

Macquarie



## **MACQUARIE EUROPE**

---

### **TERMS AND CONDITIONS OF INVESTMENT BUSINESS**

*FOR PROFESSIONAL CLIENTS AND ELIGIBLE  
COUNTERPARTIES*

SEPTEMBER 2011

---

## TABLE OF CONTENTS

1.	DEFINED TERMS .....	4
2.	REGULATION.....	4
3.	APPLICATION AND SCOPE OF THESE TERMS.....	5
4.	YOUR STATUS .....	6
5.	OUR SERVICES .....	6
6.	INSTRUCTIONS.....	8
7.	EXECUTION OF ORDERS .....	9
8.	OUR RESPONSIBILITIES AT SETTLEMENT .....	10
9.	YOUR RESPONSIBILITIES AT SETTLEMENT.....	10
10.	OUR CHARGES.....	10
11.	AGGREGATION OF ORDERS .....	11
12.	YOUR MONEY .....	11
13.	CONFIRMATIONS.....	12
14.	CUSTODY OF YOUR INVESTMENTS .....	12
15.	RIGHTS ISSUES, TAKEOVERS, ETC.....	12
16.	CUSTOMER WARRANTIES, REPRESENTATIONS AND COVENANTS.....	12
17.	CONFLICT OF INTERESTS .....	13
18.	INDEMNITY AND LIABILITY .....	14
19.	INTEREST .....	15
20.	COMPLAINTS PROCEDURE .....	15
21.	CHANGES TO THESE TERMS OF BUSINESS.....	15
22.	TERMINATION .....	15
23.	CONFIDENTIALITY .....	16
24.	DATA PROTECTION.....	16
25.	ANTI CORRUPTION AND BRIBERY .....	16
26.	ASSIGNMENT .....	17

---

27.	DELAY OR OMISSION .....	17
28.	GENERAL .....	17
	APPENDIX 1- RISK WARNING NOTICE .....	19
	APPENDIX 2: ADDITIONAL TERMS .....	26
	APPENDIX 3: ADDITIONAL TERMS .....	28

# TERMS AND CONDITIONS OF INVESTMENT BUSINESS

## TERMS APPLICABLE TO PROFESSIONAL CLIENTS AND ELIGIBLE COUNTERPARTIES

---

### 1. DEFINED TERMS

---

“**Additional Terms**” means additional terms which form part of these Terms of Business and are applicable to services and transactions that we may carry out with or for you from time to time;

“**Applicable Regulations**” means:

- (a) all applicable laws, rules, regulations, instruments and provisions in force from time to time ;
- (b) the rules of a relevant market in which we may carry on business on your behalf; and
- (c) rules, principles and codes of practice of any regulatory authority to which the parties are subject, including the FSA Rules;

“**Agreement**” means any agreement other than these Terms of Business in place between you and us;

“**Affiliate**” means any entity controlled, directly or indirectly, by us, any entity that controls, directly or indirectly, us, or any entity directly or indirectly under common control with us. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person;

“**Business Day**” means a day which is not a Saturday or Sunday and upon which banks are open for business in London;

“**Client Money Rules**” means the provisions of the FSA's Client Assets Sourcebook relating to client money;

“**Custody Rules**” means the provisions of the FSA's Client Assets Sourcebook relating to the custody of client assets;

“**Eligible Counterparty**” has the meaning given in the FSA Rules;

“**FSA**” means the UK Financial Services Authority and any successor body thereto;

“**FSA Rules**” means the rules, guidance, principles and regulations made by the FSA from time to time;

“**Order Execution Policy**” means the Macquarie order execution policy as amended from time to time;

“**Permitted Purposes**” has the meaning given in clause 24;

“**Professional Client**” has the meaning given in the FSA Rules; and

“**Terms of Business**” means these Terms and Conditions of Investment Business;

### 2. REGULATION

---

2.1 These Terms of Business are issued to you by either

- Macquarie Capital (Europe) Limited, a company registered in England and Wales (registered number 03704031) having its registered office at Ropemaker Place, 28 Ropemaker Street, London EC2Y 9HD;
- Macquarie Bank International Limited, a company registered in England and Wales (registered number 06309906) having its registered office at Ropemaker Place, 28 Ropemaker St, London EC2Y 9HD;
- Macquarie Bank Limited, a company registered in Australia which has its London branch (registered number BR002678) at Ropemaker Place, 28 Ropemaker Street, London EC2Y 9HD.

2.2 In these Terms of Business “Macquarie” means Macquarie Capital (Europe) Limited, Macquarie Bank International Limited, Macquarie Bank Limited (London Branch), and any Affiliate from time to time of Macquarie Group Limited which is resident in the United Kingdom. References to “we”, “us” and “our” are references to the Macquarie company which is providing services to, or is otherwise dealing with, you.

2.3 Macquarie Capital (Europe) Limited [FSA reference number is 193905], Macquarie Bank International Limited [FSA reference number is 471080] and Macquarie Bank Limited (London Branch) [FSA reference number is 170934] are authorised and regulated in the United Kingdom by

the Financial Services Authority (the "FSA"), whose address is 25 The North Colonnade, Canary Wharf, London E14 5HS.

- 2.4 the services that we provide to you pursuant to them are subject to Applicable Regulations so that:
- (a) if there is any conflict between these Terms of Business and any Applicable Regulations, the latter will prevail;
  - (b) nothing in these Terms of Business shall exclude or restrict any duty or liability which we may have to you under Applicable Regulations;
  - (c) we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations;
  - (d) all Applicable Regulations and whatever we do or fail to do in order to comply with them will be binding on you;
  - (e) such actions that we take or fail to take for the purpose of compliance with any Applicable Regulations shall not render us or any of our directors, officers, employees or agents liable; and
  - (f) you agree to comply with all Applicable Regulations.
- 2.5 For further details about Macquarie, the services we provide and other information relevant to these Terms of Business, please refer to our website [www.macquarie.com](http://www.macquarie.com). Information on our website does not constitute part of the agreement between you and us.

### **3. APPLICATION AND SCOPE OF THESE TERMS**

---

- 3.1 These Terms of Business with any Additional Terms, and accompanying documents including the cover letter as amended from time to time, (these " Terms of Business ") set out the terms of the investment business relationship between you and us. These Terms of Business supersede any other general terms of business for investment business that we may previously have sent you. You are also referred to the risk warnings in Appendix 1 to these Terms of Business and other important information about our services, which we may have made available to you separately. By providing instructions to us after receiving this document you agree that the services will be provided on the basis of these Terms of Business. These Terms of Business will continue until they are terminated in accordance with section 22.
- 3.2 In the case of specific types of transactions, these Terms of Business may be supplemented by, and shall be deemed to include any Additional Terms which relate to such specific transactions. For the avoidance of doubt, such Additional Terms shall remain in full force and effect unless we notify you otherwise. Where such Additional Terms relate to specific transactions, such Additional Terms shall govern such specific transactions.
- 3.3 If there is any conflict between these Terms of Business and the terms of another Agreement relating to a specific service in place between us, the latter will prevail.
- 3.4 We are obliged by the FSA Rules to comply with certain rules of conduct. However, we assume no greater responsibility nor owe you any fiduciary duty, other than those imposed by the FSA Rules or the express terms of these Terms of Business.
- 3.5 We may introduce you to an Affiliate for the purpose of providing any services or effecting any transactions envisaged by these Terms of Business. You agree that we may, from time to time, act as agent for any such Affiliate. If we agree, you may also pass orders directly to such Affiliates. Where you pass an order directly to an Affiliate based overseas or you otherwise have a direct relationship with any such Affiliate, these Terms of Business will not apply to your relationship with that Affiliate which will be governed by such other terms as may be provided by, or agreed with, the Affiliate (if any). Such overseas Affiliates may not be regulated by the FSA and, as a result, you may not have the benefit of the protections granted by the FSA Rules. The regulatory system, including compensation arrangements, applying to such overseas Affiliates may be different to that applicable in the UK. We shall be entitled to delegate the performance of any of our obligations under the Terms of Business to any Affiliate or such other person or persons as we think fit, but shall remain responsible for the acts and omissions of any such delegate as if they were our own.

#### 4. YOUR STATUS

---

- 4.1 Based on the information available to us and as permitted by the FSA Rules, we shall categorise you as either an “Eligible Counterparty” or as a “Professional Client” and notify you of this in a client categorisation notice (the “Client Categorisation Notice”).
- 4.2 You have the right to request a different client categorisation. If you request categorisation as an Eligible Counterparty and we agree to such categorisation, we would no longer be required by regulatory rules to provide certain protections granted to a Professional Client. However, notwithstanding the absence of applicable regulatory rules, we would endeavour to provide a service which is overall effective and commercially reasonable. The regulatory protections concerned include formal requirements in the following areas: (a) to act in accordance with your best interests; (b) to provide certain information to you before providing services; (c) not to give or receive inducements; (d) to achieve best execution in respect of your orders; (e) to execute orders subject to other constraints as regards timing and handling relative to other clients' orders; (f) to ensure that information we provide is fair, clear and not misleading; and (g) to provide certain reports, confirmations and statements. If you request to be categorised as a retail client thereby requiring a higher level of regulatory protection we may not be able to provide our services to you.
- 4.3 If we receive a request for a different client categorisation from you, we will inform you of whether or not we accept it. However, until we receive such a request, we shall deal with you on the basis of our original categorisation as set out in the Client Categorisation Notice.
- 4.4 You agree and acknowledge that you are responsible for keeping us informed about any change that could affect your categorisation as an Eligible Counterparty or Professional Client.
- 4.5 Even where you are categorised as an Eligible Counterparty, we may, at our initiative, treat you as a Professional Client for the purposes of the FSA Rules. Where we do so, we will notify you of this re-categorisation accordingly.
- 4.6 Unless otherwise agreed by us, if you are acting on behalf of any other person when dealing with us, we will continue to treat you alone (rather than any such other person) as our client for the purposes of the FSA Rules. However, if you act as agent on behalf of another person, you acknowledge and accept that you and your principal will be jointly and severally liable, each as if a principal, to us in respect of all of your obligations and liabilities pursuant to these Terms of Business.
- 4.7 If you are authorised under the Financial Services and Markets Act 2000 and are acting on behalf of any other person when dealing with us, you agree that you will comply at all times with all relevant FSA Rules and you will be responsible for and will have undertaken all necessary identification and verification checks for the purposes of complying with statutory and FSA money laundering requirements in respect of each principal for who you act.

#### 5. OUR SERVICES

---

- 5.1 The services we may provide include, but are not limited to, dealing and distribution services, the arrangement of deals, and, where we separately agree with you, personal recommendations (as defined in the FSA Rules), in the following investments, together with related research;
- (a) shares;
  - (b) debenture stock, loan stock, bonds, notes, certificates of deposit, commercial paper or other debt instruments, including government, public agency, municipal and corporate issues;
  - (c) warrants to subscribe for investments falling within (a) or (b) above ;
  - (d) depository receipts or other types of instrument relating to investments falling within (a), (b) or (c) above;
  - (e) units in regulated or unregulated collective investment schemes;
  - (f) futures and contracts for differences on commodities, securities, interest rate and debt instruments,
  - (g) stock or other indices, currencies and base and precious metals;
  - (h) spot and forward contracts on currencies, commodities, base and precious metals;

- (i) options to acquire or dispose of any of the instruments falling within any of the above categories and options on options;
  - (j) notes, over-the-counter and other derivative products involving, referable to the value of, or granting rights or accepting obligations in respect of or by reference to one or more of the above categories together with commodities, freight, bullion, base and other precious metals;
  - (k) investments which are similar or related to any of the foregoing.
- 5.2 We may also provide other services if agreed between us.
- 5.3 In respect of all the above, we may enter into transactions with you as principal or as your agent. If we act as principal, a statement to that effect will be included on the transaction confirmation provided by us in accordance with section 13 of these Terms of Business.
- 5.4 Subject to the foregoing, and unless agreed otherwise in writing, there are no restrictions on the markets or types of investment in which we may carry on business on your behalf.
- 5.5 For some products and transactions, we will be unable to provide our services to you unless you have entered into the relevant Additional Terms. We may also provide you with specific or general risk warnings in relation to some products or transactions, or types of products or transactions (for example in relation to contingent liability transactions which may commit you to further payment or liability beyond your initial outlay). You undertake to read such risk warnings and take them into account when deciding whether or not to instruct us in relation to the relevant products or transactions.
- 5.6 If you are categorised as a Professional Client, we are required under the FSA Rules to assess whether a product or transaction is appropriate for you. Accordingly, you will be required to provide us with information about your knowledge and experience in investments that are relevant to the particular product or transaction, so as to enable us to make such an assessment. We will be entitled to rely on the information provided by you. If we deem a product or transaction not appropriate for you, we will notify you. However, unless the information provided by you indicates otherwise, when providing services to you, we will assume that you have the necessary experience and knowledge in order to understand the risks involved in relation to those services or relevant transactions.
- 5.7 In respect of each transaction, we will deal with you solely on an execution only basis. We will not advise on the merits of that transaction or its taxation or other consequences.
- 5.8 If we effect a transaction with or for you, this shall not be taken to mean that we recommend, or concur on the merits of, the transaction or that the transaction is suitable for you. You are required to make your own assessment of any transaction that you are considering and should not rely on any information, proposal or other communication from us as being investment advice.
- 5.9 Notwithstanding section 5.8 and 5.9 above, in some circumstances we will separately agree to provide you with personal recommendations (as defined in the FSA Rules) in respect of a transaction. If we make a personal recommendation to you such personal recommendation shall be expressly made either orally or in writing. We shall not be required to ensure that such personal recommendation takes into account any investment research or other recommendations we may have published from time to time.
- 5.10 If we do agree to provide you with personal recommendations (as defined under the FSA Rules):
  - (a) we will only advise you on the products, services and transactions provided by us or an Affiliate;
  - (b) we give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the tax consequences of any transaction;
  - (c) you hereby acknowledge that the provision of personal recommendations is incidental to your dealing relationship with us and provided solely to enable you to make your own investment decisions;
  - (d) you undertake to provide to us on request all information regarding your investment objectives, financial situation and knowledge and experience in investments that are relevant to the particular product or transaction, so as to enable us to provide a personal recommendation that is suitable for you. We will be entitled to rely on the information

provided by you and will assume that such information is complete and accurate in all material respects unless you tell us otherwise;

- (e) we shall not be under any obligation to provide on-going recommendations in relation to the management of your investments unless you have entered into a discretionary investment management agreement with us;
- (f) we are also entitled to assume that:
  - (i) you have the necessary experience and knowledge in order to understand the risks involved in relation to those services or relevant transactions; and
  - (ii) where you are a per se professional client or an eligible counterparty (as defined in the FSA Rules), that you are financially able to bear any related investment risks consistent with your investment objectives in relation to the proposed products, transactions and services.
- (g) if you do not, or are unable to, provide us with the information we request in a timely manner, or we consider that the relevant product, service or transaction is not suitable for you, then this may result in a delay in us dealing with or for you and/ or we may refuse to deal with or for you. It is your responsibility to notify us if your circumstances have changed.

5.11 We may from time to time send published research reports and recommendations and other publications to you. If the document contains a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on to any such person or category of persons. We give no representation, warranty or guarantee as to the accuracy or completeness of such information or as to the tax consequences of any transaction. We shall not be obliged to provide you with copies of any published research or recommendations either at the same time as it is provided to an Affiliate or third parties or at all. We may, subject to the FSA Rules, effect own account transactions at any time in investments which are or have been the subject of such recommendation and/or publications, or any related investments. No research shall constitute an offer by us or any Affiliate to buy or sell any investment. Any such published research reports or recommendations may appear in one or more screen information service.

## 6. INSTRUCTIONS

---

- 6.1 We may rely and act on any instructions, notices or requests of any person who is, or whom we reasonably believe to be, a person designated or authorised by you to give such instructions, notices or requests (whether given in writing or by telex, telephone, computer-based systems or other media) but we will not be obliged to do so. We will not be liable for any action we take in good faith, pursuant to receipt of instructions from you, nor will we be responsible for verifying the accuracy of instructions received from you. We may require (but shall not be obliged to require) written confirmation before acting on oral instructions. You shall provide us with a list of persons who are authorised, either alone or with others, to act on your behalf in the giving of instructions and performance of any other acts, discretions or duties under these Terms and Conditions together with specimens of their signatures if written instructions are to be given. You warrant that any such list(s) of persons named by you will be correct at the date thereof. You shall notify us immediately of any amendments to such list(s) and provide specimen signatures of new signatories.
- 6.2 You shall promptly give us confirmation of any instructions to us which we may require in respect of any transaction or proposed transaction. If you do not provide confirmation of such instructions promptly or following reasonable efforts by us, we are unable to contact you, we may, in our absolute discretion, take such steps at your cost as we consider necessary or desirable for our or your protection. If you do not provide us with notice of your intention to exercise an option at the time stipulated by us, we may treat the option as abandoned by you and, if so, will notify you.
- 6.3 If, after instructions are received, we believe it is not reasonably practicable to act upon such instructions within a reasonable time, we may defer acting upon those instructions until it is, in our reasonable opinion, practicable to do so or notify you that we are refusing to act upon such instructions. We can only cancel instructions if we have not acted upon them and instructions may only be withdrawn or amended by you with our consent. We shall not be liable for any losses resulting from such deferral, cancellation, amendment or refusal.

- 6.4 We are not obliged to accept any particular order or agree to enter into a transaction with you or carry out an instruction received from you. If we decline to enter into a proposed transaction, we shall not be obliged to give a reason but shall promptly notify you accordingly.
- 6.5 We have, at our absolute discretion, the right (but no obligation) to set limits and/or parameters to control your ability to place orders. Such limits and/or parameters may be amended, increased, decreased, removed or added to by us at our absolute discretion. Any limits and/or parameters are solely for our protection and we have no responsibility for monitoring or ensuring compliance with limits and/or parameters by you. You agree and acknowledge that such limits and/or parameters are not a guide or recommendation of acceptable trading levels for you and that you rely on your own financial and risk assessments to determine internal limits and/or parameters.
- 6.6 We shall not be liable for any loss, expense, cost or liability (including consequential loss) suffered or incurred by you as a result of instructions being given, or any other communications being made, via the internet or other electronic medium. You will be solely responsible for all orders, and for the accuracy of all information, sent via the Internet or other electronic medium using your name or personal identification number. We will not execute an order until we have verified the order to you and transmission of an order shall not give rise to a binding contract between us and you.
- 6.7 You confirm and provide your consent that we may use voice recording procedures in connection with receiving orders or instructions with or without the use of an automatic warning device. Our voice records shall be and remain our sole property and will, in the absence of manifest error, be conclusive evidence of the orders, instructions or conversations so recorded. Subject to Applicable Regulations, the period for retention of such voice records shall be at our discretion.
- 6.8 You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with your record keeping obligations, although records may be made available to you on request at our absolute discretion.
- 6.9 You agree to keep adequate records in accordance with Applicable Regulations to demonstrate the nature of orders submitted and the time at which such orders are submitted.
- 6.10 Under Applicable Regulations, we may be obliged to make information about certain transactions public. You agree and acknowledge that any and all proprietary rights in such transaction information are owned by us and you waive any duty of confidentiality attaching to the information which we reasonably disclose.

## **7. EXECUTION OF ORDERS**

---

- 7.1 If you are a Professional Client, the FSA Rules on best execution will apply. Our current Order Execution Policy, as relevant to Professional Clients, has been made available to you. By agreeing to these Terms of Business and by providing instructions to us, you confirm that you have read and agree to the terms of our Order Execution Policy. In particular you consent to us effecting transactions on your behalf outside a regulated market or multilateral trading facility (both terms as defined in the FSA Rules). You acknowledge that when executing certain transactions we will not be executing orders on your behalf and will not be subject to the obligation under the FSA Rules to take all reasonable steps to obtain the best possible result taking into account the execution factors (as defined in the FSA Rules). The circumstances in which we will not be executing orders on your behalf are set out in the section 1.2 our Order Execution Policy.
- 7.2 Orders may be executed by us or passed to any Affiliate, intermediate broker or agent for execution. We may arrange for a transaction to be executed, either in whole or in part, by selling an investment to you from another client, or a client of an Affiliate of ours, or vice-versa. We shall not give you prior notice if we arrange for a transaction to be executed in this manner. Transactions are subject to:
- (a) the terms and conditions of any intermediate broker or agent;
  - (b) the customs and regulations of the relevant market, exchange and clearing house ("Market Rules");
  - (c) any other terms covering any particular transaction under the rules of any market or exchange or
  - (d) any separate agreement between you and us.

- 7.3 We shall use reasonable endeavours to execute any order promptly, but in accepting your orders we do not represent or warrant that it will be possible to execute such order or that execution will be possible according to your instructions. We shall execute an order only when the relevant market is open for dealings, and shall deal with any instructions received outside market hours as soon as possible when that relevant market is next open for business (in accordance with the rules of that market).
- 7.4 We may require you to limit the number of open positions which you may have with us at any time and we may in our sole discretion close out, at your cost, any one or more transactions in order to ensure that such position limits are maintained.
- 7.5 We may take or omit to take any action which we consider necessary or desirable in order to ensure compliance with any of the above or the FSA Rules. We shall not be liable for any loss suffered by you as a result of our taking or omitting to take any such action or as a result of the acts or omissions of any market, exchange or clearing house.
- 7.6 Where you place a client limit order in respect of shares admitted to trading on a regulated market and the order is not immediately executed under prevailing market conditions, we shall assume that you do not wish us to make the order public in a manner which is easily accessible to other market participants unless you expressly instruct us otherwise.

## **8. OUR RESPONSIBILITIES AT SETTLEMENT**

---

- 8.1 We are not obliged to settle transactions or account to you unless and until we (or our settlement agents) have received all necessary documents or money from you and/or a counterparty (as appropriate). Where we undertake transactions for you, delivery or payment is entirely at your risk except to the extent that any failure of delivery or payment is a result of our negligence, wilful default or fraud. In the case of securities which have already been assented to an offer, settlement may be delayed if the transaction can only be completed with securities issued by the offeror.
- 8.2 Settlement of transactions may be administered by one of our Affiliates and you agree that we may pass all relevant information to any such Affiliate to enable it to administer such settlement.

## **9. YOUR RESPONSIBILITIES AT SETTLEMENT**

---

- 9.1 You will be responsible for the due performance of every transaction which we enter into with or for you, whether you are dealing as principal or as agent for another person. You will deliver any money or property due under a transaction carried out pursuant to these Terms of Business in accordance with the terms of the transaction or otherwise in accordance with our reasonable requests. We may buy investments or property to cover any liabilities of yours to deliver investments or property to us. We may debit your account(s) with any loss we suffer and/or cost we incur in this way.

## **10. OUR CHARGES**

---

- 10.1 Our charges for the services described in these Terms of Business will be disclosed to you in accordance with the FSA Rules. You will pay the charges prevailing at the time the services are provided. All charges are exclusive of VAT. Any alteration to charges will be notified to you before the time of the change.
- 10.2 We may pay or receive fees, commissions or non-monetary benefits to or from any Affiliate or other third party in connection with the services where permitted by FSA Rules. If you are a Professional Client, we will provide you with separate disclosure of the essential arrangements relating to such fees, commissions or non-monetary benefits.
- 10.3 You will be responsible for payment of all taxes, brokerage, transfer fees, registration fees, stamp duty and all other liabilities, charges, costs and expenses payable or incurred by us and/or a custodian in connection with the services described in these Terms of Business except to the extent that such liabilities, charges, costs and expenses arise from our negligence, wilful default or fraud. We may deduct from sums due to you or withhold any such estimated or actual charges at our reasonable discretion. Any difference between such estimated amounts and the final confirmed liability shall be promptly credited or debited to your account.
- 10.4 You acknowledge the possibility that other taxes or costs may exist that are not paid through or imposed by us.

- 10.5 All payments to us under these Terms of Business shall be made in same day funds in such currency as we may from time to time specify to the bank account designated by us for such purposes. All such payments shall be made by you without any deduction or withholding.
- 10.6 We may share our charges with all or any of our Affiliates or any third party.

## **11. AGGREGATION OF ORDERS**

---

- 11.1 We may combine your order with our own orders, orders of Affiliates and persons connected with us and orders of other clients. Where you are a Professional Client, aggregation will only take place if we believe it is likely that the aggregation will not work overall to your disadvantage. However, the effect of aggregation may work on some occasions to your disadvantage in relation to a particular order.

## **12. YOUR MONEY**

---

- 12.1 Macquarie Bank Limited (London Branch) and Macquarie Bank International Limited are approved banks under the FSA Rules and as such money held by either of these entities in an account on your behalf will be held as banker and not as trustee. As a result, the money held by them on your behalf will not be treated as client money within the meaning of the FSA Rules and will therefore not be segregated and neither entity shall be liable to account to you for any profits made by its use as banker of such funds. However, Macquarie Capital (Europe) Limited will treat money received from you or held by it on your behalf in accordance with the FSA Client Money Rules.
- 12.2 Subject to the preceding paragraph, we will treat your money as client money and hold it in accordance with the FSA Client Money Rules if expressly agreed in writing between you and us.
- 12.3 Your money may be held or controlled by a third party, such as an exchange, a clearing house or an intermediate broker to enable transactions to be effected in accordance with your instructions or to meet your obligations to provide collateral for a transaction. We have no responsibility for any acts or omissions of any third party to whom we pass money received from you.
- 12.4 We may transfer your money to an overseas branch of Macquarie Bank Limited (an authorised deposit-taking institution regulated by the Australian Prudential Regulatory Authority) and/or Macquarie Bank International Limited which are part of the same group of companies as Macquarie Capital (Europe) Limited, deposit your money in an overseas approved bank or pass your money to an overseas intermediate broker, settlement agent or counterparty outside the United Kingdom. In such circumstances, the legal and regulatory regime applying to the overseas branch, approved bank, intermediate broker, settlement agent or counterparty will be different from that of the United Kingdom and, in the event of their failure, money may be treated in a different manner from that which would apply if the money was held by a bank, intermediate broker, settlement agent or counterparty in the United Kingdom. We will not be liable for the insolvency, acts or omissions of any third party referred to in this sub-clause.
- 12.5 Interest will not be payable to you on money held unless otherwise agreed between you and us.
- 12.6 We may (but shall not in any circumstances be obliged to) convert any monies held for you into such other currency as we consider necessary or desirable to cover your obligations and liabilities in that currency at such rate of exchange as we shall select. We shall be entitled to charge and retain for our own account such administration fee for arranging such conversion as we may from time to time specify.
- 12.7 Where there has been no movement on an account (notwithstanding any payments or receipts of charges, interest or similar items) for a period of six (6) years, you consent to us closing the relevant account and retaining the sums contained therein for such use as we in our discretion determine, provided we have first taken reasonable steps to notify you and return the balance. We agree to make good any valid claim made by you in respect of any balance on an account closed in this way.
- 12.8 Where Macquarie Capital (Europe) Limited receives money from you or holds it on your behalf as client money under the FSA Client Money Rules, the following shall also apply:
- (a) We may hold your money with either Macquarie Bank Limited (London Branch) or Macquarie Bank International Limited which are banks in the same group as ourselves;
  - (b) We may place money received from you in a qualifying money market fund, as defined in the Client Money Rules. As a result, any money will not be held in accordance with the Client Money Rules and the units in the relevant fund will be held in accordance with the

Custody Rules. Please let us know if you do not wish your money to be placed in a qualifying money market fund.

- (c) Where any obligations owing to us from you are due and payable to us, we may cease to treat as client money so much of the money held on your behalf as equals the amount of those obligations in accordance with the Client Money Rules. You agree that we may apply that money in or towards satisfaction of all or part of those obligations due and payable to us. For the purposes of these Terms of Business, any such obligations become immediately due and payable, without notice or demand by us, when incurred by you or on your behalf.
- (d) As a continuing security for the payment and discharge of your obligations under these Terms of Business, you grant to us, with full title guarantee, a first fixed security interest in all your money that we may cease to treat as client money in accordance with the Client Money Rules. You agree that we shall be entitled to apply that money in or towards satisfaction of all or any part of your obligations which are due and payable to us but unpaid.

### **13. CONFIRMATIONS**

---

- 13.1 We will promptly provide you with confirmation of all transactions carried out on your behalf in accordance with the FSA Rules unless confirmation is provided to you by a third party, for example by a broker through whom we deal. You agree that we may send confirmations and other statements by electronic mail to the e-mail address on record for you or as otherwise agreed between us. It is your responsibility to inform us of any change to your e-mail address, the non-receipt of confirmation, or whether any confirmations are incorrect before settlement. Subject to Applicable Regulations, we may send you a single confirmation in respect of a series of transactions unless agreed otherwise. All confirmations and other statements which we send to you will be conclusive and binding on you unless you notify us in writing within 5 Business Days of receipt by you that you disagree with its contents, or we notify you of an error in the confirmation within the same period.

### **14. CUSTODY OF YOUR INVESTMENTS**

---

- 14.1 We will not be obliged to provide or arrange for any custody services in respect of your investments. All investments purchased through us and requiring registration will be registered in your name or as you may request, in the name of an eligible nominee or eligible custodian in accordance with FSA Rules. We accept no liability for the negligence or other default of a third party nominee or custodian.

### **15. RIGHTS ISSUES, TAKEOVERS, ETC.**

---

- 15.1 Unless we accept your specific instructions as regards investments which we are holding on your behalf, we shall not be responsible for:
  - (a) taking up any rights;
  - (b) exercising any conversion or subscription rights;
  - (c) dealing with takeover or other offers or capital reorganisations;
  - (d) exercising voting rights; or
  - (e) exercising any other rights which are conferred by any investments held by us or to our order for your account.
- 15.2 In the event that we hold investments on your behalf, we shall endeavour to advise you of the occurrence of any such rights, offers or capital reorganisations upon becoming aware of the same.

### **16. CUSTOMER WARRANTIES, REPRESENTATIONS AND COVENANTS**

---

- 16.1 You warrant and represent that:
  - (a) you have capacity and are not under any legal disability with respect to, and are not subject to any law or regulation which prevents your performance of, these Terms of Business or any transaction contemplated by these Terms of Business;

- (b) you have obtained all necessary consents, authority, powers, licences and authorisations to enable you lawfully to enter into and perform your obligations under these Terms of Business and to grant the security interests and powers referred to in these Terms of Business;
- (c) investments or other property supplied by you shall, subject to these Terms of Business, at all times be free from any charge, lien, pledge or encumbrance other than one which is routinely imposed on all securities in a clearing system in which such investments or property may be held;
- (d) unless otherwise agreed by us, you act as principal and sole beneficial owner (but not as trustee) under these Terms of Business and each transaction;
- (e) these Terms of Business, each transaction contemplated by them and the obligations created under them are binding upon you and enforceable against you in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, order, charge or agreement by which you are bound;
- (f) no Event of Default or a Potential Event of Default has occurred and is continuing with respect to you;
- (g) any information which you provide or have provided to us in respect of your financial position, domicile or other matters is accurate and not misleading in any material respect;
- (h) you are willing and financially able to sustain a total loss of funds resulting from transactions under these Terms of Business and trading in such transactions is a suitable investment vehicle for you;
- (i) to the best of your knowledge and belief, you are in compliance with all laws to which you are subject including, without limitation, all tax laws and regulations, exchange control requirements and registration requirements that would affect the enforceability of these Terms of Business or the transactions contemplated by them.

16.2 The warranties and representations in this section 16 shall be deemed to be repeated each time you provide instructions, investments or collateral to us and also on the date of each transaction.

16.3 You covenant to us that:

- (a) you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this clause 16;
- (b) you will promptly notify us of the occurrence of any Event of Default or Potential Event of Default with respect to you;
- (c) you will not send orders or take any action which you have reason to believe are in breach of Applicable Regulations; and
- (d) upon demand, you will provide us with such information as we may reasonably require to evidence the matters referred to in this clause 16 or to comply with any Applicable Regulations. you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this clause 16.

## **17. CONFLICT OF INTERESTS**

---

17.1 Macquarie has established and implemented a conflicts policy at group level (which may be revised and updated from time to time) (the "Conflicts Policy") pursuant to the FSA Rules, which sets out how we must seek to identify and manage all material conflicts of interest.

17.2 You agree that we may transact business in circumstances where we have, or which give rise to, and may maintain, such an interest, relationship or arrangement without prior reference to you and retain all benefits received there from. In addition, we may provide advice and other services to third parties whose interests may be in conflict or competition with your interests. We, our Affiliates and our or their employees may take positions opposite to you or may be in competition with you to acquire the same or a similar position. We will not deliberately favour any person over you but will not be

responsible for any loss which may result from such competition. Where we are unable to manage a conflict of interest, we will disclose that conflict to you before providing the relevant service. We may also decline to act where we believe that there is no other practicable way of treating you (or, where applicable, your principal or principals) and our other clients fairly. If you object to us acting where we have disclosed that we have a conflict, you should notify your usual contact at Macquarie in writing. Unless so notified, we will assume that you do not object to our so acting.

17.3 Such conflicting interests or duties may arise because:

- (a) we may be dealing as principal or agent or be registered as a market maker in the investments that are the subject of a transaction or providing services to other persons with interests in or proposing to acquire such investments;
- (b) we may be a financial adviser or lending banker to the issuer of such investments;
- (c) we may be dealing as agent on your behalf with a person connected with us or conducting an "agency cross" by matching your order with the order of another party (who may be a person connected with us) or receive a commission or other payment from the counterparty or broker to any transaction which we carry out on your behalf;
- (d) a transaction may be in units in a unit trust or collective investment scheme of which a person connected with us is a manager or trustee or in investments where the issuer is a person connected with us or in investments in which we or a person or persons connected with us have undertaken or underwritten an issue within a period of 12 months before the date of the transaction;
- (e) a transaction may be in investments in respect of which we or a person or persons connected with us are contemporaneously trading or have traded on our own account or have either a long or short position;
- (f) we may have acted upon or used our, or their, published research recommendations (or the conclusions which they expressed or the research or analysis on which they are based ) before the recommendations have been published to our (or their) customers;
- (g) we may deal with you as principal in a foreign exchange transaction.

17.4 You should also understand that we or persons connected with us may carry on corporate finance business for clients. In such circumstances you may receive or see an investment publication or other document communicated or approved by us, or containing invitations, offers, recommendations or advice from us, or persons with which we are associated, to the public or a class of persons in which you are included. However, you should not treat that as representing advice from us to you as a customer about suitability or otherwise. Before entering into any commitment in such a case, you are recommended to seek specific advice on the merits and suitability of the proposed transaction.

## **18. INDEMNITY AND LIABILITY**

---

- 18.1 You shall fully indemnify us and keep us fully indemnified against all losses, expenses, costs and liabilities (together "Losses") which arise as a result of or in connection with your breach of these Terms of Business or the proper provision by us of the services or the exercise of any rights envisaged by these Terms of Business (including, for the avoidance of doubt, any fines which may be imposed upon us as a result of late settlement of any transaction and any costs incurred in enforcing our rights or defending any action or claim brought by a third party or any losses arising from acting on your instructions, or instructions reasonably believed to be given by you or on your behalf).
- 18.2 Neither we nor our directors, officers, employees or agents shall be liable for any Losses whether arising out of negligence, breach of contract, misrepresentation or otherwise, suffered or incurred by you under these Terms of Business (including any transaction or where we have declined to enter into a proposed transaction) unless such Losses arise directly from our or their respective gross negligence, wilful default or fraud. In no circumstance, shall we have any liability for losses suffered by you or any third party for any special or consequential damage, loss of profits, loss of goodwill or loss of business opportunity arising under or in connection with these Terms of Business, whether arising out of negligence, breach of contract, misrepresentation, the failure of any third party to perform its obligations to us, or otherwise. Nothing in these Terms of Business will limit any of our liability for death or personal injury resulting from our negligence.
- 18.3 Without limitation, we do not accept liability for any adverse tax implications of any Transaction whatsoever.

- 18.4 Without limitation, we do not accept any liability by reason of any delay or change in market conditions before any particular transaction is effected.
- 18.5 We shall not be in breach of these Terms of Business and shall not be liable or have responsibility of any kind for any loss or damage incurred by you as a result of our failure to perform any or all of our obligations, where such failure arises from or is attributable to either acts, events or omissions or accidents beyond our reasonable control, including but without limitation any breakdown, delay, malfunction or failure of transmission, act of God, war, terrorism, malicious damage, civil commotion, failure of any communication or computer system, interruptions of power supplies, industrial action, acts and regulations of any governmental or supra national bodies or authorities or the failure by the relevant intermediate broker or agent, agent or principal of our custodian, sub-custodian, dealer, market, or regulatory or self-regulatory organisation, for any reason, to perform its obligations. Nothing in these Terms of Business will exclude or restrict any duty or liability we may have to you under the regulatory system (as defined in the FSA Rules), which may not be excluded or restricted thereunder.
- 18.6 You acknowledge that you have not relied on or been induced to enter into these Terms of Business by a representation other than those expressly set out in these Terms of Business. We will not be liable to you (in equity, contract or tort under the Misrepresentation Act 1967) for a representation that is not set out in these Terms of Business and that is not fraudulent.
- 18.7 Macquarie Capital (Europe) Limited and Macquarie Bank International Limited are not authorised deposit-taking institutions for the purposes of the Banking Act 1959 (Commonwealth of Australia), and their obligations do not represent deposits or other liabilities of Macquarie Bank Limited ABN 46 008 583 542. Macquarie Bank Limited does not guarantee or otherwise provide assurance in respect of the obligations of Macquarie Capital (Europe) Limited and Macquarie Bank International Limited.

## **19. INTEREST**

---

- 19.1 If you fail to pay any amount when it is due, we reserve the right to charge interest (both before and after judgment) on such unpaid amount calculated at the rate reasonably determined by us to be the reasonable cost of funding such overdue amount. Such interest shall accrue and be calculated daily from the due date to the date of payment and shall be compounded monthly.

## **20. COMPLAINTS PROCEDURE**

---

- 20.1 We have internal procedures for handling complaints fairly and promptly. You may submit a complaint to the compliance officer, for example, by letter, telephone, fax or e-mail. We will send you a written acknowledgement of your complaint enclosing details of our complaints procedure. Further details regarding our complaints procedures are available on request.

## **21. CHANGES TO THESE TERMS OF BUSINESS**

---

- 21.1 We may amend these Terms of Business by sending you a written notice describing the relevant changes. Such changes will become effective on a date to be specified in the notice.
- 21.2 Any changes to these Terms of Business proposed by you will become effective only once they have been agreed by us in writing.

## **22. TERMINATION**

---

- 22.1 Unless required by Applicable Regulations, either party may terminate these Terms of Business (and the relationship between us) by giving five (5) days written notice of termination to the other. Upon terminating these Terms of Business, all amounts payable by you to us will become immediately due and payable including (but without limitation): all outstanding fees, charges and commissions; any dealing expenses incurred by terminating these Terms of Business; and any losses and expenses realised in closing out any transactions or settling or concluding outstanding obligations incurred by us on your behalf. Termination of these Terms of Business will not affect any outstanding order or transaction under these Terms of Business or any legal rights or obligations which may already have arisen.
- 22.2 Notwithstanding section 22.1, on an Event of Default or at any time after we have determined, in our absolute discretion, that you have not performed (or we reasonably believe that you will not be able or willing in the future to perform) any of your obligations to us, in addition to any rights under Appendix 3, we shall be entitled without prior notice to you, to terminate these Terms of Business immediately.

## **23. CONFIDENTIALITY**

---

- 23.1 Subject to section 27, neither party to these Terms of Business shall, without the prior written consent of the other, use or disclose any information relating to the business, investments, finances or other matters of a confidential nature of the other party except to the extent that such use or disclosure is to an Affiliate or is required by law or any regulatory authority or is desirable for the purposes of, or to enable the disclosing party to properly perform its obligations under, these Terms of Business.
- 23.2 Neither we nor any Affiliate is obliged to disclose to you or to take into consideration or utilise for your benefit any fact, matter or thing:
- (a) if in our or its opinion disclosure of the information would or might be a breach of duty or confidence to any other person or render our or its employees liable to criminal or civil proceedings ; or
  - (b) which comes to the notice of an officer, employee or agent of ours or of any Affiliate but does not come to the actual notice of the individual or individuals with whom you are dealing.
- 23.3 The obligations in this section 23 shall not apply to any confidential information lawfully in a party's possession otherwise than as a result of the Terms of Business or coming into the public domain otherwise than by breach by any party of its obligations contained in the Terms of Business. For the avoidance of doubt, we and our Affiliates will be entitled to disclose confidential information if we are required or requested to disclose such information by a relevant regulatory authority or pursuant to any Applicable Regulations.
- 23.4 The provisions of this section 23 shall continue to bind you and us after termination of these Terms of Business.

## **24. DATA PROTECTION**

---

- 24.1 We may use, store or otherwise process any personal information provided by you, your employees, agents or representatives. Such personal information may be processed by us for the purpose of administering these Terms of Business, providing services to you, or marketing financial services and products provided by us or third parties to you ("Permitted Purposes"). If you do not want personal information to be used for marketing purposes, you shall notify us. We may, for any Permitted Purpose, transfer or disclose personal information to any Affiliate of ours anywhere in the world, to any person acting on our behalf, to any person to whom we are permitted to delegate any of our functions under these Terms of Business (other than to the extent that you have indicated that you do not want your personal information to be used for marketing purposes), to any regulators and governmental agencies, in any jurisdiction, where we are required to do so by Applicable Regulations, there is a public duty to disclose or our interests require disclosure. You agree to the processing and disclosure of personal information for the Permitted Purposes and agree to procure such consent from your employees, agents and representatives. You also agree that the Permitted Purposes may be amended to include other uses or disclosures of personal information by notice to you. You may request us to make available to you a copy of your personal information.
- 24.2 Before providing us with any information relating to identifiable living individuals in connection with these Terms of Business you should ensure that those individuals are aware of: our identity; that we may use your information to administer and operate your account; that this may involve disclosure of their information and transfer of their information to any country, including countries outside the European Economic Area which may not have strong data protection laws; and that they have rights of access to, and correction of, their information which they may exercise by contacting us.
- 24.3 You may have rights of access to some or all of the information we hold about you, to have inaccurate information corrected and to tell us that you do not wish to receive marketing information, under data protection law.

## **25. ANTI CORRUPTION AND BRIBERY**

---

- 25.1 Each party represents and warrants that in relation to the performance of its obligations under these Terms of Business:
- (a) it shall comply with all laws, rules and regulations applicable to anti corruption and bribery, including, but not limited to, the United Kingdom's Bribery Act 2010;

- (b) it will not, and nor will any officers, employees, shareholders, representatives or agents associated with it, directly, or indirectly, either in private business dealings or in dealings with the public sector, offer, give, receive or agree to offer, give or receive (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of these Terms of Business which would violate any anti-corruption laws or regulations applicable to it, including (without limitation) the United Kingdom's Bribery Act 2010; and
- (c) ensure that all persons associated with the party or other persons who are performing services in connection with these Terms of Business comply with this clause 25.

## **26. ASSIGNMENT**

---

- 26.1 These Terms of Business shall be for the benefit of and binding upon the parties and their respective successors and assigns. You may not assign, charge, delegate or otherwise transfer or purport to assign, charge, delegate or otherwise transfer any of your rights or obligations under these Terms of Business or any interest in these Terms of Business, without our prior written consent, and any purported assignment, charge, delegation or transfer in violation of this clause 26 shall be void.

## **27. DELAY OR OMISSION**

---

- 27.1 The rights and remedies provided under these Terms of Business are cumulative and not exclusive of those provided by law. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. No delay or omission in exercising any right, power or remedy provided by law or under these Terms of Business (including any transaction), or partial or defective exercise thereof, shall prevent further or other exercise of, or operate as a waiver of, such right, power or remedy. No waiver of any breach of any term of these Terms of Business shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same term or as authorising a continuation of the particular breach.

## **28. GENERAL**

---

- 28.1 These Terms of Business and all non-contractual obligations and other matters arising from them or in connection with them shall be governed by and construed in accordance with English law and each party submits to the non-exclusive jurisdiction of the English Courts.
- 28.2 If at any time any provision of these Terms of Business is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Terms of Business under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected.
- 28.3 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999.
- 28.4 Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future and irrespective of the currency) owed by you to us (including margin, fees and commission), even though arising in a different Transaction, against any amount (whether actual or contingent, present or future and irrespective of the currency) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained. Where such amounts being set off are expressed in different currencies, we shall be entitled at your expense to convert any sums owing to you into the currency of your debt to us for the purpose of effecting the said set off.
- 28.5 Time shall be of the essence in respect of all your obligations under these Terms of Business (including any transaction).
- 28.6 These Terms of Business are supplied to you in English, and we will continue to communicate with you, and you will continue to communicate with us, in English.
- 28.7 We shall be entitled to communicate with you by telephone, fax, e-mail or by post. You may communicate with us by post at the address given in section 1.1 of these Terms of Business, telephone, fax or electronic mail, unless you are obliged to communicate in writing under these Terms of Business, in which case you may communicate with us by letter delivered by post or personal delivery to that address.

- 28.8 We are a member of the Financial Services Compensation Scheme (the "Scheme") in the United Kingdom. The Scheme is only available to certain types of claimants and claims. Payments to eligible claimants under the Scheme will vary depending on the type of protected claim (for example deposits or investments) the claimants hold with respect to the relevant institution. Payments under the Scheme in respect of investments are subject to a maximum payment to any eligible investor of GBP 50,000. Payments under the Scheme in respect of deposits are subject to a maximum payment to any eligible depositor of GBP 85,000. Further details of the Scheme are available on request or at the Scheme's official website at [www.fscs.org.uk](http://www.fscs.org.uk).
- 28.9 If you are situated outside England and Wales, process by which any proceedings in England are begun may be served on you by being delivered to the address in England or Wales nominated by you to us for this purpose. This does not affect our right to serve process in another manner permitted by law.
- 28.10 You confirm that you have regular access to the Internet and consent to us providing you with information, including information about our Order Execution Policy and information about the nature and risks of investments, by electronic message or by posting such information on our website at <http://www.macquarie.co.uk/mgl/uk> or such other website as we may from time to time notify to you.

## APPENDIX 1- RISK WARNING NOTICE

This notice is supplementary to the Terms of Business which you may receive from time to time.

### 1. GENERAL

---

The value of investments and the income from them may fluctuate and go down as well as up. There is no guarantee that you will get back the amount initially invested. The value of investments may be affected by a variety of factors, including economic and political developments, interest rates and foreign exchange rates, as well as issuer-specific events. Past performance is not a guide to future performance.

Investments denominated in currencies other than your base currency carry the risk of exchange-rate movements. A movement in exchange rates may have a separate effect, unfavourable as well as favourable, on your gains and losses. Hedging techniques may, in certain circumstances, be limited or not be successful.

The market for some investments may be restricted or illiquid. There may be no readily available market and from time to time there may be difficulty in dealing in such investments or obtaining reliable information about the value and extent of risks associated with such investments.

### 2. EQUITY SECURITIES

---

Buying equity securities (the most common form of which are shares) will mean that you will become a member of the issuer company and participate fully in its economic risk. Holding equity securities will generally entitle you to receive any dividend distributed each year (if any) out of the issuer's profits made during the reference period.

Generally, holdings in equity securities will expose you to more risk than debt securities since remuneration is tied more closely to the profitability of the issuer. In the event of insolvency of the issuer, your claims for recovery of your equity investment in the issuer will generally be subordinated to the claims of both preferred or secured creditors and ordinary unsecured creditors of the issuer.

There is an extra risk of losing money when shares are bought in some smaller companies, such as penny shares. There is a big difference between the buying price and the selling price of these shares. If they have to be sold immediately, you may get back much less than was paid for them. The price may change quickly and it may go down as well as up.

If you buy equity securities you will be exposed to both the specific risks associated with individual securities held (and the financial soundness of their issuers), as well as the systemic risks of the equity securities markets.

### 3. DERIVATIVES

---

This notice cannot disclose all the risks and other significant aspects of warrants and/or derivative products such as futures, options, and contracts for differences. You should not deal in these products unless you understand their nature and the extent of your exposure to risk. You should also be satisfied that the product is suitable for you in the light of your circumstances and financial position. Certain strategies, such as a 'spread' position or a 'straddle', may be as risky as a simple 'long' or 'short' position. Although warrants and/or derivative instruments can be utilised for the management of investment risk, some of these products are unsuitable for many investors. Different instruments involve different levels of exposure to risk and in deciding whether to trade in such instruments you should be aware of the following points.

#### (a) WARRANTS

A warrant is a time-limited right to subscribe for shares, debentures, loan stock or government securities and is exercisable against the original issuer of the underlying securities.

A relatively small movement in the price of the underlying security results in a disproportionately large movement, unfavourable or favourable, in the price of the warrant. The prices of warrants can therefore be volatile.

It is essential for anyone who is considering purchasing warrants to understand that the right to subscribe which a warrant confers is invariably limited in time with the consequence that if the investor fails to exercise this right within the predetermined timescale then the investment becomes worthless.

You should not buy a warrant unless you are prepared to sustain a total loss of the money you have invested plus any commission or other transaction charges.

Some other instruments are also called warrants but are actually options (for example, a right to acquire securities which is exercisable against someone other than the original issuer of the securities, often called a 'covered warrant').

#### (b) OFF-EXCHANGE WARRANT TRANSACTIONS

Transactions in off-exchange warrants may involve greater risk than dealing in exchange traded warrants because there is no exchange market through which to liquidate your position, or to assess the value of the warrant or the exposure to risk. Bid and offer prices need not be quoted, and even where they are, they will be established by dealers in these instruments and consequently it may be difficult to establish what is a fair price.

### **(c) FUTURES**

Transactions in futures involve the obligation to make, or to take, delivery of the underlying asset of the contract at a future date, or in some cases to settle the position with cash. They carry a high degree of risk. The 'gearing' or 'leverage' often obtainable in futures trading means that a small deposit or down payment can lead to large losses as well as gains. It also means that a relatively small movement can lead to a proportionately much larger movement in the value of your investment, and this can work against you as well as for you. Futures transactions have a contingent liability, and you should be aware of the implications of this, in particular the margining requirements, which are set out in paragraph 8.

### **(d) OPTIONS**

There are many different types of options with different characteristics.

Buying options:

Buying options involves less risk than selling options because, if the price of the underlying asset moves against you, you can simply allow the option to lapse. The maximum loss is limited to the premium, plus any commission or other transaction charges. However, if you buy a call option on a futures contract and you later exercise the option, you will acquire the future. This will expose you to the risks described under 3 and 8.

Writing options

If you write an option, the risk involved is considerably greater than buying options. You may be liable for margin to maintain your position and a loss may be sustained well in excess of the premium received. By writing an option, you accept a legal obligation to purchase or sell the underlying asset if the option is exercised against you, however far the market price has moved away from the exercise price. If you already own the underlying asset which you have contracted to sell (when the options will be known as 'covered call options') the risk is reduced. If you do not own the underlying asset ('uncovered call options') the risk can be unlimited. Only experienced persons should contemplate writing uncovered options, and then only after securing full details of the applicable conditions and potential risk exposure.

Traditional options

Certain London Stock Exchange member firms under special exchange rules write a particular type of option called a 'traditional option'. These may involve greater risk than other options. Two-way prices are not usually quoted and there is no exchange market on which to close out an open position or to effect an equal and opposite transaction to reverse an open position. It may be difficult to assess its value or for the seller of such an option to manage his exposure to risk.

Certain options markets operate on a margined basis, under which buyers do not pay the full premium on their option at the time they purchase it. In this situation you may subsequently be called upon to pay margin on the option up to the level of your premium. If you fail to do so as required, your position may be closed or liquidated in the same way as a futures position.

### **(e) CONTRACTS FOR DIFFERENCES**

Futures and options contracts can also be referred to as contracts for differences. These can be options and futures on the FTSE 100 index or any other index, as well as currency and interest rate swaps. However, unlike other futures and options, these contracts can only be settled in cash. Investing in a contract for differences carries the same risks as investing in a future or an option and you should be aware of these as set out in paragraphs 3 and 4 respectively. Transactions in contracts for differences may also have a contingent liability and you should be aware of the implications of this as set out in paragraph 8.

### **(f) OFF-EXCHANGE TRANSACTIONS IN DERIVATIVES**

It may not always be apparent whether or not a particular derivative is arranged on exchange or is an off-exchange derivative transaction. While some off-exchange markets are highly liquid, transactions in off-exchange or 'non transferable' derivatives may involve greater risk than investing in on-exchange derivatives because there is no exchange market on which to close out an open position. It may be impossible to liquidate an existing position, to assess the value of the position arising from an off-exchange transaction or to assess the exposure to risk. Bid prices and offer prices need not be quoted, and, even where they are, they will be established by dealers in these instruments and consequently it may be difficult to establish what is a fair price.

#### 4. FOREIGN MARKETS

---

Foreign markets will involve different risks from the UK markets. In some cases the risks will be greater. The potential for profit or loss from transactions of foreign markets or in foreign denominated contracts will be affected by fluctuations in foreign exchange rates.

#### 5. EMERGING MARKETS/HIGHER RISK COUNTRIES

---

##### (a) GENERAL

You should be aware that there are significant additional risks in investing in securities of any issuer located in emerging or developing markets, such as markets in the Middle East, North Africa, Eastern Europe and the Russian Federation (collectively "Higher Risk Countries") which are not typically associated with well developed markets. Such investments should be considered as highly speculative, involve a high degree of risk and may result in the loss of the entire investment.

Generally, any investment in securities of any issuer located in a Higher Risk Country is only suitable for sophisticated investors who fully understand and appreciate the risks involved. Accordingly, you (also referred to herein as the "Counterparty") should exercise particular care in evaluating the risks involved and must decide for yourself whether, in the light of those risks, investment is appropriate.

This statement is not intended to be exhaustive and there may be other risk factors which the Counterparty should take into account in relation to a particular investment. The Counterparty should also note that the information contained in this statement may become out-dated relatively quickly.

***By providing any trading instructions to us after receipt of this statement, you will be taken to have acknowledged and you accept that it has been properly notified by us with respect to the risks listed herein and you acknowledge and accept that any one or more of these risks could lead to loss which could, in certain circumstances, far exceed your initial investments and capital.***

Although the prime focus of this statement is to identify some specific risks associated with an investment in securities of issuers in emerging markets and/or Higher Risk Countries, some of these risks apply or could potentially apply to more advanced markets.

##### (b) POLITICAL RISKS

Factors such as external or internal conflicts, coups and racial and national tensions create political instability in Higher Risk Countries. Political instability can significantly influence an issuer's ability to generate earnings and stock market returns. Furthermore, changes in the political scene may have an impact on the ability to repatriate capital, dividends and profits earned and generally on investment and investment ownership rights. In most Higher Risk Countries it is not possible to say whether political reforms aimed at creating a multi-party democracy and transition from a centrally planned economy to a market economy will be successful. There is the possibility that these goals could be disrupted or even reversed due to political, social, economic, ethnic or religious instability.

Higher Risk Countries are frequently criticized for the lack of transparency and fairness in their electoral processes and the results of such processes may not always be acceptable to the international community. Higher Risk Countries may also be faced with corruption within their governmental, administrative and financial systems and practices.

Higher Risk Countries may face adverse international relations and / or international economic sanctions and / or international attention to their practices with respect to their governmental, administrative, economic and fiscal systems, their practices with respect to the prevention of money laundering and financial crime and their practices on the international effort to combat terrorism. Sanctions may apply to the Higher Risk country as a whole or to natural or legal persons from or affiliated with such Higher Risk Countries.

There is a particular risk in the Higher Risk Countries that guarantees of investor protection may not always be honoured, and that policies encouraging foreign investment may be abandoned, interrupted or reversed. There can be no assurance that any securities or the assets of the issuer of the securities will not be subject to nationalization, requisition or confiscation, or compulsory reorganization by any authority or body and attention is drawn to the fact that certain constitutions within Higher Risk Countries may allow respective national governments to undertake such actions without respective obligations for fair compensation.

## **(c) ECONOMIC RISKS**

The underlying economic infrastructure of many Higher Risk Countries is significantly less developed than in more mature economies and many Higher Risk Countries suffer from major macroeconomic problems including hyperinflation, public deficits, unemployment, overdependence on the performance of one or more particular sector(s) (including the oil and gas sector in a number of Higher Risk Countries, volatile interest rates, shortages of basic raw materials and increased levels of poverty. Economic policies and reforms may be taken for reasons other than long term macroeconomic development and stability. Economic policies and reforms may fail, creating a challenging macroeconomic environment for issuers of any securities and prolonged periods of severe economic disruption potentially also leading to total economic collapse. Poor infrastructure including, without limitation, telecommunications and transport systems, and an inefficient banking sector, can hinder business development. The limited supply of domestic savings, coupled with the absence of mechanisms and institutions through which new capital can easily be raised, may give rise to problems in obtaining funding. There are also high levels of external debt which, if maintained, could weaken the economic situation of Higher Risk Countries. Government policies within Higher Risk Countries may be of an interventionist nature which may impact the operation of the respective capital market including the banking sector and the stock market. Government interest rate policies (aimed for example at controlling inflation or boosting economic growth) will also impact the performance of the respective stock market as higher interest rates may make investments in equities less attractive and vice versa.

## **(d) LEGAL AND REGULATORY ENVIRONMENT**

There does not yet exist in many Higher Risk Countries the legal and regulatory systems necessary for the proper and efficient functioning of a modern, efficient and transparent capital market. This may include the non-existence or limited functioning of market regulators, incomplete legislation and regulations pertaining to the capital markets and no or limited investor compensation schemes. There is therefore a high degree of legal uncertainty as to the nature and extent of investor's rights and the ability to enforce those rights. Many advanced legal concepts which now form significant elements of mature legal systems are not yet in place or, if they are in place, have yet to be tested in courts. It is difficult to predict with a degree of certainty the outcome of judicial proceedings or even the quantum of damages which may be awarded following a successful claim.

In Higher Risk Countries, courts, arbitration courts and agencies may not consider themselves bound by precedents so the Counterparty may find it difficult to pursue legal remedies or enforce judgments of foreign courts. Furthermore, many relevant regulations are unclear in scope, which increases the risk that transactions entered into in good faith and with professional advice, could later be seen to be in breach of such regulations and subject to challenge. There is likely to be rapid change in many Higher Risk Countries as new legislation is implemented.

Before making any investment in securities of an issuer in a Higher Risk Country you should understand the particular legal and regulatory environment and seek appropriate independent legal advice on the regulatory and legal requirements and risks associated with an investment in that country. Macquarie does not provide legal advice. The rules and regulations in Higher Risk Countries may change or be reinterpreted and Macquarie assumes no responsibility for advising you of any such change or re-interpretation.

## **(e) INVESTMENT RISKS**

### **(i) Settlement procedures and ownership risks**

The capital markets in many Higher Risk Countries, and the institutions on which they depend, are undeveloped. Therefore, the procedures for settlement, clearing and registration of security transactions can give rise to technical and practical problems. In the worst cases this could lead to disputes over title to securities. In other cases, inefficient systems may result in delayed payments. Risks may also arise in relation to local custody arrangements; the provision of custody services is a relatively novel practice, and the controls put in place in more mature markets may not be available. In addition, the country-specific law of many Higher Risk Countries (particularly those countries whose legal systems are based on European civil law systems) generally do not recognize the distinction between legal and beneficial ownership with the consequence that nominee arrangements cannot be guaranteed to be effective. This can have significant adverse tax implications for the Counterparty because of uncertainty as to the tax treatment and liability to tax as between the custodian and beneficial owner.

Securities, especially equity securities, are usually registered in book-entry form only and are not evidenced by actual certificates. Title is therefore dependent on the register of stockholders being properly maintained. At worst, the Counterparty could lose the value of their investment because their interest in securities has not been correctly registered or has been removed, or the register itself has been lost or destroyed. In addition the

Counterparty may have to make payment on a purchase or delivery on a sale before receipt of securities or, as the case may be, sale proceeds.

In some Higher Risk Countries there is a requirement for each investor to have a unique investor number or identifier. We may require you to provide us with your investor number or identifier at the time you place an order with us and any failure or delay in doing so may result in your order not being placed or not being executed in accordance with your instructions.

#### 1. Special factors relating to the Russian Federation

You will be exposed to operational and other risks associated with the Russian market infrastructure, including registrars and local depositories. The registration process can sometimes be cumbersome and time-consuming and can lead to constraints in trading and additional credit risks.

The concept of beneficial ownership is not yet fully developed under Russian law. It may thus be possible that Russian law would not recognize your beneficial ownership of securities, despite these being held in segregated accounts. As a result, you will not be fully protected in the event that a valid order is served on your custodian seeking to freeze, attach or otherwise restrict securities registered as belonging to either your custodian or other sub-custodians. A Russian Court may treat your assets as securities belonging to your custodian or its sub-custodians and as such open to seizure and arrest, leading to loss of your beneficial interest. You should seek appropriate legal advice on these matters.

Typically, ownership of securities under Russian law will only transfer upon settlement and registration of the relevant securities. As a result, your corporate action entitlements and obligations may not correspond with legal ownership of the securities.

Trades in the Russian Federation will either settle through the Depository Clearing Company ("DCC") or via the registrar. All trades that settle via the DCC usually settle on a delivery versus payment ("DVP") basis, however, where you do not have a cash account linked to your securities account, the trade will settle on free of payment ("FOP") basis. Trades that are to settle through the registrar will settle on a FOP basis.

The standard settlement period for DCC trades is T+3. However, the settlement period for registrar trades may be longer, because settlement of the trade requires the physical re-registering of the securities at the local registrar, which could be located anywhere in Russia. Depending on where the registrar is located and the expected time for registration of the securities, Macquarie may need to advise you of a change of expected settlement date from the date that was specified in the original trade confirmation.

In addition to the extended settlement period for registrar-traded securities, registrar-traded securities will settle on a FOP basis, with the seller of the securities required to deliver the securities to the buyer prior to the buyer transferring the cash amount representing the purchase price. This will expose the seller of the securities to additional credit risk on the buyer. Where you are the seller, this means that you will be taking additional credit risk on Macquarie. Where you are the buyer of securities, you must make full payment of the purchase price for the purchased securities to the seller (ie Macquarie) in accordance with the settlement instructions provided by Macquarie (which will typically be within 2 days of the delivery of the securities).

#### 2. Corporate Actions

There is no centralized source of disclosure of corporate actions in many High Risk Countries. The obligation of the issuers may be limited to press announcements. There is therefore the risk of an announcement not being noticed, especially where the issuer has selected the press route as the sole route for public notification of such corporate actions. We will bear no responsibility or liability for failure on our behalf to locate or identify such relevant events.

Corporate actions in Russia typically are subject to a 'record date'. Due to the fact that in Russia the 'record date' may precede substantially the event and / or where the registration of securities ownership, due to delays or otherwise, occurs many days after the trade date, your ability to participate in the event may not correspond with your holding in our records or the holdings that appear on your statement or may include some of the trades that were effected by you prior to the 'record date'. Similar conditions may apply in other Higher Risk Countries as well.

##### (ii) Repatriation of funds

The laws of certain Higher Risk Countries can in some cases prohibit the repatriation of funds invested therein. Therefore, there can be no guarantee that all such funds will be capable of being remitted to the Counterparty. Although certain Higher Risk Countries have specific legislation which currently provides assurances of the rights of foreign investors to remit profits and dividends from their Investments, such rights may be subject to restrictions. The legislation of Higher Risk Countries may change or be reinterpreted to prevent repatriation.

### **(iii) Exchange rates and controls**

Securities of Higher Risk Countries and issuers based in Higher Risk Countries are, with few exceptions, denominated in foreign currency (e.g. Roubles in Russia) which may not be externally convertible into other currencies, although, subject to restrictions, certain such currencies are convertible within their own country of origin. The value of investments measured in USD or in other hard currency such as the Euro can fluctuate significantly due to volatile exchange rates and high inflation. Also, the relatively unpredictable operation of the banking systems of the Higher Risk Countries may affect the transfer of funds in and out of the country and the convertibility of the relevant currency into other currencies, including the requirement for advance notice to the respective financial and monetary authorities for the repatriation of funds. Exchange rate fluctuations may occur between the trade date for the transaction and the date on which Counterparty acquires the relevant currency to meet settlement obligations. Accordingly, the purchase price measured in the local currency may be greater than at the trade date.

Because certain Higher Risk Countries operate certain exchange controls affecting the transfer of funds in and out of the country and the convertibility of their currencies, particular care must be taken to ensure that exchange control formalities are complied with and all relevant licences obtained, including where required the registration of initial investments. Currency regulations are frequently changing and it is possible that the ability of the Counterparty to convert local currency into hard currency may be impaired.

### **(iv) Investment restrictions, default and currency risk**

Foreign investment in Securities of issuers in Higher Risk Countries is or may become, in certain cases, legally restricted or may become restricted for reasons beyond Macquarie's or the Counterparty's control or understanding. Such actions can affect liquidity, prices of securities and the overall value of the investment. Sometimes these restrictions are contained in constitutional documents of a company which may not be easily obtainable. The Counterparty acknowledges that ownership of certain Securities in certain Higher Risk Countries is restricted by citizenship, nationality, residency or other requirements which ultimately may purport to implement the policies of certain governments.

The Counterparty acknowledges that it is familiar with the risks inherent in purchasing securities in Higher Risk Countries or related to emerging markets, including, without limitation, the risks inherent in purchasing synthetic investments in Higher Risk Countries and that it accepts such risks. In particular the Counterparty understands that the governments in some Higher Risk Countries have a history of defaulting on their obligations and that their currencies may have experienced periods of instability and hyperinflation, all of which could lead to the loss of the entire value of investments in the Counterparty's account or possession.

## **6. CONTINGENT LIABILITY INVESTMENT TRANSACTIONS**

---

Contingent liability investment transactions, which are margined, require you to make a series of payments against the purchase price, instead of paying the whole purchase price immediately.

If you trade in futures contracts for differences or sell options, you may sustain a total loss of the margin you deposit with your firm to establish or maintain a position. If the market moves against you, you may be called upon to pay substantial additional margin at short notice to maintain the position. If you fail to do so within the time required, your position may be liquidated at a loss and you will be responsible for the resulting deficit. Even if a transaction is not margined, it may still carry an obligation to make further payments in certain circumstances over and above any amount paid when you entered the contract.

Save as specifically provided by the FSA, we may only carry out margined or contingent liability transactions with or for you if they are traded on or under the rules of a recognised or designated investment exchange. Contingent liability investment transactions which are not so traded may expose you to substantially greater risks.

## **7. LIMITED LIABILITY TRANSACTIONS**

---

The amount you can lose in limited liability transactions will be less than in other margined transactions, which have no predetermined loss limit. Nevertheless, even though the extent of the loss will be subject to the agreed limit, you may sustain the loss in a relatively short time. Your loss may be limited, but the risk of sustaining a total loss to the amount agreed is substantial.

## **8. COLLATERAL**

---

If you deposit collateral as security with us, the way in which it will be treated will vary according to the type of transaction and where it is traded. There could be significant differences in the treatment of your collateral, depending on whether you are trading on a recognised or designated investment exchange, with the rules of that exchange (and the associated

clearing house) applying, or trading off-exchange. Deposited collateral may lose its identity as your property once dealings on your behalf are undertaken.

Even if your dealings should ultimately prove profitable, you may not get back the same assets which you deposited, and may have to accept payment in cash.

## **9. COMMISSIONS**

---

Before you begin to trade, you should obtain details of all commissions and other charges for which you will be liable. If any charges are not expressed in money terms (but, for example, as a percentage of contract value), you should obtain a clear and written explanation, including appropriate examples, to establish what such charges are likely to mean in specific money terms. In the case of futures, when commission is charged as a percentage, it will normally be as a percentage of the total contract value, and not simply as a percentage of your initial payment.

## **10. SUSPENSIONS OF TRADING**

---

Under certain trading conditions it may be difficult or impossible to liquidate a position. This may occur, for example, at times of rapid price movement if the price rises or falls in one trading session to such an extent that under the rules of the relevant exchange trading is suspended or restricted. Placing a stop-loss order will not necessarily limit your losses to the intended amounts, because market conditions may make it impossible to execute such an order at the stipulated price.

## **11. CLEARING HOUSE PROTECTION**

---

On many exchanges, the performance of a transaction by us (or a third party with whom we deal on your behalf) is 'guaranteed' by the exchange or clearing house. However, this guarantee is unlikely in most circumstances to cover you, the customer, and may not protect you if we or another party defaults on its obligations to you. There is no clearing house for traditional options, normally for off-exchange instruments.

## **12. INSOLVENCY**

---

In the event of our insolvency or default, or that of any other brokers involved with your transaction, positions may be liquidated or closed out without your consent. In certain circumstances, you may not get back the actual assets which you lodged as collateral and you may have to accept any available payments in cash.

## APPENDIX 2: ADDITIONAL TERMS

This Appendix 2 is supplementary to the Terms of Business which you may receive from time to time and relates to any transaction in which you will or may be liable to make further payments or deliveries, other than charges, taxes, commissions and fees ("margined transactions") for your account. Where another agreement or general terms are in effect relating to the provision of security, margin or collateral then such other agreement or general terms shall prevail to the extent there is any conflict between such agreement or terms and this Appendix 2.

### MARGINS, COLLATERAL AND PAYMENT

---

1. In respect of margined transaction for your account, you shall pay to us on demand:
  - (a) such sums of money by way of deposits, or as initial or variation margin as we may require being, in the case of a transaction effected on an exchange, not less than the amount or percentage stipulated by the relevant exchange;
  - (b) such sums of money as may from time to time be due to us under a transaction and such sums as may be required in or towards clearance of any debit balance on any account with us; and
  - (c) such sums of money as we may from time to time require as security for your obligations to us (our "margin requirement").
2. With our prior written agreement on each occasion, you may deposit securities or other assets ("collateral") with us or provide us with a guarantee or indemnity from a person and in a form acceptable to us instead of cash for the purpose of complying with your obligations under this Appendix 2. Any securities or other assets so deposited may be held by an intermediate broker who will be responsible for claiming and receiving all interest payments, income and other rights accruing to you. We accept no responsibility whatsoever for the acts or omissions of any intermediate broker and shall not be liable to you for any losses resulting directly or indirectly from such acts or omissions.
3. Notwithstanding any other provision of these Terms of Business, money and collateral provided to us under this Appendix 2 shall be transferred absolutely to us for our own benefit and use.
4. We will return money and/or collateral of the same type, nominal value, currency and amount as that provided by you to us in the following circumstances: (a) if we determine, in our sole discretion, that our margin requirement has been reduced; or (b) provided that none of your obligations to us are then outstanding, upon termination of these Terms of Business.
5. We may:
  - (a) pass on any money or collateral received from you in order to satisfy our or your obligations to any third party;
  - (b) charge, pledge, rehypothecate or grant any security arrangement over non-cash collateral in order to satisfy our or your obligations to any third party, in which case the collateral may not be registered in your name; and
  - (c) lend collateral to any third party, in which case the collateral may not be registered in your name.

6. We shall not be obliged to account to you for any income received as a result of carrying out any of these activities.
7. If you fail to provide any margin, deposit or other sum due under these Terms of Business we may close out any open position without prior reference to you and apply any proceeds thereof to payment of any amounts due to us.
8. You may not withdraw or substitute any property which we hold as security, margin or collateral without our prior consent.
9. Upon an Event of Default, we will be entitled to close out any open positions and set-off the value of the collateral provided by you to us against any sums due to you from us, in accordance with the provisions of Appendix 3 of these Terms of Business.
10. All payments from you under this Appendix 2 will be made free of and without withholding or deduction for any taxes, duties, assessments or governmental charges of whatsoever nature imposed, withheld or assessed by any relevant tax authority, unless required by law, in which case you shall pay such additional amounts as will result in the receipt by us of an amount which we would have received had no deduction or withholding been made.
11. You shall, immediately upon request, execute all documents and do all such things as we may reasonably request in order to enable us to exercise our rights under this Appendix 2.

### APPENDIX 3: ADDITIONAL TERMS

This Appendix 3 is supplementary to the Terms of Business which you may receive from time to time. Where another agreement or general terms are in effect relating to the provisions of this Appendix 3 then such other agreement or general terms shall prevail to the extent there is any conflict between such agreement or terms and this Appendix 3.

For the purposes of this Appendix 3, the following terms are defined:

**“Automatic Close-Out Event”** means the occurrence of any of the events specified in paragraphs (a) to (h) in the definition of an Insolvency Event;

**“Event of Default”** means:

- (a) failure by you to make any payment or delivery to us under these Terms of Business including, but not limited to, payment for your investments and the delivery of collateral or margin;
- (b) failure by you to perform any of your other obligations under these Terms of Business;
- (c) an Insolvency Event occurring in respect of you;
- (d) any representations, warranties or undertakings made by you being incorrect, untrue or ceasing to be true in any material respect when made or repeated or deemed to have been made or repeated; and
- (e) an admission by you that are unable to, or intend not to, perform any of your obligations under these Terms of Business, or the occurrence of an event of default, termination event or other similar event (however described) under any competent documentation forming part of these Terms of Business or any other Agreement between us and you;

**“Insolvency Event”** means the occurrence of any of the following at any time:

- (a) you are dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) you become insolvent or you are unable to pay your debts or fail or admit in writing the inability generally to pay your debts as they become due;
- (c) you make a general assignment, arrangement or composition with or for the benefit of your creditors;
- (d) (i) you institute or have instituted against you, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over you in the jurisdiction of your incorporation or organisation or the jurisdiction of your head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for your winding-up or liquidation by you or such regulator, supervisor or similar official; or  
  
(ii) you have instituted against you a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for either parties winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in (d)(i) above and either –
  - (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for your winding-up or liquidation; or
  - (B) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof;
- (e) you have a resolution passed for your winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) you seek or become subject to the appointment of an administrator (whether out of court or otherwise), provisional liquidator, conservator, receiver, trustee, custodian or other similar official for all or substantially all or any material part of your assets;
- (g) you have a secured party take possession of all or substantially all your assets or have a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all your assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter;

(h) you cause or become subject to any event with respect to you which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) above (inclusive); or

(i) you take any action in furtherance of, or indicating your consent to, approval of, or acquiescence in, any of the foregoing acts;

“**Potential Event of Default**” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default;

## NETTING AND SET OFF

---

1. On the occurrence of an Event of Default we shall be entitled at any time to retain or make deductions from or set-off amounts or credit balances (whether or not contingent and regardless of the currency) which we owe to you or which you owe to us (including, without limitation, the proceeds of any sale), in order to meet any liabilities which you may have incurred to us or which we may have incurred on your behalf under these Terms of Business including, for example, when appropriate:
  - (a) sums to be paid in settlement of transactions;
  - (b) settlement of fees, commissions or charges or any other amounts referred to in clause 10 (Our Charges) of these Terms of Business or any liabilities or costs incurred when exercising rights under this Appendix 3, or any other provision of these Terms of Business; and
  - (c) any interest payable to it.
2. For the purposes of cross-currency set-off, we may convert an obligation in one currency to another currency at a market rate reasonably determined by us.
3. Until you have paid or discharged in full all monies and liabilities owed to us, any monies, payable from you to us from time to time, may be used to exercise rights of set-off.
4. Each obligation of us to make payments or deliveries under each transaction or otherwise under these Terms of Business is subject to the conditions precedent that (1) no Event of Default or Potential Event of Default with respect to you has occurred and is continuing and (2) no Termination Date has occurred or been effectively designated.

## DEFAULT

---

5. If at any time an Event of Default occurs then:
  - (a) if such Event of Default is an Automatic Close-Out Event, a termination date will be deemed to occur as of the time immediately preceding the institution of the relevant proceeding, case or procedure or the presentation of the relevant petition (“Automatic Termination Date”); and
  - (b) if such Event of Default is not an Automatic Close-Out Event, we may, by notice to you, specify the relevant Event of Default and designate a date as the termination date (“Termination Date”) for the termination and liquidation of transactions in accordance with the provisions of clause 7 of this Appendix 3.
6. Upon the occurrence or effective designation of an Automatic Termination Date or Termination Date determined in accordance with clause 6:
  - (a) neither Party shall be obliged to make any further payments or deliveries under any transactions and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Close-Out Amount;
  - (b) on or as soon as reasonably practicable after the Termination Date (or, in the case of an Automatic Close-Out Event, as soon as reasonably practicable after we first become aware of the Automatic Termination Date) we shall determine, in respect of each transaction, the total cost, loss or (as the case may be) gain as a result of the termination, in each case expressed in the currency agreed by us in writing or, failing such agreement, the lawful currency of the United Kingdom (the “**Close-Out Currency**”) at the prevailing rate at the Termination Date (or the Automatic Termination Date, as the case may be) and, if

appropriate, including any loss of bargain, cost of funding or, without duplication, cost, loss or (as the case may be) gain as a result of the termination, liquidation, obtaining, performing or re-establishing of any hedge or related trading position, pursuant to these Terms of Business, of each payment or delivery which would otherwise) have been required to be made under such transaction; the Close-Out Amount shall be determined as of the Termination Date (or the Automatic Termination Date, as the case may be) or, if that would not be commercially reasonable, as of the date or dates following the Termination Date (or the Automatic Termination Date, as the case may be) as would be commercially reasonable in making such determination, we shall act in accordance with commercially acceptable principles of valuation including, where appropriate, obtaining quotations from market makers (selected in good faith) in the relevant markets for the cost of entering into a replacement transaction that would have the effect of preserving the economic equivalent of the payment or delivery which would otherwise have been required to be made under the relevant transaction; and

(c) we shall treat each cost or loss to us, determined as above, as a positive amount and each gain by us, so determined, as a negative amount and aggregate all of such amounts to produce a single, net positive or negative amount, denominated in the Close-Out Currency (the "**Close-Out Amount**").

7. If the Close-Out Amount is a positive amount, you shall pay the Close-Out Amount to us and, if it is a negative amount, we shall pay an amount equal to the absolute value of the Close-Out Amount to you. We shall notify you of the Close-Out Amount, and by which party it is payable, immediately after the calculation of such amount. The amount payable by one party to the other party pursuant to this clause shall be payable by the close of business on the 10<sup>th</sup> business day immediately following the day on which notice of such Close-Out Amount is effective (the "**Due Date**").
8. Notwithstanding the provisions of this Appendix 3, insofar as any transaction between you and us is documented under the terms of a market standard master netting agreement, such transactions shall be netted in accordance with the terms of such market standard master netting agreement.

#### **POWER OF SALE OVER YOUR INVESTMENTS**

---

9. All investments (including collateral) which we hold or are entitled to receive on your behalf shall be a continuing security for the payment and satisfaction of all sums which may at any time be or become due from you to us, including any interest payable to us hereunder and reasonable costs, charges and expenses paid or incurred in perfecting or enforcing our security or otherwise.
10. You hereby irrevocably authorise us at any time after the occurrence of an Event of Default, if any amount due to us from you has not been paid when due (or on demand, if so payable), at any time after demand made on you, without prior notice, to sell all or any of such investments at such price and in such manner as we may in our reasonable discretion decide without being responsible for any loss or diminution in price and apply any proceeds of such sale in or towards:
  - (a) discharge of the costs of such sale; and
  - (b) discharge of the sums secured by clauses in this Appendix 3.
11. If, at any time, we have any reason to believe that you may be unable or unwilling to meet any liabilities which you have incurred to us or which we may have incurred on your behalf or to comply with any other obligations under these Terms of Business or on the occurrence of an Event of Default under these Terms of Business, we shall be entitled (and are irrevocably authorised by you to take all or any of the following actions without prior notice to you: close out or require you to close out immediately any open positions and/or buy any investment or other property where this is, or is in our reasonable opinion likely to be, necessary in order for us to fulfill our obligations under any transaction entered into as a result of your instructions (you shall reimburse us for the full amount of the purchase price plus any associated costs and expenses) and/or treat any outstanding transactions as cancelled and terminated.