlement), unless specifically agreed by MUFG in writing.

### **17. Client Money**

17.1 MUFG is an authorised credit institution licensed to conduct deposit business and subject to supervision by the Authorised Regulators.

17.2 You may withdraw any money held in an account with MUFG pursuant to these ToB at any time, subject to MUFG's account withdrawal procedures and unless limitations have been set in accordance with an agreement thereto between you and MUFG.

17.3 MUFG is subject to the deposit guarantee scheme and investor compensation scheme as provided for in the DFSA and in the Special Prudential Measures, Investor Compensation and Deposit Guarantees Decree (*Besluit bijzondere prudentiële maatregelen, beleggerscompensatie en depositogarantie Wft*). If you hold money or Financial Instruments in a MUFG account, you may be entitled to the rights that follow from the regulations as referred to in the previous sentence.

17.4 MUFG will provide you with an overview of your Financial Instruments and funds held at MUFG at least annually.

### **18. Communication**

18.1 Communication between us, including communication relating to Investment Services provided to you, may be in writing, by email

## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

or other electronic means, or orally (including by telephone). Except where otherwise agreed, the language of communication shall be English, Dutch or Japanese, and you will receive documents and other information from us in English.

18.2 Correspondence to you may be sent by MUFG to the address last notified by you or, in the absence thereof, to your last place of ordinary residence. You must inform MUFG of the address to which notices may be sent. It is your responsibility to notify MUFG in the event of a change of address. On notification MUFG shall make the necessary changes to your account as quickly as is possible.

18.3 You agree that the MUFG may provide information in a durable medium or via a website. We will notify you of the website address when such information is accessible and when such information is revised. Specifically you agree that we may provide the following information to you via a website, where relevant and in accordance with Applicable Regulations:

- (a) the ToB;
- (b) a description of the conflicts of interest policy maintained by us and, upon request, further details of that conflicts of interest policy;
- (c) any changes to the methods of communication to be used between us, including but not limited to how we receive orders or requests for quotes;
- (d) a general description of the nature and risks of Financial Instruments in the product factsheets;
- (e) costs and charges including but not limited to, where relevant, aggregated costs and charges related to the Financial Instrument, the Investment Service and any third party payments, currency conversion rates and costs and illustrations of costs and charges;
- (f) details of our order execution policy; and

(g) the Wholesale Foreign Exchange Global Terms of Dealing Transactions.

### 19. Data protection

19.1 You shall ensure that any disclosure of personal data, whether in relation to your employees or otherwise, made to MUFG by you or on your behalf is made with the data subject's consent or is otherwise lawful.

19.2 Unless agreed otherwise in writing with you MUFG may, in accordance with data protection laws applicable to MUFG, save, process, use and reuse of any data obtained in connection with the performance of a contract, pursuant to which MUFG provides services to you.

19.3 You shall ensure that the personal data provided to MUFG will be up-to-date and relevant for the service or product delivered by MUFG to you and in accordance with data protection law.

19.4 Before providing us with any information relating to identifiable living individuals in connection with these ToB you should ensure that those individuals are aware of:

- (a) our identity and contact details;
- (b) that we may use their information to administer and operate your account, provide you with services pursuant to these ToB, disclose this data to third parties in so far as it is necessary to provide those services and, from time to time (to the extent necessary, with your consent), inform you about other products or services which we believe may be of interest to you;
- (c) that we are entitled to process the individuals' information for the purposes in subclause (b) to: (i) comply with legal obligations that we are subject to in relation to reporting transactions to protect against fraud; and (ii) to pursue our legitimate interests in providing you with the required services;

## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

(d) that this may involve disclosure of their information which may include transfer of their information to any country, including countries outside the European Economic Area (“EEA”), that provide a similar level of protection as data protection laws within the EEA, but we will ensure that their information is protected and transferred in a manner consistent with how their information will be protected by us in the EEA;

(e) that we will keep their information only for as long as necessary for the purpose it has been collected and is processed for or as required under Applicable Regulations;

(f) that they have rights of access to, and correction of, their information which they may exercise by contacting us in writing;

(g) that they may lodge a complaint with data protection authorities if they are unhappy with the way that we are using their information; and

(h) if any data subject does not wish to receive information from us, then they should contact us using the details provided in these ToB.

19.5 You may have rights of access to some or all of the information we hold about you, to have inaccurate information corrected and to tell us that you do not wish to receive marketing information, under data protection law. If you wish to exercise any of these rights, please contact us in writing.

19.6 You irrevocably authorise MUFG to disclose to the Authorised Regulator or any governmental or other regulatory body or authority having jurisdiction, any information relating to you, including your investment positions, which is in MUFG's possession and which MUFG is obliged to disclose by law or by any applicable rule of any such regulatory body or authority.

19.7 We may analyse and use the information we hold about you to enable us to give you information (by post, telephone, e-mail or other medium, using the contact details you

have given us) about products and services offered by us (or by our Affiliated Companies or selected third parties) which we believe may be of interest to you. If you do not wish to receive marketing information, please let us know by contacting us in writing.

### 20. Recording

Telephone conversations between MUFG and you may be recorded without the use of a warning tone and may be used to monitor compliance with relevant rules and regulations, confirm instructions received and MUFG may otherwise have recourse to such recordings for the purposes of resolving any dispute, complaint or investigation from you or on your behalf or on behalf of any other person.

### 21. Complaints

If you have any complaint about MUFG's conduct or performance under these arrangements, please email your complaint to [MiFID2@nl.mufg.jp](mailto:MiFID2@nl.mufg.jp) where the nature of your complaint will be investigated.

### 22. Indemnity and Limitation of Liability

22.1 Neither we nor our directors, officers, employees, or agents shall be liable for any losses, damages, costs or expenses (together “Loss”), whether arising out of negligence, misrepresentation or otherwise, incurred or suffered by you under this ToB (including any Transaction or where we have declined to enter into a proposed Transaction) even if such Loss is a reasonably foreseeable consequence unless such Loss arises directly from our or their respective gross negligence, wilful default or fraud.

22.2 In no circumstance, shall we have liability for Loss suffered by you or any third party for any special or consequential damage, loss of profits, loss of goodwill or loss of business opportunity arising under or in connection with these ToB, whether arising

## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

out of negligence, breach of contract, misrepresentation or otherwise.

22.3 Nothing in these ToB will limit our liability for death or personal injury resulting from our negligence.

22.4 Without limitation, we do not accept liability for any adverse tax implications of any Transaction whatsoever.

22.5 We shall not be liable to you for any partial or non-performance of our obligations hereunder by reason of any force majeure (*overmacht*), including without limitation any breakdown, delay, malfunction or failure of transmission, communication or computer facilities, industrial action, act of terrorism, act of God, acts and regulations of any governmental or supra national bodies or authorities or the failure by the relevant intermediate broker or agent, agent or principal of our custodian, sub-custodian, dealer, Market, clearing house or regulatory or self-regulatory organisation, for any reason, to perform its obligations.

22.6 We shall not be liable for any loss or expenses which may result by reason of any delay or change in market conditions before any particular Transaction has been effected.

### 23. Joint and Several Liability

Where these ToB apply in relation to a partnership or otherwise by or on behalf of more than one person, any liability arising hereunder shall be deemed to be the joint and several liabilities of the partners in the firm or of such persons as aforesaid. These ToB shall not be terminated or prejudiced or affected by any change in the constitution of such partnership or by the death of any one or more of such persons. MUFG shall be entitled to accept instructions and give receipts and for all purposes deal with any one of such persons as agent to all of them.

### 24. Authorities and Consents

24.1 You warrant and represent to MUFG that:

(i) you are duly incorporated or established under the laws of your place of incorporation or establishment;

(ii) you have, and you undertake that you will continue to have, all requisite corporate powers, capacity and authority to engage MUFG upon the terms and conditions of these ToB, and to execute and perform your obligations under these ToB;

(iii) these ToB have been duly accepted and constitute your valid, legal and binding obligations;

(iv) you have obtained, and will maintain in effect, in relation to all transactions, all necessary consents of any governmental or other regulatory body or authority applicable to each transaction, and that you will comply with the terms of the same and all applicable laws, regulations and directives of such bodies and authorities. You will forthwith on demand by MUFG deliver to MUFG copies of all such consents or such other evidence of any such consents and such evidence of compliance with such and with any such laws, regulations and directives as MUFG may reasonably require;

(v) you act as principal in each Transaction;

(vi) any information which you provide or have provided to us in respect of your financial position, domicile or other matters is accurate and not misleading in any material respect;

(vii) you are financially able and prepared to sustain a total loss of funds resulting from Transactions and trading in such Transactions is a suitable investment vehicle for you; and

(viii) in relation to your Transactions with or through MUFG, you are entering into Transactions for hedging purposes only and not for speculative purposes.

24.2 You will forthwith on demand by MUFG deliver to MUFG copies of all such consents or such other evidence of any such consents and such evidence of compliance



## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

with such and with any such laws, regulations and directives as MUFG may reasonably require.

### **25. Delay or Omission**

No delay or omission on MUFG's part in exercising any right, power, remedy or privilege under these ToB shall impair such right, power, remedy or privilege or act as a waiver. Any waiver or release of a party's rights under these ToB must be granted specifically in writing by the party granting it. MUFG's rights and remedies provided for in this document are cumulative and not exclusive of any rights of lien, sale, setoff or retention or other rights or remedies provided by law, statute or otherwise howsoever. Each party may exercise each of its rights as often as it thinks necessary.

### **26. Assignment of rights and obligations**

You cannot assign any rights and obligations under these ToB and any transactions entered into pursuant hereto may not and cannot be assigned without MUFG's prior written consent.

### **27 Rights of third parties**

A person who is not a party to these ToB or any transactions entered into pursuant to it has no right to enforce any term of such agreement, except as otherwise expressly provided in these ToB.

### **28. Severability**

Each provision of these ToB is severable and, if any provision is or becomes invalid or unenforceable or contravenes any applicable law or rules and regulations of the appropriate regulatory authority, the remaining provisions shall remain valid and enforceable.

### **29. Confidentiality**

29.1 Neither party shall disclose to any person, unless required to do so by any applicable law or by any regulatory or supervisory authority (including the

Authorised Regulators) or by any other person entitled by law to require disclosure, or to enable it properly to perform its obligations under these ToB, any information relating to the business, investments, finances or other matters of a confidential nature of the other party of which it may in the course of its duties or otherwise become possessed, and each party shall use reasonable endeavours to prevent any such disclosure.

29.2 By accepting these ToB, you authorise MUFG to disclose such information relating to you as may be required by any law, rule or regulatory authority (including the Authorised Regulators) without prior notice to you. Furthermore MUFG may disclose requested and relevant information relating to you to third parties in or outside the Netherlands in order to facilitate the transfer of funds.

### **30. Termination**

30.1 You may terminate your relationship with us by giving MUFG fourteen days prior written notice of termination. MUFG may terminate your relationship by giving MUFG fourteen days prior written notice of termination.

30.2 These ToB will also terminate immediately and MUFG may, without prior reference to you and in MUFG's absolute discretion, take any action MUFG deems necessary or expedient to perform, cancel or close out any transaction or contract entered into if any of the following events occur:

- (i) you default in performing an obligation pursuant to these ToB or commit any breach of the terms contained in these ToB; an order is made or a resolution passed for your winding-up or a meeting convened for a voluntary winding-up;
- (ii) you convene a meeting or make any arrangement or composition with your creditors; you cease to trade or become unable to pay your debts or become subject to a suspension of payments or bankruptcy

## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

proceeding (or an application for such proceeding has been filed) under the Dutch Bankruptcy Act (*Faillissementswet*) or any comparable legislation either in the Netherlands or elsewhere which may be applicable;

(iii) any debt or obligation of yours becomes due and payable or is declared and payable due to any default on your part;

(iv) you making use of the Investment Service(s) in a manner contrary to legislation or regulations or that may lead to damage to the reputation of MUFG or to infringement of the integrity of the banking sector;

(v) national or international legislation or regulations obliging MUFG to do so.

30.3 No penalty will become due from either you or MUFG in respect of the termination of these arrangements; however, you will pay all amounts due to MUFG from you, including any outstanding fees and charges that have accrued down to the date of termination and MUFG's charges for transferring your investments to your new investment firm.

30.4 If these arrangements are terminated, that will not affect any outstanding order or transaction or any legal rights or obligations that may already have arisen.

30.5 Termination shall not affect the applicability of clause 21 up to and including 30 and clause 33 of these ToB, the then outstanding rights and obligations and Transactions which shall continue to be governed by this ToB and the particular clauses agreed between you and us in relation to such Transactions until all obligations have been fully performed.

### 31. Amendments

31.1 MUFG may amend these ToB by sending you a written notice describing the relevant changes. Such changes will become effective after the date specified in the notice,

which date shall be at least 30 days after the notice is sent to you.

31.2 If you object to the announced amendment, you must notify us thereof in writing within 30 days after MUFG has given notice of the amendment.

31.3 In derogation of clauses 31.1 and 31.2, amendments to these ToB that are required under any Applicable Regulations, any further regulation thereto or required by any governmental or regulatory authority or court, the amendments shall have immediate effect from the moment MUFG has sent notice thereof.

31.4 No amendment will affect any outstanding order or Transaction or any legal rights or obligations which may already have arisen.

### 32. Entry into Force

32.1 These ToB supersede any previous general terms of business between you and us on the same subject matter and takes effect on the Effective Date.

32.2 Where MUFG has already sent you or shall send you, or MUFG have entered into with you, any master agreement and/or other client documentation relating to regulated activities, the terms of such separate agreement shall prevail but shall be supplemented by the terms of these ToB (to the extent they do not conflict with such agreements).

32.3 You acknowledge that you have not relied on or have been induced to enter into these ToB by a representation other than those expressly set out in these ToB.

## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

### **33. Governing Law**

33.1 The contractual and non-contractual obligations under, in connection to or pursuant to these ToB are governed by Netherlands law.

33.2 Any dispute arising from or in connection with these ToB shall be submitted to the exclusive jurisdiction of the competent court in Amsterdam.

## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

### Schedule 1

#### Definitions and interpretations

##### Definitions

Definitions specific to the attached Schedules are contained in the respective Schedules as appropriate.

**Applicable Regulations:** Means:

- (i) the DFSA and any applicable underlying rules and regulations;
- (ii) rules of the relevant Market; and
- (iii) Regulation (EU) No 600/2014 of 15 May 2017 (MiFIR), Commission Delegated Regulation (EU) 2017/565 of 25 April 2016, Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 and any other applicable regulation supplementing MiFID II.

**Best Execution:** Means that when executing orders MUFG takes all sufficient steps to obtain the best possible result for our clients, as meant in Article 27(1) MiFID II.

**Cash Account:** Means the current account maintained by you with us on which cash is administered.

**Connected Companies:** Means any MUFG entity or company which is affiliated with MUFG.

**DFSA:** Means the Dutch Financial Supervision Act (*Wet op het financieel toezicht*) as amended, supplemented or re-adopted from time to time.

**Effective Date:** Means 3 January 2018 unless the effective date of MiFID II in the Netherlands is postponed beyond 3 January 2018 in which case it shall mean the date MiFID II is effective or as otherwise notified by us to you in writing.

**Eligible Counterparty:** Means an eligible counterparty (*in aanmerking komende tegenpartij*) as defined in Section 1:1 DFSA.

**EMIR:** Means Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories and any delegated or implementing acts made under that Regulation, each as amended or restated from time to time.

**Financial Instruments:** Means the financial instruments as set out in Section C of Annex 1 to MiFID II, including:

- (i) foreign exchange products (including Foreign Exchange Forward, Foreign Exchange Option, Non-Deliverable Forward, FX Swap, excluding spot forex contracts);
- (ii) currency options (including Range Hyper Deposit); and
- (iii) interest rate derivatives (including Interest Rate Swap, Currency Swap, Interest Rate Cap/Floor).

**General Banking Conditions:** Means the general banking conditions of the Netherlands Bankers' Association (*Nederlandse Vereniging van Banken*) filed with the Registrar's office of the District Court of Amsterdam on 26 August 2016 (no. 60/2016), as they may be amended from time to time in accordance their terms.

**Market:** Means any regulated market, multilateral trading facility or organised trading facility (as such terms are defined in Article 1:1 DFSA) or any other third country trading facility determined to be equivalent to a regulated market, multilateral trading facility or organised trading facility pursuant to the relevant provision of MiFID II.

**MiFID II:** Means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial



## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

instruments amending Directives 2002/92/EC and Directive 2011/61/EU.

**MTF:** Means a multilateral trading facility (*multilaterale handelsfaciliteit*) as defined in Section 1:1 DFSA.

**MUFG:** Means MUFG Bank (Europe) N.V.

**MUSE:** Means Mitsubishi UFJ Securities EMEA plc.

**OTF:** Means an organised trading facility (*georganiseerde handelsfaciliteit*) as defined in Section 1:1 DFSA.

**Professional Client:** Means a professional client (*professionele belegger*) as defined in Section 1:1 DFSA.

**Research:** Means a publication recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

- (i) it is labelled as research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;
- (ii) if the recommendation in question were to be made by an investment firm to a client, it would not constitute the provision of a personal recommendation or advice; and
- (iii) all other publications aimed as research and produced in a segregated environment and subject to the relevant requirements of Applicable Regulations relating to investment research.

**Retail Client:** Means a non-professional client (*niet-professionele belegger*) as defined in Section 1:1 DFSA.

**Transaction:** Means any transaction in relation with Financial Instruments entered into by you following Investment Services provided to you by MUFG.

**ToB:** Has the meaning given to it in Clause 1.1 (*Scope*).

**Wholesale Foreign Exchange Global Terms of Dealing Transactions:** Means the Global FX Code as made available by the Bank for International Settlements, from time to time.

### Interpretations

1. The headings are included for convenience only and will not affect the interpretation or construction of these ToB.

2. In these ToB, unless the context requires otherwise, any reference to:

- (a) "we" or "us" will, unless otherwise specified herein or required by context, mean MUFG and any successor thereto with which you transact the business set out in these TOB;
- (b) a party or the parties is to a party or the parties (as the case may be) to these ToB;
- (c) a statute or statutory provision or rules or regulations includes any consolidation or re-enactment, modification or replacement of the same, any statute or statutory provision or rule or regulation of which it is a consolidation, re-enactment, modification or replacement and any subordinate legislation in force under any of the same from time to time;
- (d) a person includes a firm, corporation and unincorporated associations, government, state or agency of state, any association or partnership or joint venture (whether or not having a separate legal personality); and
- (e) a document is to that document as varied, supplemented or replaced from time to time.

## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

### Schedule 2

#### Summary of conflicts of interest policy

We have in place a written conflicts management policy. A summary of our conflicts management policy is set out below. We may provide more information on our website or we may provide this to you upon written request.

MUFG is engaged in a range of regulated businesses in the Netherlands. This may give rise to situations where MUFG, under Applicable Regulations:

- (i) may have interests, relationships and/or arrangements which conflict with those of you whether in relation to these ToB or otherwise; and/or
- (ii) may have other clients whose interests conflict with your interests.

MUFG has established a written conflicts policy to manage conflicts of interests. Pursuant to this policy, MUFG will, in providing services to clients, ensure that all clients are treated fairly and, so far as is reasonably practicable, MUFG will ensure that such transactions are effected on terms which are not materially less favourable to you than if the conflicts or potential conflicts had not existed.

We have measures and controls in place to identify both potential and actual conflicts of interest. This includes, for example, identifying situations where we are likely to make a financial gain, or avoid a financial loss, at your expense or where we carry out the same business as you. We have identified a wide range of scenarios where a potential conflict of interest may arise, in particular where we or our associates provide corporate

finance business and where we deal on or own account.

In addition to identifying conflicts, MUFG has procedures to try and prevent conflicts from arising and also to manage conflicts of interests that do arise. This includes segregation of duties for and supervision of staff engaged in different business activities which may also include information barriers (both physical and systems access), maintenance of a restricted list, personal account dealing restrictions applicable to all staff and their connected persons, a gifts, entertainment and inducement policy, relevant training to staff and a remuneration policy and independent remuneration committees to deal with remuneration that may or does give rise to a conflict of interests.

Where we do not consider that our measures and controls to manage conflicts (such as those outlined above) are sufficient to manage a conflict, we may:

- (i) choose to disclose specific conflicts to clients and to ask for their informed consent to continue to act, notwithstanding the existence of any such conflict; and/or
- (ii) decline to act, for example where the group is already acting for another client and we consider that it would may be inappropriate for us to undertake business for you and we are not in a position to manage the conflict of interest on a reasonable basis or are precluded from doing so by a legal or regulatory constraint.

## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

### Schedule 3

#### Derivatives Compliance Schedule

##### 1. Application and scope

1.1 The provisions in this Derivatives Compliance Schedule apply to all derivatives between us and you, subject to clause 1.2 of this Derivatives Compliance Schedule.

1.2 If you and we entered into an agreement covering in substance the issues contained in this Derivatives Compliance Schedule or you and we both have adhered to the ISDA 2013 EMIR NFC Representation Protocol or the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published on the website of the International Swaps and Derivatives Association, Inc., the amendments to any Covered Master Agreement (as defined in the relevant Protocol) effected as a result shall prevail to the extent that they document the substance of the issues covered in this Derivatives Compliance Schedule.

1.3 Where a person enters into a Derivative with us as agent for and on behalf of a client, investor, fund, account and/or other principal, the references to "you" in this Derivatives Compliance Schedule shall be interpreted to refer to such principal.

##### 2. Representation

2.1 You represent and warrant on the day you accept this Derivatives Compliance Schedule, such representation and warranty will be deemed to be repeated by you each time you enter into a Derivative and at all times while such Derivative remains outstanding that you are (as applicable):

- (i) a financial counterparty ("FC"); or
- (ii) a non-financial counterparty referred to in article 10 of EMIR ("NFC+"); or
- (iii) a non-financial counterparty not referred to in Article 10 of EMIR ("NFC-").

each of the above under (i) and (ii) shall include an entity established outside the EEA which would have been a financial counterparty or a non-financial counterparty referred to in Article 10 of EMIR if you had been established in the EEA, but to whom EMIR applies either in whole or in part.

2.2 You must notify MUFG immediately upon becoming aware that the representation in clause 2.1 has ceased or is likely to cease to be true.

##### 3. Confirmation of Uncleared OTC Derivatives

3.1 Unless we agree with you otherwise, where we enter into any Uncleared OTC Derivative with you:

- (a) we will send you a confirmation setting out or incorporating by reference or otherwise all the terms of the Transaction as soon as reasonably practicable before the relevant confirmation deadline as set out in clause 3.2 below of this Derivatives Compliance Schedule (the "**Confirmation Deadline**");
- (b) you must notify us, as soon as possible and in any event by the Confirmation Deadline, if you do not agree to the confirmation, setting out the reasons for your disagreement;
- (c) you will be deemed to have agreed to the confirmation if we have not received notification of your disagreement by the Confirmation Deadline.

3.2 The Confirmation Deadline referred to in clause 3.1 above of this Derivatives Compliance Schedule will be as follows:

- (i) for FC or NFC+ the end of the first business day following the date of execution of the Transaction
- (ii) for the NFC- the end of the second Business Day following the date of execution of the Transaction.

Where two Confirmation Deadlines are applicable to you, the earlier Confirmation Deadline shall apply.

## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

### 4. Portfolio Reconciliation

4.1 From time to time we will notify you of a schedule of dates as of which portfolio reconciliation is to be carried out with respect to the Uncleared OTC Derivatives outstanding between you and us. Each date so notified is a "**Portfolio Reconciliation Date**".

4.2 We will be designated a "**Portfolio Data Sending Entity**" for the purposes of portfolio reconciliation and you will be designated to be a "**Portfolio Data Receiving Entity**". We or you may change this designation at any time by written agreement between us (such agreement not to be unreasonably delayed and for this purpose the parties agree, without limitation, that it will not be unreasonable for a party to delay agreement where agreement would result in the other party having different designations in respect of such party and one or more affiliates of such party) and we shall notify you of how clauses 4.4 to 4.6 of this Derivatives Compliance Schedule shall be modified to give effect to the change

4.3 We will make reasonable endeavours to ensure that we perform a portfolio reconciliation exercise with you as set out in the table below. Where two Confirmation Deadlines are applicable to you, the earlier Confirmation Deadline shall apply.

4.4 If you are an NFC+ or FC, MUFG will make reasonable endeavours to ensure that:

- (i) where there are 50 or fewer Uncleared OTC Derivative transactions outstanding between you and MUFG, there will be at least one Portfolio Reconciliation Date per quarter;
- (ii) where there are between 51 and 499 Uncleared OTC Derivative transactions outstanding between you and MUFG at any time, there will be at least one Portfolio Reconciliation Date per week; and
- (iii) where there are 500 or more Uncleared OTC Derivative transactions outstanding

between you and MUFG at any time each business day will be a Portfolio Reconciliation Date.

If you are an NFC-, MUFG will make reasonable endeavours to ensure that:

- (i) where there are 100 or more Uncleared OTC Derivative transactions outstanding between you and MUFG, there will be at least one Portfolio Reconciliation Date per quarter; and
- (ii) where there are 100 or less Uncleared OTC Derivative transactions outstanding between you and MUFG, there will be at least one Portfolio Reconciliation Date per year.

4.5 MUFG will endeavour to provide the Portfolio Data not later than the fifth business day following each Portfolio Reconciliation Date, unless you are an FC or NFC+ and if there are 500 or more Derivative transactions outstanding between you and MUFG, in which case MUFG will endeavour to provide the Portfolio Data not later than the first business day following each Portfolio Reconciliation Date. On that day you must undertake a comparison of the Portfolio Data against your own books and records in order to identify promptly any misunderstandings of key terms.

4.6 If you identify one or more discrepancies which you consider, acting reasonably and in good faith, are material to the rights and obligations of the parties, you must notify MUFG in writing as soon as reasonably practicable and the parties will consult with each other in good faith to resolve such discrepancies in a timely fashion for so long as such discrepancies remain outstanding.

4.7 If you do not notify MUFG of any discrepancies by 16:00 Amsterdam time on the fifth business day following the date on which MUFG sent the Portfolio Data, you will be deemed to have affirmed such Portfolio Data.

4.8 MUFG may delegate performance of portfolio reconciliation to a third party and by



## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

agreeing these ToB you give consent to reconciliation by these means. Or, you may delegate performance of this obligation to a third party if MUFG agrees to this. To the extent required, you shall inform and/or obtain consent of individuals whose personal data will be transferred to such third party.

### **5. Dispute Resolution**

5.1 You and we agree to use the following procedure to identify and resolve Disputes: (a) Either party may identify a Dispute by sending a notice promptly to the other party; (b) On and following the date the Dispute notice is sent under sub-clause (a) above, the parties will consult in good faith to resolve the Dispute in a timely manner, including, without limitation, by exchanging any relevant information and by identifying and using any Agreed Process which can be applied to the subject of the Dispute or, where no such Agreed Process exists or the parties agree that such Agreed Process would be unsuitable, determining and applying a resolution method for the Dispute; and

(c) With respect to any Dispute that is not resolved within five business days, escalate issues internally to appropriately senior members of staff (or equivalent) in addition to actions under (b) above.

5.2 You and we agree that each party will have internal procedures and processes in place to record and monitor any Dispute for as long as the Dispute remains outstanding.

5.3 This Derivatives Compliance Schedule and any action or inaction of either party in respect of this Derivatives Compliance Schedule are without prejudice to any rights or obligations the parties may possess in respect of each other under any Agreed Process or other contractual agreement, by operation of law or otherwise. Action or inaction by a party in respect of this Derivatives Compliance Schedule will not be presumed to operate as an exercise or waiver, in whole or part, of any

right, power or privilege such party may possess in respect of each other under any Agreed Process or other contractual agreement, by operation of law or otherwise. In particular, but without limitation, (i) any valuation in respect of one or more Derivatives for the purposes of this Derivatives Compliance Schedule will be without prejudice to any other valuation with respect to such Transactions made for collateral, close out, dispute or other purpose; (ii) the parties may seek to identify and resolve issues and discrepancies between themselves before either party delivers notice of a Dispute; and (iii) nothing in this Derivatives Compliance Schedule obliges a party to deliver notice of a Dispute following the identification of any such issue or discrepancy (notwithstanding that such issue or discrepancy may remain unresolved) or limits the rights of the parties to serve notice of a Dispute or otherwise to pursue any dispute resolution process in respect of any such issue or discrepancy.

### **6. Portfolio Compression**

6.1 Where we have 500 or more Uncleared OTC Derivatives outstanding between you and us you agree to regularly, and at least every six months, analyse the possibility to conduct a portfolio compression exercise. Where such exercise takes place this will be subject to separate agreement between us which shall cover, inter alia, when the compression exercise takes place and becomes legally binding.

### **7. Consent to disclosure**

7.1 You acknowledge that MUFG may report any Derivatives entered into by you with MUFG to a trade repository or Regulator (either directly or via a third party service provider) or may otherwise provide information relating to such Derivatives to a trade repository or Regulator. You waive any rights you may have to confidential treatment of the information provided by you under applicable law or under any other agreement

## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

between you and MUFG, to the extent necessary to enable MUFG or any third party service provider to make such reports or to provide such information to a trade repository or Regulator.

7.2 You consent to the disclosure of information relating to any Derivatives entered into by you with MUFG to MUFG's head office, branches or affiliates, or any persons or entities who provide services to MUFG, its head office, branches or affiliates in connection with making the reports or providing the information referred to in paragraph 7.1.

7.3 You acknowledge that pursuant to global regulatory reform initiatives, regulators require reporting of trade data to increase market transparency and enable regulators to monitor systemic risk to ensure safeguards are implemented globally.

7.4 You acknowledge that disclosures made under this Derivatives Compliance Schedule may include, without limitation, the disclosure of trade information including a party's identity (by name, address, corporate affiliation, identifier or otherwise) to any trade repository or one or more systems or services operated by any trade repository and any Regulators and that such disclosures could result in certain anonymous transaction and pricing data becoming available to the public. You further acknowledge that, for the purposes of complying with regulatory reporting obligations, MUFG may use a third party service provider to transfer trade information into a trade repository and that a trade repository may engage the services of a global trade repository regulated by one or more governmental regulators. You also acknowledge that disclosures made under this Derivatives Compliance Schedule may be made to recipients in jurisdictions other than that of MUFG or a jurisdiction that may not necessarily provide an equivalent or adequate

level of protection for personal or other data as your home jurisdiction. For the avoidance of doubt, (i) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for the purposes of such law; (ii) any agreement between the parties to maintain confidentiality of information in relation to Derivatives or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information as set out herein; and (iii) nothing herein is intended to limit the scope of any other consent to disclosure separately given by you to MUFG.

### **8. Liability**

Without prejudice to the rights, powers, remedies and privileges provided by law, failure by you or us to take any actions required by or to otherwise comply with this Derivatives Compliance Schedule or any inaccuracy of the representation and warranty regarding confidentiality, in either case, will not constitute an event of default in respect of either party or any other event which permits either party to terminate any transaction or agreement between the parties.

### **9. Modification of this Derivatives Compliance Schedule**

9.1 We may amend this Derivatives Compliance Schedule at any time by notice to you.

9.2 Subject to clause 9.3, we will give you at least 10 Business Days prior notice before the proposed date of application of any amendments

## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

9.3 We may amend this Derivatives Compliance Schedule with immediate effect and without prior notice if required to do so by Applicable Regulations or where required to do so by a competent authority, or if we consider in our sole discretion that it is necessary to amend this Derivatives Compliance Schedule in order to comply with Applicable Regulations.

### 10. Termination and survival

10.1 Subject to clause 10.2 of this Derivatives Compliance Schedule, termination of this Derivatives Compliance Schedule must be agreed in writing between you and us. Agreement to terminate will not be unreasonably withheld or denied by either party.

10.2 Unless otherwise agreed in writing between you and us, this Derivatives Compliance Schedule shall survive in its entirety with respect to any Derivative entered into between you and us up to the date of termination in accordance with clause 10.1 of this Derivatives Compliance Schedule.

10.3 Termination of this Derivatives Compliance Schedule is without prejudice to any accrued rights and liabilities of the parties. Clauses 7, 8, 10.3 and 12 of this Derivatives Compliance Schedule shall survive termination of this Derivatives Compliance Schedule.

### 11. Notices

11.1 Any notices given by you under this Derivatives Compliance Schedule must be made in writing and sent to your regular MUFG contact (in relation to MUFG or your regular MUSE contact in relation to MUSE).

11.2 Any notices given by us under this Derivatives Compliance Schedule shall be made to your last-known address for service of notices.

11.3 Any notice given by you shall be effective only upon actual receipt by us. Any notice given by us shall be effective upon the date of that notice.

### 12. Definitions

12.1 For the purposes of this Derivatives Compliance Schedule:

**Agreed Process** means any process agreed between the parties in relation to a Dispute other than the procedure set out in clause 5.1 of this Derivatives Compliance Schedule.

**Derivatives** shall have the meaning given to the term “derivative” in EMIR.

**Dispute** means any dispute regarding the existence, validity, termination or valuation of any OTC Derivative contract subject to this Derivatives Compliance Schedule or in relation to any exchange of collateral in relation to such an OTC Derivative contract.

**EMIR** means Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories and any delegated or implementing acts made under that Regulation, each as amended or restated from time to time.

**ESMA** means the European Securities Markets Authority.

**Portfolio Data** means the key terms of any Uncleared OTC Derivative contracts outstanding between the parties on each Portfolio Reconciliation Date, that identify each particular contract, including (but not limited to) the valuation attributed to each contract in accordance with Article 11(2) of EMIR.

## **Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties**

**Portfolio Reconciliation Date** has the meaning given in clause 4.1 of this Derivatives Compliance Schedule.

**Regulator** means ESMA, the national competent authority of any EEA Member State or the equivalent authority of a state or territory that is not an EEA Member State.

**Uncleared** means not cleared by a central counterparty authorised or recognised under EMIR (or to which the transitional provisions of Article 89 EMIR apply).

12.2 All capitalised terms in this Derivatives Compliance Schedule shall have the meaning as defined in this Derivatives Compliance Schedule or as defined in Schedule 1 of the ToB. Capitalised terms which are not defined in this Derivatives Compliance Schedule or in Schedule 1 of the ToB, shall have the same meaning as under EMIR.



## Terms of Business relating to Investment Services to Professional Clients and Eligible Counterparties

### Schedule 4

#### Summary of order execution policy

##### **1. Scope**

1.1 MUFG operates an Execution Policy ("**Policy**") that is in accordance with MiFID II. This Policy is available on our website. A summary of our Policy is set out below.

When execution orders or a transaction in Financial Instruments for you, MUFG will take all sufficient steps to obtain the best possible results for you. This Policy applies only to business conducted with Clients classified by MUFG Professional Clients under MiFID II, and is not applicable to Eligible Counterparties.

1.2 MUFG only transacts with you on the basis of "Request for Quote" or "**RfQ**". RfQ means that you submit a request for a quote for (the price of) a certain Financial Instrument to which MUFG responds with a quote. Where you request the execution of a transaction, the transaction must take place according to the specific instructions of you (*i.e.* the transaction must be executed on the basis of the price quoted by MBE, subject to limited exceptions in the case of an outdated quote).

##### **2. Best Execution**

2.1 In order for MUFG to determine whether you are a Professional Client that may legitimately rely on MUFG to protect your interest in relation to pricing, MUFG will perform a general assessment of the Four Fold Test upon your onboarding as a client. In addition, we will assess the outcome of the Four Fold Test before entering into any transaction in Financial Instruments with you. Based on that outcome MUFG will determine whether you can legitimately rely on the MUFG's protection in relation to pricing and other elements.

##### **3. Specific Instructions**

3.1 Where you provide MUFG with specific instructions, MUFG will execute the transaction in accordance with those instructions. In doing so, MUFG will be deemed to have satisfied its Best Execution obligations. Where your instructions relate to only part of the transaction, MUFG will continue to apply this Policy to those aspects of the transaction not covered by your specific instructions.

3.2 You should be aware that providing specific instructions to MUFG in relation to the execution of a particular transaction may prevent MUFG from taking steps that MUFG has designed and implemented in this Policy to give Best Execution

##### **4. Monitoring and Review**

4.1 Should there be any material changes to our execution arrangements or Policy, MUFG will notify you and will also post an updated version of this document on the website.