

OTC CASH EQUITY TRADES – DEFAULT PROTOCOL

1. INTRODUCTION

1.1 This Protocol is published by the Association for Financial Markets in Europe (*AFME*). Its purpose is to allow parties to adhere to a set of standard default provisions in circumstances where cash equities trades are not otherwise subject to the default rules of a regulated market, multilateral trading facility, clearing house or similar venue, and where the parties have not themselves separately agreed express provisions that would apply upon the default of one of the parties to the trade.

1.2 The default provisions contained in the Protocol may be applied to cash equity trades covered by this Protocol by a party that has adhered to the Protocol (an *Adhering Party*) upon the occurrence of an insolvency-related event of default affecting another Adhering Party.

1.3 Parties may adhere to the Protocol and be bound by its terms by following the adherence procedure described in Section 2 below. Adhering Parties agree that the terms of this Protocol shall apply to all Covered Trades (as defined below) entered into by them with another Adhering Party. The Protocol shall take effect as separate bilateral agreements between each Adhering Party and each other Adhering Party.

1.4 The Protocol is intended to cover persons falling with the following categories:

- (a) Investment Firms;
- (b) Credit Institutions; and
- (c) Equivalent Third Country Firms.

1.5 The Protocol is intended to create legal rights and obligations and parties are encouraged to take legal advice on its terms and effect before adhering to the Protocol.

2. ADHERENCE

2.1 Adherence to the Protocol will be evidenced through:

- (a) the execution and delivery to the Association of Financial Markets in Europe (*AFME*) of a letter in the form, or substantially the form, set out in Exhibit 1 to this Protocol (*Adherence Letter*); or
- (b) electronic acceptance of the terms of the Protocol via a website (the *AFME Protocol Website*) hosted and operated by a third party provider (the *Administrator*) on behalf of AFME,

(the *Adherence Confirmation*).

2.2 Until such time as the Adherence Confirmation is capable of being effected by electronic means adherence must be effected by delivering, by courier, to AFME, as

agent, at the address set out in the form of Adherence Letter, two copies of the Adherence Letter, one a manually signed original and the other a conformed copy containing, in place of each signature, the printed or typewritten name of each signatory.

2.3 Following commencement of the AFME Protocol Website, adherence will be capable of being effected by electronic means pursuant to sub-paragraph 2.1(b). Parties that were Adhering Parties as at the date of commencement of the AFME Protocol Website will continue to be Adhering Parties and their names will be included on the list of Adhering Parties maintained on the AFME Protocol Website.

2.4 A party will become an Adhering Party to this Protocol with effect from:

- (a) in the case of an Adherence Confirmation effected by means of Adherence Letter pursuant to sub-paragraph 2.1(a), the entry of the party's name on the list of Adhering Parties maintained by AFME and published on the AFME Website; or
- (b) in the case of an Adherence Confirmation effected by electronic means pursuant to sub-paragraph 2.1(b), the entry of the party's name on the list of Adhering Parties published on the AFME Protocol Website.

2.5 This Protocol is intended for use without negotiation. In adhering to this Protocol a party may not specify amendments to the Protocol or additional provisions, conditions or limitations in its Adherence Letter or otherwise. Any such purported amendments, additional provisions, conditions or limitations will be of no effect and will result in such party failing to become an Adhering Party.

2.6 The terms set out in this Protocol will be effective as between any two Adhering Parties from the time they become Adhering Parties.

2.7 An Adhering Party may withdraw its adherence to the Protocol by:

- (a) execution and delivery to AFME of a letter in the form, or substantially the form, set out in Exhibit 2 to this Protocol (the *Withdrawal Letter*); or
- (b) through electronic notification via the AFME Protocol Website,

(the *Withdrawal Confirmation*).

2.8 The Withdrawal Confirmation must specify a date from which the Adhering Party wishes its withdrawal to take effect, provided that such date shall not be less than 10 Business Days from the date of the Withdrawal Confirmation.

2.9 Until such time as a Withdrawal Confirmation is capable of being made by electronic means withdrawal must be effected by delivering, by courier, to AFME, as agent, at the address set out in the form of Withdrawal Letter, two copies of the Withdrawal Letter, one a manually signed original and the other a conformed copy containing, in place of each signature, the printed or typewritten name of each signatory.

2.10 Following commencement of the AFME Protocol Website, withdrawal will only be capable of being effected by electronic means pursuant to sub-paragraph 2.7(b).

2.11 Subject to paragraph 2.12 below, an Adhering Party will cease to be an Adhering Party (and will become a **Former Adhering Party**) with effect from the removal of the Adhering Party's name from the list of Adhering Parties maintained by AFME on the AFME Website or, following commencement of the AFME Protocol Website, by removal of the Adhering Party's name from the list of Adhering Parties maintained on the AFME Protocol Website.

2.12 The terms of this Protocol will continue to apply between an Adhering Party and a Former Adhering Party in respect of Covered Trades entered into prior to that party becoming a Former Adhering Party.

2.13 In consideration of the mutual rights and obligations between Adhering Parties created by this Protocol, each Adhering Party agrees to be bound by its terms as amended from time to time.

2.14 All Covered Trades between any two Adhering Parties together with this Protocol will be deemed to form one single agreement as between those two Adhering Parties. Any provisions governing any Covered Trades, whether collectively or individually, shall continue to apply to the respective Covered Trades, provided that in the event of any conflict with the provisions of this Protocol the provisions of this Protocol shall prevail.

3. REPRESENTATIONS.

3.1 Each Adhering Party represents to each other Adhering Party on a continuing basis that:

- (a) it is duly incorporated and validly existing under the laws of its country of incorporation or formation;
- (b) it is duly authorised and empowered to execute and deliver the Adherence Confirmation and to perform its duties and obligations under this Protocol;
- (c) the person executing the Adherence Letter or submitting the Adherence Confirmation is duly authorised to do so on its behalf;
- (a) the execution and delivery of this Protocol will not:
 - (i) conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, the documents constituting the Adhering Party, or any indenture, trust deed, mortgage or other agreement or instrument to which the Adhering Party is a party or by which it or any of its assets is bound;
 - (ii) infringe any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental body, regulatory body or

court, domestic or foreign, having jurisdiction over the Adhering Party or any of its assets;

- (d) it has all necessary licences and approvals to perform its duties and obligations under this Protocol and will do nothing prejudicial to the continuation of such authorisation, licences or approvals;
- (e) this Protocol constitutes the legal, valid, binding and enforceable obligations of the Adhering Party and is enforceable in accordance with its terms.

4. DEFINITIONS AND INTERPRETATION

4.1 In this Protocol the following terms shall have the following meanings:

Act of Insolvency means in relation to an Adhering Party

- (a) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors; or
- (b) its stating in writing that it is unable to pay its debts as they become due; or
- (c) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
- (d) the presentation or filing of a petition in respect of it in any court or before any agency alleging or for the bankruptcy, winding-up or insolvency of such Adhering Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition not having been stayed or dismissed within 30 days of its filing (except in the case of (1) a petition for winding-up or any analogous proceeding; or (2) an Adhering Party incorporated or maintaining its centre of main economic interest in Germany, (i) the filing for the opening of an *Insolvenzverfahren* and (ii) the taking of measures pursuant to § 46a para. 1 of the German Banking Act (*Kreditwesengesetz*) against such party; or (3) an Adhering Party incorporated, established, organised or formed in Switzerland, the ordering of the liquidation *Bankenkonkurs*, *Effektenhändlerkonkurs* within the meaning of art. 33 of the Swiss Federal Banking Statute, in respect of which (in any case within (1), (2) or (3)) no such 30 day period shall apply); or
- (f) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such Adhering Party over all or any material part of such Adhering Party's property; or

- (g) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement as referred to in Section 3 of the Insolvency Act 1986 (or any analogous proceeding).

With respect to an Adhering Party incorporated or maintaining its centre of main economic interest in Germany the references to an “analogous officer” in paragraphs (c) and (f) above shall include an *Insolvenzverwalter*.

With respect to an Adhering Party incorporated, established, organised or formed in Switzerland, paragraphs (a) to (g) above shall be construed so as to include (without limitation) acts and proceedings analogous to those mentioned in the relevant paragraphs above: (i) under the Swiss Federal Statute on Banks and Savings Banks of 8 November 1934 (as amended) and the pertaining ordinances (*Schutzmassnahmen; Fälligkeitsaufschub; Stundung; Sanierungsverfahren; Liquidation insolventer Banken oder Effekthändler (Bankenkongkurs); Anerkennung ausländischer Konkursdekrete und Liquidations- und Sanierungsmassnahmen (recognition of foreign bankruptcy decrees and liquidation and restructuring measures)*) (for the avoidance of doubt irrespective of whether applied in relation to banks (within the meaning of the Swiss Federal Statute on Banks and Savings Banks of 8 November 1934) or securities dealers (within the meaning of the Swiss Federal Statute on Stock Exchanges and Securities Trading of 24 March 1995, as amended)), and (ii) under any substitute or supplementing legislation.

Adherence Confirmation has the meaning given in paragraph 2.1;

Adherence Letter has the meaning given in sub-paragraph 2.1(a);

Adhering Party means a party that has adhered to this Protocol in accordance with the provisions of Section 2;

Administrator means the third party appointed by AFME to operate the AFME Protocol Website;

AFME Website means www.afme.eu;

AFME Protocol Website has the meaning given in sub-paragraph 2.1(b);

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

Base Currency means the base currency selected by the Non-Defaulting Party;

Business Day means a day, other than a Saturday or Sunday, on which banks are generally open for business in London;

Covered Trade means a contract for the purchase and sale of equity securities for settlement by delivery of the equity security which is:

- (a) not entered into on, or under the rules of, a Regulated Market, MTF or Equivalent Third Country System that has default rules (other than statutory provisions) that would apply to determine the parties' rights and obligations under the contract upon or following the occurrence of a Default Event;
- (b) not subject to the rules of a central counterparty or other clearing system that has default rules (other than statutory provisions) that would apply to determine the parties' rights and obligations under the contract upon or following the occurrence of a Default Event; or
- (c) not subject to binding contractual terms between the Defaulting Party and Non-Defaulting Party (other than this Protocol) that would apply to determine the parties' rights and obligations under the contract upon or following the occurrence of a Default Event,

and in each case where the contract has not yet been performed by the transfer of the relevant equity securities against the payment of the purchase price (for the avoidance of doubt contracts falling with paragraphs C(4) or C(9) of Annex 1 to MiFID shall not constitute Covered Trades even if such contracts may be physically settled by delivery of equity securities);

Credit Institution has the meaning given in Article 4(1)(a) of Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions;

Default Event means an Act of Insolvency of an Adhering Party;

Default Market Value means the value of Securities calculated in accordance with paragraphs 5.7 to 5.9;

Default Notice has the meaning given in paragraph 5.1;

Default Valuation Time means the close of business in the Appropriate Market on the tenth dealing day after the Termination Date;

Defaulting Party has the meaning given in paragraph 5.1;

Deliverable Securities means Securities to be delivered by the Defaulting Party;

Equivalent Third Country Firm means a firm that would be an Investment Firm or a Credit Institution if it had its head office in the European Economic Area;

Equivalent Third Country System means a multilateral securities trading system that is equivalent to an MTF or Regulated Market established outside of the European Economic Area;

Former Adhering Party has the meaning given in paragraph 2.11;

Insolvenzordnung means the Insolvency Act which came into force in Germany on 1 January 1999;

Insolvenzverfahren means insolvency proceedings instituted under the Insolvenzordnung;

Insolvenzverwalter means an Insolvenzverwalter appointed under the Insolvenzordnung;

Investment Firm has the meaning given in Article 4(1) of MiFID;

MiFID means Directive 2004/39/EC on markets in financial instruments;

MTF has the meaning given in Article 4(15) of MiFID;

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

Non-Defaulting Party has the meaning given in paragraph 5.1;

Protocol means this AFME OTC Cash Equity Default Protocol, as amended from time to time;

Receivable Securities means securities to be received by the Defaulting Party;

Regulated Market has the meaning given in Article 4(14) of MiFID;

Securities means the equity securities that are to be delivered under a Covered Trade;

Termination Balance has the meaning given in sub-paragraph 5.5(c);

Termination Date means the date of service of the Default Notice under paragraph 5.1 (or, where paragraph 5.3 applies, the date of the Default Event; or where paragraph 5.4 applies, the date of deemed service of the Default Notice);

Transaction Costs means, in relation to any transaction contemplated in paragraph 5.7, the reasonable costs, commissions (including internal commissions), fees and expenses (including any mark-up or mark-down or premium paid for guaranteed delivery) incurred, or that would be incurred, in connection with the purchase of Deliverable Securities or sale of Receivable Securities, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction;

Withdrawal Confirmation has the meaning given in paragraph 2.7; and

Withdrawal Letter has the meaning given in sub-paragraph 2.7(a).

4.2 In this Protocol unless the context requires otherwise:

- (a) the headings are inserted for convenience only and do not affect the construction of the Agreement;
- (b) references to one gender includes all genders;
- (c) references to the singular include references to the plural;
- (d) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re-enacted;
- (e) references in this Protocol to any English legal term for any action, remedy, method of judicial proceedings, legal document, legal status, court official or any other legal concept is, in respect of any jurisdiction other than England and Wales, deemed to include the legal concept or term which most nearly approximates in that jurisdiction to the English legal term.

5. DEFAULT TERMS

5.1 Subject to paragraphs 5.3 and 5.4 upon or following the occurrence of a Default Event affecting an Adhering Party (the *Defaulting Party*) each other Adhering Party (the *Non-Defaulting Party*) which is a party to a Covered Trade with the Defaulting Party may serve a notice (a *Default Notice*) on the Defaulting Party.

5.2 Upon service of a Default Notice the provisions of paragraphs 5.5 to 5.13 shall apply as between the Defaulting Party and Non-Defaulting Party.

5.3 With respect to an Adhering Party incorporated or maintaining its centre of main economic interest in Germany, if:

- (a) a filing is made for the opening of an *Insolvenzverfahren* against such party; or
- (b) measures are taken pursuant to §46a para. 1 of the German Banking Act (*Kreditwesengesetz*) against such party,

all (and not only some) Covered Trades and the Protocol (as between the Non-Defaulting Party and the Defaulting Party) shall immediately terminate and the provisions of paragraphs 5.5 to 5.13 shall apply automatically without the need for the service of a Default Notice by the Non-Defaulting Party as if such Default Notice had been given. For the avoidance of doubt, termination of the Protocol shall be without prejudice to the operation of this Section 5 in respect of the Covered Trades between the Defaulting Party and Non-Defaulting Party.

5.4 With respect to an Adhering Party incorporated, established, organised or formed in Switzerland a Default Notice shall be deemed to have been served, even if no Default Notice is given, as of the time immediately preceding the opening of bankruptcy (*Konkurseröffnung*) in the case of an Act of Insolvency specified in paragraph (d) of the definition and the provisions of paragraphs 5.5 to 5.13 shall apply automatically as if such Default Notice had been given at that time.

5.5 In respect of all (and not only some) Covered Trades between the Defaulting and Non-Defaulting Parties the delivery and payment obligations of the Defaulting and Non-Defaulting Parties shall, to the extent they have not already fallen due for performance as at the Termination Date, be accelerated so as to fall due for performance at the Termination Date and performance of the parties' delivery and payment obligations shall be terminated and replaced by an obligation to pay the Termination Balance (as defined below) calculated in accordance with the following provisions:

- (a) the Default Market Value of the Securities to be delivered and the value of the cash to be paid under the Covered Trades shall be established by the Non-Defaulting Party;
- (b) on the basis of the sums so established, an account shall be taken by the Non-Defaulting Party as at the Termination Date of what is due from each party to the other (on the basis that a party's claim for delivery of Securities in respect of a Covered Trade equals the Default Market Value of those Securities);
- (c) the sums due from one party shall be set off against the sums due from the other and only the balance of the account (the *Termination Balance*) shall be payable (by the party having the claim valued at the lower amount);
- (d) the Non-Defaulting Party shall notify the Defaulting Party of the Termination Balance as soon as possible and in any event within one Business Day of its calculation;
- (e) the Termination Balance shall be payable on the Business Day following notification by the Non-Defaulting Party to the Defaulting Party;
- (f) for the purpose of the calculations required by this paragraph 5.5 any sums not denominated in the Base Currency shall be converted into the Base Currency on the relevant date at the spot rate prevailing at the relevant time as determined by the Non-Defaulting Party in its commercially reasonable discretion.

5.6 For the purposes of this Protocol, the Default Market Value of Securities shall be calculated in accordance with paragraphs 5.7 to 5.9.

5.7 If between the Default Event and the Default Valuation Time:

- (a) the Non-Defaulting Party has sold, in the case of Receivable Securities, or purchased, in the case of Deliverable Securities, securities which form part of the same issue and are of an identical type and description as the Securities (and regardless as to whether such sales or purchases have settled), the Non-Defaulting Party may elect to treat as the Default Market Value:
 - (i) in the case of Receivable Securities, the net proceeds of such sale after deducting all Transaction Costs incurred in connection therewith; provided that, where the securities sold are not identical in amount to the Securities, the Non-Defaulting Party may, acting in good faith,

either (A) elect to treat such net proceeds of sale divided by the amount of securities sold and multiplied by the amount of the Securities as the Default Market Value or (B) elect to treat such net proceeds of sale of the securities actually sold as the Default Market Value of that proportion of the Securities, and, in the case of (B), the Default Market Value of the balance of the Securities shall be determined separately in accordance with the provisions of this paragraph 5.7; or

- (ii) in the case of Deliverable Securities, the aggregate cost of such purchase, including all Transaction Costs incurred in connection therewith; provided that, where the securities purchased are not identical in amount to the Securities, the Non-Defaulting Party may, acting in good faith, either (A) elect to treat such aggregate cost divided by the amount of securities purchased and multiplied by the amount of the Securities as the Default Market Value or (B) elect to treat the aggregate cost of purchasing the securities actually purchased as the Default Market Value of that proportion of the Securities or, and, in the case of (B), the Default Market Value of the balance of the Securities shall be determined separately in accordance with the provisions of this paragraph 5.7,

(for the avoidance of doubt, the Non-Defaulting Party shall have sole and absolute discretion as to the manner and timing of any sales or purchases of securities which form part of the same issue and are of an identical type and description as the Securities); or

- (b) the Non-Defaulting Party has received, in the case of Deliverable Securities, offer quotations or, in the case of Receivable Securities, bid quotations in respect of securities of the relevant description from two or more market makers or regular dealers in the Appropriate Market in a commercially reasonable size (as determined by the Non-Defaulting Party) the Non-Defaulting Party may elect to treat as the Default Market Value:
 - (i) the price (or where more than one price is quoted the arithmetic mean of the prices so quoted) by each of them for, in the case of Deliverable Securities, the sale by the relevant market maker or dealer of such securities or, in the case of Receivable Securities, the purchase by the relevant market maker or dealer of such securities, provided that such price or prices quoted may be adjusted in a commercially reasonable manner by the Non-Defaulting Party to reflect accrued but unpaid dividends not reflected in the price or prices quoted in respect of such securities;
 - (ii) after deducting, in the case of Receivable Securities, or adding, in the case of Deliverable Securities, the Transaction Costs which would be incurred or reasonably anticipated in connection with such a transaction.

5.8 If, acting in good faith, either (A) the Non-Defaulting Party has endeavoured but been unable to sell or purchase securities in accordance with sub-paragraph 5.7(a)

above or to obtain quotations in accordance with sub-paragraph 5.7(b) above (or both); or (B) the Non-Defaulting Party has determined that it would not be commercially reasonable to sell or purchase securities at the prices bid or offered or to obtain such quotations, or that it would not be commercially reasonable to use any quotations which it has obtained under sub-paragraph 5.7(b) above the Non-Defaulting Party may determine the Net Value of the relevant Securities (which shall be specified) and the Non-Defaulting Party may elect to treat such Net Value as the Default Market Value of the relevant Securities.

5.9 To the extent the Non-Defaulting Party has not determined a Default Market Value in accordance with paragraph 5.7 or 5.8 the Default Market Value of the relevant Securities shall be an amount equal to their Net Value at the Default Valuation Time; provided that, if at the Default Valuation Time the Non-Defaulting Party reasonably determines that, owing to circumstances affecting the market in the Securities in question, it is not reasonably practicable for the Non-Defaulting Party to determine a Net Value of such Securities which is commercially reasonable (by reason of lack of tradable prices or otherwise), the Default Market Value of such Securities shall be an amount equal to their Net Value as determined by the Non-Defaulting Party as soon as reasonably practicable after the Default Valuation Time.

5.10 If an Adhering Party serves a Default Notice under paragraph 5.1 (or if no Default Notice is required under paragraphs 5.3 or 5.4) the Non-Defaulting Party and the Defaulting Party shall, where required or permitted by the relevant settlement system, use their reasonable endeavours to remove settlement instructions in respect of Covered Trades between them from the relevant settlement system to prevent such trades from settling after service of a Default Notice (or the occurrence of the relevant Default Event in paragraphs 5.3 or 5.4).

5.11 The Defaulting Party shall be liable to the Non-Defaulting Party for costs, losses, charges, damages, fees and expenses incurred by the Non-Defaulting Party in connection with or as a consequence of a Default Event including buy-in costs in respect of any Covered Trades and all reasonable legal and other professional expenses incurred by the Non-Defaulting Party. Any claim by the Non-Defaulting Party for such costs, losses, charges, damages, fees and expenses may be added to the Termination Balance, if owed by the Defaulting Party, or subtracted from the Termination Balance, if owed by the Non-Defaulting Party.

5.12 For all purposes, including legal proceedings, a statement of the Termination Balance due signed by an authorised officer of the Non-Defaulting Party shall be conclusive and binding in the absence of manifest error.

5.13 In the event of either party failing to remit sums in accordance with this Protocol such party hereby undertakes to pay to the other party upon demand interest (before as well as after judgment) on the net balance due and outstanding, for the period commencing on and inclusive of the original due date for payment to (but excluding) the date of actual payment, in the same currency as the principal sum and at the overnight London Inter Bank Offered Rate as quoted on a reputable financial information service (*LIBOR*). Interest will accrue daily on a compound basis and will be calculated according to the actual number of days elapsed. No interest shall be

payable under this paragraph in respect of any day on which one Party endeavours to make a payment to the other Party but the other Party is unable to receive it.

6. NO WAIVER

6.1 No failure or delay by an Adhering Party (whether by course of conduct or otherwise) to exercise any right, power or privilege under this Protocol shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege as herein provided.

7. NOTICES

7.1 Any notice or other communication to be given by one Adhering Party to another in respect of this Protocol may be given in any manner set forth below to the address or number for the relevant Adhering Party or in accordance with the electronic messaging system details in each case as set out on the AFME Website or, following its commencement, the AFME Protocol Website and will be deemed effective as indicated:

- (a) if in writing and delivered in person or by courier, on the date it is delivered;
- (b) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (c) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (d) if sent by electronic messaging system, on the date that electronic message is received,

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

7.2 An Adhering Party may change the address or facsimile number or electronic messaging system details at which notices or other communications are to be given to it by notifying AFME (or, following commencement of the AFME Protocol Website, the Administrator) of its amended details.

8. RIGHTS OF THIRD PARTIES

8.1 Other than AFME, a person who is not an Adhering Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Protocol,

but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

9. LIMITATION OF LIABILITY

Neither AFME nor any of its officers, servants or agents will incur any liability to any Adhering Party or any other person or be responsible for any loss, damage, expense or claim whatsoever suffered or incurred by any Adhering Party or any other person as a result of performing or failing to perform any function under this Protocol except to the extent that such liability, loss, damage, claim or expense is shown to be attributable to the fraud or wilful default of AFME. Neither AFME nor any of its officers, servants or agents shall be liable for any loss of business, profit or consequential damage of any kind whatsoever.

10. SPECIFIC PERFORMANCE

Each Adhering Party agrees that in relation to legal proceedings it will not seek specific performance of another Adhering Party's (the *Affected Party*) obligations to deliver Securities under a Covered Trade following service of a Default Notice (or, where paragraphs 5.3 or 5.4 apply, following the occurrence of the Default Event) by it in relation to the Affected Party, but without prejudice to any other rights it may have.

11. AMENDMENTS

Amendments to this Protocol may be made by AFME publishing the proposed amendment on the AFME Website or, following its commencement, the AFME Protocol Website at least 10 Business Days prior to such amendment taking effect. Amendments to the Protocol will become effective upon AFME publishing the amended version of the Protocol on the AFME Website or, following its commencement, the AFME Protocol Website, and each Adhering Party shall be bound by the terms of this Protocol as amended. If an Adhering Party does not accept the proposed amendment it may withdraw from the Protocol in accordance with the provisions of Section 2 prior to the amendment taking effect. AFME will, prior to publishing any proposed amendments to the Protocol, consult with its members who are Adhering Parties or a committee of its members appointed for this purpose. No amendment, modification or waiver with respect to matters contemplated by this Protocol will be effective unless made in accordance with the terms of this Section 11.

12. GOVERNING LAW

12.1 This Protocol and any Adherence Confirmation and Withdrawal Confirmation (together *the Protocol Documents*) any non-contractual obligations arising out of or in relation to the Protocol Documents shall be governed by and construed in accordance with English law. The English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Protocol (including claims for set-off and counterclaims), including, without limitation, disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Protocol; and (ii) any non-contractual obligations arising out of or in connection with

this Protocol. For such purposes each Adhering Party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

EXHIBIT 1

Form of Adherence Letter

[Letterhead of Adhering Party]

**FAO []
Association for Financial Markets in Europe
St. Michael's House
1 George Yard
London
EC3V 9DH
United Kingdom**

[Date]

Dear Sirs

AFME OTC Cash Equities Protocol – Adherence Letter

1. ADHERENCE

The purpose of this letter is to confirm our adherence to the AFME OTC Cash Equities Protocol (the *Protocol*), and by executing this letter we agree to be bound by the terms of the Protocol as amended from time to time. This letter constitutes an Adherence Letter as referred to in the Protocol.

The definitions and provisions contained in the Protocol are incorporated into this Adherence Letter.

2. APPOINTMENT AS AGENT AND RELEASE

We hereby appoint AFME as our agent for the limited purposes of the Protocol and accordingly we waive, and hereby release AFME from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or our adherence to the Protocol or any actions contemplated as being required by AFME.

3. CONTACT DETAILS

Our contact details for the purposes of the Protocol are:

Name:

Address:

Telephone:

Fax:

E-mail:

4. BASE CURRENCY

For the purposes of the Protocol we elect to use [*dollars / sterling / Euro / other*] as our Base Currency.

5. AGENT FOR SERVICE OF PROCESS¹

We will at all times while we remain an Adhering Party to the Protocol maintain an agent for service of process and any other documents in proceedings in England. Such agent is currently:

[Insert details of agent for service of process]

Any claim form, judgment or other notice of legal process will be sufficiently served on us if delivered to such agent at its address for the time being. We undertake not to revoke the authority of the above agent without giving prior notification to the AFME of a replacement agent.

We consent to the publication of the conformed copy of this letter by AFME and to the disclosure by AFME of the contents of this letter.

Yours faithfully

[ADHERING PARTY]

Signed by: _____
Name:
Title:

¹ Non-UK Adhering Parties only.

EXHIBIT 2

Form of Withdrawal Letter

[Letterhead of Adhering Party]

**FAO []
Association for Financial Markets in Europe
St. Michael's House
1 George Yard
London
EC3V 9DH
United Kingdom**

[Date]

Dear Sirs

AFME OTC Cash Equities Protocol – Withdrawal Letter

The purpose of this letter is to notify you that we wish to withdraw from adherence to the AFME OTC Cash Equities Protocol (the *Protocol*) with effect from:

[SPECIFY DATE]

This letter constitutes a Withdrawal Letter as referred to in the Protocol.

We consent to the publication of the conformed copy of this letter by AFME and to the disclosure by AFME of the contents of this letter.

Yours faithfully

[ADHERING PARTY]

Signed by: _____

Name:

Title: