

Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 CME Amsterdam B.V. – Application for Exemption from Recognition as an Exchange – Notice and Request for Comment

NOTICE AND REQUEST FOR COMMENT

APPLICATION BY CME AMSTERDAM B.V. FOR EXEMPTION FROM RECOGNITION AS AN EXCHANGE

A. Introduction

This notice requests comment on (i) the application filed by CME Amsterdam B.V. (the **Applicant**) as operator of EBS Multilateral Trading Facility (**EBS MTF**) under section 147 of the Securities Act (Ontario) (**Act**) for an exemption from the requirement to be recognized as an exchange contained in section 21 of the Act (**Recognition Requirement**); and (ii) the draft order exempting the Applicant from the Recognition Requirement.

The Applicant is a limited liability company organized under the laws of the Netherlands. The ultimate parent company of the Applicant is CME Group Inc. (**CME Group**), a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market. The Applicant is the operator of the EBS MTF, which is principally regulated by the Autoriteit Financiële Markten of the Netherlands (the **AFM**). EBS MTF is a Request for Quote (**RFQ**) and Request for Stream (**RFS**) trading system that facilitates transactions in foreign exchange (**FX**) derivatives instruments, including forwards, swaps, and non-deliverable forwards (**NDFs**).

The Applicant proposes to offer direct access in Ontario to the EBS Direct and EBS Institutional FX platforms of EBS MTF to prospective participants in Ontario (**Ontario Participants**).

As the Applicant will be carrying on business in Ontario, it is required either to be recognized as an exchange under the Act or to apply for an exemption from the Recognition Requirement. The Applicant has applied for an exemption from the Recognition Requirement on the basis that it is already subject to regulatory oversight by the AFM.

B. Background

On January 3, 2018, the Markets in Financial Instruments Directive 2014/65/EU of the European Parliament and of the Council (**MiFID II**) was implemented. Under Article 28(1) of the Markets in Financial Instruments Regulation (Regulation (EU) No. 600/2014) (**MiFIR**), the regulation that accompanies MiFID II, certain European counterparties must trade certain derivatives on a trading venue and not bilaterally. As a result, Canadian banks and other institutions wishing to enter into transactions in these derivatives with EU counterparties must do so on a trading venue, namely a regulated market, an organised trading facility, an MTF or a third-country trading venue that the European Commission has determined has an equivalent system for regulating trading venues.

The Applicant has indicated that Canadian banks and other institutions wish to trade on the EBS Direct and EBS Institutional FX platforms of EBS MTF.

MTFs provide a facility for bringing together orders from multiple buyers and sellers for types of over-the-counter (**OTC**) derivatives and other securities and use established non-discretionary methods under which the orders interact with each other. They meet the definition of “marketplace.”

An MTF has a responsibility to regulate the conduct of its participants with respect to trading on the MTF and to set rules governing trading on the system. Because of these self-regulatory responsibilities, under the Act they would be considered an exchange.

C. Application and Draft Exemption Order

In the application, the Applicant has outlined how it meets the criteria for exemption from the Recognition Requirement. The specific criteria can be found in Appendix 1 of the draft exemption order. Subject to comments received, Staff intend to

recommend that the Commission grant an exemption order with terms and conditions based on the draft exemption order. The application can be found on our website at www.osc.gov.on.ca and the draft exemption order is attached to this Notice.

D. Comment Process

The Commission is publishing for public comment the Applicant's application and the draft exemption order for 60 days. We are seeking comment on all aspects of the application and draft exemption order.

Please provide your comments in writing, via e-mail, on or before August 4, 2020, to the attention of:

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Email: comments@osc.gov.on.ca

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published.

Questions may be referred to:

Alex Petro
Trading Specialist, Market Regulation
email: apetro@osc.gov.on.ca

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5,
AS AMENDED
(THE ACT)

AND

IN THE MATTER OF
CME AMSTERDAM B.V.

ORDER

(Section 147 of the Act)

WHEREAS CME Amsterdam B.V. (**Applicant**) has filed an application dated February 14, 2020 (**Application**) with the Ontario Securities Commission (**Commission**) requesting an order pursuant to section 147 of the Act exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act in order to operate the EBS Direct and EBS Institutional FX platforms of EBS MTF (**Exchange Relief**);

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant (formerly known as NEX Amsterdam B.V.) is a limited liability company organized under the laws of the Netherlands. The ultimate parent company of the Applicant is CME Group Inc. (**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;
2. The Applicant is authorised by the Dutch Minister of Finance as a “market operator” (**Market Operator**) and supervised and regulated by the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*) (the **AFM** or **Foreign Regulator**) with permission to operate EBS MTF, a multilateral trading facility (**MTF**);
3. On March 12, 2019, the Dutch Minister of Finance authorised the Applicant to act as the Market Operator of the EBS MTF (the **Facility**) in the Netherlands and the AFM has commenced supervision and regulation of the Applicant on an ongoing, active basis;
4. The Markets in Financial Instruments Directive 2014/65/EU of the European Parliament and of the Council (**MiFID**) requires that multilateral trading by European Union (**EU**)/European Economic Area (**EEA**) participants takes place on a trading venue (i.e., a “regulated market”, a “multilateral trading facility” or an “organized trading facility”, as those terms are defined under MiFID). The United Kingdom (**UK**) officially exited the European Union on January 31, 2020 (**Brexit**). As part of its Brexit contingency planning, CME Group transitioned its on-MTF FX forwards and swaps businesses from BrokerTec Europe Limited in the UK to the Facility on March 18, 2019 to maintain a single pool of liquidity. Without the Exchange Relief, participants of the Facility in Ontario will be precluded from trading with EU/EEA participants on the Facility;
5. The Applicant operates the Facility for, among other things, trading foreign exchange (**FX**) derivatives. The Facility is made up of different trading platforms, but the subjects of this order are the EBS Direct and EBS Institutional FX platforms, which trade FX Forwards/Outrights, Swaps and Non-Deliverable Forwards (the **MTF Instruments**). The Applicant may add other types of financial instruments in the future, subject to obtaining the required regulatory approvals;
6. As a Market Operator, the Applicant must comply with the Netherlands Financial Supervision Act (*Wet op het financieel toezicht*, **Wft**), MiFID, the Markets in Financial Instruments Regulation, other applicable regulation in the EEA (such as Regulation (EU) No 596/2014 – Market Abuse Regulation), the rules pertaining to this legislation and the applicable guidance from the AFM and De Nederlandsche Bank (the **Applicable Rules**), which include, among other things, rules on (i) the conduct of business (including rules regarding client categorization, communication with clients and other investor protections and client agreements), (ii) market conduct (including rules applicable to firms operating an MTF), (iii) systems and controls (including rules on outsourcing, governance, record-keeping and conflicts of interest) and (iv) transparency (including rules on transaction reporting to competent authorities and publication of pre- and post-trade information);
7. The AFM requires the Applicant to comply at all times with a set of threshold conditions for authorization and ongoing requirements, including requirements that the Applicant has sound business and controlled business operations and

that it has appropriate resources for the activities it carries on. Breach of a threshold condition could lead to enforcement action or the Applicant's authorisation being revoked by the AFM and the Dutch Minister of Finance;

8. In addition to complying with detailed rules and guidance governing the organization and conduct of the Applicant's business, the Applicant is required to act in accordance with Section 4:90 of the Wft, which requires the Applicant to act honestly, fairly and professionally and refrain from actions that are detrimental to the integrity of the market. Additionally, pursuant to Section 4:14(2)(a) of the Wft, in conjunction with Article 29a(2) of the Decree on Conduct of Business Supervision (*Besluit Gedragstoezicht Financiële ondernemingen Wft*) and Article 15(5) of MiFID, the Applicant must establish adequate risk management policies and procedures and adopt effective arrangements to manage the risks relating to its activities, processes and systems. The Applicant is also required to deal with the AFM in an open and cooperative way, and must disclose to the AFM anything relating to the Applicant of which the AFM would reasonably expect notice;
9. The Applicant is subject to prudential requirements, including minimum regulatory capital and liquidity requirements, and is capitalized in excess of regulatory requirements;
10. The Market Operator of an MTF is required under the Applicable Rules to set rules, conduct compliance reviews, monitor participants' trading activity and take enforcement action against participants when appropriate. Pursuant to Section 2:46 of the Wft, the Applicant is required to report to the AFM (a) significant breaches of the Applicant's rules, (b) disorderly trading conditions, and (c) conduct that may involve market abuse. The Applicant will also notify the AFM when a participant's access is terminated, and may notify the AFM when a participant is temporarily suspended or subject to condition(s). The AFM may choose to take further action against a participant in its discretion;
11. The Applicant has instituted procedures and controls to collect information, examine participants' records, supervise trading on the Facility, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform automated real-time market monitoring and market surveillance and establish an automated trade surveillance system to evaluate participants' compliance with the Applicant's rules and applicable law;
12. The Applicant is required by MiFID to ensure that its fee structure is sufficiently granular to allow users to predict the payable fees on the basis of at least the following elements: (i) chargeable services, including the activity which will trigger the fee, (ii) the fee for each service, stating whether the fee is fixed or variable, and (iii) rebates, incentives or disincentives. MiFID also requires the Applicant to publish objective criteria for the establishment of its fees and fee structures, together with execution fees, ancillary fees, rebates, incentives and disincentives in one comprehensive and publicly accessible document on its website;
13. Settlement of transactions executed on the Facility takes place between the counterparties. Although the Applicant's rules require counterparties to settle any deals, the Applicant is not involved in settlement and counterparties make their own bilateral arrangements with respect to settlement;
14. The Applicant requires that its participants be "eligible counterparties" or "professional clients," each as defined in MiFID. Each prospective participant must: (i) enter into a valid and effective customer agreement with the Facility; (ii) satisfy the Applicant's internal client on-boarding requirements including, but not limited to, "know your client" procedures; (iii) agree to adhere, on an on-going basis, to the terms of the Applicant's rules, customer agreements, user guides and any guidance or other requirements of the Applicant; (iv) have the legal and regulatory capacity to undertake trading in derivatives on an MTF; (v) have adequate organisational procedures and controls to limit erroneous trades and the submission of erroneous orders to the Facility, including, but not limited to, the ability to cancel unexecuted orders; (vi) meet the technical specifications and standards required by the Applicant; (vii) be an investment firm or credit institution (each as defined by MiFID and Directive 2013/36/EU of the European Parliament and of the Council, respectively) or other person which (a) is of sufficiently good repute, (b) has a sufficient level of trading ability, competence and experience, and (iii) has sufficient resources for their role as a participant; and (viii) satisfy any additional eligibility criteria set out in the Applicant's rules;
15. Additionally, participants on the Facility are responsible for all the acts, omissions, conduct and activity of their authorised employees and must ensure that their authorised employees have sufficient training, are properly supervised and have adequate experience, knowledge and competence to participate on the Facility in accordance with the Applicant's customer agreements and the Applicant's rules;
16. All participants that are located in Ontario (**Ontario Participants**) are 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;

17. Because the Facility sets requirements for the conduct of its participants and surveils the trading activity of its participants, it is considered by the Commission to be an exchange;
18. Because the Applicant intends to provide Ontario Participants with direct access to trading the MTF Instruments on the Facility, the Commission will consider the Applicant to be carrying on business as an exchange in Ontario and will be required to be recognized as such or exempted from recognition pursuant to section 21 of the Act;
19. The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described herein; and
20. The Applicant satisfies the exemption criteria as described in Appendix I to Schedule "A";

AND WHEREAS the products traded on the Facility are not 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;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and the Applicant's activities on an ongoing basis to determine whether it is appropriate for the Exchange Relief to continue to be granted subject to the terms and conditions set out in Schedule "A" to this order;

AND WHEREAS the Applicant has acknowledged to the Commission that the scope of the Exchange Relief and the terms and conditions imposed by the Commission set out in Schedule "A" to this order may change as a result of the Commission's monitoring of developments in international and domestic capital markets or the Applicant's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities;

AND WHEREAS based on the Application, together with the representations made by and acknowledgments of the Applicant to the Commission, the Commission has determined that the Applicant satisfies the criteria set out in Appendix I to Schedule "A" and that the granting of the Exchange Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that, pursuant to section 147 of the Act, the Applicant is exempt from recognition as an exchange under subsection 21(1) of the Act in order to operate the EBS Direct and EBS Institutional FX platforms of EBS MTF,

PROVIDED THAT the Applicant complies with the terms and conditions contained in Schedule "A".

DATED ●

SCHEDULE "A"

TERMS AND CONDITIONS

Meeting Criteria for Exemption

1. The Applicant will continue to meet the criteria for exemption included in Appendix I to this Schedule.

Regulation and Oversight of the Applicant

2. The Applicant will maintain its authorisation as the Market Operator of an MTF with the Dutch Minister of Finance and will continue to be subject to the supervision and regulatory oversight of the AFM.
3. The Applicant will continue to comply with the ongoing requirements applicable to it as a Market Operator authorised by the Dutch Minister of Finance and supervised and regulated by the AFM.
4. The Applicant will promptly notify the Commission if its authorisation as a Market Operator has been revoked, suspended, or amended by the Dutch Minister of Finance, or the basis on which its authorisation as a Market Operator has been granted has significantly changed.
5. The Applicant must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

Access

6. The Applicant will not provide direct access to a participant in Ontario (**Ontario User**) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as an "eligible counterparty" or "professional client", each as defined in MiFID.
7. For each Ontario User provided direct access to its MTF, the Applicant will require, as part of its application documentation or continued access to the MTF, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.
8. The Applicant may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses the Facility.
9. The Applicant will require Ontario Users to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, the Applicant will promptly restrict the Ontario User's access to the Applicant if the Ontario User is no longer appropriately registered or exempt from those requirements.
10. The Applicant must make available to Ontario Users appropriate training for each person who has access to trade on the Applicant's facilities.

Trading by Ontario Users

11. The Applicant will not provide access to an Ontario User to trading in products other than FX derivatives without prior Commission approval.

Submission to Jurisdiction and Agent for Service

12. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
13. The Applicant will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation

or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the Applicant's activities in Ontario.

Disclosure

14. The Applicant will provide to its Ontario Users disclosure that:
- (a) rights and remedies against the Applicant may only be governed by the laws of England and Wales, rather than the laws of Ontario and may be required to be pursued in the Netherlands rather than in Ontario; and
 - (b) the rules applicable to trading on the Applicant may be governed by the laws of England and Wales, rather than the laws of Ontario.

Prompt Reporting

15. The Applicant will notify staff of the Commission promptly of:
- (a) any material change to its business or operations or the information provided in the Application, including, but not limited to material changes:
 - (i) to the regulatory oversight by the Dutch Minister of Finance and the AFM;
 - (ii) the corporate governance structure of the Applicant;
 - (iii) the access model, including eligibility criteria, for Ontario Users;
 - (iv) systems and technology; and
 - (v) the clearing and settlement arrangements for the Applicant;
 - (b) any change in the Applicant's regulations or the laws, rules and regulations in the Netherlands relevant to the financial instruments available for trading on the Facility where such change may materially affect its ability to meet the criteria set out in Appendix I to this Schedule;
 - (c) any condition or change in circumstances whereby the Applicant is unable or anticipates it will not be able to continue to meet any of the relevant rules and regulations of the Netherlands;
 - (d) any known investigations of, or any disciplinary action against the Applicant by the AFM or any other regulatory authority to which it is subject;
 - (e) any matter known to the Applicant that may materially and adversely affect its financial or operational viability, including, but not limited to, any declaration of an emergency pursuant to the Applicant's rules;
 - (f) any default, insolvency, or bankruptcy of a participant of the Applicant known to the Applicant or its representatives that may have a material, adverse impact upon the Applicant; and
 - (g) any material systems outage, malfunction or delay.
16. The Applicant will promptly provide staff of the Commission with the following information to the extent it is required to provide to or file such information with the Dutch Minister of Finance or the AFM:
- (a) details of any material legal proceedings instituted against the Applicant;
 - (b) notification that the Applicant has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it; and
 - (c) the appointment of a receiver or the making of any voluntary arrangement with creditors.

Quarterly Reporting

17. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a quarterly basis (within 30 days of the end of each calendar quarter), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Ontario trading on the Facility as customers of participants (**Other Ontario Participants**);
 - (b) the legal entity identifier assigned to each Ontario User, and, to the extent known by the Applicant, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;
 - (c) a list of all Ontario Users whom the Applicant has referred to the AFM, or, to the best of the Applicant's knowledge, whom have been disciplined by the AFM with respect to such Ontario Users' activities on the Facility and the aggregate number of all participants referred to the AFM in the last quarter by the Applicant;
 - (d) a list of all active investigations during the quarter by the Applicant relating to Ontario Users and the aggregate number of active investigations during the quarter relating to all participants undertaken by the Applicant;
 - (e) a list of all Ontario applicants for status as a participant who were denied such status or access to the Applicant during the quarter, together with the reasons for each such denial;
 - (f) a list of all additions, deletions, or changes to the products available for trading since the prior quarter;
 - (g) for each product,
 - (i) the total trading volume and value originating from Ontario Users, and, to the extent known by the Applicant, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and
 - (ii) the proportion of worldwide trading volume and value on the Applicant conducted by Ontario Users, and, to the extent known by the Applicant, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;
- provided in the required format; and
- (h) a list outlining each material incident of a security breach, systems failure, malfunction, or delay (including cyber security breaches, systems failures, malfunctions or delays reported under section 15(g) of this Schedule) that occurred at any time during the quarter for any system relating to trading activity, including trading, routing or data, specifically identifying the date, duration and reason, to the extent known or ascertainable by the Applicant, for the failure, malfunction or delay, and noting any corrective action taken.

Annual Reporting

18. The Applicant will file with the Commission any annual financial report or financial statements (audited or unaudited) of the Applicant provided to or filed with the Dutch Minister of Finance and/or the AFM promptly after filing with the Dutch Minister of Finance and/or the AFM.

Information Sharing

19. The Applicant will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

APPENDIX I

CRITERIA FOR EXEMPTION OF A FOREIGN EXCHANGE TRADING OTC DERIVATIVES FROM RECOGNITION AS AN EXCHANGE

PART 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**).

1.2 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.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

- (a) effective oversight of the exchange,
- (b) that business and regulatory decisions are in keeping with its public interest mandate,
- (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,
- (d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and
- (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

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.

PART 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.

3.2 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.

3.3 Risks Associated with Trading Products

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

PART 4 ACCESS

4.1 Fair Access

- (a) The exchange has established appropriate written standards for access to its services including requirements to ensure
 - (i) participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,
 - (ii) the competence, integrity and authority of systems users, and
 - (iii) systems users are adequately supervised.
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.
- (c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.
- (d) The exchange does not
 - (i) permit unreasonable discrimination among participants, or
 - (ii) impose any burden on competition that is not reasonably necessary and appropriate.
- (e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

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

PART 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.
- (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.

PART 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.

PART 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.

8.2 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.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

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

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

9.2 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;
- (b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
- (c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;

- (d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;
- (e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;
- (f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and
- (g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

9.3 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.

PART 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.

PART 11 TRADING PRACTICES

11.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to 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.

11.3 Transparency

The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.

PART 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.

12.2 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.

12.3 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.

PART 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.

PART 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.

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

PART 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 co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.

PART 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).

APPENDIX II

DEFINITION OF PROFESSIONAL CLIENTS

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

DEFINITION OF ELIGIBLE COUNTERPARTIES

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

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

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

DEFINITION OF PROFESSIONAL CLIENTS

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

I. Categorises of Clients who are Considered to be Professionals

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

1. Entities which are required to be authorised or regulated to operate in the financial markets. The list below shall be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a third country:
 - a. Credit institutions;
 - b. Investment firms;
 - c. Other authorised or regulated financial institutions;
 - d. Insurance companies;
 - e. Collective investment schemes and management companies of such schemes;
 - f. Pension funds and management companies of such funds;
 - g. Commodity and commodity derivatives dealers;

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

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

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

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

II. Clients who may be Treated as Professional on Request

II.1. Identification criteria

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

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

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

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

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

- the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters,
- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000,

- the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

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

II.2. Procedure

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

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

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

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

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