



**MALTA**  
**STOCK EXCHANGE**

**CHAPTER 4**  
**TRADING**  
**PROCEDURES AND**  
**REGULATIONS**

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# TRADING PROCEDURES

## 4 - TRADING PROCEDURES AND REGULATIONS

### 4.00 General Conditions

#### Trading Sessions

**4.00.01** Market trading sessions [“trading sessions”] shall be held on such days as the Board shall from time to time determine by Exchange Notice.

**4.00.02** Market open and closing times shall be established by the Exchange and may be different for each category of listed financial instruments traded on the market. No transactions may be effected before the opening signal or after the closing signal.

**4.00.03** Trading sessions will be split into the following stages:

- Pre-trading phase
- Main trading phase – Continuous trading with Auctions – starting with an opening auction and ending with a closing auction. In the case of securities where Volatility Interruptions are applicable, continuous trading may be interrupted by intra-day auctions
- Post-trading phase

#### Trading Restricted to Trading Session

**4.00.04** Subject to the provisions set out in the Act and any regulations made thereunder, purchases and sales of listed financial instruments taking place on-market must be transacted during a trading session thereof. Unless otherwise prescribed by the Exchange, all financial instruments shall be traded using the XETRA trading platform [“XETRA”] in terms of these Bye-laws and procedures established by the Exchange for XETRA in

accordance with the Trading Procedures set out below in bye-laws 4.07.01 – 14.07.17 below and to the Market Model Principles set out in Appendix 4.1.

#### Access to Trading System

**4.00.05** Access to the Trading System is limited to:

- approved traders
- designated Exchange personnel, and
- any other person duly approved by the Exchange

#### Power to Deny/Terminate access

**4.00.06** The Exchange has the right to suspend for a definite period or indefinitely, as well as deny or terminate access to the trading system of any Member and/or his approved trader/s should the Member and/or his approved trader/s be in default of his contractual obligations or has failed to pay the appropriate fees in terms of Exchange Notice 1 – Fees & Other Charges, or has failed in any way to satisfy the provisions of the Act, any regulations made thereunder or the Bye-laws.

**4.00.07** A Member shall not be entitled to claim against the Exchange or officers of the Exchange or any person appointed or delegated by the Exchange, for any loss or damages related to their functions executed in good faith under the above Bye-laws.

#### Trading Regulations

**4.00.08** The rules regarding trading on XETRA are set out in Section 4.07.00 below and the Market Model Principles outlined in Appendix 4.1

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## 4.01 Client Instructions

### Instructions from Clients

#### 4.01.01 It is the responsibility of Members

- to ensure that they have received bona fide instructions from clients,
- to have effective procedures in place to identify and verify the persons from whom they take instructions to effect transactions,
- if, the person from whom instructions are received is acting for and on behalf of someone (i.e., an agent), to have effective procedures in place to identify and verify the agent as well as the customer, and
- to have effective procedures in place to conduct all the necessary customer due diligence as prescribed under applicable law and any relevant Guidelines issued in this respect.

**4.01.02** Members acknowledge that the Exchange may request the Member to disclose information, documentation and/or data in relation to the customer due diligence information, documentation and/or data obtained by the Member on the client and in respect of which transactions have been effected by the Member on behalf of the client. The Member shall immediately disclose to the Exchange all customer identification and due diligence analysis and records upon request. Furthermore, Members shall be duty bound to immediately alert the Exchange in relation to any circumstance calling for Enhanced Due Diligence measures in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations.

**4.01.03** Instructions may be received from clients:

- directly on completion of the appropriate Instruction Form, duly signed,

- by completing the appropriate Instruction Form but utilizing Authorised Intermediaries, duly signed by the Authorised Intermediary,
- through their appointed attorney and in accordance with terms set out in the relevant Power of Attorney, or
- in accordance with the Client's Agreement Letter or other express and written client mandate instructions.

Orders must be recorded on a Client Instruction Form. Instruction Forms in respect of orders received over the telephone, facsimile, electronic mail or other means or from overseas clients must be backed up by express, written and signed instructions from the clients.

**4.01.04** Client Instruction Forms must at least include the information outlined in bye-law 4.01.11 below.

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**4.01.05** All Client Agreement Letters are to include the following standard novation clause in accordance with bye-law 7.06.05:

“In the event that

\_\_\_\_\_   
 [name/s of client/s]

do not advance the appropriate funds for settlement to

\_\_\_\_\_   
 [name of Member Firm]

or will not be in a position to advance the appropriate funds for settlement, consent is hereby granted to

\_\_\_\_\_   
 [name of Member Firm],

for title of the purchased securities which are the subject of the default to be credited to his account”.

**4.01.06** Client Instruction Forms, must also include the following statement:  
For the purposes of the Financial Markets Act [Cap. 345 of the Laws of Malta], the Prevention of Money Laundering Act [Cap. 373 of the Laws of Malta], the Criminal Code [Cap. 9 of the Laws of Malta], and the Professional Secrecy Act [Cap. 377 of the Laws of Malta], I/we hereby grant my/our consent and authorisation to

\_\_\_\_\_   
 name of Member Firm] to:

- Make available to the Malta Stock Exchange upon request, all such documentation, information and/or data as may be necessary for ensuring

compliance with the Prevention of Money Laundering Act and any subsidiary legislations and/or guidance issued thereunder and the Criminal Code; and

- Carry out enquiries into my/our Malta Stock Exchange Account/s kept at the Central Securities Depository or holdings of securities registered at the Central Securities Depository of the Malta Stock Exchange.

**4.01.07** At no stage shall a Member offer or bid for financial instruments unless he has a genuine request by a client in accordance with these Bye-laws. The Exchange may ask any Member to prove that a genuine request exists and the Member is required to provide the necessary evidence forthwith.

**4.01.08** Trading Members have the responsibility to as far as possible, ensure that prior to executing deals on behalf of a client they are in possession of the latest information about the available balance held by the client in the financial instrument that the trade is to be effected.

## Order Log Book

**4.01.09** Each Member shall retain an Order Log Book wherein all buying and selling orders must be listed in the order in which they are received and indicating all the information outlined in bye-law 4.01.11 below. The Order Log Book must reflect the sequence in which orders are entered into the trading system.

**4.01.10** The Order Log Book may be kept in electronic format. However, for regulatory purposes, a copy highlighting any changes should be printed and duly signed by the trader effecting such changes. Such hard copy may be printed at the end of the business day to encompass all changes effected during that day.

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**4.01.11** The Order Log Book shall, at least, contain the following information:

- a sequential order number [this should be cross-referenced to the order received]
- the date and time of receipt of order
- the type of order [purchase or sale]
- the name and/or symbol of the financial instrument to be traded
- the number of shares or nominal value of bonds/stocks/treasury bills [as appropriate] to be traded
- the trading price/limits and any conditions attached thereto
- expiry condition of the order, if any
- client name/s, and
- Date of Birth
- ID/Passport
- Nationality of ID/Passport
- LEI (if applicable)
- Investment Decision Maker
- Client ID
- MSE Account No

**4.01.12** Members must verify with the client/s concerned all “open” orders which have not yet been executed, in full or in part, within a period of three (3) months from the date of input into the trading system, or from the date of the last revision of the order, as the case may be. Should the client confirm the original order, an appropriate note must be made on the Client Instruction Form which should be duly initialed by the authorized person.

All “open” orders or unexecuted parts thereof, whether reconfirmed by the client/s or not, will expire automatically after a period of 360

days from the date of input and will be deleted from the trading system. Reconfirmed orders must be re-inputted in the trading system after the expiry of 360 days.

**4.01.13** At least on a monthly basis, the Compliance Officer must reconcile and verify the Order Log Book with the Outstanding Orders Report as generated by the trading system and sign in confirmation.

## 4.02 Functions of the Member

### Selling Member

**4.02.01** The Selling Member shall use his best endeavours to sell the financial instruments for which he has orders to trade on the first trading day following the receipt of instructions from his client/s and to ensure that his client is the registered holder of the financial instruments to be sold.

### Buying Member

**4.02.02** The Buying Member shall use his best endeavours to buy the listed financial instruments for which he has orders to trade on the first trading day following the receipt of instructions from his client/s.

## 4.03 Mistrades

### Declaration of a Mistrade

**4.03.01** The Exchange may, under certain circumstances, agree to cancel trades and delete them from the electronic trading system where a Member Firm makes a successful application for the cancellation of

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an order book trade. Such trades shall be deemed to be mistrades and shall be so advised to the market.

## Conditions applying to Mistrades

**4.03.02** The Member Firm objecting to the trade, i.e. the Member Firm applying for a declaration of a mistrade must make such application within ten [10] minutes of the determination of the execution price. In any event, the Exchange will not accept any application for a mistrade unless it is made on the same day provided that no exceptional circumstances prevail.

**4.03.03** The application for a declaration of a mistrade must be made, in the first instance, by telephone to the Exchange's Market Operations Office using the relevant contact details advised by the Exchange from time to time.

## Determination of a Mistrade

**4.03.04** The Exchange shall only declare a mistrade in the following circumstances:

- the order limit price was entered in error and the resulting traded price is considered not to be in line with market conditions; or
- a failure in the technical systems of, or supporting, the order book, but excluding the Member Firm's own systems.

Provided that in the case of an erroneous limit being entered on an order the resulting trade shall not be cancelled if the order has been executed at a price which is in line with market conditions as defined in the Market Model Parameters irrespective of the error in the entry of the order limit.

**4.03.05** When an application to declare a mistrade is made by a Member Firm, the Exchange shall, under normal circumstances, determine if the traded price is in line with market conditions for that financial instrument by considering the relevant market prices of the last three[3] months or any other period as may be determined by the Exchange.

**4.03.06** If a mistrade application cannot be approved in accordance with the above requirements, an order book trade may be cancelled by agreement between the counterparties to the trade. In these circumstances the parties may effect a de facto cancellation of the trade by executing a corresponding offsetting trade, a contra trade, off the order book [OTC]. In these particular circumstances the Exchange shall not delete the trade for which the original application for a declaration of a mistrade was made.

## Power of the Exchange to declare a Mistrade

**4.03.07** The Exchange may cancel an order book trade without an application for a mistrade from the counterparties to the trade if the Exchange can identify and determine that the price of the trade in question fulfills the conditions for a mistrade or where the particular circumstances of that trade warrant its cancellation.

**4.03.08** The Exchange shall not be liable to any Member Firm or any other party, either directly or indirectly, arising from the declaration of a mistrade.

## 4.04 Irregular Deals

**4.04.01** Any deal which in the opinion of the Exchange is irregular or is in contravention of the Act, any regulations made thereunder or

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the Bye-laws shall be reported immediately to the Chief Executive and to the Competent Authority.

**4.04.02** Any trade determined by XETRA is binding on both parties unless it violates any Court Order or any other order issued by a Competent Authority in terms of law, notified to the Exchange at any time prior to the time that such deal is entered into MaltaClear or any other relevant settlement system.

**4.04.03** In such circumstances the Exchange may, in its sole and absolute discretion, take any action which is deemed appropriate including that of declaring such trade shall not continue to be processed by the Exchange.

## 4.05 Trading Delays and Systems Failure

**4.05.01** Should a Member Firm encounter a system problem that prevents it from accessing the order book or reporting off-order book trades in order to book financial instruments, the Member Firm shall immediately notify:

- the XETRA Technical Helpdesk immediately by telephone or e-mail using relevant contact details advised by the Exchange from time to time and ensure that a suitably experienced and knowledgeable technical person takes responsibility for communicating with the XETRA Technical Helpdesk, and
- the Exchange's Market Operations Office by telephone using relevant contact details advised by the Exchange from time to time, outlining the difficulties it is encountering,

**4.05.02** A Member Firm shall also notify the XETRA Technical Helpdesk and the Exchange's Market Operations Office when its system issues are resolved.

**4.05.03** Should on-going issues arise which the Member Firm cannot resolve in a timely manner with the XETRA Technical Helpdesk, the Member Firm will raise such issues with the Exchange's Market Operations Office.

### Individuals with authority to cancel orders

**4.05.04** All active traders of a Member Firm with access to the electronic trading system shall have the authority to request deletion of all that Member Firm's orders in the event of a system failure as outlined in bye-laws 4.05.01 to 4.05.03 above.

**4.05.05** In the event of a system failure, a Member Firm is responsible for the cancellation of its own orders. However, active traders of the Member Firm as indicated Bye-law 4.05.04 above may, by contacting the XETRA Trading Helpline [Market Supervision XETRA] by telephone, or by e-mail, using relevant contact details advised by the Exchange from time to time, request:

- the deletion of all of that Member Firm's orders on the order book; or
- the entry of an order or orders

**4.05.06** A Member Firm is obliged to honour any order book trades which are executed prior to the notification of its system problems or which have been placed on its behalf.

## 4.06 Publication of Prices

### Recognized Lists

**4.06.01** Recognized lists shall be issued by the Exchange containing the latest transaction information and any other market and Exchange information in accordance with the Exchange's transparency and reporting requirements.

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## 4.07 Trading Procedures

**4.07.01** The general principles governing trading on the regulated market are described below. Detailed procedures are found in the Market Model Principles, appended as Appendix 4.1 to this Chapter.

### Validity of Bids and Offers

**4.07.02** To be valid, bids and offers must be made:

- during the trading session
- to all Members generally and without discrimination, and
- in the manner prescribed by these Bye-laws and the Market Model Parameters established by the Exchange.

**4.07.03** Furthermore, to be valid, an order must include:

- the name, symbol or ISIN No. of the financial instrument to be traded
- whether the order is a buy or a sell order
- the number or volume of financial instruments to be traded
- explicit instructions regarding the trading price
- investment decision maker
- client ID
- any conditions which must be met prior to the order becoming effective, if applicable.

### Tick Sizes

**4.07.04** Orders must be entered within the defined tick sizes as published from time to

time in accordance with Markets in Financial Instrument Directive 2014/65/EU Article 49.

### Minimum Tradable Units

**4.07.05** Minimum tradable units [Board Lots] for each security will be determined by the Exchange and will be as set out in the Market Model Principles.

### Volatility Interruptions

**4.07.06** All trades effected in a financial instrument or group of financial instruments as may be determined by the Exchange from time to time, and as laid out in the Market Model Parameters, shall be executed within volatility interruption limits in accordance with procedures set by the Exchange.

**4.07.07** Volatility interruption limits and procedures and applicability may be amended by the Exchange in the light of prevalent market conditions.

### Order Types

**4.07.08** The following, which are explained in detail in the Market Model Principles, are permitted order types:

- Limit orders
- Market orders
- Market-to-limit orders

### Execution conditions – continuous trading

**4.07.09** Limit orders, market orders, market-to-limit orders and midpoint orders may be defined by the following execution conditions during continuous trading:  
**“Immediate-or-cancel”**



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Bid/ask orders which are executed immediately and fully or as fully as possible. Non-executed parts are deleted without entry into the order book.

## “Fill-or-kill”

Bid/ask orders which are executed immediately and fully or not at all. Should such execution not be possible these orders are deleted without entry into the order book.

## “Book-or-cancel”

Bid/ask orders which are placed as resting liquidity in the order book

Once this order surpasses the entry/exit price, it becomes a market order.

## Trading restrictions

**4.07.10** Limit orders and market orders may be assigned trading restrictions which define during which stage of trading such orders may be traded. Applicable trading restrictions are the following :

### “Opening Auction”

Bid/ask orders available for execution only in opening auction

### “Closing Auction”

Bid/ask orders available for execution only in closing auction

### “Auction Only”

Bid/ask orders available for execution only during auctions

### “Accept Surplus”

Bid/ask orders can only be entered and are available for execution during the book balancing phase of an auction

### “Main Trading Phase”

Bid/ask orders available for execution only during continuous trading

**4.07.11** Limit orders or market orders not limited by a trade restriction will be available for execution during all phases of the trading session. Trading restrictions are not applicable to market-to-limit orders.

## Validity constraints

**4.07.12** Bid/ask orders may be entered into the order book with the following validity constraints:

### “Good-for day”

Bid/ask orders valid only for the trading day on which they are entered into the order book

### “Good-till-cancelled”

Bid/ask orders valid until execution, deletion by the respective Member, deletion as a result of corporate actions and other relevant market operations or until reaching the maximum validity period of 360 calendar days, that is, T+359

### “Good-till-date”

Bid/ask orders valid until a specified date up to the maximum validity period.

## Execution priority

**4.07.13** Orders are executed according to a price/time priority during continuous trading.

## Modification of orders

**4.07.14** In order to change the instrument or buy/sell side, an order must be deleted and entered as a new order.

**4.07.15** A new time stamp will be given to an order in the case of the following modifications:

- Changing the limit price

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- Increasing the quantity/volume to be traded
- Increasing the validity period
- Changing the discretionary range
- Changing specific trading restrictions.

## 4.08 Market Makers

### General

**4.08.01** The Market Makers Admission Committee may approve at its sole discretion that market making may be conducted in one or more of the financial instruments admitted to trading on any of its markets.

**4.08.02** At least two (2) market makers must be approved to conduct market making in one or more financial instruments prior to the Market Makers Admission Committee allowing market making activity in such financial instrument or instruments.

Provided that such requirement for a minimum of two (2) market makers may be waived at the sole discretion of the Market Makers Admission Committee.

**4.08.03** When giving due consideration to a waiver under bye-law 4.08.02 above, the Market Makers Admission Committee will take into consideration prevalent market conditions in the financial instruments for which application to act as market maker has been made. In cases where approval has been given for one [1] market maker in a particular financial instrument, such approval will initially be for a period of twelve [12] months. Should no second market maker be approved to deal in the same financial instruments during this period, the Market Makers Admissions Committee will review the situation nine [9] months of such approval

being given and will confirm approval or otherwise by no later than one [1] month prior to expiry of original approval given.

**4.08.04** Should a market maker cease, for whatever reason, to provide market making activities in one or more financial instruments with the result that only one (1) market maker is continuing such activities in one or more financial instruments, the Market Makers Admission Committee will allow such activity to continue by the remaining market maker. However, the Market Makers Admission Committee shall review market making activity in such financial instrument/s within one (1) month of the cessation of activity by a market maker and may, at its sole discretion, suspend or revoke approval to the remaining market maker giving not less than one [1] month's notice.

### Eligibility

**4.08.05** Any person who is a Member of the Exchange and who also holds a Category 3 Licence issued by the Malta Financial Services Authority in terms of the Investment Services Act, 1994, or equivalent authorisation issued by a European Economic Area competent authority, and who has pass-ported its services in Malta in terms of the European Passport Rights for Investment Firms Regulations may be approved by the Exchange to conduct market making activities on one or more financial instruments admitted to trading on any of its markets. Provided that an applicant market maker confirms his adherence to the relevant Bye-laws and related rules and regulations that may be issued by the Exchange from time to time.

Provided further that where appropriate, the Exchange may, at its sole discretion, impose any other condition/s to ensure the efficient operations of its markets and to further safeguard the interest of investors.

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## Application procedure

**4.08.06** Any person duly licensed in accordance with bye-law 4.08.05 above wishing to apply to provide market making activities in one or more financial instruments admitted to trading on any of the Exchange's markets, may do so on the appropriate Application Form as provided for in Appendix 4.2 to this Chapter.

**4.08.07** The Application Form submitted must be duly completed and signed as appropriate and must be accompanied by the following :

- a copy of the Board Resolution or appropriate authority by the governing body of the applicant stating its decision to apply to the Exchange to provide market making activities in one or more financial instruments admitted to trading on any of its markets;
- a copy of the Global Master Securities Lending Agreement [GMSLA] or its equivalent entered into by the Applicant where applicable;
- a copy of the relevant Category 3 Licence or equivalent authorisation as outlined in bye-law 4.08.05 above;
- copies of the Personal Questionnaires, or equivalent documentation, as submitted to the MFSA or other Competent Authority issuing the equivalent authorisation as outlined in bye-law 4.08.05 above;
- any other documentation as may be requested by the Exchange in order to ensure all appropriate information and authorizations are available.

**4.08.08** Where an applicant market maker is also applying for membership of the Exchange as required in terms of bye-law 4.08.05 above, the application process and requirements in respect of Membership of the Exchange as outlined in Chapter 3 of these Bye-laws shall apply.

**4.08.09** Any Application Form not completed or signed as appropriate and/or not accompanied by the requisite documentation as outlined in bye-law 4.08.07, shall not be processed by the Exchange and will be returned forthwith to the applicant stating the reason for such rejection.

## Approval of applications

**4.08.10** The Exchange shall set up a Market Makers Admittance Committee to review applications in respect of market making activities, approve or reject applications and to monitor the performance of approved market makers in accordance with these bye-laws.

**4.08.11** The Market Makers Admittance Committee shall consider any application received to provide market making services in terms of bye-law 4.08.07 above, within ten [10] working days from the date of receipt provided that all relevant documentation in terms of bye-law 4.08.07 above has been submitted.

**4.08.12** The Market Makers Admission Committee shall, at its discretion, grant admission as a market maker to any applicant which meets the Exchange's criteria for eligibility as outlined in bye-law 4.08.05 above.

Prior to granting approval, the Exchange shall, in all cases, obtain confirmation from the MFSA or the Competent Authority of the applicant that it has no objection to the applicant undertaking such activities.

**4.08.13** Approval of an applicant as a market maker shall become effective on the date that the appropriate Exchange Notice is issued by the Exchange. Such Exchange Notice shall include

- the name of the approved market maker

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- a list of the financial instruments in which the market maker has been approved to deal, and
- the date from which such dealing shall take effect.

Such notification may, as appropriate, also provide for certain conditions that shall ensure the efficient operation of the market to safeguard the interests of investors.

## Rejected applications

**4.08.14** The Market Makers Admission Committee may decline to approve an applicant as a market maker, if, in its opinion,

- it does not comply with the eligibility criteria outlined in bye-law 4.08.05 above;
- it has not provided all the necessary information and documentation as required under bye-law 4.08.07 above;
- it is deemed that such approval is not in the interest of the Exchange's market or for any other reason as may be determined by the Market Makers Admission Committee.

**4.08.15** The Market Makers Admission Committee shall inform the rejected applicant in writing within ten [10] working days of the receipt of the application of the circumstances such rejection and stating the reasons therefor.

**4.08.16** The rejected applicant has five [5] working days from the date of such rejection notice to appeal to the Board of the Exchange against such decision by the Market Makers Admission Committee.

**4.08.17** The Board shall, within ten [10] days of receipt of an appeal against a decision of the Market Makers Admission Committee review all relevant processes and

documentation pertaining to the rejected application.

**4.08.18** The Board shall inform both the applicant and the Market Makers Admission Committee of its decision in writing within the time frame stipulated in bye-law 4.08.17 above.

**4.08.19** Should the Board uphold the decision of the Market Markets Admission Committee the rejected applicant may appeal to the Financial Services Tribunal within the time-frames as stipulated by law.

**4.08.20** An applicant whose application has been rejected by the Board following the appeal process outlined in bye-law 4.08.17 above, may not re-submit an application to provide the services of a market maker before the lapse of twelve [12] months from the date of such rejection.

Provided that such period following date of reject of application may be reduced should applicant satisfy the Market Making Admissions Committee that it can satisfy the criteria outlined in the above bye-laws.

Resignation, cancellation and suspension of market maker status

**4.08.21** A market maker may voluntarily resign its market maker status in all or in one or more of the financial instruments in which it has been approved to provide market making activities by submitting written notice to the Exchange.

**4.08.22** The Exchange shall issue appropriate notification of such cessation of market making activities immediately upon receipt. Such cessation of market making activities will come into force within two [2] working days of issue of such notification.

**4.08.23** A market maker resigning from market making activities as outlined in bye-law 4.08.21 above may be re-admitted as a

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market maker in such financial instruments upon written request to the Market Makers Admission Committee. No approval for re-admittance shall be given before the lapse of at least twenty [20] working days from the date of resignation.

**4.08.24** The Market Makers Admission Committee may, at its sole discretion, suspend for a period or revoke a market maker's approval to provide market making activities should the market maker repeatedly fail in its obligation as outlined in these bye-laws having been previously censured in this regard.

## Supplementary Application

**4.08.25** A market maker duly approved in terms of bye-law 4.08.01 above, may submit a Supplementary Application as per Appendix 4.3 to this Chapter, to undertake market making activities in additional financial instruments.

The provisions of bye-laws 4.08.01 – 4.08.23 shall also apply to such Supplementary Applications.

## Notification

**4.08.26** Approval to conduct market making activities, approval of Supplementary Admission Applications, suspension, revocation and cessation of market making activities shall be notified to the market by the Exchange. Such approval, suspension, revocation or cessation of market making activities shall become effective immediately upon such notification being made.

## Rights and Obligations of Market Makers

## Quotes, spreads and refresh periods

**4.08.27** A market maker is obliged to input continuous bid and offer prices in accordance with the minimum quote volume, maximum quote spreads and the minimum refresh period during the continuous trading sessions of the relevant market. A market maker may only enter one quote (bid and offer price) per security at any given time on the market.

**4.08.28** Market maker quotes may be entered during normal operating hours of the Exchange and at defined times during the day's trading cycle as may be determined by the Exchange from time to time.

**4.08.29** In order for a quote to be valid, a market maker must enter his quote in the appropriate order window of the trading system and must include:

- name of security
- buy price
- sell price
- volume which must at least be equivalent to the minimum quote volume

**4.08.30** All quotes will participate in the regular market and will be considered as limit orders and matched and allocated accordingly in terms of the Market Model Principles as outlined in Appendix 4.1 to this Chapter.

**4.08.31** The parameters set out in bye-law 4.08.27 above shall be calculated by the Exchange in accordance with the criteria stipulated by the Exchange and notified to the market from time to time.

**4.08.32** Such parameters as set out in bye-law 4.08.33 above may be changed by the Exchange from time to time in accordance with the exigencies of the market and it shall

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notify the market within reasonable time accordingly of any such changes.

## Reclusion from dealing as principal

**4.08.33** A market maker may be precluded from dealing as principal in the financial instruments of an Issuer where the market maker has an interest in either the offeror or the offeree in an acquisition or merger transaction.

**4.08.34** Should such circumstances as outlined in bye-law 4.08.33 above prevail, the market maker will not be obliged to maintain quotes in the financial instruments concerned. The Exchange must be immediately notified of such circumstances and will inform the market accordingly.

**4.08.35** When such restrictions no longer apply to the market maker concerned, it shall notify the Exchange in writing of its intention, where applicable, to re-commence its market making activities and the Exchange shall in turn immediately inform the market accordingly.

## Waiver of obligations

**4.08.36** In the light of certain prevalent market conditions, such as, but not limited to, a strong one-way market or exceptional volatility, the ability of the market maker to make a market in certain financial instruments may become restricted. In such circumstances the maximum spreads, minimum quote volumes and the minimum period for maintaining quotes may be reviewed.

**4.08.37** Should such circumstances as outlined in bye-law 4.08.36 above prevail, as determined by a particular market maker and previously notified to the Exchange, the market maker may:

- alter the bid/ask spread quoted for a particular financial instrument after the time when it has effected a transaction in that financial instrument or after one [1] minute from the time of the input of the relevant quote, whichever is the earlier, and/or
- reduce the minimum quote volume below that relevant to the financial instrument in question, and/or
- reduce the minimum period for maintaining quotes below that relevant to the financial instrument in question.

**4.08.38** A market maker must comply with the normal parameters governing its operations immediately the extraordinary market conditions have abated.

**4.08.39** The market maker shall inform the Exchange immediately of the resumption of its normal market making activities and, furthermore, shall provide the Exchange with periodic reports for the duration of its inability to fulfil its market making obligations.

## Securities borrowing

**4.08.40** In order to continue to satisfy its obligations in terms of these Bye-laws, a market maker may enter into a Global Master Securities Lending Agreement as per Appendix 4.4 to this Chapter with a third party (a securities lender).

**4.08.41** A market maker entering into any contract with a securities lender as outlined in Bye-law 4.08.39 above, must lodge a copy of such a contract, and any amendments thereto, with the Exchange together with the application as outlined in bye-laws 4.08.07 and 4.08.08 above.

**4.08.42** Any parties entering into any contract with a securities lender as outlined in Bye-law 4.08.36 above must comply with the "Code of

# TRADING PROCEDURES

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Guidance on Securities Borrowing and Lending” as per Appendix 4.5 to this Chapter.

## Short-selling

**4.08.43** Market makers who have not entered into a GMSLA or equivalent and engage in short-selling activities are to comply with the relevant obligations of Regulation [EU] No 236/2012 of the European Parliament and of the Council of 14 March 2012.



**MALTA**  
STOCK EXCHANGE

## **Appendix 4.1**

# **MARKET MODEL PRINCIPLES**

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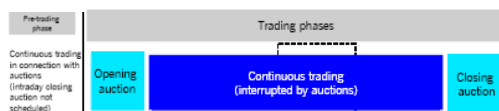
## 4.1 MARKET MODEL PRINCIPLES

Below please find the underlying principles of the Exchange's Market Model within the XETRA Trading Platform.

### 1. Trading phases and Time Schedule

The trading phases within Xetra are:

- **Pre-trading phase**
- **Main trading phase** - Continuous Trading with Auctions - Starting with an opening auction and ending with a closing auction. In case of Equities, Corporate Bonds and Malta Government Stocks continuous trading may be interrupted with intra-day auctions due to volatility interruptions.
- **Post trading phase**



Timing schedule for the MSE Regular Market and Prospects MTF – Equities, Corporate Bonds and Malta Government Stocks

**Pre-Trading Phase** - Starts at 09:00:00 with duration of 30 minutes.

The pre-trading phase precedes the main trading phase. During this phase traders may enter orders but no trades will be effected. Orders with Book or Cancel restrictions will be rejected at this stage. During pre-trading the reference price is either the last price determined during the last auction of the previous day or the last traded price.

**Main Trading Phase** - Commences at 09:30:00 with:

- **Opening Auction** - Duration of 2 minutes with a random end from 1 to 30 seconds.
- **Closing Auction** - Starts at 15:25:00 with a duration of 5 minutes and a random end from 1 to 30 seconds.
- **Post Trading Phase** - Commences after closing auction at 15:30:01 or later (as this depends on the duration of closing auction for each security) and ends at 16:00:00.

During the main trading phase all orders may be traded. At this stage orders may also be added, modified or deleted.

Continuous trading starts as soon as the opening auction is terminated. The order book at this stage is open. Details such as price limits, accumulated order volumes at each limit and the number of the orders in the book are all visible. Each new order accepted in XETRA at this stage is checked against possible executable orders on the other side of the book.

Orders will be executed according to price/time priority. Orders can be executed in full or in part or not at all.

Orders are sorted in accordance to price/time priority ensuring that buy orders with a higher limit take precedence over buy orders with lower limits and sell orders with a lower limit take precedence sell over orders with a higher limit. The second criterion 'time' comes into effect in the event of orders sharing the same limit, i.e. the order with the earlier timestamp takes priority. Market orders have priority over limit orders in the order book. Time priority is also applicable to Market Orders.

Time as secondary criterion applies in the event that two orders have the same volume. Therefore, orders entered earlier are treated with priority.

After the trading phase, new orders can be entered and existing orders can be modified or deleted in the post-trading phase. New order entries are taken into consideration in the respective trading form on the following trading day depending on possible execution restrictions and validity constraints. It is also possible to modify trade attributes in the post-trading phase.

Timing schedule for the Treasury Bill Market:

- **Pre-Trading Phase** - Starts at 09:00:00 with duration of 30 minutes.
- **Main Trading Phase** - Commences at 09:30:00 with:
- **Opening Auction** - Duration of 2 minutes with a random end from 1 to 30 seconds.
- **Closing Auction** - Starts at 10:28:00 with a duration of 2 minutes and a random end from 1 to 30 seconds.
- **Post Trading Phase** - Commences after closing auction at 10:30:01 or later (as this depends on the duration of closing auction for each Treasury Bill) and ends at 16:00:00.

Timing Schedule for OTC Trade Reporting (Off-Exchange Trades):

- OTC Trade Reporting is permitted from start of pre-trading phase (09:00:00) to end of post trading phase (16:00:00)

During the whole trading day (pre-trading, trading and post-trading phase), all participants have the possibility to enter OTC

trades in XETRA. In principle, entry is possible for all financial instruments, which are part of the exchange trading in XETRA.

Reversal of OTC trades is also permitted from start of pre-trading until end of post trading.

## 2. Order Book Transparency

No orders will be visible (closed order book) during the pre-trading and post trading phases

During any auction the order book will be partially closed:

- In the case of an uncrossed order book (No possibility of orders being executed.) the best bid and ask limits are displayed together with the accumulated volumes at the best bid and/or ask limit.
- In the case of a crossed order book (Orders are likely to be executed.) the executable volume for the indicative auction price, the indicative auction price itself and if any the side of the surplus and the volume of the surplus will be displayed.
- During Continuous Trading the order book will be open (open order book).

## 3. Volatility Interruptions

A volatility interruption is triggered whenever the potential execution price of an order lies outside the dynamic and/or static price range. If this occurs during continuous trading the market status is changed to an auction.

The auction is made up of a call phase and a price determination phase. The call phase during which new orders / quotes can be entered and existing once modified or deleted

has a minimum duration of 2 minutes plus a random end.

During price determination no order modification is possible. This phase only takes a few seconds.

After this period ends the auction price is checked again this time within a new range (Dynamic Price Range X Multiplier).

If the auction price is within this new price range the volatility interruption ends automatically, the trade/s executed and the market goes back to continuous trading.

If the potential auction price lies outside the new price range the auction goes into an extended volatility interruption during which order entry and modification is again permitted.

When a market goes into an extended volatility interruption market state will remain in the extended volatility phase until this is terminated manually by Market Supervision.

## Volatility Interruption Parameters

Volatility Interruption Parameters which are mainly the Dynamic Price Range, the Static Price Range and the Multiplier, vary according to instrument type that is Equities, Corporate Bonds and Malta Government Stocks (Volatility Interruptions are not applicable for Treasury Bills.)

Furthermore these parameters also vary according to each instrument's individual

Liquidity Class which is updated on a quarterly basis.

### Dynamic Price Range

This price range is based on reference price 1 (See below). As the name implies this price range will be continuously moving.

If the indicative price lies outside the "dynamic" price range around the reference price, the security goes into auction. If at the end of this auction (2mins + random end) that is during Price Determination Phase, the price is still within the defined range (Dynamic price range X Extended Volatility Factor) the reference price will be re-adjusted, the volatility interruption terminated and the security goes back into continuous trading.

### Static Price Range

This price range is based on reference price 2 (See below). This is a wider price range than the dynamic price range.

This wider static price range defines the maximum percentage deviation of an additional reference price which generally corresponds to the last price determined in an auction on the current trading day. If this price is not available, the last traded price determined on one of the previous trading days is taken as reference price. Reference price 2 is only re-adjusted during the trading day after auction price determination so that the position of the static price range remains largely unchanged during trading. Executions triggered by midpoint orders do not lead to an adjustment of the reference price.

### Extended Volatility Factor

This is the multiplier by which the Dynamic Price Range is multiplied in order to determine the new price range against which

the potential market price is checked at the price determination phase.

## Trigger of Volatility Interruptions

Volatility interruptions may be triggered by two types of Reference Prices as explained hereunder:

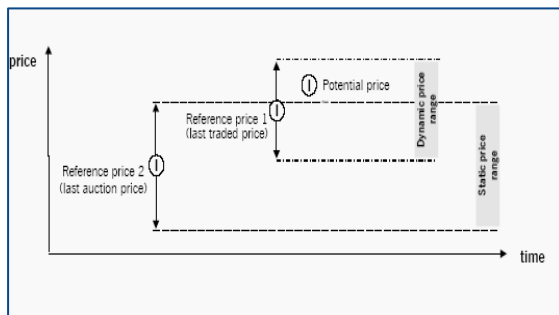
### Reference Price

The reference price is the price on which a price range will be based. This can be subdivided into:

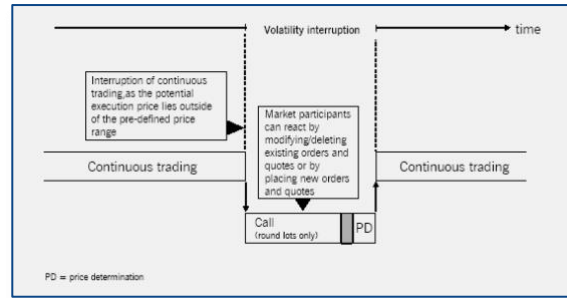
- **Reference Price 1** - The reference price on which the dynamic price range will be based. This price will always be the last traded price.
- **Reference Price 2** - The reference price on which the static price range will be based.

For the opening auction this reference price will be a price determined in an auction or continuous trading on the previous trading day depending on which is the last price for that day.

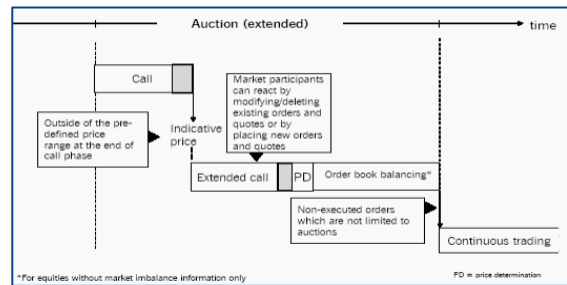
For the current trading day this reference price will only change if a new price is determined in an auction.



## Volatility Interruptions during Continuous Trading



## Volatility Interruptions during Auctions



### Extended Volatility Interruptions

As outlined above Extended Volatility Interruptions do not end automatically but require the manual intervention of Market Supervision based on The Exchange's instructions.

As a general rule when a market goes into an extended volatility phase the procedure adopted is as outlined below:

- The Market Official at Market Operations will verify the "Losing Party" to the potential trade.

The "Losing Party" would be the Buying Member if the potential execution price would be higher than the Reference Price and the Selling Member if the potential execution price would be lower than the Reference Price.

- The respective trader who has entered the respective order is then contacted and he must confirm whether the trade is to be allowed to go through or otherwise. If trade is

not to be allowed the trader should delete the order / orders accordingly.

- The market is afterwards released back to continuous trading.
- Authorization to confirm whether a trade is allowed to go through or otherwise must always be given by one of the Member's approved traders.
- Notwithstanding the above the Exchange still retains discretion to deviate from the above policy depending on the current market situation and any other specific market circumstances that might be applicable.

## 4. Market Order Interruptions

Market order interruptions can occur during the closing and the opening auctions but not in intraday auctions that only occur due to a volatility interruption.

A market order interruption means that the call phase during an auction is extended by a specific time duration plus random end when there is a market order surplus i.e. there are still market orders or market-to-limit orders (with no limit yet assigned) in the order book at the end of the call phase.

This increases the execution probability of market orders and market-to-limit orders in auctions. Again during this extended call phase order entry and modification is possible.

If a market order interruption is triggered after a volatility interruption in the opening / closing auction the market order interruption will also be subject to the extended dynamic

price range if this is applicable as explained earlier above.

The extended call phase is terminated as soon as the surplus in market orders and market-to-limit orders could be executed or else the extension has expired. The extension of the call phase also ends randomly.

Time duration of the extended call phase is set to 1 minute plus a random end.

## 5. Order Types

Supported order types are Market Orders, Limit Orders, Market-to-limit Orders, Iceberg Orders, Midpoint Orders and Hidden Orders.

Three Basic Types of orders are admitted for price determination during continuous trading and in auctions:

- **Limit orders (L)** - Bid/ask orders, which are to be executed at their specified limit or better. Limit orders will be the only order type applicable for Treasury Bills.
- **Market orders (M)** - Unlimited bid/ask orders. They are to be executed at the next price determined.
- **Market-to-limit orders (T)** - Unlimited bid/ask orders, which are to be executed at the auction price or in continuous trading at the best limit in the order book, if this limit is represented by at least one limit order and if there is no market order on the other side of the book. Any unexecuted part of a market-to-limit order is entered into the order book with a limit equal to the price of the first partial execution.

## 6. Execution Conditions for Continuous Trading

Market orders, limit orders and market-to-limit orders in continuous trading can be defined by the following execution conditions:

- **Immediate-Or-Cancel order (IOC)** - This is an order which is executed immediately and fully or as fully as possible. Non-executed parts are deleted without entry in the order book.
- **Fill-Or-Kill order (FOK)** - This is an order which is executed immediately and fully or not at all. If immediate and full execution is not possible the order is rejected without entry in the order book.

Additional execution conditions in continuous trading for Limit Orders:

- **Book-Or-Cancel order (BOC)** - These orders are placed as resting liquidity in the order book in order to ensure passive execution.

If immediate execution is possible the order is rejected with the only exemption from the rule is immediate execution against hidden orders. However the BOC order is still rejected if it triggers a volatility interruption.

Additionally to this BOC orders are deleted when an auction or volatility interruption is triggered and any incoming BOC orders during auctions or volatility interruptions are rejected.

## 7. Trading Restrictions

Trading Restrictions allow market orders and limit orders to be assigned to auctions,

specific auctions as well as assignment to trading with other specific restrictions. Trading Restrictions with respect to Strike Match Orders are only possible during the Closing Auction.

Trading restrictions include:

- **Opening Auction Only (OA)** - Order only valid in opening auctions.
- **Closing Auction Only (CA)** - Order only valid in closing auctions.
- **Auction Only (AU)** - Order only valid in auctions.
- **Accept Surplus (SU)** - An order with this trading restriction can only be entered during the order book balancing phase of an auction.
- **Main Trading Phase Only (MT)** - Order only executable in main trading phase.
- **Auctions In Main Trading Phase Only (MA)** - Orders executable only in auctions of the main trading phase.
- **End-Of-Day Auction Only (EA)** - Order only executable in the end-of-day auction only.

The Accept Surplus and the End-Of-Day Auction Only are not applicable within the current set-up of our market on Xetra Trading Platform.

## 8. Validity Constraints

Validity of orders can be:

- **Good-For-Day (GFD)** - Order only valid for the current exchange trading day.
- **Good-Till-Cancelled (GTC)** - Order only valid until execution, deletion by the respective member or reaching the maximum validity period of 360 days, that is 360 calendar

days including the current day (T + 359).

- **Good-Till-Date** - Order only valid until a specified date up to the maximum validity period of 360 days.

By default, order validity is the current business day.

## 9. Tick Sizes

Tick sizes for the different instrument types are as follows:

- **Equities** - Tick Size (in accordance with Markets in Financial Instrument Directive 2014/65/EU Article 49).
- **Treasury Bills** - Tick Size "0.0001" (4 decimal places)
- **Government Bonds** - Tick Size "0.01" (2 decimal places)
- **Corporate Bonds** - Tick Size "0.01" (2 decimal places)

## 10. Round lots, Odd lots, Minimum Tradable Unit and Minimum Order Size.

In the Xetra trading platform scenario only round lots are executable during continuous trading while during auctions both round lots and odd lots (odd lots are orders below the round lot size) are tradable.

For MSE Xetra, Round Lots are set the same as the Minimum Tradable Unit. This means that odd lots are practically non-existent in our market.

The Minimum Tradable Unit will reflect the current set-up for each security thus these will remain as follows:

- **Equities** - "1"
- **Treasury Bills** - "1000"
- **Government Bonds** - "1" or "100" (Depending on the security.)
- **Corporate Bonds** - "1", "100" or "1000" (Depending on the security.)

The Minimum Order Size will also reflect the above set-up.

## 11. Execution Priority

### General rule

Orders are executed according to price/time priority.

## 12. Illustration of Price Determination Processes

### 12.1 Auctions

#### 12.1.1 Basic Matching Rules

The auction price is determined on the basis of the order book situation stipulated at the end of the call phase. Concerning the price determination in auctions, market-to-limit orders are handled in the same way as market orders

The auction price corresponds to the limit in the order book with the highest executable order volume and the lowest surplus (see example 1).

Should this process determine more than one limit with the highest executable order volume and the lowest surplus for the determination of the auction price, the surplus is referred to for further price determination:

- The auction price is stipulated according to the highest limit if the surplus for all limits is on the buy side (bid surplus) (see example 2).
- The auction price is stipulated according to the lowest limit if the surplus for all limits is on the sell side (ask surplus) (see example 3).

If the inclusion of the surplus does not lead to a clear auction price, the reference price is included as an additional criterion. This may be the case if:

- there is a bid surplus for one part of the limits and an ask surplus for another part (see example 4),
- there is no surplus for all limits (see example 5).

In the first case, the lowest limit with an ask surplus or the highest limit with a bid surplus is chosen for further price determination.

In both cases, the reference price is considered for stipulating the auction price if:

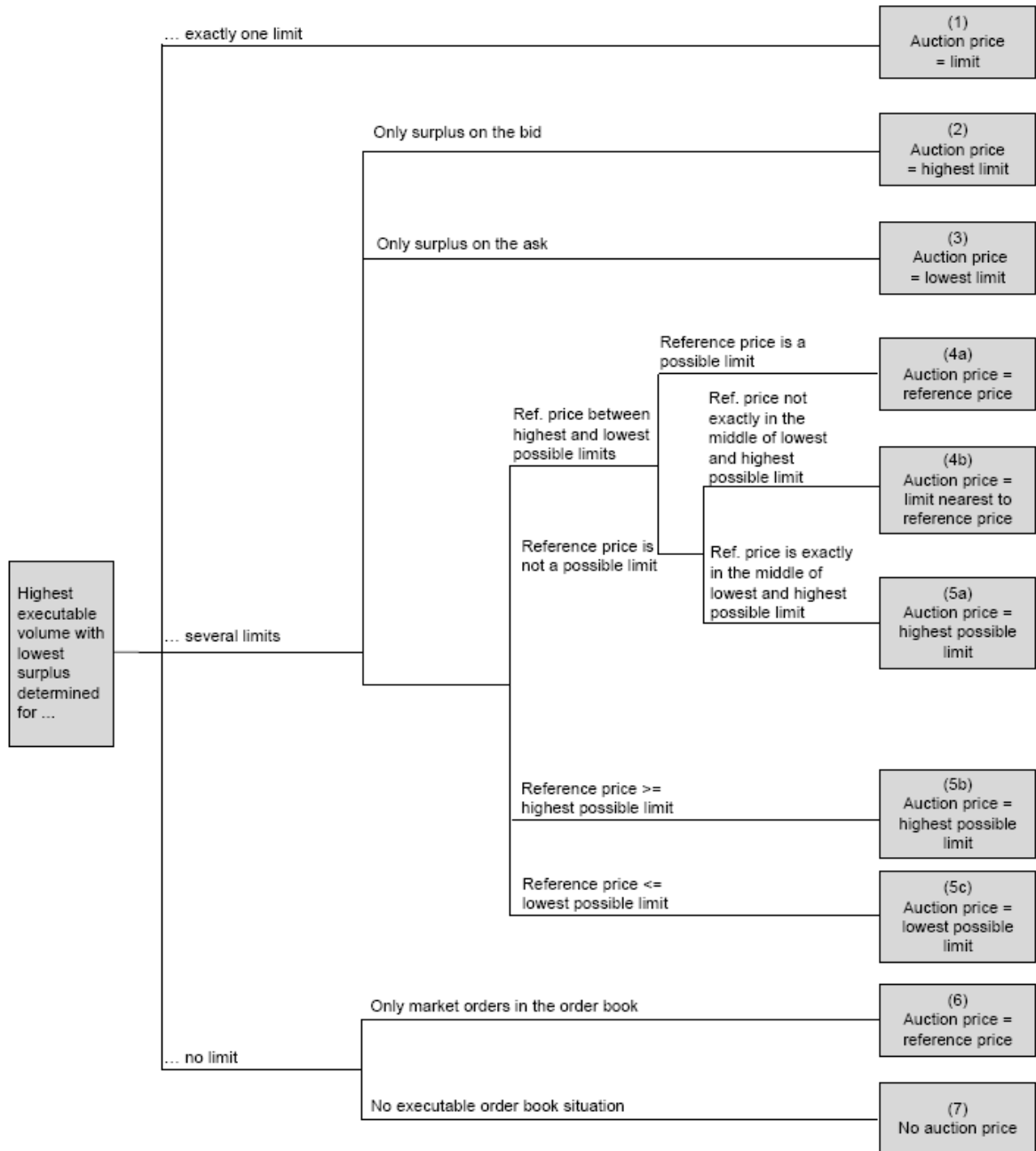
- the reference price is higher than or equal to the highest limit, the auction price is determined according to this limit.
- the reference price is lower than or equal to the lowest limit, the auction price is determined according to this limit.
- the reference price lies between the highest and lowest limit, the auction price equals the reference price.

If only market orders are executable against one another, they are matched at the reference price (see example 6).

An auction price cannot be determined if orders are not executable against one another. In this case, the best bid/ask limit (if available) is displayed, whereby the limit of hidden orders is not considered (see example 7).

The following diagram (next page) gives an outline of how price determination rules affect possible order book situations in an auction. The number in brackets refers to the corresponding example for this rule.





## 12.1.2 Matching Examples

The following examples are given to clarify the basic matching rules in auctions. In the examples, price determination is carried out using typical order book situations.

# APPENDIX 4.1

**Example 1: There is only one limit at which the highest order volume can be executed and which has the lowest surplus.**

Bid	Quantity	Acc. Quantity	Surplus	Limit	Surplus	Acc. Quantity	Quantity	Ask
Limit	200	200		2.02	500	700		
Limit	200	400		2.01	300	700		
Limit	300	700		<b>2.00</b>		700	100	Limit
		700	100	1.98		600	200	Limit
		700	300	1.97		400	400	Limit

The auction price will be 2.00 according to the limit.

**Example 2: There are several possible limits and there is a surplus of demand (bids).**

Bid	Quantity	Acc. Quantity	Surplus	Limit	Surplus	Acc. Quantity	Quantity	Ask
Limit	400	400		2.02	100	500		
Limit	200	600	100	<b>2.01</b>		500		
		600	100	1.99		500	300	Limit
		600	400	1.98		200	200	Limit

The auction price will be 2.01 according to the highest limit.

**Example 3: There are several possible limits and there is a surplus of supply (asks).**

Bid	Quantity	Acc. Quantity	Surplus	Limit	Surplus	Acc. Quantity	Quantity	Ask
Limit	300	300		2.02	300	600		
Limit	200	500		2.01	100	600		
		500		<b>1.99</b>	100	600	400	Limit
		500	300	1.98		200	200	Limit

The auction price will be 1.99 according to the lowest limit.

**Example 4: There are several possible limits and there is both a surplus of demand (bids) and supply (asks).**

Bid	Quantity	Acc. Quantity	Surplus	Limit	Surplus	Acc. Quantity	Quantity	Ask
Market	100	100		Market	100	200		
		100		2.02	100	200	100	Limit
Limit	100	200	100	1.99		100		
		200	100	Market		100	100	Market

The auction price either equals the reference price or is determined according to the limit nearest to the reference price:

- If the reference price is 2.00, the auction price will be 2.00.
- If the reference price is 2.03, the auction price will be 2.02.
- If the reference price is 1.99, the auction price will be 1.99.

**Example 5: There are several possible limits and no surplus available.**

Bid	Quantity	Acc. Quantity	Surplus	Limit	Surplus	Acc. Quantity	Quantity	Ask
Limit	300	300		2.02	200	500		
Limit	200	500		2.01		500		
		500		1.99		500	300	Limit
		500	300	1.98		200	200	Limit

The auction price either equals the reference price or is determined according to the limit nearest to the reference price:

- If the reference price is 2.05, the auction price will be 2.01.
- If the reference price is 2.00, the auction price will be 2.00.
- If the reference price is 1.97, the auction price will be 1.99.

# APPENDIX 4.1

## Example 6: Only market orders are executable in the order book.

Bid	Quantity	Acc. Quantity	Surplus	Limit	Surplus	Acc. Quantity	Quantity	Ask
Market	900	900	100	Market		800		
		900	100	Market		800	800	Market

The auction price equals the reference price.

## Example 7: There is no eligible limit as there are only non-executable orders in the order book.

Bid	Quantity	Acc. Quantity	Surplus	Limit	Surplus	Acc. Quantity	Quantity	Ask
				2.01	80	80	80	Limit
Hidden	80	80	80	2.00				
Limit	80	160	160	1.99				

It is not possible to determine an auction price. In this case, the highest visible bid limit (1.99) and the lowest visible ask limit (2.01) are disclosed to market participants.

## Additional example: Partial execution of an order in the opening auction.

Bid	Quantity	Acc. Quantity	Surplus	Limit	Surplus	Acc. Quantity	Quantity	Ask
Limit 9:00	300	600	200	2.00		400	400	Limit
Limit 9:01	300							

When two limit orders are available on the bid side at the auction price, time priority determines which of the orders is to be partially executed. In this case, the order with the time stamp 9:00 is executed fully and the order with the time stamp 9:01 is executed partially (100 shares) at an auction price of 2.00. The surplus of 200 shares resulting from the partial execution is transferred to continuous trading provided that the order is not limited to auctions only.

## 12.2 Continuous Trading

### 12.2.1 Basic Matching Rules of the Order Book

Each new incoming market or limit order is checked immediately for possible execution against orders on the other side of the order book. Execution takes place according to price/time priority. Orders can be executed in one or more steps, fully, partially or not at all. Thus, each new incoming order may generate one or several trades or none at all. Limit orders with the BOC restriction will be rejected by the order book if immediate execution is possible

Remaining parts of a partially executed market-to-limit order will enter the order book with a limit and a time stamp equal to the price of the executed part. In addition to taking account of price/time priority, price determination in continuous trading is carried out according to the following rules:

**Rule 1:** If an incoming market order meets an order book with only market orders on the other side, this market order is executed (as far as possible) at the reference price (see example 1).

**Rule 2:** If an incoming market order, market-to-limit order or limit order meets an order book with only limit orders on the other side, the highest bid limit or lowest ask limit in the order book determines the price (see examples 2, 3, 10, 11, 18, 19).

**Rule 3:** If an incoming market-to-limit order meets an order book with only market orders, or market and limit orders, or no orders at all on the other side of the book, the market-to-

limit order is rejected (see examples 9, 12, 13).

**Rule 4:** If an incoming:

- market order meets an order book with market orders and limit orders on the other side (see examples 4, 5, 6, 7), or
- limit order meets an order book with market orders only on the other side (see examples 14, 15, 16, 17), or
- limit order meets an order book with market orders and limit orders on the other side (see examples 21, 22, 23, 24, 25, 26),

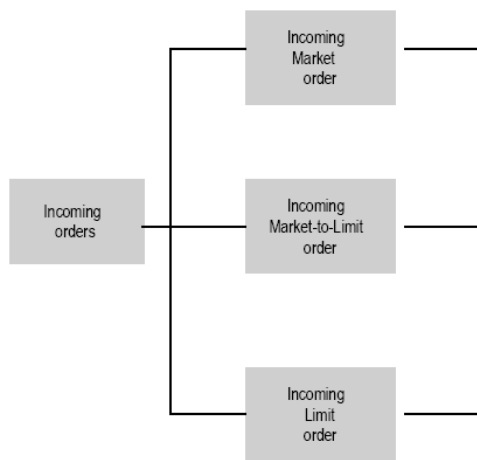
then the incoming order is executed against the market orders in accordance with price/time priority, with respect to non-executed bid market orders at the reference price or higher (at the highest limit of the executable orders), or with respect to non-executed ask market orders at the reference price or lower (at the lowest limit of the executable orders).

Unexecuted market orders in the order book must be executed immediately with the next transaction (if possible). In this case, the following two principles must be taken into consideration for continuous trading:

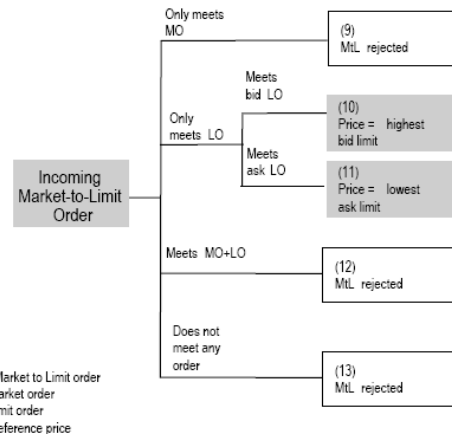
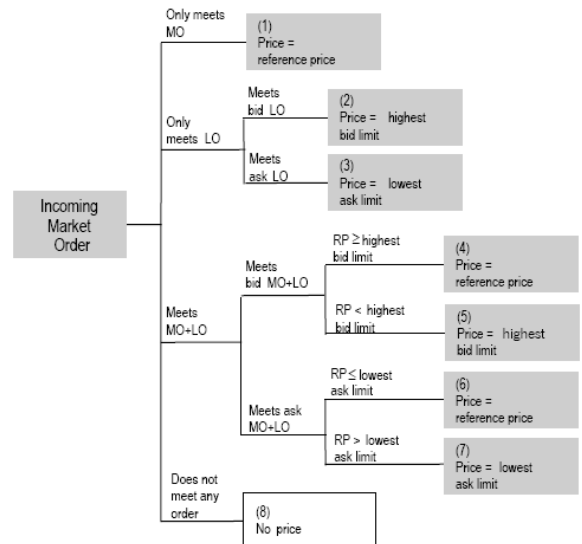
- **Principle 1:** Market orders are given the reference price as a “virtual” price. On this basis, execution is carried out at the reference price provided that this does not violate price/time priority.
- **Principle 2:** If orders cannot be executed at the reference price, they are executed in accordance with price/time priority by means of price determination above or below the reference price (non-executed bid market orders or ask market orders) i.e. the price is determined by a limit within the order book or the limit of an incoming order.

**Rule 5:** If an incoming order does not meet any order in the order book (see examples 8, 13, 27) or if an incoming limit order meets an order book with only limit orders on the other side of the book, and the limit of the incoming buy (sell) order is lower (higher) than the limit of the best sell (buy) order in the book (see example 20), no price is determined.

**Rule 6:** Limit orders are executed according to price/time priority.



The following diagrams outline how price determination rules affect the order book in continuous trading. The number in brackets refers to the corresponding example for each situation:



## 12.2.2 Matching Examples

This section is divided into two subsections: the first subsection (12.2.2.1) provides matching examples which cover the order book situations mentioned in the diagrams presented above. In the second subsection (12.2.2.2) additional examples are provided which cover special order book situations, e.g. volatility interruptions.

### 12.2.2.1 Examples for Basic Matching Rules in Continuous Trading

The following examples should clarify the basic matching rules for continuous trading by showing how price determination is carried out in different order book situations. The following examples should clarify the basic matching rules for continuous trading by

# APPENDIX 4.1

showing how price determination is carried out in different order book situations.

Example 1: A market order meets an order book with market orders only on the other side of the order book.

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				

Incoming order:  
Ask market order, quantity 6,000 shares

The reference price is 2.00. Both market orders are executed at the reference price of 2.00 (see principle 1).

Example 2: A market order meets an order book with limit orders only on the other side of the order book.

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	2.00				

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	2.00				

Incoming order:  
Ask market order, quantity 6,000 shares

Both orders are executed at the highest bid limit of 2.00.

Example 3: A market order meets an order book with limit orders only on the other side of the order book.

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
			2.00	6000	9:01	

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
			2.00	6000	9:01	

Incoming order:  
Bid market order, quantity 6,000 shares

Both orders are executed at the lowest ask limit of 2.00.

Example 4: A market order meets an order book with market orders and limit orders on the other side of the order book.

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				
9:02	1000	1.95				

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				
9:02	1000	1.95				

Incoming order:  
Ask market order, quantity 6,000 shares

The reference price is 2.00. It is higher than or equal to the highest bid limit. The incoming ask market order is executed against the bid market order in the order book at the reference price of 2.00 (see principle 1).

Example 5: A market order meets an order book with market orders and limit orders on the other side of the order book.

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				
9:02	1000	2.02				

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				
9:02	1000	2.02				

Incoming order:  
Ask market order, quantity 6,000 shares

The reference price is 2.00. It is lower than the highest bid limit. The incoming ask market order is executed against the bid market order in the order book at the highest bid limit of 2.02 (see principle 2)

# APPENDIX 4.1

Example 6: A market order meets an order book with market orders and limit orders on the other side of the order book.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
			Market	6000	9:01
			2.02	1000	9:02

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
			Market	<del>6000</del>	9:01
			2.02	1000	9:02

Incoming order: Bid market order, quantity 6,000 shares

The reference price is 2.00. It is lower than or equal to the lowest ask limit.

The incoming bid market order is executed against the ask market order in the order book at the reference price of 2.00 (see principle 1).

Example 7: A market order meets an order book with market orders and limit orders on the other side of the order book.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
			Market	6000	9:01
			2.02	1000	9:02

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
			Market	<del>6000</del>	9:01
			2.02	1000	9:02

Incoming order: Bid market order, quantity 6,000 shares

The reference price is 2.03. It is higher than the lowest ask limit.

The incoming bid market order is executed against the ask market order in the order book at the lowest ask limit of 2.02 (see principle 2).

Example 8: A market order meets an order book in which there are no orders.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	Market			

Incoming order: Bid market order, quantity 6,000 shares

The incoming bid market order is entered in the order book. A price is not determined and no orders are executed.

Example 9: A market-to-limit order meets an order book with market orders only on the other side of the order book.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	Market			

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	Market			

Incoming order: Ask market-to-limit order, quantity 6,000 shares

The market-to-limit order is rejected. A price is not determined and no orders are executed

Example 10: A market-to-limit order meets an order book with limit orders only on the other side of the order book.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	2.00			

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:01	<del>6000</del>	2.00			

Incoming order: Ask market-to-limit order, quantity 6,000 shares

Both orders are executed at the highest bid limit of 2.00.

Example 11: A market-to-limit order meets an order book with limit orders only on the other side of the order book.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
			2.00	6000	9:01

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
			2.00	<del>6000</del>	9:01

Incoming order: Bid market-to-limit order, quantity 6,000 shares

Both order are executed at the lowest ask limit of 2.00.

Example 12: A market-to-limit order meets an order book with market orders and limit orders on the other side of the order book.



# APPENDIX 4.1

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				
8:55	5000	1.99				

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				
8:55	5000	1.99				

Incoming order:  
Ask market-to-limit order, quantity 6,000 shares

The market-to-limit order is rejected. A price is not determined and no orders are executed.

Example 13: A market-to-limit order meets an order book in which there are no orders on the other side of the order book.

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	

Incoming order:  
Ask market-to-limit order, quantity 6,000 shares

The market-to-limit order is rejected. A price is not determined and no orders are executed.

Example 14: A limit order meets an order book with market orders only on the other side of the order book

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				

Incoming order:  
Ask order, limit 1.95, quantity 6,000 shares

The reference price is 2.00. It is higher than or equal to the lowest ask limit. Both orders are executed at the reference price of 2.00 (see principle 1).

Example 15: A limit order meets an order book with market orders only on the other side of the order book.

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
9:01	6000	Market				

Incoming order:  
Ask order, limit 2.03, quantity 6,000 shares

The reference price is 2.00. It is lower than the lowest ask limit. Both orders are executed at the lowest ask limit of 2.03 (see principle 2).

Example 16: A limit order meets an order book with market orders only on the other side of the order book.

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
				Market	6000	
					9:01	

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
				Market	6000	
					9:01	

Incoming order:  
Bid order, limit 2.03, quantity 6,000 shares

The reference price is 2.00. It is lower than or equal to the highest bid limit. Both orders are executed at the reference price of 2.00 (see principle 1).

Example 17: A limit order meets an order book with market orders only on the other side of the order book.

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
				Market	6000	
					9:01	

Bid					Ask	
Time	Quantity	Limit	Limit	Quantity	Time	
				Market	6000	
					9:01	

Incoming order:  
Bid order, limit 1.99, quantity 6,000 shares

The reference price is 2.00. It is higher than the highest bid limit. Both orders are executed at the highest bid limit of 1.99 (see principle 2).

# APPENDIX 4.1

Example 18: A limit order meets an order book with limit orders only on the other side of the order book.

Bid			Ask		
Time	Volume	Limit	Limit	Volume	Time
9:33	6000	1.99			

Bid			Ask		
Time	Volume	Limit	Limit	Volume	Time
9:33	6000	1.99			

Incoming order:  
Ask order, limit  
1.98, quantity  
6,000 shares

The highest bid limit is higher than or equal to the lowest ask limit. Both orders are executed at the highest bid limit of 1.99

Example 19: A limit order meets an order book with limit orders only on the other side of the order book.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
			1.99	6000	9:33

Incoming order:  
Bid order, limit  
2.00, quantity  
6000 shares

The highest bid limit is higher than or equal to the lowest ask limit. Both orders are executed at the lowest ask limit of 1.99.

Example 20: A limit order meets an order book with limit orders only on the other side of the order book

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:33	6000	1.99			

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:33	6000	1.99	2.00	6000	10:01

Incoming order:  
Ask order, limit  
2.00, quantity  
6,000 shares

The incoming ask order is entered in the order book. A price is not determined and no orders are executed.

Example 21: A limit order meets an order book with market orders and limit orders on the other side of the order book.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	Market			
9:02	1000	1.96			

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	Market			
9:02	1000	1.96			

Incoming order:  
Ask order, limit  
1.95, quantity  
6,000 shares

The reference price is 2.00. It is higher than or equal to the highest bid limit and higher than or equal to the lowest ask limit.

The incoming ask order is executed against the bid market order in the order book at the reference price of 2.00 (see principle 1).

Example 22: A limit order meets an order book with market orders and limit orders on the other side of the order book.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	Market			
9:02	1000	2.02			

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	Market			
9:02	1000	2.02			

Incoming order:  
Ask order, limit  
1.99, quantity  
6000 shares

The reference price is 2.00. The highest bid limit is higher than or equal to the lowest ask limit and higher than the reference price.

The incoming ask order is executed against the bid market order in the order book at the highest bid limit of 2.02 (see principle 2).

Example 23: A limit order meets an order book with market orders and limit orders on the other side of the order book.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	Market			
9:02	1000	2.02			

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	Market			
9:02	1000	2.02			

Incoming order:  
Ask order, limit  
2.03, quantity  
6000 shares

Example 24: A limit order meets an order book with market orders and limit orders on the other side of the order book.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
			Market	6000	9:01
			2.02	1000	9:02

Incoming order:  
Bid order, limit  
2.03, quantity  
6,000 shares

The reference price is 2.00. It is lower than or equal to the highest bid limit and lower than or equal to the lowest ask limit.

The incoming bid order is executed against the ask market order in the order book at the reference price of 2.00 (see principle 1).

Example 25: A limit order meets an order book with market orders and limit orders on the other side of the order book.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
			Market	6000	9:01
			2.02	1000	9:02

Incoming order:  
Bid order, limit  
2.00, quantity  
6,000 shares

The reference price is 2.01. The highest bid limit is lower than or equal to the lowest ask limit and lower than the reference price.

The incoming bid order is executed against the ask market order in the order book at the highest bid limit of 2.00 (see principle 2).

Example 26: A limit order meets an order book with market orders and limit orders on the other side of the order book

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
			Market	6000	9:01
			1.99	1000	9:02

Incoming order:  
Bid order, limit  
2.03, quantity  
6,000 shares

The reference price is 2.00. The lowest ask limit is lower than the highest bid limit and the reference price. The incoming bid order is executed against the ask market order in the order book at the lowest ask limit of 1.99 (see principle 2).

Example 27: A limit order meets an order book in which there are no orders.

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time

Incoming order:  
Bid order, limit  
2.00, quantity  
6,000 shares

Bid			Ask		
Time	Quantity	Limit	Limit	Quantity	Time
10:01	6000	2.00			

The incoming bid order is entered in the order book. No price is determined and no orders are executed.

## 12.2.2.2 Further examples

Partial execution of a market order: A limit order meets an order book with market orders and limit orders on the other side of the order book.

Bid		Limit		Ask	
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	Market			
9:02	1000	2.02			

Bid		Limit		Ask	
Time	Quantity	Limit	Limit	Quantity	Time
9:01	6000	Market			
9:02	1000	2.02			

Incoming order:  
Ask order, limit  
2.03, quantity  
1000 shares

The reference price is 2.00. The lowest ask limit is higher than the highest bid limit and the reference price. The incoming ask order can only be partially executed against the bid market order in the order book, which is carried out at the lowest ask limit of 2.03 (see principle 2)

Initiation of a volatility interruption. A limit order meets an order book with market orders and limit orders on the other side of the order book.

Bid		Limit		Ask	
Time	Volume	Limit	Limit	Volume	Time
9:01	6000	Market			
9:02	1000	2.02			

Bid		Limit		Ask	
Time	Volume	Limit	Limit	Volume	Time
9:01	6000	Market	2.20	1000	10:01
9:02	1000	2.02			

Incoming order:  
Ask order, limit  
2.20, quantity  
1000 shares

The reference price is 2.00 and the price range is +/- 2% of the last determined price. The limit of the incoming ask order lies outside the pre-defined price range and an execution is not carried out. The ask order is entered in the order book and continuous trading is interrupted by an auction.

Partial execution of a market-to-limit order: A market-to-limit order meets an order book with limit orders only on the other side of the order book

Bid		Limit		Ask	
Time	Quantity	Limit	Limit	Quantity	Time
9:01	1000	2.03			
9:02	1000	2.02			

Bid		Limit		Ask	
Time	Quantity	Limit	Limit	Quantity	Time
9:01	4000	2.03	2.03	2000	9:05
9:02	1000	2.02			

Incoming order:  
Ask market-to-  
limit order,  
quantity 3,000  
shares, time:  
9:05

The incoming market-to-limit order can only be partially executed against the best bid limit order in the order book at 2.03. The remaining part of the market-to-limit order (2,000) is entered into the order book with a limit equal to the price of the executed part at 2.0

## 13. Determination of the Official Closing Price

The MSE uses the following method for determining the Official Closing Price each day for all instruments traded on Xetra®:

- If an instrument is traded in the closing auction the auction price will be the Official Closing Price
- If there are trades during the opening auction or during continuous trading for an instrument on the day, but the instrument does not trade in the closing auction the Last Traded Price will be the Official Closing Price.
- If there are no trades for an instrument on a particular day, the Official Closing Price will be the previous day's Official Closing Price.

## **14. OTC Trade Reporting (Off Exchange Trades)**

OTC trades will be permitted from the beginning of the pre-trading phase up to the end of the post-trading phase.

All OTC trades will be “Free of Payment” that is not settled through MaltaClear and thus although the Xetra Trading Platform permits Settlement Dates from T+1 to T+89 these will be treated as T+0 for post trading purposes within the CSD.



**MALTA**  
STOCK EXCHANGE

## **Appendix 4.2**

# **APPLICATION TO CARRY OUT MARKET MAKING ACTIVITIES ON THE MARKETS OPERATED BY MALTA STOCK EXCHANGE PLC**

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## APPLICATION TO CARRY OUT MARKET MAKING ACTIVITIES ON THE MARKETS OPERATED BY MALTA STOCK EXCHANGE PLC

### How to use this Application Form

1. Applicants must submit a completed Application Form together with any supporting documents to:  
  
Market Makers Admission Committee  
Malta Stock Exchange Plc  
Garrison Chapel  
Castille Place  
Valletta VLT 1063
2. The Application should be read in conjunction with the Financial Markets Act [Cap 345 of the Laws of Malta] and any regulations made thereunder and the Bye-laws of the Malta Stock Exchange plc [available on [www.borzamalta.com.mt](http://www.borzamalta.com.mt)].
3. Applications will only be considered provided that all relevant sections have been duly completed and supporting documents have been appended as outlined in bye-law 4.108.07.
4. Should space provided not be sufficient, additional information may be entered on a separate sheet with the heading "Continuation to Section \_\_\_\_" duly signed and dated.
5. Misleading or incorrect information on any material point shall render the application invalid.
6. All information submitted in the application is for the sole use of the Exchange and will not be divulged to third parties other than the Competent Authority as deemed appropriate.

## SECTION 1 – APPLICANT

**1.01 Applicant's Name** \_\_\_\_\_

**1.02 Category of License Holder**

1. Credit institution constituted and licensed under the laws of Malta;
2. a branch (established in Malta) of a credit institution authorised in an EU Member State or EEA State;
3. a branch established in Malta of an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions.
4. other \_\_\_\_\_

*[Please tick as appropriate]*

**1.03 I.S.A. Cat. 3 License Ref No.** (or equivalent authorization): \_\_\_\_\_

*[Kindly attach a copy of such license/authorisation]*

**1.04 Registered Address\***

Address: \_\_\_\_\_

Telephone No : \_\_\_\_\_

Fax No : \_\_\_\_\_

E-mail : \_\_\_\_\_

*The above information will appear on the Exchange's List of Approved Market Makers and all communications will be addressed accordingly.*



## SECTION 2 – DIRECTORS, OFFICERS AND EMPLOYEES

### 2.01 Chairman and Directors of Market Maker

#### CHAIRMAN

Full Name and Surname \_\_\_\_\_

Identity Card / Passport No \_\_\_\_\_

Date of Appointment \_\_\_\_\_

#### DIRECTOR

Full Name and Surname \_\_\_\_\_

Identity Card / Passport No \_\_\_\_\_

Date of Appointment \_\_\_\_\_

#### DIRECTOR

Full Name and Surname \_\_\_\_\_

Identity Card / Passport No \_\_\_\_\_

Date of Appointment \_\_\_\_\_

## DIRECTOR

Full Name and Surname \_\_\_\_\_

Identity Card / Passport No \_\_\_\_\_

Date of Appointment \_\_\_\_\_

## DIRECTOR

Full Name and Surname \_\_\_\_\_

Identity Card / Passport No \_\_\_\_\_

Date of Appointment \_\_\_\_\_

### 2.02 Officers and Employees

[Including Chief Executive, Managing Director, Secretary to Board as applicable and other employees holding a position of trust within the firm.]

Full Name & Surname	Position	ID Card / Passport No.	Date of Appointment
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

# APPENDIX 4.2

## 2.03 Director/s / Officer/s appointed to sign on behalf of Market Maker

Full Name & Surname	Position	ID Card / Passport No.	Date of Appointment
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

### Specimen Signatures

(i) \_\_\_\_\_

(ii) \_\_\_\_\_

### Board resolution reference and date in respect of above appointments

Reference : \_\_\_\_\_

Date : \_\_\_\_\_

**SECTION 3 – SECURITIES IN WHICH MARKET MAKING WILL  
BE CONDUCTED**

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Signed \_\_\_\_\_ Dated \_\_\_\_\_



**MALTA**  
STOCK EXCHANGE

## **Appendix 4.3**

# **SUPPLEMENTARY APPLICATION TO CARRY OUT MARKET MAKING ACTIVITIES ON THE MARKETS OPERATED BY MALTA STOCK EXCHANGE PLC**

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## 4.3 SUPPLEMENTARY APPLICATION TO CARRY OUT MARKET MAKING ACTIVITIES ON THE MARKETS OPERATED BY MALTA STOCK EXCHANGE PLC

### How to use this Application Form

1. Applicants must submit a completed Application Form together with any supporting documents to :  
  
Market Makers Admission Committee  
Malta Stock Exchange Plc  
Garrison Chapel  
Castille Place  
Valletta VLT 1063
2. The Application should be read in conjunction with the Financial Markets Act [Cap 345 of the Laws of Malta] and any regulations made thereunder and the Bye-laws of the Malta Stock Exchange plc [available on [www.borzamalta.com.mt](http://www.borzamalta.com.mt)].
3. Applications will only be considered provided that all relevant sections have been duly completed and supporting documents have been appended as outlined in bye-law 4.10.06.
4. Should space provided not be sufficient, additional information may be entered on a separate sheet with the heading "Continuation to Section \_\_\_\_" duly signed and dated.
5. Misleading or incorrect information on any material point shall render the application invalid.
6. All information submitted in the application is for the sole use of the Exchange and will not be divulged to third parties other than the Competent Authority as deemed appropriate.

REF No.

**SECTION 1 – APPLICANT**

1.01 Applicant’s Name : \_\_\_\_\_

1.01 Reference No. and Approval Date in respect of Application to Act as market maker.  
\_\_\_\_\_

**SECTION 2 – ADDITIONAL SECURITIES IN WHICH MARKET MAKING WILL BE CONDUCTED**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed \_\_\_\_\_ Dated \_\_\_\_\_



**MALTA**  
STOCK EXCHANGE

## **Appendix 4.4**

# **GLOBAL MASTER SECURITIES LENDING AGREEMENT**

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## 4.4 GLOBAL MASTER SECURITIES LENDING AGREEMENT

BETWEEN:

(Party A) a company incorporated under the laws of

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acting through one or more Designated Offices; and

(Party B) a company incorporated under the laws of

---

acting through one or more Designated Offices.

### 1. APPLICABILITY

**1.1** From time to time the Parties acting through one or more Designated Offices may enter into transactions in which one party (Lender) will transfer to the other (Borrower) securities and financial instruments (Securities) against the transfer of Collateral (as defined in paragraph 0) with a simultaneous agreement by Borrower to transfer to Lender Securities equivalent to such Securities on a fixed date or on demand against the transfer to Borrower by Lender of assets equivalent to such Collateral.

**1.2** Each such transaction shall be referred to in this Agreement as a Loan and shall be governed by the terms of this Agreement, including the supplemental terms and conditions contained in the Schedule and any Addenda or Annexes attached hereto, unless otherwise agreed in writing. In the

event of any inconsistency between the provisions of an Addendum or Annex and this Agreement, the provisions of such Addendum or Annex shall prevail unless the Parties otherwise agree.

**1.3** Either Party may perform its obligations under this Agreement either directly or through a Nominee.

### 2. INTERPRETATION

#### 2.1 In this Agreement:

Act of Insolvency means in relation to either Party:

- (a) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors; or
- (b) its stating in writing that it is unable to pay its debts as they become due; or
- (c) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
- (d) the presentation or filing of a petition in respect of it (other than by the other Party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency alleging or for the bankruptcy, winding up or insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition not having been stayed or dismissed within 30 days of its filing (except in the case of a petition for winding-up or any analogous proceeding in respect of which no such 30 day period shall apply); or

(e) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such Party over all or any material part of such Party's property; or

(f) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement.

Agency Annex means the Annex to this Agreement published by the International Securities Lending Association and providing for Lender to act as agent for a third party in respect of one or more Loans;

Alternative Collateral means Collateral having a Market Value equal to the Collateral delivered pursuant to paragraph 0 and provided by way of substitution in accordance with the provisions of paragraph 0;

Applicable Law means the laws, rules and regulations (including double taxation conventions) of any relevant jurisdiction, including published practice of any government or other taxing authority in connection with such laws, rules and regulations;

Automatic Early Termination has the meaning given in paragraph 0;

Base Currency means the currency indicated in paragraph 0 of the Schedule;

Business Day means:

(a) in relation to Delivery in respect of any Loan, a day other than a Saturday or a Sunday or any National or Public Holiday on which banks and securities markets are open for business generally in the place(s) where the relevant Securities, Equivalent Securities, Collateral or Equivalent Collateral are to be delivered;

(b) in relation to any payments under this Agreement, a day other than a Saturday or a Sunday or any National or Public Holiday on which banks are open for business generally in

the principal financial centre of the country of which the currency in which the payment is denominated is the official currency and, if different, in the place where any account designated by the Parties for the making or receipt of the payment is situated (or, in the case of a payment in euro, a day on which TARGET operates);

(c) in relation to a notice or other communication served under this Agreement, any day other than a Saturday or a Sunday or any national or Public Holiday on which banks are open for business generally in the place designated for delivery in accordance with paragraph 0 of the Schedule; and

(d) in any other case, a day other than a Saturday or a Sunday or on any National or Public Holiday on which banks are open for business generally in each place stated in paragraph 0 of the Schedule;

Buy In means any arrangement under which, in the event of a seller or transferor failing to deliver securities to the buyer or transferee, the buyer or transferee of such securities is entitled under the terms of such arrangement to buy or otherwise acquire securities equivalent to such securities and to recover the cost of so doing from the seller or transferor;

Cash Collateral means Collateral taking the form of a transfer of currency;

Close of Business means the time at which the relevant banks, securities settlement systems or depositaries close in the business centre in which payment is to be made or Securities or Collateral is to be delivered;

Collateral means such securities or financial instruments or transfers of currency as are referred to in the table set out under paragraph 0 of the Schedule as being acceptable or any combination thereof as agreed between the Parties in relation to any particular Loan and which are delivered by

Borrower to Lender in accordance with this Agreement and shall include Alternative Collateral;

Defaulting Party has the meaning given in paragraph 0;

Delivery in relation to any Securities or Collateral or Equivalent Securities or Equivalent Collateral comprising Securities means:

(a) in the case of Securities held by a Nominee or within a clearing or settlement system, the crediting of such Securities to an account of the Borrower or Lender, as the case may be, or as it shall direct, or,

(b) in the case of Securities otherwise held, the delivery to Borrower or Lender, as the case may be, or as the transferee shall direct of the relevant instruments of transfer, or

(c) by such other means as may be agreed,

and deliver shall be construed accordingly;

Designated Office means the branch or office of a Party which is specified as such in paragraph 0 of the Schedule or such other branch or office as may be agreed to in writing by the Parties;

Equivalent or equivalent to in relation to any Loaned Securities or Collateral (whether Cash Collateral or Non Cash Collateral) provided under this Agreement means Securities or other property, of an identical type, nominal value, description and amount to particular Loaned Securities or Collateral (as the case may be) so provided. If and to the extent that such Loaned Securities or Collateral (as the case may be) consists of Securities that are partly paid or have been converted, subdivided, consolidated, made the subject of a takeover, rights of pre-emption, rights to receive securities or a certificate which may at a future date be exchanged for Securities, the expression shall include such Securities or

other assets to which Lender or Borrower (as the case may be) is entitled following the occurrence of the relevant event, and, if appropriate, the giving of the relevant notice in accordance with paragraph 0 and provided that Lender or Borrower (as the case may be) has paid to the other Party all and any sums due in respect thereof. In the event that such Loaned Securities or Collateral (as the case may be) have been redeemed, are partly paid, are the subject of a capitalisation issue or are subject to an event similar to any of the foregoing events described in this paragraph, the expression shall have the following meanings:

(a) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;

(b) in the case of a call on partly paid Securities, Securities equivalent to the relevant Loaned Securities or Collateral, as the case may be, provided that Lender shall have paid Borrower, in respect of Loaned Securities, and Borrower shall have paid to Lender, in respect of Collateral, an amount of money equal to the sum due in respect of the call;

(c) in the case of a capitalisation issue, Securities equivalent to the relevant Loaned Securities or Collateral, as the case may be, together with the securities allotted by way of bonus thereon;

(d) in the case of any event similar to any of the foregoing events described in this paragraph, Securities equivalent to the Loaned Securities or the relevant Collateral, as the case may be, together with or replaced by a sum of money or Securities or other property equivalent to that received in respect of such Loaned Securities or Collateral, as the case may be, resulting from such event;

Income means any interest, dividends or other distributions of any kind whatsoever with respect to any Securities or Collateral;

Income Record Date, with respect to any Securities or Collateral, means the date by reference to which holders of such Securities or Collateral are identified as being entitled to payment of Income;

Letter of Credit means an irrevocable, non negotiable letter of credit in a form, and from a bank, acceptable to Lender;

Loaned Securities means Securities which are the subject of an outstanding Loan;

Margin has the meaning specified in paragraph 0 of the Schedule with reference to the table set out therein;

Market Value means:

(a) in relation to the valuation of Securities, Equivalent Securities, Collateral or Equivalent Collateral (other than Cash Collateral or a Letter of Credit):

(i) such price as is equal to the market quotation for the mid price of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a reputable pricing information service reasonably chosen in good faith by Lender; or

(ii) if unavailable the market value thereof as derived from the mid price or rate bid by a reputable dealer for the relevant instrument reasonably chosen in good faith by Lender,

in each case at Close of Business on the previous Business Day, or as specified in the Schedule, unless agreed otherwise or, at the option of either Party where in its reasonable opinion there has been an exceptional movement in the price of the asset in question since such time, the latest available price, plus (in each case):

(iii) the aggregate amount of Income which has accrued but not yet been paid in respect of the Securities, Equivalent Securities, Collateral or Equivalent Collateral concerned to the extent not included in such price,

provided that the price of Securities, Equivalent Securities, Collateral or Equivalent Collateral that are suspended or that cannot legally be transferred or that are transferred or required to be transferred to a government, trustee or third party (whether by reason of nationalisation, expropriation or otherwise) shall for all purposes be a commercially reasonable price agreed between the Parties, or absent agreement, be a price provided by a third party dealer agreed between the Parties, or if the Parties do not agree a third party dealer then a price based on quotations provided by the Reference Dealers. If more than three quotations are provided, the Market Value will be the arithmetic mean of the prices, without regard to the quotations having the highest and lowest prices. If three quotations are provided, the Market Value will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest or lowest price, then one of such quotations shall be disregarded. If fewer than three quotations are provided, the Market Value of the relevant Securities, Equivalent Securities, Collateral or Equivalent Collateral shall be determined by the Party making the determination of Market Value acting reasonably;

(b) in relation to a Letter of Credit the face or stated amount of such Letter of Credit; and

(c) in relation to Cash Collateral the amount of the currency concerned;

Nominee means a nominee or agent appointed by either Party to accept delivery of, hold or deliver Securities, Equivalent

Securities, Collateral and/or Equivalent Collateral or to receive or make payments on its behalf;

Non Cash Collateral means Collateral other than Cash Collateral;

Non Defaulting Party has the meaning given in paragraph 0;

Notification Time means the time specified in paragraph 1.5 of the Schedule;

Parties means Lender and Borrower and Party shall be construed accordingly;

Posted Collateral has the meaning given in paragraph 0;

Reference Dealers means, in relation to any Securities, Equivalent Securities, Collateral or Equivalent Collateral, four leading dealers in the relevant securities selected by the Party making the determination of Market Value in good faith;

Required Collateral Value has the meaning given in paragraph 0;

Sales Tax means value added tax and any other Tax of a similar nature (including, without limitation, any sales tax of any relevant jurisdiction);

Settlement Date means the date upon which Securities are due to be transferred to Borrower in accordance with this Agreement;

Stamp Tax means any stamp, transfer, registration, documentation or similar Tax; and

Tax means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) imposed by any government or other taxing authority in respect of any transaction effected pursuant to or contemplated by, or any payment under or in respect of, this Agreement.

## 2.2 Headings

All headings appear for convenience only and shall not affect the interpretation of this Agreement.

## 2.3 Market terminology

Notwithstanding the use of expressions such as “borrow”, “lend”, “Collateral”, “Margin” etc. which are used to reflect terminology used in the market for transactions of the kind provided for in this Agreement, title to Securities “borrowed” or “lent” and “Collateral” provided in accordance with this Agreement shall pass from one Party to another as provided for in this Agreement, the Party obtaining such title being obliged to deliver Equivalent Securities or Equivalent Collateral as the case may be.

## 2.4 Currency conversions

Subject to paragraph 0, for the purposes of determining any prices, sums or values (including Market Value and Required Collateral Value) prices, sums or values stated in currencies other than the Base Currency shall be converted into the Base Currency at the latest available spot rate of exchange quoted by the European Central Bank for the purchase of the Base Currency with the currency concerned on the day on which the calculation is to be made or, if that day is not a Business Day, the spot rate of exchange quoted at Close of Business on the immediately preceding Business Day on which such a quotation was available.

2.5 The Parties confirm that introduction of and/or substitution (in place of an existing currency) of a new currency as the lawful currency of a country shall not have the effect of altering, or discharging, or excusing performance under, any term of the Agreement or any Loan thereunder, nor give a Party the right unilaterally to alter or terminate the Agreement or any Loan thereunder. Securities will for the purposes of this Agreement be regarded as equivalent to other securities notwithstanding that as a result of such introduction and/or substitution

those securities have been redenominated into the new currency or the nominal value of the securities has changed in connection with such redenomination.

## 2.6 Modifications etc. to legislation

Any reference in this Agreement to an act, regulation or other legislation shall include a reference to any statutory modification or re enactment thereof for the time being in force.

## 3. LOANS OF SECURITIES

Lender will lend Securities to Borrower, and Borrower will borrow Securities from Lender in accordance with the terms and conditions of this Agreement. The terms of each Loan shall be agreed prior to the commencement of the relevant Loan either orally or in writing (including any agreed form of electronic communication) and confirmed in such form and on such basis as shall be agreed between the Parties. Unless otherwise agreed, any confirmation produced by a Party shall not supersede or prevail over the prior oral, written or electronic communication (as the case may be).

## 4. DELIVERY

### 4.1 Delivery of Securities on commencement of Loan

Lender shall procure the Delivery of Securities to Borrower or deliver such Securities in accordance with this Agreement and the terms of the relevant Loan.

### 4.2 Requirements to effect Delivery

The Parties shall execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in:

(a) any Securities borrowed pursuant to paragraph 0;

(b) any Equivalent Securities delivered pursuant to paragraph 0;

(c) any Collateral delivered pursuant to paragraph 0;

(d) any Equivalent Collateral delivered pursuant to paragraphs 0 or 0;

shall pass from one Party to the other subject to the terms and conditions set out in this Agreement, on delivery of the same in accordance with this Agreement with full title guarantee, free from all liens, charges and encumbrances. In the case of Securities, Collateral, Equivalent Securities or Equivalent Collateral title to which is registered in a computer based system which provides for the recording and transfer of title to the same by way of book entries, delivery and transfer of title shall take place in accordance with the rules and procedures of such system as in force from time to time. The Party acquiring such right, title and interest shall have no obligation to return or deliver any of the assets so acquired but, in so far as any Securities are borrowed by or any Collateral is delivered to such Party, such Party shall be obliged, subject to the terms of this Agreement, to deliver Equivalent Securities or Equivalent Collateral as appropriate.

### 4.3 Deliveries to be simultaneous unless otherwise agreed

Where under the terms of this Agreement a Party is not obliged to make a Delivery unless simultaneously a Delivery is made to it, subject to and without prejudice to its rights under paragraph 0, such Party may from time to time in accordance with market practice and in recognition of the practical difficulties in arranging simultaneous delivery of

Securities, Collateral and cash transfers, waive its right under this Agreement in respect of simultaneous delivery and/or payment provided that no such waiver (whether by course of conduct or otherwise) in respect of one transaction shall bind it in respect of any other transaction.

#### **4.4 Deliveries of Income**

In respect of Income being paid in relation to any Loaned Securities or Collateral, Borrower (in the case of Income being paid in respect of Loaned Securities) and Lender (in the case of Income being paid in respect of Collateral) shall provide to the other Party, as the case may be, any endorsements or assignments as shall be customary and appropriate to effect, in accordance with paragraph 0, the payment or delivery of money or property in respect of such Income to Lender, irrespective of whether Borrower received such endorsements or assignments in respect of any Loaned Securities, or to Borrower, irrespective of whether Lender received such endorsements or assignments in respect of any Collateral.

## **5. COLLATERAL**

#### **5.1 Delivery of Collateral on commencement of Loan**

Subject to the other provisions of this paragraph 0, Borrower undertakes to deliver to or deposit with Lender (or in accordance with Lender's instructions) Collateral simultaneously with Delivery of the Securities to which the Loan relates and in any event no later than Close of Business on the Settlement Date.

#### **5.2 Deliveries through securities settlement systems generating automatic payments**

Unless otherwise agreed between the Parties, where any Securities, Equivalent Securities,

Collateral or Equivalent Collateral (in the form of securities) are transferred through a book entry transfer or settlement system which automatically generates a payment or delivery, or obligation to pay or deliver, against the transfer of such securities, then:

(a) such automatically generated payment, delivery or obligation shall be treated as a payment or delivery by the transferee to the transferor, and except to the extent that it is applied to discharge an obligation of the transferee to effect payment or delivery, such payment or delivery, or obligation to pay or deliver, shall be deemed to be a transfer of Collateral or delivery of Equivalent Collateral, as the case may be, made by the transferee until such time as the Collateral or Equivalent Collateral is substituted with other Collateral or Equivalent Collateral if an obligation to deliver other Collateral or deliver Equivalent Collateral existed immediately prior to the transfer of Securities, Equivalent Securities, Collateral or Equivalent Collateral; and

(b) the Party receiving such substituted Collateral or Equivalent Collateral, or if no obligation to deliver other Collateral or redeliver Equivalent Collateral existed immediately prior to the transfer of Securities, Equivalent Securities, Collateral or Equivalent Collateral, the Party receiving the deemed transfer of Collateral or Delivery of Equivalent Collateral, as the case may be, shall cause to be made to the other Party for value the same day either, where such transfer is a payment, an irrevocable payment in the amount of such transfer or, where such transfer is a Delivery, an irrevocable Delivery of securities (or other property, as the case may be) equivalent to such property.

#### **5.3 Substitutions of Collateral**

Borrower may from time to time call for the repayment of Cash Collateral or the Delivery of Collateral equivalent to any Collateral

delivered to Lender prior to the date on which the same would otherwise have been repayable or deliverable provided that at or prior to the time of such repayment or Delivery Borrower shall have delivered Alternative Collateral acceptable to Lender and Borrower is in compliance with paragraph 0 or paragraph 0, as applicable.

### **5.4 Marking to Market of Collateral during the currency of a Loan on aggregated basis**

Unless paragraph 0 of the Schedule indicates that paragraph 0 shall apply in lieu of this paragraph 0, or unless otherwise agreed between the Parties:

(a) the aggregate Market Value of the Collateral delivered to or deposited with Lender (excluding any Equivalent Collateral repaid or delivered under paragraphs (b) or (b) (as the case may be)) (Posted Collateral) in respect of all Loans outstanding under this Agreement shall equal the aggregate of the Market Value of Securities equivalent to the Loaned Securities and the applicable Margin (the Required Collateral Value) in respect of such Loans;

(b) if at any time on any Business Day the aggregate Market Value of the Posted Collateral in respect of all Loans outstanding under this Agreement together with: (i) all amounts due and payable by the Lender under this Agreement but which are unpaid; and (ii) if agreed between the parties and if the Income Record Date has occurred in respect of any Non-Cash Collateral, the amount or Market Value of Income payable in respect of such Non-Cash Collateral exceeds the aggregate of the Required Collateral Values in respect of such Loans together with: (i) all amounts due and payable by the Borrower under this Agreement but which are unpaid; and (ii) if agreed between the parties and if the Income Record Date has occurred in respect of any securities equivalent to Loaned

Securities, the amount or Market Value of Income payable in respect of such Equivalent Securities, Lender shall (on demand) repay and/or deliver, as the case may be, to Borrower such Equivalent Collateral as will eliminate the excess;

(c) if at any time on any Business Day the aggregate Market Value of the Posted Collateral in respect of all Loans outstanding under this Agreement together with: (i) all amounts due and payable by the Lender under this Agreement but which are unpaid; and (ii) if agreed between the parties and if the Income Record Date has occurred in respect of any Non-Cash Collateral, the amount or Market Value of Income payable in respect of such Non-Cash Collateral falls below the aggregate of Required Collateral Values in respect of all such Loans together with: (i) all amounts due and payable by the Borrower under this Agreement but which are unpaid; and (ii) if agreed between the parties and if the Income Record Date has occurred in respect of Securities equivalent to any Loaned Securities, the amount or Market Value of Income payable in respect of such Equivalent Securities, Borrower shall (on demand) provide such further Collateral to Lender as will eliminate the deficiency;

(d) where a Party acts as both Lender and Borrower under this Agreement, the provisions of paragraphs (b) and (c) shall apply separately (and without duplication) in respect of Loans entered into by that Party as Lender and Loans entered into by that Party as Borrower.

### **5.5 Marking to Market of Collateral during the currency of a Loan on a Loan by Loan basis**

If paragraph 0 of the Schedule indicates this paragraph 0 shall apply in lieu of paragraph 0, the Posted Collateral in respect of any Loan



shall bear from day to day and at any time the same proportion to the Market Value of Securities equivalent to the Loaned Securities as the Posted Collateral bore at the commencement of such Loan. Accordingly:

- (a) the Market Value of the Posted Collateral to be delivered or deposited while the Loan continues shall be equal to the Required Collateral Value;
  
- (b) if at any time on any Business Day the Market Value of the Posted Collateral in respect of any Loan together with: (i) all amounts due and payable by the Lender in respect of that Loan but which are unpaid; and (ii) if agreed between the parties and if the Income Record Date has occurred in respect of any Non-Cash Collateral, the amount or Market Value of Income payable in respect of such Non-Cash Collateral exceeds the Required Collateral Value in respect of such Loan together with: (i) all amounts due and payable by the Borrower in respect of that Loan; and (ii) if agreed between the parties and if the Income Record Date has occurred in respect of Securities equivalent to any Loaned Securities, the amount or Market Value of Income payable in respect of such Equivalent Securities, Lender shall (on demand) repay and/or deliver, as the case may be, to Borrower such Equivalent Collateral as will eliminate the excess; and
  
- (c) if at any time on any Business Day the Market Value of the Posted Collateral together with: (i) all amounts due any payable by the Lender in respect of that Loan; and (ii) if agreed between the parties and if the Income Record Date has occurred in respect of any Non-Cash Collateral, the amount or Market Value of Income payable in respect of such Non-Cash Collateral falls below the Required Collateral Value together with: (i) all amounts due and payable by the Borrower in respect of that Loan; and (ii) if agreed between the

parties and if the Income Record Date has occurred in respect of Securities equivalent to any Loaned Securities, the amount or Market Value of Income payable in respect of such Equivalent Securities, Borrower shall (on demand) provide such further Collateral to Lender as will eliminate the deficiency.

## **5.6 Requirements to deliver excess Collateral**

Where paragraph 0 applies, unless paragraph 0 of the Schedule indicates that this paragraph 0 does not apply, if a Party (the first Party) would, but for this paragraph 0, be required under paragraph 0 to provide further Collateral or deliver Equivalent Collateral in circumstances where the other Party (the second Party) would, but for this paragraph 0, also be required to or provide Collateral or deliver Equivalent Collateral under paragraph 0, then the Market Value of the Collateral or Equivalent Collateral deliverable by the first Party (X) shall be set off against the Market Value of the Collateral or Equivalent Collateral deliverable by the second Party (Y) and the only obligation of the Parties under paragraph 0 shall be, where X exceeds Y, an obligation of the first Party, or where Y exceeds X, an obligation of the second Party to repay and/or (as the case may be) deliver Equivalent Collateral or to deliver further Collateral having a Market Value equal to the difference between X and Y.

**5.7** Where Equivalent Collateral is repaid or delivered (as the case may be) or further Collateral is provided by a Party under paragraph 0, the Parties shall agree to which Loan or Loans such repayment, delivery or further provision is to be attributed and failing agreement it shall be attributed, as determined by the Party making such repayment, delivery or further provision to the earliest outstanding Loan and, in the case of a repayment or delivery up to the point at which the Market Value of Collateral in respect of such Loan equals the Required Collateral Value in respect of such Loan, and

then to the next earliest outstanding Loan up to the similar point and so on.

## **5.8 Timing of repayments of excess Collateral or deliveries of further Collateral**

Where any Equivalent Collateral falls to be repaid or delivered (as the case may be) or further Collateral is to be provided under this paragraph 0, unless otherwise provided or agreed between the Parties, if the relevant demand is received by the Notification Time specified in paragraph 0 of the Schedule, then the delivery shall be made not later than the Close of Business on the same Business Day; if a demand is received after the Notification Time, then the relevant delivery shall be made not later than the Close of Business on the next Business Day after the date such demand is received.

## **5.9 Substitutions and extensions of Letters of Credit**

Where Collateral is a Letter of Credit, Lender may by notice to Borrower require that Borrower, on the third Business Day following the date of delivery of such notice (or by such other time as the Parties may agree), substitute Collateral consisting of cash or other Collateral acceptable to Lender for the Letter of Credit. Prior to the expiration of any Letter of Credit supporting Borrower's obligations hereunder, Borrower shall, no later than 10.30 a.m. UK time on the second Business Day prior to the date such Letter of Credit expires (or by such other time as the Parties may agree), obtain an extension of the expiration of such Letter of Credit or replace such Letter of Credit by providing Lender with a substitute Letter of Credit in an amount at least equal to the amount of the Letter of Credit for which it is substituted.

## **6. DISTRIBUTIONS AND CORPORATE ACTIONS**

**6.1** In this paragraph 0, references to an amount of Income received by any Party in respect of any Loaned Securities or Non Cash Collateral shall be to an amount received from the issuer after any applicable withholding or deduction for or on account of Tax.

### **6.2 Manufactured payments in respect of Loaned Securities**

Where the term of a Loan extends over an Income Record Date in respect of any Loaned Securities, Borrower shall, on the date such Income is paid by the issuer, or on such other date as the Parties may from time to time agree, pay or deliver to Lender such sum of money or property as is agreed between the Parties or, failing such agreement, a sum of money or property equivalent to (and in the same currency as) the type and amount of such Income that would be received by Lender in respect of such Loaned Securities assuming such Securities were not loaned to Borrower and were retained by Lender on the Income Record Date.

### **6.3 Manufactured payments in respect of Non-Cash Collateral**

Where Non Cash Collateral is delivered by Borrower to Lender and an Income Record Date in respect of such Non Cash Collateral occurs before Equivalent Collateral is delivered by Lender to Borrower, Lender shall on the date such Income is paid, or on such other date as the Parties may from time to time agree, pay or deliver to Borrower a sum of money or property as is agreed between the Parties or, failing such agreement, a sum of money or property equivalent to (and in the same currency as) the type and amount of such Income that would be received by Lender in respect of such Non Cash Collateral assuming Lender:

(a) retained the Non Cash Collateral on the Income Record Date; and

(b) is not entitled to any credit, benefit or other relief in respect of Tax under any Applicable Law.

## **6.4 Indemnity for failure to redeliver Equivalent Non-Cash Collateral**

Unless paragraph 0 of the Schedule indicates that this paragraph does not apply, where:

(a) prior to any Income Record Date in relation to Non Cash Collateral, Borrower has in accordance with paragraph 0 called for the Delivery of Equivalent Non Cash Collateral;

(b) Borrower has given notice of such call to Lender so as to be effective, at the latest, five hours before the Close of Business on the last Business Day on which Lender would customarily be required to initiate settlement of the Non Cash Collateral to enable settlement to take place on the Business Day immediately preceding the relevant Income Record Date;

(c) Borrower has provided reasonable details to Lender of the Non Cash Collateral, the relevant Income Record Date and the proposed Alternative Collateral;

(d) Lender, acting reasonably, has determined that such Alternative Collateral is acceptable to it and Borrower shall have delivered or delivers such Alternative Collateral to Lender; and

(e) Lender has failed to make reasonable efforts to transfer Equivalent Non Cash Collateral to Borrower prior to such Income Record Date,

Lender shall indemnify Borrower in respect of any cost, loss or damage (excluding any indirect or consequential loss or damage or

any amount otherwise compensated by Lender, including pursuant to paragraphs 0 and/or 0) suffered by Borrower that it would not have suffered had the relevant Equivalent Non Cash Collateral been transferred to Borrower prior to such Income Record Date.

## **6.5 Income in the form of Securities**

Where Income, in the form of securities, is paid in relation to any Loaned Securities or Collateral, such securities shall be added to such Loaned Securities or Collateral (and shall constitute Loaned Securities or Collateral, as the case may be, and be part of the relevant Loan) and will not be delivered to Lender, in the case of Loaned Securities, or to Borrower, in the case of Collateral, until the end of the relevant Loan, provided that the Lender or Borrower (as the case may be) fulfils its obligations under paragraph 0 or 0 (as applicable) with respect to the additional Loaned Securities or Collateral, as the case may be.

## **6.6 Exercise of voting rights**

Where any voting rights fall to be exercised in relation to any Loaned Securities or Collateral, neither Borrower, in the case of Equivalent Securities, nor Lender, in the case of Equivalent Collateral, shall have any obligation to arrange for voting rights of that kind to be exercised in accordance with the instructions of the other Party in relation to the Securities borrowed by it or transferred to it by way of Collateral, as the case may be, unless otherwise agreed between the Parties.

## **6.7 Corporate actions**

Where, in respect of any Loaned Securities or any Collateral, any rights relating to conversion, sub division, consolidation, pre-emption, rights arising under a takeover offer, rights to receive securities or a certificate which may at a future date be exchanged for securities or other rights, including those requiring election by the holder for the time being of such Securities or Collateral, become

exercisable prior to the delivery of Equivalent Securities or Equivalent Collateral, then Lender or Borrower, as the case may be, may, within a reasonable time before the latest time for the exercise of the right or option give written notice to the other Party that on delivery of Equivalent Securities or Equivalent Collateral, as the case may be, it wishes to receive Equivalent Securities or Equivalent Collateral in such form as will arise if the right is exercised or, in the case of a right which may be exercised in more than one manner, is exercised as is specified in such written notice.

## **7. RATES APPLICABLE TO LOANED SECURITIES AND CASH COLLATERAL**

### **7.1 Rates in respect of Loaned Securities**

In respect of each Loan, Borrower shall pay to Lender, in the manner prescribed in sub paragraph 0, sums calculated by applying such rate as shall be agreed between the Parties from time to time to the daily Market Value of the Loaned Securities.

### **7.2 Rates in respect of Cash Collateral**

Where Cash Collateral is deposited with Lender in respect of any Loan, Lender shall pay to Borrower, in the manner prescribed in paragraph 0, sums calculated by applying such rates as shall be agreed between the Parties from time to time to the amount of such Cash Collateral. Any such payment due to Borrower may be set off against any payment due to Lender pursuant to paragraph 0.

### **7.3 Payment of rates**

In respect of each Loan, the payments referred to in paragraph 0 and 0 shall accrue daily in respect of the period commencing on and inclusive of the Settlement Date and terminating on and exclusive of the Business Day upon which Equivalent Securities are delivered or Cash Collateral is repaid. Unless

otherwise agreed, the sums so accruing in respect of each calendar month shall be paid in arrears by the relevant Party not later than the Business Day which is the tenth Business Day after the last Business Day of the calendar month to which such payments relate or such other date as the Parties shall from time to time agree.

## **8. DELIVERY OF EQUIVALENT SECURITIES**

### **8.1 Lender's right to terminate a Loan**

Subject to paragraph 0 and the terms of the relevant Loan, Lender shall be entitled to terminate a Loan and to call for the delivery of all or any Equivalent Securities at any time by giving notice on any Business Day of not less than the standard settlement time for such Equivalent Securities on the exchange or in the clearing organisation through which the Loaned Securities were originally delivered. Borrower shall deliver such Equivalent Securities not later than the expiry of such notice in accordance with Lender's instructions.

### **8.2 Borrower's right to terminate a Loan**

Subject to the terms of the relevant Loan, Borrower shall be entitled at any time to terminate a Loan and to deliver all and any Equivalent Securities due and outstanding to Lender in accordance with Lender's instructions and Lender shall accept such delivery.

### **8.3 Delivery of Equivalent Securities on termination of a Loan**

Borrower shall procure the Delivery of Equivalent Securities to Lender or deliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Loan on termination of the Loan. For the avoidance of doubt any reference in this Agreement or in any other agreement or communication

between the Parties (howsoever expressed) to an obligation to deliver or account for or act in relation to Loaned Securities shall accordingly be construed as a reference to an obligation to deliver or account for or act in relation to Equivalent Securities.

#### **8.4 Delivery of Equivalent Collateral on termination of a Loan**

On the date and time that Equivalent Securities are required to be delivered by Borrower on the termination of a Loan, Lender shall simultaneously (subject to paragraph 0 if applicable) repay to Borrower any Cash Collateral or, as the case may be, deliver Collateral equivalent to the Collateral provided by Borrower pursuant to paragraph 0 in respect of such Loan. For the avoidance of doubt any reference in this Agreement or in any other agreement or communication between the Parties (however expressed) to an obligation to deliver or account for or act in relation to Collateral shall accordingly be construed as a reference to an obligation to deliver or account for or act in relation to Equivalent Collateral.

#### **8.5 Delivery of Letters of Credit**

Where a Letter of Credit is provided by way of Collateral, the obligation to deliver Equivalent Collateral is satisfied by Lender delivering for cancellation the Letter of Credit so provided, or where the Letter of Credit is provided in respect of more than one Loan, by Lender consenting to a reduction in the value of the Letter of Credit.

#### **8.6 Delivery obligations to be reciprocal**

Neither Party shall be obliged to make delivery (or make a payment as the case may be) to the other unless it is satisfied that the other Party will make such delivery (or make an appropriate payment as the case may be) to it. If it is not so satisfied (whether because an Event of Default has occurred in respect of the other Party or otherwise) it shall notify

the other Party and unless that other Party has made arrangements which are sufficient to assure full delivery (or the appropriate payment as the case may be) to the notifying Party, the notifying Party shall (provided it is itself in a position, and willing, to perform its own obligations) be entitled to withhold delivery (or payment, as the case may be) to the other Party until such arrangements to assure full delivery (or the appropriate payment as the case may be) are made.

## **9. FAILURE TO DELIVER**

### **9.1 Borrower's failure to deliver Equivalent Securities**

If Borrower fails to deliver Equivalent Securities in accordance with paragraph 0 Lender may:

(a) elect to continue the Loan (which, for the avoidance of doubt, shall continue to be taken into account for the purposes of paragraph 0 or 0 as applicable); or

(b) at any time while such failure continues, by written notice to Borrower declare that that Loan (but only that Loan) shall be terminated immediately in accordance with paragraph 0 as if (i) an Event of Default had occurred in relation to the Borrower, (ii) references to the Termination Date were to the date on which notice was given under this sub paragraph, and (iii) the Loan were the only Loan outstanding. For the avoidance of doubt, any such failure shall not constitute an Event of Default (including under paragraph 0) unless the Parties otherwise agree.

### **9.2 Lender's failure to deliver Equivalent Collateral**

If Lender fails to deliver Equivalent Collateral comprising Non Cash Collateral in accordance with paragraph 0 or 0, Borrower may:

(a) elect to continue the Loan (which, for the avoidance of doubt, shall continue to be taken into account for the purposes of paragraph 0 or 0 as applicable); or

(b) at any time while such failure continues, by written notice to Lender declare that that Loan (but only that Loan) shall be terminated immediately in accordance with paragraph 0 as if (i) an Event of Default had occurred in relation to the Lender, (ii) references to the Termination Date were to the date on which notice was given under this sub paragraph, and (iii) the Loan were the only Loan outstanding. For the avoidance of doubt, any such failure shall not constitute an Event of Default (including under paragraph 0) unless the Parties otherwise agree.

### 9.3 Failure by either Party to deliver

Where a Party (the Transferor) fails to deliver Equivalent Securities or Equivalent Collateral by the time required under this Agreement or within such other period as may be agreed between the Transferor and the other Party (the Transferee) and the Transferee:

- (a) incurs interest, overdraft or similar costs and expenses; or
- (b) incurs costs and expenses as a direct result of a Buy in exercised against it by a third party,

then the Transferor agrees to pay within one Business Day of a demand from the Transferee and hold harmless the Transferee with respect to all reasonable costs and expenses listed in sub paragraphs 0 and 0 above properly incurred which arise directly from such failure other than (i) such costs and expenses which arise from the negligence or wilful default of the Transferee and (ii) any indirect or consequential losses.

## 10. EVENTS OF DEFAULT

**10.1** Each of the following events occurring and continuing in relation to either Party (the Defaulting Party, the other Party being the Non Defaulting Party) shall be an Event of Default but only (subject to sub paragraph 0) where the Non Defaulting Party serves written notice on the Defaulting Party:

- (a) Borrower or Lender failing to pay or repay Cash Collateral or to deliver Collateral on commencement of the Loan under paragraph 0 or to deliver further Collateral under paragraph 0 or 0;
- (b) Lender or Borrower failing to comply with its obligations under paragraph 0 or 0 upon the due date and not remedying such failure within three Business Days after the Non Defaulting Party serves written notice requiring it to remedy such failure;
- (c) Lender or Borrower failing to pay any sum due under paragraph (b), (b) or 0 upon the due date;
- (d) an Act of Insolvency occurring with respect to Lender or Borrower, provided that, where the Parties have specified in paragraph 0 of the Schedule that Automatic Early Termination shall apply, an Act of Insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party shall not require the Non Defaulting Party to serve written notice on the Defaulting Party (Automatic Early Termination);
- (e) any warranty made by Lender or Borrower in paragraph 0 or paragraphs (a) to (d) being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated;
- (f) Lender or Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations under this Agreement and/or in respect of any Loan where such failure to perform would with the

service of notice or lapse of time constitute an Event of Default;

(g) all or any material part of the assets of Lender or Borrower being transferred or ordered to be transferred to a trustee (or a person exercising similar functions) by a regulatory authority pursuant to any legislation;

(h) Lender (if applicable) or Borrower being declared in default or being suspended or expelled from membership of or participation in, any securities exchange or suspended or prohibited from dealing in securities by any regulatory authority, in each case on the grounds that it has failed to meet any requirements relating to financial resources or credit rating; or

(i) Lender or Borrower failing to perform any other of its obligations under this Agreement and not remedying such failure within 30 days after the Non Defaulting Party serves written notice requiring it to remedy such failure.

**10.2** Each Party shall notify the other (in writing) if an Event of Default or an event which, with the passage of time and/or upon the serving of a written notice as referred to above, would be an Event of Default, occurs in relation to it.

**10.3** The provisions of this Agreement constitute a complete statement of the remedies available to each Party in respect of any Event of Default.

**10.4** Subject to paragraphs 0 and 0, neither Party may claim any sum by way of consequential loss or damage in the event of failure by the other Party to perform any of its obligations under this Agreement.

## 11. CONSEQUENCES OF AN EVENT OF DEFAULT

**11.1** If an Event of Default occurs in relation to either Party then paragraphs 0 to 0 below shall apply.

**11.2** The Parties' delivery and payment obligations (and any other obligations they have under this Agreement) shall be accelerated so as to require performance thereof at the time such Event of Default occurs (the date of which shall be the Termination Date) so that performance of such delivery and payment obligations shall be effected only in accordance with the following provisions.

(a) The Default Market Value of the Equivalent Securities and Equivalent Non-Cash Collateral to be delivered and the amount of any Cash Collateral (including sums accrued) to be repaid and any other cash (including interest accrued) to be paid by each Party shall be established by the Non Defaulting Party in accordance with paragraph 0 and deemed as at the Termination Date.

(b) On the basis of the sums so established, an account shall be taken (as at the Termination Date) of what is due from each Party to the other under this Agreement (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Non-Cash Collateral equal to the Default Market Value thereof) and the sums due from one Party shall be set off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be payable on the next following Business Day after such account has been taken and such sums have been set off in accordance with this paragraph. For the purposes of this calculation, any sum not denominated in the Base Currency shall be converted into the Base Currency at the Spot Rate prevailing at such dates and times determined by the Non Defaulting Party acting reasonably.

(c) If the balance under sub paragraph 0 above is payable by the Non Defaulting Party and the Non Defaulting Party had delivered to the Defaulting Party a Letter of Credit, the Defaulting Party shall draw on the Letter of Credit to the extent of the balance due and shall subsequently deliver for cancellation the Letter of Credit so provided.

(d) If the balance under sub paragraph 0 above is payable by the Defaulting Party and the Defaulting Party had delivered to the Non Defaulting Party a Letter of Credit, the Non Defaulting Party shall draw on the Letter of Credit to the extent of the balance due and shall subsequently deliver for cancellation the Letter of Credit so provided.

(e) In all other circumstances, where a Letter of Credit has been provided to a Party, such Party shall deliver for cancellation the Letter of Credit so provided.

**11.3** For the purposes of this Agreement, the Default Market Value of any Equivalent Collateral in the form of a Letter of Credit shall be zero and of any Equivalent Securities or any other Equivalent Non-Cash Collateral shall be determined in accordance with paragraphs 0 to 0 below, and for this purpose:

(a) the Appropriate Market means, in relation to securities of any description, the market which is the most appropriate market for securities of that description, as determined by the Non Defaulting Party;

(b) the Default Valuation Time means, in relation to an Event of Default, the close of business in the Appropriate Market on the fifth dealing day after the day on which that Event of Default occurs or, where that Event of Default is the occurrence of an Act of Insolvency in respect of which under paragraph 0 no notice is required from the Non Defaulting Party in order for such event to constitute an Event of Default, the close of business on the fifth dealing day after the day on which the Non Defaulting Party first

became aware of the occurrence of such Event of Default;

(c) Deliverable Securities means Equivalent Securities or Equivalent Non-Cash Collateral to be delivered by the Defaulting Party;

(d) Net Value means at any time, in relation to any Deliverable Securities or Receivable Securities, the amount which, in the reasonable opinion of the Non Defaulting Party, represents their fair market value, having regard to such pricing sources and methods (which may include, without limitation, available prices for securities with similar maturities, terms and credit characteristics as the relevant Equivalent Securities or Equivalent Collateral) as the Non Defaulting Party considers appropriate, less, in the case of Receivable Securities, or plus, in the case of Deliverable Securities, all Transaction Costs incurred or reasonably anticipated in connection with the purchase or sale of such securities;

(e) Receivable Securities means Equivalent Securities or Equivalent Non-Cash Collateral to be delivered to the Defaulting Party; and

(f) Transaction Costs in relation to any transaction contemplated in paragraph 11.4 or 11.5 means the reasonable costs, commissions (including internal commissions), fees and expenses (including any mark up or mark down or premium paid for guaranteed delivery) incurred or reasonably anticipated in connection with the purchase of Deliverable Securities or sale of Receivable Securities, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction.

**11.4 If between the Termination Date and the Default Valuation Time:**

(a) the Non Defaulting Party has sold, in the case of Receivable Securities, or



purchased, in the case of Deliverable Securities, securities which form part of the same issue and are of an identical type and description as those Equivalent Securities or that Equivalent Collateral, (and regardless as to whether or not such sales or purchases have settled) the Non Defaulting Party may elect to treat as the Default Market Value:

(i) in the case of Receivable Securities, the net proceeds of such sale after deducting all Transaction Costs; provided that, where the securities sold are not identical in amount to the Equivalent Securities or Equivalent Collateral, the Non Defaulting Party may, acting in good faith, either (A) elect to treat such net proceeds of sale divided by the amount of securities sold and multiplied by the amount of the Equivalent Securities or Equivalent Collateral as the Default Market Value or (B) elect to treat such net proceeds of sale of the Equivalent Securities or Equivalent Collateral actually sold as the Default Market Value of that proportion of the Equivalent Securities or Equivalent Collateral, and, in the case of (B), the Default Market Value of the balance of the Equivalent Securities or Equivalent Collateral shall be determined separately in accordance with the provisions of this paragraph 0; or

(ii) in the case of Deliverable Securities, the aggregate cost of such purchase, including all Transaction Costs; provided that, where the securities purchased are not identical in amount to the Equivalent Securities or Equivalent Collateral, the Non Defaulting Party may, acting in good faith, either (A) elect to treat such aggregate cost divided by the amount of securities purchased and multiplied by the amount of the Equivalent Securities or Equivalent Collateral as the Default Market Value or (B) elect to treat the aggregate cost of purchasing the Equivalent Securities or Equivalent Collateral actually purchased as the Default Market Value of that proportion of the Equivalent Securities or Equivalent Collateral, and, in the case of (B), the Default Market Value of the balance of the Equivalent

Securities or Equivalent Collateral shall be determined separately in accordance with the provisions of this paragraph 0;

(c) the Non Defaulting Party has received, in the case of Deliverable Securities, offer quotations or, in the case of Receivable Securities, bid quotations in respect of securities of the relevant description from two or more market makers or regular dealers in the Appropriate Market in a commercially reasonable size (as determined by the Non Defaulting Party) the Non-Defaulting Party may elect to treat as the Default Market Value of the relevant Equivalent Securities or Equivalent Collateral:

(i) the price quoted (or where more than one price is so quoted, the arithmetic mean of the prices so quoted) by each of them for, in the case of Deliverable Securities, the sale by the relevant market marker or dealer of such securities or, in the case of Receivable Securities, the purchase by the relevant market maker or dealer of such securities, provided that such price or prices quoted may be adjusted in a commercially reasonable manner by the Non Defaulting Party to reflect accrued but unpaid coupons not reflected in the price or prices quoted in respect of such Securities;

(ii) after deducting, in the case of Receivable Securities or adding in the case of Deliverable Securities the Transaction Costs which would be incurred or reasonably anticipated in connection with such transaction.

**11.5** If, acting in good faith, either (A) the Non Defaulting Party has endeavoured but been unable to sell or purchase securities in accordance with paragraph 0 above or to obtain quotations in accordance with paragraph 0 above (or both) or (B) the Non Defaulting Party has determined that it would not be commercially reasonable to sell or purchase securities at the prices bid or offered

or to obtain such quotations, or that it would not be commercially reasonable to use any quotations which it has obtained under paragraph 0 above the Non Defaulting Party may determine the Net Value of the relevant Equivalent Securities or Equivalent Collateral (which shall be specified) and the Non Defaulting Party may elect to treat such Net Value as the Default Market Value of the relevant Equivalent Securities or Equivalent Collateral.

**11.6** To the extent that the Non Defaulting Party has not determined the Default Market Value in accordance with paragraph 0, the Default Market Value of the relevant Equivalent Securities or Equivalent Collateral shall be an amount equal to their Net Value at the Default Valuation Time; provided that, if at the Default Valuation Time the Non Defaulting Party reasonably determines that, owing to circumstances affecting the market in the Equivalent Securities or Equivalent Collateral in question, it is not reasonably practicable for the Non Defaulting Party to determine a Net Value of such Equivalent Securities or Equivalent Collateral which is commercially reasonable (by reason of lack of tradable prices or otherwise), the Default Market Value of such Equivalent Securities or Equivalent Collateral shall be an amount equal to their Net Value as determined by the Non Defaulting Party as soon as reasonably practicable after the Default Valuation Time.

Other costs, expenses and interest payable in consequence of an Event of Default

**11.7** The Defaulting Party shall be liable to the Non-Defaulting Party for the amount of all reasonable legal and other professional expenses incurred by the Non Defaulting Party in connection with or as a consequence of an Event of Default, together with interest thereon at such rate as is agreed by the Parties and specified in paragraph 10 of the Schedule or, failing such agreement, the European Central Bank Spot Rate on the date on which it is to be determined or, in the case

of an expense attributable to a particular transaction and, where the Parties have previously agreed a rate of interest for the transaction, that rate of interest if it is greater than the European Central Bank Spot Rate. Interest will accrue daily on a compound basis.

## Set off

**11.8** Any amount payable to one Party (the Payee) by the other Party (the Payer) under paragraph 0 may, at the option of the Non Defaulting Party, be reduced by its set off against any amount payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement between the Payee and the Payer or instrument or undertaking issued or executed by one Party to, or in favour of, the other Party. If an obligation is unascertained, the Non Defaulting Party may in good faith estimate that obligation and set off in respect of the estimate, subject to accounting to the other Party when the obligation is ascertained. Nothing in this paragraph shall be effective to create a charge or other security interest. This paragraph shall be without prejudice and in addition to any right of set off, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

## 12. TAXES

Withholding, gross up and provision of information

**12.1** All payments under this Agreement shall be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any Applicable Law.

**12.2** Except as otherwise agreed, if the paying Party is so required to deduct or withhold, then that Party (Payer) shall:

- (a) promptly notify the other Party (Recipient) of such requirement;
- (b) pay or otherwise account for the full amount required to be deducted or withheld to the relevant authority;
- (c) upon written demand of Recipient, forward to Recipient documentation reasonably acceptable to Recipient, evidencing such payment to such authorities; and
- (d) other than in respect of any payment made by Lender to Borrower under paragraph 0, pay to Recipient, in addition to the payment to which Recipient is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the amount actually received by Recipient (after taking account of such withholding or deduction) will equal the amount Recipient would have received had no such deduction or withholding been required; provided Payer will not be required to pay any additional amount to Recipient under this sub paragraph 0 to the extent it would not be required to be paid but for the failure by Recipient to comply with or perform any obligation under paragraph 0.

**12.3** Each Party agrees that it will upon written demand of the other Party deliver to such other Party (or to any government or other taxing authority as such other Party directs), any form or document and provide such other cooperation or assistance as may (in either case) reasonably be required in order to allow such other Party to make a payment under this Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document, or the provision of such cooperation or assistance, would not materially prejudice the legal or commercial

position of the Party in receipt of such demand). Any such form or document shall be accurate and completed in a manner reasonably satisfactory to such other Party and shall be executed and delivered with any reasonably required certification by such date as is agreed between the Parties or, failing such agreement, as soon as reasonably practicable.

## Stamp Tax

**12.4** Unless otherwise agreed, Borrower hereby undertakes promptly to pay and account for any Stamp Tax chargeable in connection with any transaction effected pursuant to or contemplated by this Agreement (other than any Stamp Tax that would not be chargeable but for Lender's failure to comply with its obligations under this Agreement).

**12.5** Borrower shall indemnify and keep indemnified Lender against any liability arising as a result of Borrower's failure to comply with its obligations under paragraph 0.

## Sales Tax

**12.6** All sums payable by one Party to another under this Agreement are exclusive of any Sales Tax chargeable on any supply to which such sums relate and an amount equal to such Sales Tax shall in each case be paid by the Party making such payment on receipt of an appropriate Sales Tax invoice.

## Retrospective changes in law

**12.7** Unless otherwise agreed, amounts payable by one Party to another under this Agreement shall be determined by reference to Applicable Law as at the date of the relevant payment and no adjustment shall be made to amounts paid under this Agreement as a result of:

- (a) any retrospective change in Applicable Law which is announced or enacted after the date of the relevant payment; or

(b) any decision of a court of competent jurisdiction which is made after the date of the relevant payment (other than where such decision results from an action taken with respect to this Agreement or amounts paid or payable under this Agreement).

### 13. LENDER'S WARRANTIES

Each Party hereby warrants and undertakes to the other on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that, where acting as a Lender:

(a) it is duly authorised and empowered to perform its duties and obligations under this Agreement;

(b) it is not restricted under the terms of its constitution or in any other manner from lending Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;

(c) it is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it hereunder to Borrower free from all liens, charges and encumbrances; and

(d) it is acting as principal in respect of this Agreement, other than in respect of an Agency Loan.

### 14. BORROWER'S WARRANTIES

Each Party hereby warrants and undertakes to the other on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that, where acting as a Borrower:

(a) it has all necessary licences and approvals, and is duly authorised and empowered, to perform its duties and obligations under this Agreement and will do nothing prejudicial to the continuation of such authorisation, licences or approvals;

(b) it is not restricted under the terms of its constitution or in any other manner from borrowing Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;

(c) it is absolutely entitled to pass full legal and beneficial ownership of all Collateral provided by it hereunder to Lender free from all liens, charges and encumbrances;

(d) it is acting as principal in respect of this Agreement; and

(e) it is not entering into a Loan for the primary purpose of obtaining or exercising voting rights in respect of the Loaned Securities.

### 15. INTEREST ON OUTSTANDING PAYMENTS

In the event of either Party failing to remit sums in accordance with this Agreement such Party hereby undertakes to pay to the other Party upon demand interest (before as well as after judgment) on the net balance due and outstanding, for the period commencing on and inclusive of the original due date for payment to (but excluding) the date of actual payment, in the same currency as the principal sum and at the rate referred to in paragraph 0. Interest will accrue daily on a compound basis and will be calculated according to the actual number of days elapsed. No interest shall be payable under this paragraph in respect of any day on which

one Party endeavours to make a payment to the other Party but the other Party is unable to receive it.

## 16. TERMINATION OF THIS AGREEMENT

Each Party shall have the right to terminate this Agreement by giving not less than 15 Business Days' notice in writing to the other Party (which notice shall specify the date of termination) subject to an obligation to ensure that all Loans which have been entered into but not discharged at the time such notice is given are duly discharged in accordance with this Agreement.

## 17. SINGLE AGREEMENT

Each Party acknowledges that, and has entered into this Agreement and will enter into each Loan in consideration of and in reliance upon the fact that, all Loans constitute a single business and contractual relationship and are made in consideration of each other. Accordingly, each Party agrees:

- (a) to perform all of its obligations in respect of each Loan, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Loans, subject always to the other provisions of the Agreement; and
- (b) that payments, deliveries and other transfers made by either of them in respect of any Loan shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Loan.

## 18. SEVERANCE

If any provision of this Agreement is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision shall be severed from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Agreement shall, however, thereafter be amended by the Parties in such reasonable manner so as to achieve as far as possible, without illegality, the intention of the Parties with respect to that severed provision.

## 19. SPECIFIC PERFORMANCE

Each Party agrees that in relation to legal proceedings it will not seek specific performance of the other Party's obligation to deliver Securities, Equivalent Securities, Collateral or Equivalent Collateral but without prejudice to any other rights it may have.

## 20. NOTICES

**20.1** Any notice or other communication in respect of this Agreement may be given in any manner set forth below to the address or number or in accordance with the electronic messaging system details set out in paragraph 0 of the Schedule and will be deemed effective as indicated:

- (a) if in writing and delivered in person or by courier, on the date it is delivered;
- (b) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(c) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(d) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or the receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the Close of Business on a Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Business Day.

**20.2** Either Party may by notice to the other change the address or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

### 21. ASSIGNMENT

**21.1** Subject to paragraph 0, neither Party may charge, assign or otherwise deal with all or any of its rights or obligations hereunder without the prior consent of the other Party.

**21.2** Paragraph 0 shall not preclude a party from charging, assigning or otherwise dealing with all or any part of its interest in any sum payable to it under paragraph 0 or 0.

### 22. NON WAIVER

No failure or delay by either Party (whether by course of conduct or otherwise) to exercise any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further

exercise thereof or the exercise of any other right, power or privilege as herein provided.

### 23. GOVERNING LAW AND JURISDICTION

**23.1** This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and shall be construed in accordance with, Maltese law.

**23.2** The courts of Malta have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes or any non-contractual obligation which may arise out of or in connection with this Agreement (respectively, Proceedings and Disputes) and, for these purposes, each Party irrevocably submits to the jurisdiction of the courts of Malta.

**23.3** Each Party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any Proceedings and to settle any Disputes and agrees not to claim that the courts of Malta are not a convenient or appropriate forum.

**23.4** Each Party hereby respectively appoints the person identified in paragraph 0 of the Schedule pertaining to the relevant Party as its agent to receive on its behalf service of process in the courts of Malta. If such an agent ceases to be an agent of a Party, the relevant Party shall promptly appoint, and notify the other Party of the identity of its new agent in Malta.

### 24. TIME

Time shall be of the essence of the Agreement.

## 25. RECORDING

The Parties agree that each may record all telephone conversations between them.

## 26. WAIVER OF IMMUNITY

Each Party hereby waives all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, attachment (both before and after judgement) and execution to which it might otherwise be entitled in any action or proceeding in the courts of England or of any other country or jurisdiction relating in any way to this Agreement and agrees that it will not raise, claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

## 27. MISCELLANEOUS

**27.1** This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

**27.2** The Party (the Relevant Party) who has prepared the text of this Agreement for execution (as indicated in paragraph 0 of the Schedule) warrants and undertakes to the other Party that such text conforms exactly to the text of the standard form Global Master Securities Lending Agreement (2009 version) posted by the International Securities Lending Association on its website except as notified by the Relevant Party to the other Party in writing prior to the execution of this Agreement.

**27.3** Unless otherwise provided for in this Agreement, no amendment in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the Parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

**27.4** The Parties agree that where paragraph 11 of the Schedule indicates that this paragraph 0 applies, this Agreement shall apply to all loans which are outstanding as at the date of this Agreement and which are subject to the securities lending agreement or agreements specified in paragraph 11 of the Schedule, and such Loans shall be treated as if they had been entered into under this Agreement, and the terms of such loans are amended accordingly with effect from the date of this Agreement.

**27.5** The Parties agree that where paragraph 12 of the Schedule indicates that this paragraph 0 applies, each may use the services of a third party vendor to automate the processing of Loans under this Agreement and that any data relating to such Loans received from the other Party may be disclosed to such third party vendors.

**27.6** The obligations of the Parties under this Agreement will survive the termination of any Loan.

**27.7** The warranties contained in paragraphs 0, 0 and 0 and in the Agency Annex will survive termination of this Agreement for so long as any obligations of either of the Parties pursuant to this Agreement remain outstanding.

**27.8** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

**27.9** This Agreement (and each amendment in respect of it) may be executed

and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

**27.10** A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.



## EXECUTED by the PARTIES

SIGNED by )  
)  
duly authorised for and )  
on behalf of )

SIGNED by )  
)  
duly authorised for and )  
on behalf of )

## SCHEDULE

### 1.0 Collateral

1.1 The securities, financial instruments and deposits of currency set out in the table below with a cross marked next to them are acceptable forms of Collateral under this Agreement.

1.2 Unless otherwise agreed between the Parties, the Market Value of the Collateral delivered pursuant to paragraph **Error! Reference source not found.** by Borrower to Lender under the terms and conditions of this Agreement shall on each Business Day represent not less than the Market Value of the Loaned Securities together with the percentage contained in the row of the table below corresponding to the particular form of Collateral, referred to in this Agreement as the **Margin**.

Security/Financial Instrument/ Deposit of Currency	Mark "X" if acceptable form of Collateral	Margin (%)

### 1.3 Basis of Margin Maintenance:

Aggregation shall not apply\*

Aggregation applies unless the box is ticked.

### 1.4 Netting of obligations to deliver

Collateral and redeliver Equivalent Collateral shall not apply\*

Paragraph (netting) applies unless the box is ticked

1.5 For the purposes of Paragraph 1.5, Notification Time means by  , London time.

1.6 Indemnity for failure to redeliver Equivalent Non-Cash Collateral shall not apply\*

Indemnity for failure to redeliver Equivalent Non-Cash Collateral applies unless the box is ticked.

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\* Delete as appropriate.

\* Delete as appropriate.

\* Delete as appropriate.

## 2.0 Base Currency

The Base Currency applicable to this Agreement is \_\_\_\_\_ provided that if that currency ceases to be freely convertible the Base Currency shall be [US Dollars] [Euro] [specify other currency]\*

## 3.0 Places of Business

(See definition of Business Day.)

## 4.0 Market Value

(See definition of Market Value.)

## 5.0 Events of Default

Automatic Early Termination shall apply in respect of Party A

Automatic Early Termination shall apply in respect of Party B

## 6.0 Designated Office and Address for Notices

### (a) Designated office of Party A:

Address for notices or communications to Party A:

Address:

Attention:

Facsimile No:

Telephone No:

Electronic Messaging System Details:

### (b) Designated office of Party B:

Address for notices or communications to Party B:

Address:

Attention:

Facsimile No:

Telephone No:

Electronic Messaging System Details:

## 7(a) Agent of Party A for Service of Process

Name:

Address:

## 7(B) Agent of Party B for Service of Process

Name:

Address:

## 8.0 Agency

- Party A [may][will always]\* act as agent
- Party B [may][will always]\* act as agent
- The Addendum for Pooled Principal Transactions may apply to Party A
- The Addendum for Pooled Principal Transactions may apply to Party B

## 9.0 Party Preparing this Agreement

Party A

Party B

## 10.0 Default interest

Rate of default interest:

## 11.0 Existing Loans

Paragraph 0 applies\*

[Overseas Securities Lenders Agreement dated ]\*

[Global Master Securities Lending Agreements dated ]\*

## 12.0 Automation

Paragraph 0 applies\*

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\* Delete as appropriate.

## AGENCY ANNEX

### 1.0 TRANSACTIONS ENTERED INTO AS AGENT

#### 1.1 Power for Lender to enter into Loans as agent

Subject to the following provisions of this paragraph, Lender may enter into Loans as agent (in such capacity, the Agent) for a third person (a Principal), whether as custodian or investment manager or otherwise (a Loan so entered into being referred to in this paragraph as an Agency Loan).

If the Lender has indicated in paragraph 0 of the Schedule that it may act as Agent, it must identify each Loan in respect of which it acts as Agent as an Agency Loan at the time it is entered into. If the Lender has indicated in paragraph 0 of the Schedule that it will always act as Agent, it need not identify each Loan as an Agency Loan.

#### 1.2 Pooled Principal transactions

The Lender may enter into an Agency Loan on behalf of more than [one] Principal and accordingly the addendum hereto for pooled principal transactions shall apply.]\*

#### 1.3 Conditions for Agency Loan

A Lender may enter into an Agency Loan if, but only if:

(a) it provides to Borrower, prior to effecting any Agency Loan, such information in its possession necessary to complete all required fields in the format generally used in the industry, or as otherwise agreed by Agent and Borrower (Agreed Format), and will use its best efforts to provide to Borrower any optional information that may be requested by the Borrower for the purpose of identifying such Principal (all such information being the Principal Information). Agent represents and warrants that the Principal Information is true

and accurate to the best of its knowledge and has been provided to it by Principal;

(b) it enters into that Loan on behalf of a single Principal whose identity is disclosed to Borrower (whether by name or by reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal) either at the time when it enters into the Loan or before the Close of Business on the next Business Day after the date on which Loaned Securities are transferred to the Borrower in the Agreed Format or as otherwise agreed between the Parties; and

(c) it has at the time when the Loan is entered into actual authority to enter into the Loan and to perform on behalf of that Principal all of that Principal's obligations under the agreement referred to in paragraph (c) below.

Agent agrees that it will not effect any Loan with Borrower on behalf of any Principal unless Borrower has notified Agent of Borrower's approval of such Principal, and has not notified Agent that it has withdrawn such approval (such Principal, an Approved Principal), with both such notifications in the Agreed Format.

Borrower acknowledges that Agent shall not have any obligation to provide it with confidential information regarding the financial status of its Principals; Agent agrees, however, that it will assist Borrower in obtaining from Agent's Principals such information regarding the financial status of such Principals as Borrower may reasonably request.

#### 1.4 Notification by Agent of certain events affecting any Principal

Agent undertakes that, if it enters as agent into an Agency Loan, forthwith upon becoming aware:

(a) of any event which constitutes an Act of Insolvency with respect to the relevant Principal; or

(b) of any breach of any of the warranties given in paragraph 0 below or of any event or circumstance which results in any such warranty being untrue if repeated by reference to the then current facts,

it will inform Borrower of that fact and will, if so required by Borrower, furnish it with such additional information as it may reasonably request to the extent that such information is readily obtainable by Agent.

### 1.5 Status of Agency Loan

(a) Each Agency Loan shall be a transaction between the relevant Principal and Borrower and no person other than the relevant Principal and Borrower shall be a party to or have any rights or obligations under an Agency Loan. Without limiting the foregoing, Agent shall not be liable as principal for the performance of an Agency Loan, but this is without prejudice to any liability of Agent under any other provision of this Annex; and

(a) all the provisions of the Agreement shall apply separately as between Borrower and each Principal for whom the Agent has entered into an Agency Loan or Agency Loans as if each such Principal were a party to a separate agreement with Borrower in all respects identical with this Agreement other than this Annex and as if the Principal were Lender in respect of that agreement; provided that

(i) if there occurs in relation to the Agent an Event of Default or an event which would constitute an Event of Default if Borrower served written notice under any sub clause of paragraph 0 of the Agreement, Borrower shall be entitled by giving written notice to the Principal (which notice shall be validly given if given in accordance with paragraph 0 of the Agreement) to declare that by reason of that

event an Event of Default is to be treated as occurring in relation to the Principal. If Borrower gives such a notice then an Event of Default shall be treated as occurring in relation to the Principal at the time when the notice is deemed to be given; and

(ii) if the Principal is neither incorporated in nor has established a place of business in Malta, the Principal shall for the purposes of the agreement referred to in paragraph 0(c) above be deemed to have appointed as its agent to receive on its behalf service of process in the courts of Malta the Agent, or if the Agent is neither incorporated nor has established a place of business in Malta, the person appointed by the Agent for the purposes of this Agreement, or such other person as the Principal may from time to time specify in a written notice given to the other Party.

If Lender has indicated in paragraph 6 of the Schedule that it may enter into Loans as agent, the foregoing provisions of this paragraph do not affect the operation of the Agreement as between Borrower and Lender in respect of any Loans into which Lender may enter on its own account as principal.

### 1.6 Warranty of authority by Lender acting as Agent

Agent warrants to Borrower that it will, on every occasion on which it enters or purports to enter into a Loan as an Agency Loan, have been duly authorised to enter into that Loan and perform the obligations arising under such Loan on behalf of the Principal in respect of that Loan and to perform on behalf of the Principal all the obligations of that person under the agreement referred to in paragraph (c) above.

## ADDENDUM FOR POOLED PRINCIPAL AGENCY LOANS

### 1.0 SCOPE

This addendum applies where the Agent wishes to enter into an Agency Loan on behalf of more than one Principal. The Agency Annex shall apply to such a Loan subject to the modifications and additional terms and conditions contained in paragraph 0 to 0 below.

### 2.0 INTERPRETATION

#### 2.1 In this addendum:

- (a) Collateral Transfer has the meaning given in paragraph 0 below;
- (b) if at any time on any Business Day the aggregate Market Value of Posted Collateral in respect of all Agency Loans outstanding with a Principal under the Agreement exceeds the aggregate of the Required Collateral Value in respect of such Agency Loans, Borrower has a Net Loan Exposure to that Principal equal to that excess; if at any time on any Business Day the aggregate Market Value of Posted Collateral in respect of all Agency Loans outstanding under the Agreement with a Principal falls below the aggregate of the Required Collateral Value in respect of such Agency Loans, that Principal has a Net Loan Exposure to Borrower for such Agency Loans equal to that deficiency;
- (c) Pooled Principal has the meaning given in paragraph 6(a) below; and
- (d) Pooled Loan has the meaning given in paragraph 6(a) below.

### 3.0 MODIFICATIONS TO THE AGENCY ANNEX

#### 3.1 Paragraph (b) of the Agency Annex is deleted and replaced by the following:

“it enters into that Loan on behalf of one or more Principals and at or before the time when it enters into the Loan it discloses to Borrower the identity and the jurisdiction of incorporation, organisation or establishment of each such Principal (and such disclosure may be made either directly or by reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal);”.

#### 3.2 Paragraph (c) of the Agency Annex is deleted and replaced by the following:

“it has at the time when the Loan is entered into actual authority to enter into the Loan on behalf of each Principal and to perform on behalf of each Principal all of that Principal’s obligations under the Agreement”.

### 4.0 ALLOCATION OF AGENCY LOANS

**4.1** The Agent undertakes that if, at the time of entering into an Agency Loan, the Agent has not allocated the Loan to a Principal, it will allocate the Loan before the Settlement Date for that Agency Loan either to a single Principal or to several Principals, each of whom shall be responsible for only that part of the Agency Loan which has been allocated to it. Promptly following such allocation, the Agent shall notify Borrower of the Principal or Principals (whether by name or reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal) to which that Loan or part of that Loan has been allocated.

**4.2** Upon allocation of a Loan in accordance with paragraph 0 above or otherwise, with effect from the date on which the Loan was entered into:

- (a) where the allocation is to a single Principal, the Loan shall be deemed to have

been entered into between Borrower and that Principal; and

(b) where the allocation is to two or more Principals, a separate Loan shall be deemed to have been entered into between Borrower and each such Principal with respect to the appropriate proportion of the Loan.

**4.3** If the Agent shall fail to perform its obligations under paragraph 0 above then for the purposes of assessing any damage suffered by Borrower (but for no other purpose) it shall be assumed that, if the Loan concerned (to the extent not allocated) had been allocated in accordance with that paragraph, all the terms of the Loan would have been duly performed.

## 5.0 ALLOCATION OF COLLATERAL

**5.1** Unless the Agent expressly allocates (a) a deposit or delivery of Posted Collateral or (b) a repayment of Cash Collateral or a redelivery of Equivalent Collateral (each a Collateral Transfer) before such time, the Agent shall, at the time of making or receiving that Collateral Transfer, be deemed to have allocated any Collateral Transfer in accordance with paragraph 0 below.

(a) If the Agent has made a Collateral Transfer on behalf of more than one Pooled Principal, that Collateral Transfer shall be allocated in proportion to Borrower's Net Loan Exposure in respect of each Pooled Principal at the Agent's close of business on the Business Day before the Collateral Transfer is made; and

(b) if the Agent has received a Collateral Transfer on behalf of more than one Pooled Principal, that Collateral Transfer shall be allocated in proportion to each Pooled Principal's Net Loan Exposure in respect of Borrower at the Agent's close of business on the Business Day before the Collateral Transfer is made.

(c) Sub paragraphs Error! Reference source not found. and 0 shall not apply in respect of any Collateral Transfer which is effected or deemed to have been effected under paragraph 0 below.

## 6.0 POOLED PRINCIPALS: REBALANCING OF MARGIN

**6.1** Where the Agent acts on behalf of more than one Principal, the Parties may agree that, as regards all (but not some only) outstanding Agency Loans with those Principals, or with such of those Principals as they may agree (Pooled Principals, such Agency Loans being Pooled Loans), any Collateral Transfers are to be made on an aggregate net basis.

**6.2** Paragraphs 0 to 0 below shall have effect for the purpose of ensuring that Posted Collateral is, so far as is practicable, transferred and held uniformly, as between the respective Pooled Principals, in respect of all Pooled Loans for the time being outstanding under the Agreement.

**6.3** At or as soon as practicable after the Agent's close of business on each Business Day on which Pooled Loans are outstanding (or at such other times as the Parties may from time to time agree) there shall be effected such Collateral Transfers as shall ensure that immediately thereafter:

(a) in respect of all Pooled Principals which have a Net Loan Exposure to Borrower, the amount of Collateral then deliverable or Cash Collateral then payable by Borrower to each such Pooled Principal is equal to such proportion of the aggregate amount of Collateral then deliverable or Cash Collateral then payable, to all such Pooled Principals as corresponds to the proportion which the Net Loan Exposure of the relevant Pooled Principal bears to the aggregate of the Net Loan



Exposures of all Pooled Principals to Borrower;  
and

(b) in respect of all Pooled Principals to which Borrower has a Net Loan Exposure, the aggregate amount of Equivalent Collateral then deliverable or repayable by each such Pooled Principal to Borrower is equal to such proportion of the aggregate amount of Equivalent Collateral then deliverable or repayable by all such Pooled Principals as corresponds to the proportion which the Net Loan Exposure of Borrower to the relevant Pooled Principal bears to the aggregate of the Net Loan Exposures of Borrower to all Pooled Principals.

**6.4** Collateral Transfers effected under paragraph 0 shall be effected (and if not so effected shall be deemed to have been so effected) by appropriations made by the Agent and shall be reflected by entries in accounting and other records maintained by the Agent. Accordingly, it shall not be necessary for payments of cash or deliveries of Securities to be made through any settlement system for the purpose of such Collateral Transfers. Without limiting the generality of the foregoing, the Agent is hereby authorised and instructed by Borrower to do all such things on behalf of Borrower as may be necessary or expedient to effect and record the receipt on behalf of Borrower of cash and Securities from, and the delivery on behalf of Borrower of cash and Securities to, Pooled Principals in the course or for the purposes of any Collateral Transfer effected under that paragraph.

**6.5** Promptly following the Collateral Transfers effected under paragraph 0 above, and as at the Agent's close of business on any Business Day, the Agent shall prepare a statement showing in respect of each Pooled Principal the amount of cash Collateral which has been paid, and the amount of non-cash Collateral of each description which have been transferred, by or to that Pooled Principal immediately after those Collateral Transfers. If Borrower so requests, the Agent shall deliver to Borrower a copy of the statement so prepared in a format and to a timetable generally used in the market.

## **7.0 WARRANTIES**

### **7.1 The Agent warrants to Borrower that:**

(a) all notifications provided to Borrower under paragraph 0 above and all statements provided to the other party under paragraph 0 above shall be complete and accurate in all material respects;

(b) at the time of allocating an Agency Loan in accordance with paragraph 0 above, each Principal or Principals to whom the Agent has allocated that Agency Loan or any part of that Agency Loan is duly authorised to enter into the Agency Loans contemplated by this Agreement and to perform its obligations thereunder; and

(c) at the time of allocating an Agency Loan in accordance with paragraph 0 above, no Event of Default or event which would constitute an Event of Default with the service of a Default Notice or other written notice under paragraph 0 of the Agreement has occurred in relation to any Principal or Principals to whom the Agent has allocated that Agency Loan or any part of that Agency Loan.



**MALTA**  
STOCK EXCHANGE

## **Appendix 4.5**

# **SECURITIES BORROWING AND LENDING CODE OF GUIDANCE**

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## 4.5 SECURITIES BORROWING AND LENDING CODE OF GUIDANCE

### 1. INTRODUCTION

#### General

**1.1** This Code of Guidance on Securities Lending and Borrowing [henceforth “the Code”] applies to all participants in the securities borrowing and lending market, including beneficial owners, agents or advisors. The Code applies to participants when such functions is outsourced such as to Custodians. All participants and the relevant staff are expected to be familiar with and understand the Code. All participants, agents or advisors shall ensure that they have an understanding of the Code and furthermore ensure that new recruits in the market are aware of the contents of the Code and its relevance to their responsibilities.

**1.2** The Code does not replace existing legal and regulatory requirements or firms’ internal systems of management and control. The Code is not intended to override or conflict with internal rules of individual settlement systems in respect of relevant borrowing or lending transactions.

#### Applicability

**1.3** The Code applies to the full range of securities lending and borrowing transactions.

#### Regulation

**1.4** Any person who conducts securities borrowing or lending business in Malta would generally be carrying on a regulated activity in terms of the Investments Services Act and therefore would have to be authorized and supervised under the Act unless an exclusion is applicable. Individuals involved in securities borrowing and lending may be submit to the MFSA regulatory regime. Securities borrowers or lenders, would, as authorized persons, be submitted to the regulations of the MFSA and they would have to have regard to the Prevention of market Abuse Act and related regulations.

**1.5** The MFSA may have regard to the differing standards and practices operating in markets when interpreting its Principles for business as they apply to inter-professional business. Furthermore, non-compliance with such standards and practices may raise issues such as the integrity or competent of a firm.

**1.6** Securities Borrowing and lending activities are also subject to regulation in other member states of the European Union given the general regulatory requirements of the Markets in Financial Instruments Directive. Firms incorporated and authorized in one member state may conduct stock borrowing and lending activities in other member states under the passport arrangements.

**1.7** The Code has no statutory underpinning except where it refers to existing legal requirements but non-compliance may raise issues such as the integrity or competence of the firm.

### 2. STANDARDS

#### General

**2.1** All participants in the securities lending and borrowing market should ensure that this market operates in a sound, transparent and orderly manner. To achieve these aims, firms and their staff should adopt prudent practices, act at all times with integrity and observe the highest standards of market conduct.

**2.1.1** Participants should act with all due skill, care and diligence. Staff should therefore, be properly trained in the practices of securities lending and borrowing and be familiar with this Code.

**2.1.2** Participants are held responsible for the actions of their staff.

**2.1.3** Market professionals should pay particular attention to ensuring fair treatment for and between clients who are not also market professionals where conflicts of interest cannot be avoided.

**2.1.4** Participants in securities borrowing and lending should at all times treat the names of parties to transactions as confidential.

**2.2** In order for the benefits from the securities borrowing and lending market to accrue to market participants, it is essential that securities lending activity does not distort the market either in borrowing/lending or in the securities themselves. In this context, participants in the securities lending market must not in any circumstances enter into transactions or holding arrangements designed to limit the availability of a specific security or with the intention of creating a false or distorted market in the underlying securities. In this context market participants should comply with relevant provisions on market abuse.

**2.3** Participants in the securities borrowing and lending market have a general responsibility to ensure that their activities do not cause market disruption through fails, or lead to reputational damage to the market. Participants should comply with any regulatory restrictions on short selling that may be in force from time to time.

## Preliminary

**2.4** All participants should ensure that there are no legal obstacles to their undertaking securities lending and borrowing transactions and that they have all the necessary authorizations from regulatory authorities as may be applicable. They should become familiar with relevant rules, procedures and market conventions in which they will operate. Participants should ensure that they have established and fully understand their tax position in relation to securities lending transactions.

**2.5** All participants should be familiar with the settlement systems and functionalities that are used for the transfer of securities and related payments.

**2.6** Where necessary, participants should ensure that they have appropriate authority from the beneficial owners of the securities, or from a party suitably authorized by the beneficial owners. For the securities to be lent. Beneficial owners should understand the implications of such lending.

**2.7** Participants should ensure that they have adequate systems and controls for the business they intend to undertake. These should include the following .

**2.7.1** Participants should establish, retain and update their documentation so that it is adequate to cover the types of transactions that they undertake.

**2.7.2** Management should maintain a list of authorized borrowers and lenders of securities and should make this list available to its counterparties on request.

**2.7.3** Parties should have suitable internal controls designed to ensure that any securities loans have been properly authorized before securities are delivered against an obligation to lend.

**2.7.4** Clear and timely records should be available to management of any party involved in such transactions showing, inter alia, the value of the securities lent or borrowed, collateral and any fees received. This information should be available in aggregate and by counterparty to enable accurate monitoring of credit risk.

**2.7.5** Parties to such transactions should monitor their exposure to their counterparties on a real time basis. Appropriate exposure limit should be maintained for all counterparties, and, should be reviewed on a regular basis,

**2.7.6** All participants should be aware of possible settlement risks and take steps to ensure that such exposure is recognized and properly controlled. This should include controls on the replacement or renewal of collateral. Where securities and collateral do not move within the same settlement system or country, particular care should be exercised to ensure that value for security is provided in a timely fashion to minimize exposure and settlement counterparty risk. This may include requirements for the pre delivery of collateral in appropriate cases.

**2.7.7** There should be adequate systems to account, for tax purposes, for any manufactured payments in accordance with relevant regulations.

**2.8** The following procedures should be undertaken before entering into securities borrowing and lending transactions with a new counterparty.

**2.8.1** Parties to a securities lending transaction should disclose to their counterparty the capacity, principal or agent, in which they are acting and should also ensure that they are clear as to the capacity of their counterparty. Where the lender is an agent, the parties should agree on appropriate arrangements for the identity of the principals on whom the risk is taken to be established before each deal is effected, at least by means of an agreed identification code. Participants should also have regard to any regulatory requirements in this area and the guidance issued by the International Securities Lending Association on the recommended model for agent lender disclosure in Europe.

**2.8.2** Participants should ensure that they have agreed documentation and have assured themselves of its effectiveness and that they, or a competent person, have undertaken a thorough credit assessment of the counterparty. Where lenders ask, for example, custodians to undertake credit assessment on their behalf this should be reflected in the agreement.

**2.8.3** Participants should establish whether their counterparty is a member of any relevant exchange as this may mean that they are subject to particular rules which could affect the way in which they deal with certain events during a securities loan.

**2.9** Before dealing for the first time with a client who is not a market professional, market professionals should either confirm that the client is already aware of this Code and its contents or draw them to the client's attention.

**2.10** Such participants should inform the new client, if they are new to securities borrowing and lending that the Code recommends that :

- Transactions should be under the Securities Lending Legal Agreement or equivalent
- Transactions should be marked-to-market regularly and recollateralised as appropriate
- Participants should take possession of securities or collateral or use and independent third party
- Clients should be reminded that it is for them to decide whether to seek independent advice.

**2.11** Such participants should also inform the client that there could be tax consequences from entering into securities borrowing and lending transactions in particular with regard to dividends.

**2.12** Where such participants will be borrowing securities from clients, whether as a final borrower or intermediary, they should ensure that the lender is aware that any voting rights will be transferred along with title of the securities and the client is not, therefore, entitled to exercise any such rights until the securities are redelivered to it. They may also wish to consider explaining the client's entitlements in relation to any benefits on loaned securities.

### Agents

**2.13** Before dealing with a client for the first time, agents should either confirm that the client is already aware of this Code and its contents, or draw them to the client's

attention. Agents should represent clearly the nature of the arrangements and the capacity in which they are acting. There should be a clear legal agreement which may form part of the standard fund management or custody agreement, authorizing the agent to lend securities, setting down the terms on which the securities may be lent and specifying the collateral that may be taken.

**2.14** An agent must obtain the necessary prior written authority from the beneficial owners of the securities, or from a party suitably authorized by the beneficial owners, to undertake securities lending.

**2.15** An agent should inform the beneficial owners that securities lending involves the absolute transfer of title and that securities on loan cannot therefore be voted by the lender unless they are recalled. They should also explain the client's entitlements in relation to any benefits accruing on loaned securities.

**2.16** Where a lender is acting through an agent, there should be an agreed arrangement between agent and principal for the safeguarding of collateral and the allocation of any earnings on that collateral.

**2.17** Where a participant is acting as an agent for more than one principal, a clear system for determining which principals' securities are on loan should be established. There should also be a clear system for determining any allocation of collateral between the particular lenders and for defining their entitlements.

**2.18** An agent should make regular reports to clients, providing them with a full

explanation of the securities lending activity carried out on their behalf.

## Brokers

**2.19** As well as dealing directly or through an agent, participants may also trade through broking intermediaries (a) matched principals – participants acting in that capacity are acting as principals and (b) name-passing or name give-up brokers.

**2.20** Name passing brokers in securities lending :

- Do not act as principal to a deal
- Only quote firm prices substantiated by a market principal participant
- Only receive payment for successfully bringing counterparties together in the form of brokerage which is freely negotiated
- Pass the names immediately when a bid is hit or an offer lifted.

**2.21** While principals and brokers share equal responsibility for maintaining confidentiality, name-passing brokers must exercise particular care. They should ensure that the identity of parties to a transaction is disclosed only after the bid is hit or offer lifted which may be on a conditions basis subject to the prospective counterparty being one with whom the participant can deal and then only to the parties involved.

## Legal Agreement

**2.22** All securities lending transactions should be subject to a written legal agreement

between the parties concerned. Standard agreements should be used wherever possible.

**2.23** The Global Master Securities Lending Agreement [GMSLA] has been developed as a market standard for securities lending and covers the matters which a legal agreement ought to cover for securities lending transactions. This Agreement is kept under review and amendments are made from time to time although parties to an existing agreement would have to agree that such amendments would apply. It is recommended that this Agreement is adopted by participants entering into securities lending and borrowing transactions although it is understood that certain provisions may have to be varied to suit particular circumstances.

**2.24** The following issues covered by this Code should be covered by the legal agreement which will also contain other provisions outside the scope of this Code.

- The capacities – principal or agent, in which the parties are acting
- Where relevant, confirmation that an agent has the appropriate prior authority from the beneficial owners, or a party suitably authorized by the beneficial owners, for the securities to be lent
- The absolute transfer of title to securities and collateral
- Daily marking to market transactions
- Acceptable forms of collateral and margin percentages
- Arrangements for delivery of collateral and for the maintenance of margin whenever the mark to market reveals a material change of value
- Provisions clarifying the rights of the parties regarding substitution of collateral

- The treatment of dividend payments and other rights in respect of securities and collateral including, for example, the timing of any payments
- Arrangements for dealing with corporate actions
- Procedures for calling securities and arrangements if called securities cannot be delivered
- Clear specification of the events of default and the consequential rights and obligations of the counterparties
- Full set-off claims between the counterparties in the event of default
- The governing law and jurisdiction of the agreement.

### Custody

**2.25** Custody is an important aspect of securities borrowing and lending. Taking possession of the securities or collateral or using a third party custodian removes one important potential element of the credit risks involved, that, while in possession of the securities or collateral, the other party defaults and that the value of the securities or collateral subsequently cannot be recovered. Participants therefore need to ensure that securities loan transactions are identified, where necessary to their custodian. Participants should also take steps to satisfy themselves that their custodian's segregation arrangements are appropriate to the particular circumstances of their activities.

**2.26** Securities and collateral, including where relevant margin, should be delivered to the account of the counterparty or his agent or a designated third party.

**2.27** Before agreeing to arrangement in which securities or collateral are left with the

other party to the transactions, participants need to consider whether they are satisfied to accept such arrangements and the reason why these are prudent. They should also consider the credit standing of the other party and to assure themselves that the other party has the appropriate, independently audited, systems and controls for segregating and monitoring securities or collateral.

### Collateral/Margin

**2.28** Securities loans should where possible be made on a collateralized basis against collateral acceptable to the lender as specified in the agreement or agreed by the parties prior to the loan.

**2.29** The collateral should be delivered to the account of the lender or his agent or a designated third party.

**2.30** The collateral should include a margin over the value of the loan which should be specified in the agreement. Alternatively, if this is acceptable to both parties, the margin could be agreed at the time of the loan, when it should also be included in the relevant confirmation.

**2.31** The agreement should provide for the collateral to be adjusted whenever there is a material change in the value of the currency or securities involved in the transactions and for the original margin to be restored.

**2.32** The loan and the collateral should be marked to market on a daily basis and more frequently if the need arises.



## Default and Close-out

**2.33** Parties to a transaction should be satisfied that the legal agreement will allow their claims to be offset immediately against the claims of their counterparty in the event of default.

**2.34** Some events such as insolvency may be automatic events of default under the legal agreement whilst others may trigger one party's right to declare an event of default against the other. In these latter cases, participants need to recognize that the decision to declare a default is a major one. Senior management of any participant faced with this decision should weigh carefully whether the event which triggers the right requires such action or is a technical problem which can be resolved in alternative ways.

**2.35** Once a decision to declare a default has been taken, it is important, in the interests of the participant, the defaulting party and the market, that the process be carried out with due care. In particular :

- The non-defaulting party should do everything within its power to ensure that the default market values used in the close out calculations are and can be shown to be fair and
- If the non-defaulting party decides to buy or sell securities consequent to the close out, it should make every effort to do so without unnecessarily disrupting the market.

## Confirmations

**2.36** Trading platforms use of electronic communications has made confirmations unnecessary in many cases. However, confirmations remain relevant in cases where there is no electronic communication

associated with the original agreement to trade.

**2.37** Market professionals should ensure that a written or electronic confirmation is issued, whenever possible on the day of the trade.

**2.38** Where material changes, such as collateral adjustments or substitutions of collateral occur during the life of the transaction, these should be agreed between the parties and may also be confirmed, should either party wish it. Where appropriate this may be done via a cross reference to the original loan.

**2.39** Participants should ensure that any confirmations they receive are checked carefully as soon as possible, normally on the day of receipt, and that any queries on their terms are promptly conveyed back to the issuer.

## 3. MARKET PRACTICE

### Introduction

**3.1** It is recommended to adopt the approaches set out below. Nevertheless, such market practices may not be appropriate to specific counterparties or circumstances. Where, after due consideration, a participant considers that any particular practice is not appropriate, they should reach agreement with the counterparty either prior to commencing any trading or at the time of each trade and reflecting such agreement in the legal documentation.

## Before dealing with a new counterparty

**3.2** This part of the Code refers to various matters specifically relating to securities lending which need to be considered before entering into securities borrowing or lending transactions with a new counterparty. There are details which will need to be agreed before transactions are undertaken, usually in negotiating the legal agreement. These matters include :

- Acceptable collateral, margin levels and the collateral method to be used
- Collateralization following dividends and other corporate events
- Approach to daylight and settlement exposures and pre delivery of collateral
- Business day conventions
- Notice periods for voting, elections, recalls and substitutions
- Where the lender is acting as agent, the information to be provided about the underlying principals and the allocation of stock lent/collateral between them
- Pricing sources for marking to market and currency conversions
- Settlement arrangements
- Designated offices
- The parties tax status and manufactured dividend entitlements

**3.3** It is important for the purposes of delivery/redelivery of securities and collateral and various notice periods that there should be a clear agreement between the parties about the meaning of business days. Participants may wish to vary the usual business day convention to suit their particular circumstances and this would need to be reflected in the legal agreement.

**3.4** Participants will also need to agree the time zone in which business days are to be measured. The norm is to use the time zone in which the loaned securities or collateral are traded. Similarly, participants will need to reach an understanding about the latest time on a business day at which a notice or call should be issued in order to be treated as having been given on that day. Market practice is that notices should be given before the close of the relevant market, it should be noted that this may well be earlier than the end of the business day.

**3.5** The relationship between lender and borrow and the individual transactions between them will be facilitated if there is a clear understanding of each party's attitudes to certain events which may occur during a stock loan. Such matters include:

- Voting on securities lent or collateral given
- Elections and other corporate actions on stock lent or collateral given
- Substitutions of collateral
- Intra-day marking to market.

## At point of trade

**3.6** At the point of trade, participants will need to agree:

- The essential economic terms of the transactions, in particular the securities to be lent, rate and term
- Any of the matters set out above to the extent that they have not previously been dealt with, for example, acceptable collateral and margin percentages and
- Any non-standard features of the particular transaction..

## Confirmations

**3.7** Confirmations may be unnecessary if participants use electronic trading platforms. But any loan confirmations will normally contain the following information:

- Contract date
- Loaned securities – type, ISIN
- Lender – underlying principal unless otherwise agreed
- Borrow – same as lender
- Delivery date
- Acceptable collateral and margin percentages if not specified in the legal agreement
- Term – termination date for term transactions or terminable on demand
- Rates applicable to loaned securities
- Rates applicable to cash collateral
- Lender’s settlement system and account
- Borrower’s settlement system and account
- Lender’s bank account details
- Borrower’s bank account details

## Delivery/re-delivery

**3.8** Parties should be aware of the procedures for calling securities. The rights and obligations of each party should be clearly established.

**3.9** Any party wishing to return or recall securities on loan should have regard to the possible implications for its counterparty and should therefore notify them as soon as

possible. Where a lender intends to recall loaned securities in order to meet part of a sale or delivery obligation on a larger transaction, it is good practice, if possible, to consider whether the larger sale or delivery obligation can be shaped or partialled so as to avoid any prospect of the whole transaction failing if the borrower cannot redeliver the loaned securities at the designated time.

**3.10** There should be explicit agreement between the parties on the arrangements to be followed if called securities cannot be delivered. The parties should also consider whether arrangements are necessary in order to deal with the possibility of securities or collateral being redelivered too late in the day to enable the recipient to meet an onward delivery obligation.

**3.11** Parties should ensure that they are aware of the procedures to be followed in the event of failed deals in all markets in which stock is lent. The rights and obligations of each party should be clearly established.

**3.12** The legal agreement between participants may provide for the transferee to obtain financial redress if the transferor fails to redeliver borrowed securities or collateral at the designated time. It is available for participants to consider and agree at the outset of a new relationship how any such provisions will operate in the event of a failure to redeliver. Such amounts will typically include:

- Interest and overdraft costs which have arisen from the transferee’s need to finance an acquisition from an alternative source
- Fines and other penalties suffered by the transferee as a result of its inability to settle an onward delivery obligation

- Costs passed back to the transferee because its counterparty has bought in securities to cover a failed onward delivery.

**3.13** Other forms of potential costs may or may not be covered by the terms of the legal agreement. Where, as a result of the transferor's failure to redeliver securities or collateral, the transferee fails to meet a sale or delivery obligation in respect of a larger onward transaction, the norm is for the transferee to seek to recover only that proportion of the costs suffered which relates to the securities/collateral which the transferor has failed to return.

**3.14** Where such a claim is to be made, the transferee should inform the transferor promptly of that fact and should also provide notification as soon as possible of the amount due and the basis on which it has been calculated so that the transaction can be settled on a timely basis. The transferee should provide appropriate evidence to support the calculations as soon as possible thereafter.

### Collateral/margin/marketing to market

**3.15** The required collateral margin will be negotiated between the parties at a level which reflects both their assessment of the counterparty's creditworthiness and the market risks involved in the transaction.

**3.16** The norm is for transactions to be marked-to-market on the basis of end of previous day closing prices in the relevant market. Counterparties' credit exposures will also fluctuate intraday as market prices move and there may, therefore, be particular circumstances, such as exceptional price

movements, in which further valuations and collateral adjustments will be undertaken on an intra-day basis. Participants will need to agree at the outset, whether, and in what circumstances, such intra-day adjustments are to be undertaken, and the pricing sources and delivery mechanisms to be used.

**3.17** The degree of exposure which a counterparty would regard as material and which would trigger a call for collateral to be provided or returned will be agreed in advance with the counterparty. The point at which a net marked to market value becomes material is itself a credit judgment. This includes the possibility of the two parties agreeing to daily collateral adjustments, irrespective of the size of the exposure that has arisen.

**3.18** Participants will need to agree at the outset how any dividends and other corporate events on borrowed securities or collateral are to be dealt with in the valuation. It is advisable for participants to consider the credit exposures which may arise as a result of such events. Where their assessment indicates that adjustments to the normal calculation may be needed in order to match their particular risk appetite they may wish to negotiate such arrangements with their counterparty.

**3.19** Borrowers should exercise reasonable care in determining the time at which a substitution call is to be made, bearing in mind that some lenders, particularly principal traders and brokers, may not be in possession of the collateral. They are, therefore, encouraged to give lenders as much notice as possible of a substitution. Where a borrower intends to recall and substitute collateral in order to meet part of a sale or delivery obligation on a larger transaction, it is good

practice, if possible, to consider whether the larger sale or delivery obligation can be shaped or partial led so as to avoid any prospect of the whole transaction failing if the lender cannot redeliver the collateral at the designated time.

### Dividends, voting and other corporate actions

**3.20** Arrangements should be made to compensate the lender of securities or giver of collateral for any dividend or interest payment due while a particular security is on loan or collateral is held by the lender. These arrangements should make each party's obligations clear including, for example, the timing of any payments.

**3.21** Participants should ensure that any tax due on manufactured dividends is properly accounted for in accordance with relevant regulations.

**3.22** Securities lending involves the absolute transfer of title to both the securities lent and the collateral taken and any voting rights are transferred along with title. Securities must therefore be recalled by the lender or collateral substituted by the borrower, if they wish to exercise voting rights attaching to particular securities.

**3.23** A person could borrow share in order to be able to exercise the voting rights and influence the voting decision at a particular meeting of the company concerned. Market convention however is that securities should not be borrowed solely for this purpose. Lenders should also consider their corporate governance responsibilities before lending stock over a period in which an AGM or EGM is expected to be held. Beneficial owners need

to ensure that any agents they have made responsible for voting and for securities lending act in a co-ordinated way.

**3.24** Lenders need to be aware that if they lend their entire holding of a particular security they may cease to receive information about corporate events in relation to it.

**3.25** The arrangements to be following in the event of a rights issue or other corporate action should be clearly established by all parties before a security loan is made, with due recognition of local market rules and practice and any deadlines imposed by the various parties' local agents or custodians.

### Putting securities on hold

**3.26** Putting securities on hold is the practice by holders of securities of reserving them at the request of a second party against the latter's anticipated need to take delivery at a later date in a securities loan transaction. Prospective borrowers may wish securities to be put on hold so as to be assured that they will be available for borrowing before entering into a trade against which it will need to be delivered. Lenders will consider whether to offer such facilities to a prospective counterparty as part of the overall arrangement which they negotiate.

**3.27** When a lender is asked to put securities on hold he is under no obligation to quote a rate for any subsequent loan. If the party requesting the hold wishes to obtain a firm rate he needs to make that clear to the lender at the outset. In the absence of any specific agreement to the contrary, any rate quoted by a lender is regarded as indicative only.

**3.28** If the party which has requested the hold wishes to roll it over, standard practice is to contact the holder of the securities before 0900hrs in the absence of any agreement to the contrary between the parties, the arrangement will terminate at that time unless it has been rolled over. When a hold is rolled over the parties will need to consider whether any rate quoted needs to be re-negotiated.

**3.29** Holds are generally open to challenge in that the party making the request only has a first option on the securities should another party approach with a firm borrowing. When a hold is challenged, the holder should inform the party for whom the securities have been held of that fact and the latter will need to decide whether or not to take the securities at that time. Should he wish to do so he should notify the holder within predetermined response times. If no such notification is received by the holder within the stipulated time, he is free to transact with the party which made the challenge although before doing so, as a matter of good practice, the holder would normally contact the party for whom securities have been held again to give him a final opportunity to take the securities. When putting securities on hold, the parties will need to agree whether there is a latest time during the business day at which time the holder can initiate this process following challenge.

**3.30** Pay to hold arrangements under which the holder receives a fee for putting the stock on hold are contractual arrangements and are not therefore open to challenge.

## Term trades

**3.31** The generic description term trade is used in the securities lending market to describe a wide range of arrangements and there is therefore considerable scope for misunderstanding between participants if the precise details of the transaction are not agreed to at the outset.

**3.31.1** The parties need to agree whether the term of the loan is fixed or indicative. If the term is fixed there will be no obligation on the lender to accept early return of the stock or on the borrower to comply with a recall request.

**3.31.2** In the case of cash collateral transactions, the parties need to establish whether it is the amount of the specific securities which is fixed or the overall value.

**3.31.3** In agreeing the rate, the parties will take into account whether or not the terms is fixed and the permissibility of returns and recalls.

**3.31.4** Where appropriate, they will also need to reach agreement on the procedures for adjusting the rate if securities are returned early by the borrower or for compensating the borrower in the event of an early recall by the lender.

## Best execution and agency lending

**3.32** Participants lending securities as agent on behalf of beneficial owners should consider whether they are subject to Best Execution requirements under MIFID depending on the status of their clients and the facts and circumstances of their business. Transactions with clients classified as Eligible Counterparties are not subject to Best Execution requirements unless those counterparties request such treatment.

**3.33** Where Best Execution requirements are determined to apply, agents will need to

draw up an execution policy setting out how they take all reasonable steps to obtain the best result for their clients, taking into account execution factors listed in the Directive

**3.34** A number of factors may be significant in obtaining the best result for clients on any particular loan. The relative importance of these factors will vary depending on the circumstances. The following is an indicative and non exhaustive list of factors in accordance with the Directive.

- Price
- Lending fee/rebate fee

It should be noted that securities lending and borrowing is a demand driven activity and competitive quotes are not obtained generally by agent lenders. Lending fees/rebates can be compared to similar recently executed transactions in the market. In general, securities can be grouped into those trading at general collateral rates and those trading at special rates.

- Costs

Settlement arrangements and costs – the borrowers' ability to deliver collateral efficiently and in line with the operational model of the lender for example making use of triparty collateral management services.

- Likelihood of execution and settlement

### Demand from borrowers

Prior experience and reliability of borrowers for example if the lender recalls the lent securities.

- The size of the transaction
- Other consideration relevant to the execution of the order

Borrower approved by the lender for counterparty credit risk purposes and credit limit available

Lender approved by the borrower for counterparty credit risk purposes and credit limit available

The collateral and margin requirements of the lender

Diversification of the lender's counterparty credit exposures

The term of the loan

The tax status of the borrower and lender

**3.35** Speed is less likely to be a relevant factor because agent lenders are responding to demand to borrow in the market rather than executing particular client orders.

**3.36** The order execution policy will include information about execution venues. Depending on the particular securities, execution venues may include, inter alia:

- Bilateral execution with market counterparties approved by the client following negotiation by telephone or using an electronic system

- Execution using a multilateral trading platform and/or central counterparty
- Execution on a regulated market.

**3.37** If, as is the case for most securities lending, transactions are negotiated outside of regulated markets, agents need to obtain prior consent from their clients to deal through execution venues, typically in the form of a general agreement.

**3.38** Reinvestment of cash collateral by an agent lender on behalf of its clients may be treated as portfolio management under MIFID and therefore subject to Best Execution under the agent’s order execution policy for that activity.

**3.39** The execution policy should set out how the agent reviews and monitors the effectiveness of its execution policy, and whether any changes are needed and which business area within the agent is responsible for this process.

**3.40** Appropriate information should be provided to clients, if requested, to enable them to satisfy themselves that the execution policy has been followed. The absence of centralised market prices means it may be difficult to compare lending fees/rebates obtained with prevailing market levels at that time.

**3.41** Agents that engage in pooled securities lending will typically have separate policies for allocating aggregated transactions fairly among clients.

Agent	A party to a loan transaction that acts on behalf of a client. The agent typically
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	does not take risk in a transaction
Beneficial owner	A party which is entitled to the rights of ownership of the property. In the context of securities, the terms is usually used to distinguish this party from the registered holder which holds the securities in trust for the beneficial owner.
Benefit	Any entitlement due to a stock or share holder as a result of purchasing or holding securities including the right to any dividend, rights issue, scrip issue, etc. made by the issuer. In the case of loaned securities or collateral benefits are passed back to the lender or borrower usually by way of a manufactured dividend or the return of equivalent securities or collateral.
Broker	A person whose role is to act as an intermediary in transactions between sellers/lenders and buyers/borrowers. The broker may either put one party in touch with the other [a name passing or name give up broker] or act as a matched principal in two transactions one for the purchase and the other for the sale or vice versa.
Collateral	Securities or cash delivered by a borrower to a lender to support a loan or securities or cash
Custodian	An entity that holds securities of any type for investors, effects receipts



## APPENDIX 4.5

	and deliveries and supplies appropriate reporting
Equivalent securities or collateral	A term meaning that the securities or collateral returned must be of an identical type, nominal value, description and amount to those originally provided. If, during the term of the loan, there is a corporate action in relation to loaned securities or collateral, the lender or borrower is normally entitled to specify at that time the form in which he wishes to receive equivalent securities or collateral on termination of the loan. The legal agreement will also specify the form in which equivalent securities or collateral are to be returned in the case of other corporate events.
Fail/failed delivery	The failure to deliver cash or securities in time for the settlement of the transaction.
Global Master Securities Lending Agreement [GMSLA]	The standard legal agreement that has been developed a a market standard for securities lending of bonds and equities internationally.
Hold in custody	An arrangement under which securities or collateral are not physically delivered to the borrower or lender but are simply segregated by the lender or borrower in an internal customer account.
Putting stock on hold	The practice whereby a lender holds securities at a borrower's request in anticipation of that borrower taking delivery.

Manufactured dividend	When securities that have been lent out pay a cash dividend, the borrower of the securities is generally contractually obligated to the lender of the securities. This payment pass through is known as a manufactured dividend.
Mark to market	The act of revaluing the securities collateral in a repo or securities lending transaction to current market values. Standard practice is to mark to market daily.
Partialling	Market practice or a specific agreement between counterparties which allows a part delivery against an obligation to deliver securities.
Principal	A party to a loan transaction that acts on its own behalf or substitutes its own risk for that of its client when trading.
Recall	A request by a lender for the return of securities from a borrower.
Term trades	Transactions with a fixed maturity date.