

11 October 2013

## **AFME Model Block Trade Agreements**

Our members consider that it would be helpful to make available to parties to block trade agreements a model that could serve as a basis of contract formation with terms that can be viewed as reasonable by seller and placing agent. Many block trades are subject to onerous timing and legal constraints, and these factors conspire to make the settling of reasonable contractual terms a potentially difficult and complicated process.

Two versions of AFME Model Block Trade Agreements are made available on this website - one is a pure agency agreement with no backstop underwriting commitment (you can link to this document [here](#)) and the other has a backstop underwriting commitment built in (you can link to this document [here](#)). The AFME Model Block Trade Agreements available on this website have been drafted with the assistance of a committee comprised of (i) representatives of investment banks that participate frequently in block trades, and (ii) partners from Ashurst LLP and Cleary Gottlieb Steen & Hamilton LLP who are prominent in the EMEA block trade market and act both for sellers and underwriters, with input from certain other law firms that act in this market, with a remit to develop a model containing terms that would likely not be viewed as extreme by either constituency to serve as a starting point for individual negotiations and to facilitate reaching a final agreement.

Please note in particular the following considerations:

- While the agreements have been drafted to allow them to be used for block trades in any jurisdiction, you will note that certain clauses are UK-specific. Appropriate modifications will need to be made to tailor the agreement to the specific jurisdiction in question.
- The fee clause in both the agreements has been drafted to accommodate a simple commission arrangement given the chosen structure. The agreements have been drafted on the basis that the Manager will act on an agency basis and will use its reasonable endeavors to procure purchasers for the seller's shares, and in the backstop version of the Model Block Trade Agreement language concerning a backstop commitment has been included. If the particular transaction will involve a different structure and upside sharing or any other fee arrangement, appropriate modifications will need to be made to this clause to reflect such commercial terms.
- If no U.S. sales will be made as part of the trade, certain representations currently included may be deleted, as identified throughout the agreements.

- We have included certain representations by the Manager, primarily in order to facilitate the delivery of a 'no registration' opinion and to anticipate a not uncommon request by seller's counsel to include such representations.

- You will note that an attempt has been made to prepare a balanced draft and to include certain clauses and provisions that we believe Managers commonly agree to include in such agreements upon the request of sellers in the hope that this renders the agreements in an acceptable framework form for all parties.

Please note that the model agreements are not intended to be fixed forms with mandatory terms or to restrict in any way the right of parties to negotiate any of the terms of these or use any other form of block trade agreements, but it is hoped that they will provide user friendly wording for most standard terms thereby enabling negotiation to focus on key commercial terms (such as commission levels and structure). The particular nature of a given transaction, the commercial considerations involved and the internal policies of the parties will determine the ultimate form and substance of a block trade agreement. However, it is our view that the terms set out in the model agreements made available on this website reflect a fair balance of many (but not all) of the positions most often reached between seller and agent per current market practice. We therefore are hopeful that parties will wish to use the model agreements to enhance the efficiency of, and expedite the documentation process in, block trade transactions, which are often time-compressed, and in which best price, minimal expenses and speed to market are usually the key objectives of sellers.

Very truly yours,



**William J Ferrari**  
**Managing Director**  
**Association for Financial Markets in Europe**

**AFME** (Association for Financial Markets in Europe) promotes fair, orderly, and efficient European wholesale capital markets and provides leadership in advancing the interests of all market participants. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association through the GFMA (Global Financial Markets Association).

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

For more information please visit the AFME website, [www.afme.eu](http://www.afme.eu).