

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

AND

IN THE MATTER OF
BROKERTEC EUROPE LIMITED

ORDER

(Section 147 of the Act)

WHEREAS BrokerTec Europe Limited (**Applicant**) has filed an application dated October 20, 2022 (**Application**) with the Ontario Securities Commission (**Commission**) requesting an order for the following relief (collectively, the **Requested Relief**):

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

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant is a private limited company organized under the laws of England & Wales. The ultimate parent company of the Applicant is CME Group Inc. (**CME Group**), a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market;
2. CME Group provides electronic trading globally in futures, options, cash and over-the-counter markets and also offers clearing and settlement services across asset classes, and is the parent company of the four CME Group Exchanges: Chicago Mercantile Exchange Inc., Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., and Commodity Exchange, Inc., and the cash markets businesses of EBS (for FX) and BrokerTec (for fixed income), of which the Applicant forms a part;
3. CME Group acquired NEX Group plc and its group companies, including the Applicant, on November 2, 2018;
4. On December 1, 2001, the U.K. Financial Conduct Authority (the **FCA** or **Foreign Regulator**), a financial regulatory body in the United Kingdom (**U.K.**), authorized the Applicant to act as the operator of the BrokerTec EU MTF, a multilateral trading facility (**MTF**). The Applicant currently has approval from the FCA to offer the following products

for trading on the BrokerTec EU MTF: certificates representing certain security; commodity futures; commodity options and options on commodity futures; contracts for differences (excluding a spread bet and, a rolling spot forex contract and a binary bet); debentures; futures (excluding a commodity future and a rolling spot forex contract); government and public securities; options (excluding a commodity option and an option on a commodity future); rights to or interests in investments (contractually based investments); rights to or interests in investments (security); units; and warrants;

5. The Applicant received approval from the FCA on July 15, 2022 to operate the EBS UK MTF, a separate MTF for trading foreign exchange (**FX**) over-the-counter (**OTC**) derivatives and the EBS UK MTF began operations on September 12, 2022 (each of the BrokerTec EU MTF and the EBS UK MTF are hereinafter referred to as a **Facility**, and together as the **Facilities**);
6. The subjects of this order are the Facilities, which trade: (a) for the Brokertec EU MTF: repurchase agreements collateralized by U.K. gilts and U.K. covered bonds (**Gilt Repos**), repurchase agreements collateralized by Australian government bonds (**Australian Repos**), and repurchase agreements collateralized by corporate bonds (**Corporates**); and (b) for the EBS UK MTF: FX non-deliverable forwards (**FX NDFs**, and together with Gilt Repos, Australian Repos and Corporates, the **MTF Instruments**). The Applicant may add other types of financial instruments in the future, subject to obtaining the required regulatory approvals;
7. Each of the Facilities support a central limit order book, known as BrokerTec CLOB and EBS Market. Additionally, the BrokerTec EU MTF supports a request-for-quote trading platform, known as BrokerTec Quote;
8. The Applicant is subject to regulatory supervision by the FCA and is required to comply with the FCA's Handbook (**FCA Rules**), which includes, among other things, rules on (a) the conduct of business (including rules regarding client categorization, communication with clients and other investor protections and client agreements), (b) market conduct (including rules applicable to firms operating an MTF), and (c) systems and controls (including rules on outsourcing, governance, record-keeping and conflicts of interest). The FCA requires the Applicant to comply at all times with a set of threshold conditions for authorization, including requirements that the Applicant has sound business and controlled business operations and that it has appropriate resources for the activities it carries on. The Applicant is subject to prudential regulation, including minimum regulatory capital requirements, and is capitalized in excess of regulatory requirements. The Applicant is required to maintain an independent compliance function, which is headed by the Applicant's Chief Compliance Officer, an FCA-approved person. The Applicant's Compliance Department is responsible for identifying, assessing, advising, monitoring and reporting on the Applicant's compliance risk (i.e., the risk that the Applicant fails to comply with its obligations under the Financial Services and Markets Act 2000, the retained EU law version of the Markets in Financial Instruments Regulation (600/2014), the rules pertaining to this legislation, the applicable guidance from the FCA and the FCA Rules);
9. An MTF is obliged under the FCA Rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and report to the FCA (a)

significant breaches of MTF rules, (b) disorderly trading conditions, and (c) conduct that may involve market abuse. The Applicant will also notify the FCA when a participant's access is terminated as a result of a significant rule infringement, and may notify the FCA when a participant is temporarily suspended or subject to condition(s). As required by FCA rules, the Applicant has implemented a trade surveillance program. As part of the program, the Applicant's Compliance Department conducts real-time market monitoring of trading activity on the Facilities to identify disorderly trading and market abuse or anomalies. The trade surveillance program is designed to maintain a fair and orderly market for the Facilities' participants;

10. BrokerTec CLOB and EBS Market are available to participants via CME Group's Globex technology, which can be accessed through a graphical user interface (GUI) or Financial Information eXchange application programming interface (FIX). BrokerTec Quote is available to participants via a technology platform provided by an external vendor, Adaptive Financial Consulting Limited, which can also be accessed via a web delivered GUI or FIX;
11. An MTF must submit all trades that are required to be cleared to a clearing house for clearing. The Applicant provides direct connectivity to LCH Limited, which is recognized as a clearing agency in Ontario, to clear Gilt Repos. The Applicant is not involved in, nor is it responsible for, settlement or clearing of Australian Repos, Corporates or FX NDFs and the counterparties to such trades make their own bilateral arrangements;
12. The Applicant requires that its participants be "professional clients" or "eligible counterparties," as defined by the FCA in COBS 3 of the FCA Rules and are investment firms or credit institutions (each as defined in the FCA Rules) or other persons who (a) are of sufficiently good repute, (b) have a sufficient level of trading ability, competence and experience; and (c) have sufficient resources for their role as a participant. Each prospective participant must: have the legal and regulatory capacity to undertake trading in the relevant MTF Instruments on a Facility, satisfy the Applicant as to their adequate arrangements for entering into transactions in the MTF Instruments, order management, clearing (if relevant) and settlement of all orders submitted to the Facilities, have adequate organisational procedures and controls to limit error trades and the submission of erroneous orders to the Facilities, including, but not limited to, the operation of a kill functionality, meet the technical specifications and standards required by the Applicant for participation on the Facilities, including for those participants accessing the Facilities via an API, and satisfy any participant eligibility criteria set out in the Facilities' rulebooks, including any applicable product appendix;
13. Additionally, participants on the Facilities 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 Facilities in accordance with the Applicant's customer agreements and the Applicant's rules;
14. All participants that are located in Ontario, including participants with their headquarters or legal address in Ontario (e.g., as indicated by a participant's Legal Entity Identifier (LEI)) and all traders conducting transactions on its behalf, regardless of the traders'

physical location (inclusive of non-Ontario branches of Ontario legal entities), as well as any trader physically located in Ontario who conducts transactions on behalf of any other entity (**Ontario Participants**) are required to be registered under Ontario securities laws, exempt from registration or not subject to registration requirements. An Ontario Participant is required to immediately notify the Applicant if it ceases to meet any of the above criteria represented by it on an ongoing basis. Additionally, all Ontario Participants will be “permitted clients” as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

15. Because the Facilities set requirements for the conduct of their participants and surveil the trading activity of their participants, they are considered by the Commission to be exchanges;
16. Because the Applicant has participants that are Ontario Participants, it is considered by the Commission to be carrying on business as an exchange in Ontario and is required to be recognized as such or exempted from recognition pursuant to section 21 of the Act;
17. The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described above; and
18. The Applicant satisfies the exemption criteria as described in Appendix I to Schedule “A”;

AND WHEREAS the products traded on the Facilities 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 Requested 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 Requested 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 Requested Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that, (i) pursuant to section 147 of the Act, the Applicant is exempt from recognition as an exchange under subsection 21(1) of the Act, and (ii) pursuant to sections 15.1 of NI 21-101, 12.1 of NI 23-101 and 10 of NI 23-103, the Applicant is exempt from the requirements in NI 21-101, NI 23-101 and NI 23-103,

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 authorisations as an operator of one or more multilateral trading facilities (**MTFs**) with the U.K. Financial Conduct Authority (**FCA**) in the United Kingdom (**U.K.**) and will continue to be subject to the regulatory oversight of the FCA.

3. The Applicant will continue to comply with the ongoing requirements applicable to it as an operator of an MTF authorised with the FCA.

4. The Applicant will promptly notify the Commission if its authorisation as an operator of an MTF has been revoked, suspended, or amended by the FCA, or the basis on which its authorisation as an operator of an MTF 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 including a participant with its headquarters or legal address in Ontario (e.g., as indicated by a participant’s Legal Entity Identifier (LEI)) and all traders conducting transactions on its behalf, regardless of the traders’ physical location (inclusive of non-Ontario branches of Ontario legal entities), as well as any trader physically located in Ontario who conducts transactions on behalf of any other entity (**Ontario 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 a “professional client” or an “eligible counterparty”, as defined by the FCA in COBS 3 of the FCA’s Handbook.

7. For each Ontario User provided direct access to the Applicant’s MTFs, the Applicant will require, as part of its application documentation or continued access to the Applicant’s MTFs, 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 Applicant's MTFs.

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's MTFs if the Ontario User is no longer appropriately registered or exempt from those requirements.

Trading by Ontario Users

10. The Applicant will not provide access to an Ontario User to trading in products other than derivatives or debt securities, each as defined in subsection 1(1) of the Act, without prior Commission approval.

11. With respect to debt securities, the Applicant will only permit Ontario Users to trade a debt security that is a foreign security or a debt security that is denominated in a currency other than the Canadian dollar as such terms are defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, including:

- (a) debt securities issued by the United States (U.S.) government (including agencies or instrumentalities thereof);
- (b) debt securities issued by a foreign government;
- (c) debt securities issued by corporate or other non-governmental issuers (U.S. and foreign); and
- (d) asset-backed securities (including mortgage backed securities), denominated in either U.S. or foreign currencies.

12. The Applicant will only permit Ontario Users to trade those securities which are permitted to be traded in the U.K. under applicable securities laws and regulations.

Submission to Jurisdiction and Agent for Service

13. 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.

14. The Applicant will maintain 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.

Prompt Reporting

15. The Applicant will notify staff of the Commission promptly of:

- (a) any authorization to carry on business granted by the FCA is revoked or suspended or made subject to terms or conditions on the Applicant's operations;
- (b) the Applicant institutes 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;
- (c) a receiver is appointed for the Applicant or the Applicant makes any voluntary arrangement with creditors;
- (d) the Applicant marketplace is not in compliance with this Order or with any applicable requirements, laws or regulations of the FCA where it is required to report such non-compliance to the FCA;
- (e) any known investigations of, or disciplinary action against, the Applicant by the FCA or any other regulatory authority to which it is subject; and
- (f) the Applicant makes any material change to the eligibility criteria for Ontario Users.

Semi-Annual Reporting

16. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the follow year for the second half), 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 Applicant's MTFs 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 FCA, or, to the best of the Applicant's knowledge, whom have been disciplined by the FCA with respect to such Ontario Users' activities on the Applicant's MTFs and the aggregate number of all participants referred to the FCA since the previous report by the Applicant;

(d) a list of all active investigations since the last report by the Applicant relating to Ontario Users and the aggregate number of active investigations since the last report 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 since the last report, together with the reasons for each such denial; and

(f) 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's MTFs 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.

Information Sharing

17. 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” and a “Professional Client,” as defined by the FCA in COBS 3 of the FCA Rules.

DEFINITION OF ELIGIBLE COUNTERPARTIES

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

There are two types of eligible counterparty:

- Per se eligible counterparty.
- Elective eligible counterparty.

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

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

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

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

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

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

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

- An investment firm.
- A credit institution.

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

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

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

DEFINITION OF PROFESSIONAL CLIENTS

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

- Per se professional client.
- Elective professional client.

I. Categorises of Clients who are Considered to be Professionals

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

- An entity required to be authorised or regulated (either in the UK or a third country) to operate in the financial markets. For example:
 - a credit institution;
 - an investment firm;
 - any other authorised or regulated financial institution;
 - an insurance company;
 - a collective investment scheme (CIS) or the management company of such a scheme;
 - a pension fund or the management company of a pension fund;

- a commodity or commodity derivatives dealer;
- a local authority; and
- any other institutional investor.

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

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

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

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

- a body corporate (including a limited liability partnership) that has (or any of whose holding companies or subsidiaries has) (or has had at any time during the previous two years) called up share capital or net assets of at least £5 million (or its equivalent in any other currency at the relevant time);
- an undertaking that meets (or any of whose holding companies or subsidiaries meets) two of the following tests: a balance sheet total of EUR12.5 million, a net turnover of EUR25 million or an average number of employees during the year of 250;
- a partnership or unincorporated association that has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited partnership without deducting loans owing to any of the partners;
- a trustee of a trust (other than an occupational pension scheme, small self-administered scheme (SSAS), personal pension scheme or stakeholder pension scheme) that has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the case and designated investment forming part of the trust's assets, but before deducting its liabilities; or
- a trustee of an occupational pension scheme or SSAS, or a trustee or operator of a personal pension scheme or stakeholder pension scheme where the scheme has (or has had at any time during the previous two years) at least 50 members, and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time).
- A national or regional government, a public body that manages public debt, a central bank, an international or supranational institution (such as the World Bank, the International Monetary Fund (IMF), the European Central Bank (ECB)) or other similar international organisations.
- Another institutional investor whose main activity is to invest in financial instruments (in

relation to the firm's MiFID or equivalent third country business) or designated investments (in relation to the firm's other business). This includes entities dedicated to the securitisation of assets or other financing transactions.

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

II. Clients who may be Treated as Professional on Request

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

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

- It undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in the light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved (referred to as the “qualitative test”). If the client is an entity, the qualitative test should be performed in relation to the person authorised to carry out transactions on its behalf (COBS 3.5.4R). In practice, a firm is likely to carry out the qualitative test as part of its client on-boarding process.
- In relation to MiFID or equivalent third country business, in the course of carrying out the qualitative test, at least two of the following criteria are satisfied:
 - the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
 - the size of the client's financial instrument portfolio, defined as including cash deposit and financial instruments, exceeds EUR500,000; and/or
 - the client works or has worked in the financial sector for at least one year in a professional position, that requires knowledge of the transactions or services envisaged.
- This is referred to as the “quantitative test”.
- It can be hard for certain firms to meet the quantitative test. For example, a newly established firm may be unable to evidence the frequency at which it has carried out transactions if it has been in business for less than a year, or it may be difficult for a person to provide evidence of a professional position if in the industry concerned, there are not clear qualification requirements.
- In addition to the qualitative and quantitative tests, the following procedure must be followed:
 - the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of

transaction or product;

- the firm must give the client a clear written warning of the protections and the investor compensation rights the client may lose; and
- the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections