

## ITALIAN FINANCIAL TRANSACTIONS TAX – DERIVATIVES 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 provisions as to the allocation of payment and reporting responsibilities and obligations in circumstances where transactions in certain equity derivatives (the *Chargeable Derivatives*) are subject to the taxation on financial transactions under article 1, paragraph 492, of the Italian Law 228 of 24 December 2012 (the *Law 228*) and articles from 7 to 11 of the Decree of the Minister of Economy and Finance dated 21 February 2013 (the *Treasury Decree*), as these articles may be amended or superseded from time to time, including any related penalty or interest for late or incorrect payment or late or incorrect reporting or filing that may be due (the *FTT*). This Protocol is not purported to address which party to a transaction in Chargeable Derivatives that is liable for the FTT shall bear the economic cost of the tax. In the event of any inconsistency between the Protocol and the provisions of any agreements evidencing or governing a transaction in Chargeable Derivatives which relate to the allocation of tax risk (other than the allocation of FTT payment and reporting responsibilities and obligations), such agreements shall prevail.

1.2 The provisions contained in the Protocol shall apply to transactions covered by this Protocol by a party that has adhered to the Protocol, and has not withdrawn from, or been subject to withdrawal in accordance with section 5 below, the Protocol (an *Adhering Party*). The Protocol shall apply to an Adhering Party and all its branches, unless specified otherwise in the Adherence Letter (as defined below).

1.3 Parties may adhere to the Protocol and be bound by its terms by following the adherence procedure described in Section 2 below. Subject to the effect of any Disapplication Letter (as defined below) served by an Adhering Party, Adhering Parties agree that the terms of this Protocol shall apply to all Covered Transactions (as defined below) entered into by them with or for and on behalf of another Adhering Party and that 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 White-Listed Investment Services Providers (as defined below).

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.

1.6 For the purposes of this Protocol, each Adhering Party is responsible for interpreting the relevant provisions of the Law 228 and the Treasury Decree to determine which transactions incur reporting and payment obligations.

1.7 This Protocol shall become effective at 12.01am Milan time on 1 September 2013.

## 2. ADHERENCE

2.1 Adherence to the Protocol shall require the execution and delivery to AFME of a letter in the form, or substantially the form, set out in Exhibit 1 to this Protocol (the ***Adherence Letter***).

2.2 A party intending to adhere to this Protocol shall either:

- (a) deliver to AFME by (i) certified or registered mail (or airmail, if overseas) or equivalent; (ii) courier; or (iii) personal delivery to 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; the party shall also send scanned pdf copies of the manually signed original and conformed copies of the Adherence Letter to AFME at [fttprotocol@afme.eu](mailto:fttprotocol@afme.eu); or
- (b) send to AFME at [fttprotocol@afme.eu](mailto:fttprotocol@afme.eu) an electronically signed original and a conformed copy of the Adherence Letter.

2.3 A party may adhere for itself and for other entities in its Corporate Group by submitting an Adherence Letter containing the details of all adhering entities of its Corporate Group. If an entity in a Corporate Group wishes to adhere to this Protocol where there are existing Group Adhering Parties in the same Corporate Group, the Primary Group Adhering Party must send to AFME in accordance with paragraph 2.2 a revised Adherence Letter for the Corporate Group including both the details of the new entity and the details of the existing Group Adhering Parties.

2.4 Existing Adhering Parties which are part of a Corporate Group can become Group Adhering Parties if one of the Adhering Parties sends AFME a Corporate Group Notification providing details of all the Adhering Parties which form part of the Corporate Group.

2.5 After AFME receives the signed and conformed copies of the Adherence Letter (in electronically signed original, pdf of the manually signed original, or hard copy original), AFME shall publish the conformed copy of the Adherence Letter on the AFME Website (such publication by AFME constituting the ***Adherence Confirmation***) and will aim to do so within 5 Business Days of receipt thereof.

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

- (a) the date and time on which the Protocol shall become effective in accordance with paragraph 1.7 above, if AFME has effected the Adherence Confirmation in respect of that party by that date and time;
- (b) the date which is one Business Day following the date on which AFME effects the Adherence Confirmation in respect of that party, if AFME has effected the

Adherence Confirmation in respect of that party after the date and time specified in paragraph 1.7 above but before 1 December 2013; or

- (c) in all other cases, the date which is the next Business Day following the date on which AFME effects the Adherence Confirmation in respect of that party.

2.7 An Adhering Party will provide a link in its Adherence Letter to the webpage on the website of the relevant regulator which sets out the Adhering Party's regulatory authorisation including the specific services and activities covered by the Adhering Party's authorisation. If such information is not publicly available on the website of the relevant regulator, the Adhering Party may either (i) provide a copy of its authorisation including the specific services and activities covered by its authorisation in an annex to its Adherence Letter; or (ii) provide these details to other Adhering Parties on a bilateral basis when requested.

2.8 Except as provided for specifically in this Protocol, 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 or to remain an Adhering Party.

2.9 Subject to Sections 4 and 5 below, the terms set out in this Protocol will apply to Covered Transactions entered into between any two Adhering Parties from the time when they are both Adhering Parties and until they cease to be Adhering Parties.

2.10 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.

2.11 Any provisions evidencing or governing any Covered Transactions, whether collectively or individually, shall continue to apply to the respective Covered Transactions, provided that in the event of any conflict with the provisions of this Protocol concerning the allocation of FTT payment and reporting responsibilities and obligations, the provisions of this Protocol shall prevail.

### **3. ADHERENCE FEES**

3.1 In consideration for acceding to the terms of this Protocol, Adhering Parties shall pay AFME:

- (a) an initial adherence fee, which will be payable upon becoming an Adhering Party to this Protocol (the ***Initial Adherence Fee***) where the Adhering Party adhered after 12.01am Rome time on 11 August 2021 (other than a Group Adhering Party which adheres to this Protocol in accordance with paragraph 2.3); and
- (b) an annual adherence fee, which will be payable by all Adhering Parties on 11 January of each calendar year (each such date constituting a ***Renewal Date***),

irrespective of the date upon which each Adhering Party adhered to this Protocol (the *Annual Adherence Fee*).

3.2 Adherence Fees will be payable on a Corporate Group basis. Accordingly, one Initial Adherence Fee and Annual Adherence Fee will be payable in respect of all Group Adhering Parties. An Adhering Party will be a Group Adhering Party if it is identified as a member of a Corporate Group in an Adherence Letter or in a Corporate Group Notification. The Adhering Party which submits the first Adherence Letter or which submits a Corporate Group Notification on behalf of a Corporate Group will be the Primary Group Adhering Party and will be responsible for the payment of Adherence Fees, submission of subsequent Adherence Letters identifying additional Group Adhering Parties and the receipt of all communications and notices on behalf of the Corporate Group. A Corporate Group may designate a new Primary Group Adhering Party by notifying AFME in writing.

3.3 The terms and conditions of the Initial Adherence Fee and the Annual Adherence Fee are described in Exhibit 2. Amendments to these terms and conditions may be made by AFME publishing an amended Exhibit 2 on the AFME Website at least 30 days prior to their effective date. AFME shall, by 5 p.m. on any Business Day that it publishes an amendment to Exhibit 2 on the AFME Website, notify, via e-mail, each Adhering Party of the fact. Amendments to the terms and conditions of the Initial Adherence Fee and the Annual Adherence Fee will automatically form part of this Protocol, as new Exhibit 2, from their effective date and each Adhering Party shall be bound by its terms.

3.4 AFME will not make any refund of Adherence Fees to an Adhering Party or to a Former Adhering Party under any circumstance. No set off of fees against any amounts which may be due from AFME to an Adhering Party or to a Former Adhering Party will be allowed.

3.5 If a Former Adhering Party wishes to re-adhere to the Protocol and become an Adhering Party, it must pay:

- (a) any outstanding Adherence Fees due to AFME under this Protocol before it is permitted to submit a new Adherence Letter;
- (b) unless otherwise agreed by AFME, a new Initial Adherence Fee, in accordance with paragraph 3.1(a) above; and
- (c) an Annual Adherence Fee on each Renewal Date that falls after the date on which AFME effects the new Adherence Confirmation, in accordance with paragraph 3.1(b) above.

3.6 Payment of Adherence Fees shall be made without any Tax Deduction, unless a Tax Deduction is required by law. If a Tax Deduction is required by law to be made by an Adhering Party, the amount of the payment due from that Adhering Party shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required. AFME and the Adhering Parties shall co-operate in completing any

procedural formalities necessary for the Adhering Parties to obtain authorisation to make that payment without a Tax Deduction.

3.7 Adherence Fees are exclusive of any VAT or similar tax, which will be chargeable by AFME to Adhering Parties in accordance with the relevant applicable law.

3.8 AFME will aim to issue the relevant invoices for the Annual Adherence Fee to Adhering Parties (and the Primary Group Adhering Party for a Corporate Group) at least 30 days prior to the relevant Renewal Date with details for payment. Invoices for the Initial Adherence Fee will be issued by AFME as soon as AFME effects the Adherence Confirmation and AFME will aim to do so within 5 Business Days of receipt thereof. When a party adheres to the Protocol within the 30 day period before a Renewal Date, AFME will aim to issue an invoice for the Initial Adherence Fee and the Annual Adherence Fee within 5 Business Days of the Adherence Confirmation.

#### **4. DISAPPLICATION**

4.1 Notwithstanding any provision to the contrary in Section 2 above, an Adhering Party intending to disapply the Protocol with respect to any other Adhering Party may at any time execute and deliver by (i) certified or registered mail (or airmail, if overseas) or equivalent; (ii) courier; or (iii) personal delivery to that other Adhering Party at its address specified in its Adherence Letter or most recent notice of change of contact details published on the AFME Website (as applicable), a notice in the form, or substantially the form, set out in Exhibit 3 (the ***Disapplication Letter***).

4.2 The Disapplication Letter shall take effect from the date which, in accordance with Section 10 below, it shall be deemed effective.

4.3 Once a Disapplication Letter has become effective, the terms of this Protocol shall cease to apply as between the Adhering Party that delivered, and the Adhering Party that received, the Disapplication Letter (but, for the avoidance of doubt not between either of those Adhering Parties and any other Adhering Party). The terms of this Protocol will continue to apply between an Adhering Party and any Adhering Party to which it has delivered a Disapplication Letter, in respect of Covered Transactions entered into between those Adhering Parties or by one of those Adhering Parties for and on behalf of the other of those Adhering Parties prior to the Disapplication Letter becoming effective. In particular, but without limitation, the Disapplication Letter shall be without prejudice to the accrued rights of either Adhering Party under Section 8 below, which shall survive any such Disapplication Letter.

#### **5. WITHDRAWAL**

5.1 An Adhering Party may declare the withdrawal of its adherence to the Protocol by execution and delivery to AFME of a letter in the form, or substantially the form, set out in Exhibit 4 to this Protocol (the ***Withdrawal Letter***). A Primary Group Adhering Party may submit a Withdrawal Letter on behalf of any or all Group Adhering Parties in its Corporate Group provided that the Primary Group Adhering Party must submit a Withdrawal Letter as soon as possible, and in any event within 30 Business Days, following a Group Adhering Party ceasing to be a member of its Corporate Group. If a

Primary Group Adhering Party submits a Withdrawal Letter for itself to withdraw from this Protocol this shall be treated as a Withdrawal Letter for all Group Adhering Parties in its Corporate Group unless AFME is notified of a replacement Primary Group Adhering Party for the Corporate Group.

5.2 An Adhering Party intending to withdraw its adherence to the Protocol (or a Primary Group Adhering Party intending to withdraw the adherence of one or more Adhering Parties in its Corporate Group) shall either:

- (a) deliver to AFME by (i) certified or registered mail (or airmail, if overseas) or equivalent; (ii) courier; or (iii) personal delivery to 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; and the Adhering Party shall also send scanned pdf copies of the manually signed original and conformed copies of the Withdrawal Letter to AFME at [fttprotocol@afme.eu](mailto:fttprotocol@afme.eu); or
- (b) send to AFME at [fttprotocol@afme.eu](mailto:fttprotocol@afme.eu) an electronically signed original and a conformed copy of the Withdrawal Letter.

5.3 AFME shall, following receipt of the Withdrawal Letter (either the electronically signed original, pdf of the manually signed original, copy or hard copy original), publish the conformed copy of the letter on the AFME Website and will aim to do so within 5 Business Days of receipt of the Withdrawal Letter. Subject to paragraphs 5.4 and 5.5 below, an Adhering Party will cease to be an Adhering Party (and will become a **Former Adhering Party**) with effect from the date which is 5 Business Days following the date on which AFME publishes the conformed copy of the Withdrawal Letter relating to that Adhering Party on the AFME Website (such publication constituting the **Withdrawal Confirmation**).

5.4 Notwithstanding anything to the contrary in the foregoing paragraphs of this Section 5 or in any other provision of this Protocol, if at any time an Adhering Party ceases to be a White-Listed Investment Services Provider, it shall be subject to the immediate withdrawal of its adherence to the Protocol, in accordance with paragraphs 5.5 and 5.6 below.

5.5 A party which has ceased to be a White-Listed Investment Services Provider, shall immediately provide notice to AFME, in the form or substantially in the form, set out in Exhibit 5. Such notice shall be delivered to AFME either:

- (a) by (i) certified or registered mail (or airmail, if overseas) or equivalent; (ii) courier; or (iii) personal delivery to the address set out in the form of notice in Exhibit 5, in two copies: 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; and the party shall also send scanned pdf copies of the manually signed original and conformed copies of the notice to AFME at [fttprotocol@afme.eu](mailto:fttprotocol@afme.eu); or

- (b) by sending to AFME at [fitprotocol@afme.eu](mailto:fitprotocol@afme.eu) an electronically signed original and a conformed copy of the notice.

5.6 AFME shall, following receipt of the notice (either the electronically signed original, pdf copy or hard copy original), publish the conformed copy of the notice on the AFME Website and will aim to do so within 5 Business Days of receipt of the notice. Such publication shall constitute a Withdrawal Confirmation and such party shall become a Former Adhering Party as at the date of the Withdrawal Confirmation.

5.7 Notwithstanding anything to the contrary in the foregoing paragraphs of this Section 5 or in any other provision of this Protocol, if:

- (a) an Adhering Party fails to pay the Initial Adherence Fee by the Initial Adherence Fee Non-Payment Date, it shall be treated as withdrawing from this Protocol on the date of the Withdrawal Confirmation published by AFME in accordance with paragraph 5.8 below. Where the Primary Group Adhering Party fails to pay the Initial Adherence Fee on or before the Initial Adherence Fee Non-Payment Date, then all Group Adhering Parties in that Corporate Group will be treated as withdrawing from this Protocol on the date of the Withdrawal Confirmation published by AFME in accordance with paragraph 5.8 below; or
- (b) at any time an Adhering Party fails to pay the Annual Adherence Fee on or before the Renewal Date, it shall be treated as withdrawing from this Protocol on the date of the Withdrawal Confirmation published by AFME in accordance with paragraph 5.8 below. Where the Primary Group Adhering Party fails to pay the Annual Adherence Fee before the Renewal Date, then all Group Adhering Parties in that Corporate Group will be treated as withdrawing from this Protocol on the date of the Withdrawal Confirmation published by AFME in accordance with paragraph 5.8 below. AFME may, in its sole discretion, decide not to publish a Withdrawal Confirmation pursuant to paragraph 5.8 where an Adhering Party pays the Annual Adherence Fee prior to the date of publication of the Withdrawal Confirmation.

5.8 An Adhering Party which is treated as withdrawing from adherence to the Protocol pursuant to paragraph 5.4 or paragraph 5.7 will be considered a Former Adhering Party and AFME shall publish a notification on the AFME Website that the Adhering Party has become a Former Adhering Party. Such publication shall constitute a Withdrawal Confirmation and such party shall become a Former Adhering Party as at the date of the Withdrawal Confirmation. Where an Adhering Party has failed to pay the Annual Adherence Fee AFME will not publish a Withdrawal Confirmation prior to the date which is 30 days after the Renewal Date.

5.9 The terms of this Protocol will continue to apply between an Adhering Party and a Former Adhering Party in respect of Covered Transactions entered into between those parties or by one of those parties for and on behalf of another prior to the latter becoming a Former Adhering Party. In particular, but without limitation, neither the fact of becoming a Former Adhering Party nor the Former Adhering Party's Withdrawal Confirmation shall prejudice the accrued rights of either party under Section 7 below, which shall survive any such Withdrawal Confirmation.

## 6. REPRESENTATIONS.

6.1 Each Adhering Party represents to each other Adhering Party on a continuing basis that, for the purpose of each Covered Transaction:

- (a) it is a White-Listed Investment Services Provider;
- (b) it will immediately notify AFME if at any time its representation in subparagraph 6.1(a) ceases to be true;
- (c) it is duly incorporated and validly existing under the laws of its country of incorporation or formation;
- (d) it is duly authorised and empowered to execute, deliver and/or submit the Adherence Letter and to perform its duties and obligations under this Protocol;
- (e) the person(s) executing the Adherence Letter is duly authorised to do so on its behalf;
- (f) the execution, delivery and performance 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;
- (g) it has all necessary authorisations, 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; and
- (h) this Protocol constitutes the legal, valid, binding and enforceable obligations of the Adhering Party and is enforceable in accordance with its terms.

6.2 An Adhering Party may choose to make the representation set out in paragraph 6.3 (the ***Optional Representation***) by either:

- (a) checking the relevant box in the Adherence Letter; or
- (b) delivering to AFME a notice in the form, or substantially the form, set out in Exhibit 7 (the ***Optional Representation Notice***).

A Primary Group Adhering Party may make the Optional Representation for itself and/or for other Group Adhering Parties.



6.3 An Adhering Party that has opted to give the Optional Representation represents to each other Adhering Party with whom it enters into a Covered Transaction in Exchange Traded Derivatives or into a Covered Transaction in Securitised Derivatives that where it is the Seller it has purchased the Exchange Traded Derivatives or the Securitised Derivatives (as the case may be) that it is selling as a result of transactions effected on a Regulated Market or Multilateral Trading Facility (including transactions that are deemed to be effected on a Regulated Market or Multilateral Trading Facility according to Article 11, paragraph 1, second period, of the Treasury Decree) and that the other conditions in Article 11, paragraph 1, first period of the Treasury Decree as to the required coincidence of prices, total quantities and, where applicable, settlement dates are satisfied.

6.4 An Optional Representation Notice shall be delivered to AFME by (i) certified or registered mail (or airmail, if overseas) or equivalent; (ii) courier; or (iii) personal delivery, to the address set out in the form of notice in Exhibit 7, in two copies: 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. In addition, the party shall send scanned pdf copies of the manually signed original and conformed copies of the Optional Representation Notice to AFME at [fttprotocol@afme.eu](mailto:fttprotocol@afme.eu). AFME shall, following receipt of the manually signed original and conformed copies of the notice, publish the conformed copy of the notice on the AFME Website.

6.5 The Optional Representation shall be deemed repeated for each Covered Transaction in Exchange Traded Derivatives and each Covered Transaction in Securitised Derivatives : (i) entered into by an Adhering Party who has checked the box in the Adherence Letter; and (ii) entered into by an Adhering Party after publication of the conformed copy of such Adhering Party's Optional Representation Notice on the AFME Website. If the Optional Representation is not correct in relation to any Covered Transaction in Exchange Traded Derivatives or any Covered Transaction in Securitised Derivatives the Adhering Party shall notify the Purchaser in writing (which may, without limitation, be by e-mail or Bloomberg messaging system) at, or before, the time the relevant Covered Transaction in Exchange Traded Derivatives or Covered Transaction in Securitised Derivatives is entered into.

6.6 If the Optional Representation is incorrect in relation to any Covered Transaction in Exchange Traded Derivatives or any Covered Transaction in Securitised Derivatives and an Adhering Party has not given notice to the Purchaser in writing pursuant to paragraph 6.5 then such Adhering Party shall indemnify the Purchaser, on a continuing basis, against all reasonably incurred direct costs, expenses (including reasonable legal expenses), damages, liabilities and losses, including any penalties and interest (**Costs**) that the Purchaser suffers or incurs as a direct result of the Optional Representation being incorrect, excluding however any Costs resulting from the Purchaser's failure to duly, and in a timely manner, comply with a binding direction from the Italian tax authorities to report and/or pay the FTT in respect of the relevant Covered Transaction in Exchange Traded Derivatives or Covered Transaction in Securitised Derivatives. In no circumstances shall the Adhering Party be liable to indemnify the Purchaser for loss of profit, goodwill or opportunity. The provisions of paragraphs 8.4 to 8.9 of the Protocol shall apply to the indemnity in this paragraph 6.6 but with references to the Claiming Counterparty being replaced with references to the

Purchaser and references to the Claimed Counterparty being replaced with references to the Seller, and references to the indemnity in paragraph 8.3 being construed as references to this indemnity. Where an Optional Representation is made by a Primary Group Adhering Party on behalf of other Group Adhering Parties it is the responsibility of the Adhering Party that enters into the relevant Covered Transaction to provide the notification to the Purchaser under paragraph **Error! Reference source not found.** and that Group Adhering Party shall indemnify the Purchaser under this paragraph **Error! Reference source not found.** if the Optional Representation is incorrect and no such notice has been given to the Purchaser.

6.7 An Adhering Party that has opted to give the Optional Representation may withdraw such Optional Representation by sending a notice to AFME in the form, or substantially the form, set out in Exhibit 8 (an **Optional Representation Withdrawal Notice**). A Primary Group Adhering Party may withdraw an Optional Representation for itself and/or for other Group Adhering Parties. An Optional Representation Withdrawal Notice shall be delivered to AFME by (i) certified or registered mail (or airmail, if overseas) or equivalent; (ii) courier; or (iii) personal delivery, to the address set out in the form of notice in Exhibit 8, in two copies: 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. In addition, the party shall send scanned pdf copies of the manually signed original and conformed copies of the Optional Representation Withdrawal Notice to AFME at [fttprotocol@afme.eu](mailto:fttprotocol@afme.eu). AFME shall, following receipt of the manually signed original and conformed copies of the notice, publish the conformed copy of the notice on the AFME Website. The Optional Representation shall cease to apply to any Covered Transaction in Exchange Traded Derivatives and any Covered Transactions in Securitised Derivatives entered into by the Adhering Party that has delivered the notice immediately following publication of the Optional Representation Withdrawal Notice on the AFME Website.

## 7. DEFINITIONS AND INTERPRETATION

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

- (a) **Adherence Confirmation** has the meaning given in paragraph 2.5;
- (b) **Adherence Fees** means the Initial Adherence Fee and the Annual Adherence Fee, as defined in paragraph 3.1;
- (c) **Adherence Letter** has the meaning given in paragraph 2.1;
- (d) **Adhering Party** means a party that has adhered to this Protocol in accordance with the provisions of Section 2;
- (e) **Affected Derivatives** means (a) Derivative Financial Instruments, (b) Exchange Traded Derivatives and (c) Securitised Derivatives;
- (f) **AFME European Tax Forum** means the group of AFME members addressing AFME's work on European tax issues from time to time;

- (g) **AFME Website** means [www.afme.eu](http://www.afme.eu) or such other website address as is notified by AFME to Adhering Parties in writing;
- (h) **Annual Adherence Fee** has the meaning given in paragraph 3.1(b);
- (i) **Annual Reporting Obligations** means the filing of an annual return for FTT purposes on the basis of the rules set out in par. 6 of the Payment Regulation and the forthcoming regulation of the Director of the *Agenzia delle Entrate* which will approve the annual FTT return form;
- (j) **Art. 19 Regulation** means the regulation containing the list of States or territories with which Italy has agreements in force for the purposes of the exchange of information or the assistance in the collection of tax credits, issued by the Director of the *Agenzia delle Entrate* according to article 19, paragraph 4, of the Treasury Decree, on 1 March 2013 and supplemented on 29 March 2013, as amended or superseded from time to time;
- (k) **Black-Listed State** means any State or territory different from those indicated in the Art. 19 Regulation;
- (l) **Business Day** means a day, other than a Saturday or Sunday, on which banks are generally open for business in London;
- (m) **Claim** has the meaning given in paragraph 8.6;
- (n) **Claimed Party** means a Counterparty against which a Claiming Party is exercising its rights to an indemnity under paragraph 8.3;
- (o) **Claiming Party** means an Adhering Party exercising its rights to an indemnity under paragraph 8.3;
- (p) **Clearing Broker** means the Adhering Party that maintains an Exchange Traded Derivatives clearing account for the Customer and to which Covered Transactions in Exchange Traded Derivatives executed by an Executing Broker pursuant to orders received from the Customer (or an authorized agent of the Customer) ultimately are given up;
- (q) **Corporate Group** means a group of entities, regardless of their place of incorporation, where an entity holds, directly or indirectly, control of another entity, as a consequence of holding a majority of the voting rights in that other entity and/or having the power to appoint or remove the majority of the members of its management body;
- (r) **Corporate Group Notification** means a notification given pursuant to paragraph 2.4 substantially in the form set out in Exhibit 6;
- (s) **Costs** has the meaning given in paragraph 8.3;
- (t) **Counterparties** means (a) each Adhering Party that has entered into a Covered Transaction with another Adhering Party and (b) both the Clearing Broker and

the Customer in the case of Covered Transactions in Exchange Traded Derivatives which are given-up for clearing (provided that in this latter case the Executing Broker does not qualify as a Counterparty for the purposes of this Protocol);

- (u) **Counterparty Indemnity Event** means a Counterparty receiving a binding direction from the Italian tax authorities concerning the Reporting Obligations in relation to a Covered Transaction entered into with another Counterparty or a binding direction from the Italian tax authorities to pay, in respect of a Covered Transaction entered into with another Counterparty, the FTT for which such other Counterparty is liable under article 10 of the Treasury Decree, whether as a result of a failure of such other Counterparty to comply with its obligations under paragraph 8.1 or, in case of Covered Transactions in Exchange Traded Derivatives that are given up for clearing, under paragraph 8.2 or otherwise;
- (v) **Covered Transactions** means (a) Covered Transactions in Derivative Financial Instruments, (b) Covered Transactions in Exchange Traded Derivatives and (c) Covered Transactions in Securitised Derivatives;
- (w) **Covered Transactions in Derivative Financial Instruments** means the subscription, trading or modification of a Derivative Financial Instruments contract (to the extent that such modification affects the maturity of the contract, the parties to the contract or the notional value as determined under article 9 of the Treasury Decree), as such subscription, trading or modification are defined under article 8 of the Treasury Decree;
- (x) **Covered Transactions in Exchange Traded Derivatives** means the subscription, trading or modification of an Exchange Traded Derivative contract (to the extent that such modification affects the maturity of the contract, the parties to the contract or the notional value as determined under article 9 of the Treasury Decree), as such subscription, trading or modification are defined under article 8 of the Treasury Decree;
- (y) **Covered Transactions in Securitised Derivatives** means a transfer of ownership of such Securitised Derivatives, as such a transfer is defined under articles 3 and 8 of the Treasury Decree;
- (z) **Customer** means an Adhering party that places an order with an Executing Broker for a Covered Transaction in Exchange Traded Derivatives that is ultimately given up for clearing to a Clearing Broker;
- (aa) **Deferral Period** means a period of time during which the Italian tax authorities agree that payment of the FTT in respect of a Covered Transaction may be deferred;
- (bb) **Derivative Financial Instruments** means the derivative contracts that are referred to under article 7, paragraph 1, lett. a) of the Treasury Decree (with the exclusion of Exchange Traded Derivatives);
- (cc) **Disapplication Letter** has the meaning given in paragraph 4.1;

- (dd) **Exchange Traded Derivatives** means the derivative contracts that are referred to under article 7, paragraph 1, lett. a) of the Treasury Decree that are traded on an exchange or a trading venue;
- (ee) **Executing Broker** means an Adhering Party that executes Covered Transactions in Exchange Traded Derivatives pursuant to orders received from the Customer (or an authorized agent of the Customer) and gives them up for clearing to a Clearing Broker;
- (ff) **Executing Broker Indemnity Event** means (i) an Executing Broker receiving a binding direction from the Italian tax authorities to comply with Reporting Obligations in relation to a Covered Transaction in Exchange Traded Derivatives executed for a Customer and given-up for clearing to a Clearing Broker and/or pay the FTT for which the Customer is liable under article 10 of the Treasury Decree, whether as a result of a failure of such Customer to comply with its obligations under paragraph 8.2 or otherwise and (ii) an Executing Broker receiving a binding direction from the Italian tax authorities to comply with Reporting Obligations in relation to a Covered Transaction in Exchange Traded Derivatives executed for a Customer and given-up for clearing to a Clearing Broker and/or pay the FTT for which the a Clearing Broker is liable under article 10 of the Treasury Decree, whether as a result of a failure of such a Clearing Broker to comply with its obligations under paragraph 8.2 or otherwise;
- (gg) **Former Adhering Party** has the meaning given in paragraph 5.3;
- (hh) **FTT** has the meaning given in paragraph 1.1;
- (ii) **Group Adhering Party** means an Adhering Party that is identified in an Adherence Letter, or in a written notice sent to AFME in accordance with paragraph 2.4, as being a member of a Corporate Group;
- (jj) **Indemnity Event** means either (a) a Counterparty Indemnity Event or (b) an Executing Broker Indemnity Event;
- (kk) **Initial Adherence Fee** has the meaning given in paragraph 3.1(a);
- (ll) **Initial Adherence Fee Non-Payment Date** means the date falling 30 Business Days following the date on which AFME effects the Adherence Confirmation for the relevant Adhering Party or Corporate Group;
- (mm) **Instrumental Reporting Formalities** means the chronological recording of transactions on the basis of the rules set out in par. 5. of the Payment Regulation;
- (nn) **Investment Services and Activities** means, according to par. 1.1. of the Payment Regulation, the investment services and activities assimilated to those indicated in the TUF in article 1, paragraph 5, letters a) (“dealing for own account”), b) (“execution of orders for clients”) and e) (“reception and transmissions of orders”), excluding the activities consisting in putting in contact two or more investors;

- (oo) **Investment Services Provider** means (i) an Italian bank as defined in article 1, paragraph 2, lett. a) of the TUB combined with the definition of 'bank' as defined under in article 1, paragraph 1, lett. b) of the TUB; (ii) an EU bank as defined in article 1, paragraph 2, lett. b) of the TUB combined with the definition of 'bank' as defined under in article 1, paragraph 1, lett. b) of the TUB; (iii) a non-EU bank as defined in article 1, paragraph 2, lett. c) of the TUB combined with the definition of 'bank' as defined under in article 1, paragraph 1, lett. b) of the TUB; (iv) an EU investment company, as defined in article 1, paragraph 1, lett. f) of the TUF, or other entity, whichever its denomination is, which is authorised in its home State to provide on a professional basis to the public Investment Services and Activities (v) a non-EU investment company, as defined in article 1, paragraph 1, lett. g) of the TUF, or other entity, whichever its denomination is, which is authorised in its home State to provide on a professional basis to the public Investment Services and Activities; and (vi) a SIM (*società di intermediazione mobiliare*) as defined in article 1, paragraph 1, lett. e) of the TUF;
- (pp) **Law 228** has the meaning given in paragraph 1.1;
- (qq) **Multilateral Trading Facility** has the meaning given in article 1, par. 2, lett. f) of the Treasury Decree;
- (rr) **Optional Representation** has the meaning given in paragraph 6.2;
- (ss) **Optional Representation Notice** has the meaning given in paragraph 6.2(b);
- (tt) **Optional Representation Withdrawal Notice** has the meaning given in paragraph 6.7;
- (uu) **Payment Regulation** means the regulation containing the rules for FTT reporting, payment and refunds, issued by the Director of the *Agenzia delle Entrate* according to article 19, paragraphs 5 and 8, and article 22 of the Treasury Decree, on 18 July 2013, as amended or superseded from time to time;
- (vv) **Primary Group Adhering Party** means the Adhering Party which submits the first Adherence Letter on behalf of a Corporate Group or the Adhering Party which submits the Corporate Group Notification or the one subsequently designated by the Corporate Group in accordance with paragraph 3.2;
- (ww) **Protocol** means this AFME Italian Financial Transactions Tax Derivatives Protocol, as amended from time to time;
- (xx) **Purchaser** means a Counterparty which acquires the ownership of Securitised Derivatives from another Counterparty or purchases (either acting on it own account or through an Executing Broker) Exchange Traded Derivatives from another Counterparty;
- (yy) **Regulated Market** has the meaning given in article 1, par. 2, lett. f) of the Treasury Decree;

- (zz) **Renewal Date** has the meaning given in paragraph 3.1(b);
- (aaa) **Reporting Obligations** means the Annual Reporting Obligations and the Instrumental Reporting Formalities;
- (bbb) **Securitised Derivatives** means the transferable securities (*valori mobiliari*) that are referred to under article 7, paragraph 1, lett. b) of the Treasury Decree;
- (ccc) **Seller** means a Counterparty which transfers the ownership of Securitised Derivatives to another Counterparty or sells (either acting on its own account or through an Executing Broker) Exchange Traded Derivatives to another Counterparty;
- (ddd) **Tax Deduction** means a deduction or withholding for or on account of tax from a payment of Adherence Fees;
- (eee) **Treasury Decree** has the meaning given in paragraph 1.1;
- (fff) **TUB** means the Legislative Decree no. 385 of 1 September 1993 (*Testo Unico Bancario*);
- (ggg) **TUF** means the Legislative Decree no. 58 of 24 February 1998 (*Testo Unico della Finanza*);
- (hhh) **TUIR** means the Decree of the President of the Republic no. 917 of 22 December 1986 (*Testo Unico delle Imposte sui Redditi*);
- (iii) **White-Listed Investment Services Provider** means (a) an Investment Service Provider whose registered office is in Italy or in a White-Listed State, (b) an Investment Service Provider whose registered office is in a Black-Listed State and which has a permanent establishment in Italy according to article 162 of the TUIR, to the extent that it has followed the procedure in par. 4.1.1.II of the Payment Regulation and that the relevant details have been published on the website of the *Agenzia delle Entrate* according to par. 4.1.6 of the Payment Regulation, (c) an Investment Service Provider whose registered office is in a Black-Listed State and which has a permanent establishment in a White-Listed State, to the extent that it has followed the procedure in par. 3.1.7 of the Payment Regulation, that the relevant details have been published on the website of the *Agenzia delle Entrate* according to par. 4.1.6 of the Payment Regulation and that such details have not been cancelled from the website of the *Agenzia delle Entrate* according to par. 4.1.7 of the Payment Regulation, (d) an Investment Service Provider whose registered office is in a Black-Listed State, to the extent that it has followed the procedure in par. 4.1.5.I of the Payment Regulation, that the relevant details have been published on the website of the *Agenzia delle Entrate* according to par. 4.1.6 of the Payment Regulation and that such details have not been cancelled from the website of the *Agenzia delle Entrate* according to par. 4.1.7 of the Payment Regulation and (e) an Investment Service Provider whose registered office is in a Black-Listed State, to the extent that it has followed the procedure in par. 4.1.5.II of the Payment Regulation, that the relevant details have been published on the website of the *Agenzia delle Entrate*

according to par. 4.1.6 of the Payment Regulation and that such details have not been cancelled from the website of the *Agenzia delle Entrate* according to par. 4.1.7 of the Payment Regulation.

- (jjj) ***White-Listed State*** means any State or territory indicated in the Art. 19 Regulation;
- (kkk) ***Withdrawal Confirmation*** has the meaning given in paragraph 5.3;
- (lll) ***Withdrawal Letter*** has the meaning given in paragraph 5.1.

7.2 In this Protocol unless the context requires otherwise:

- (a) the headings are inserted for convenience only and do not affect the construction of this Protocol;
- (b) references to one gender include 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 to the Law 228 and the Treasury Decree shall be deemed to include references to any accompanying regulations from the Italian tax authorities, as the same may be amended or superseded from time to time; and
- (f) 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.

## **8. FTT TERMS**

8.1 Where an Adhering Party enters into a Covered Transaction with another Adhering Party (other than a Covered Transaction in Exchange Traded Derivatives which is given-up for clearing to a Clearing Broker):

- (a) the Counterparties acknowledge the following:
  - (i) according to article 10 of the Treasury Decree, each Counterparty is liable, unless it can benefit from an exclusion as set out in article 15 of the Treasury Decree or an exemption as set out in article 16 of the Treasury Decree, for the FTT due on the relevant Covered Transaction, in the amount set out by article 11 of the Treasury Decree;
  - (ii) according to article 19 of the Treasury Decree and par. 3.1.4 of the Payment Regulation each Counterparty is exclusively required to pay the FTT for which it is liable under article 10 of the Treasury Decree,



without being responsible for paying the FTT for which the other Counterparty is liable under the same article 10 of the Treasury Decree;

- (iii) according to article 19 of the Treasury Decree and the Payment Regulation each Counterparty is required to report the relevant Covered Transaction in compliance with the Reporting Obligations;

(b) the Counterparties agree as follows:

- (i) each Counterparty (or its delegate) will determine whether it has an obligation to, and if it determines it has such obligation will, report the Covered Transaction in compliance with the Reporting Obligations or, where applicable, will designate for this purpose the central depository in order to satisfy the Reporting Obligation on its behalf, in each case in accordance with the provisions of the Payment Regulation;
- (ii) each Counterparty (or its delegate) will exclusively pay any FTT for which it is liable under article 10 of the Treasury Decree in respect of the Covered Transaction or, where applicable, will designate for this purpose the central depository in order to satisfy this payment obligation on its behalf, in each case in accordance with the provisions of article 19 of the Treasury Decree and the Payment Regulation;
- (iii) each Counterparty will not pay the FTT for which the other Counterparty is liable under article 10 of the Treasury Decree and, where applicable, will not designate the central depository in order to satisfy this payment obligation on its behalf;
- (iv) for the purposes of the FTT, the transfer of ownership of Securitised Derivatives shall be deemed to occur on the contractual settlement date and not the actual settlement date according to the procedure set forth by article 3, paragraph 1, last period of the Treasury Decree; and
- (v) each Counterparty will (and will use reasonable efforts to procure that its respective agents will) co-operate reasonably with each other Counterparty, to the extent permitted by applicable law, in the event either of them is subject to an FTT audit by the Italian tax authorities in respect of the Covered Transaction; in particular, without limitation, one Counterparty may require the other to provide it with information supporting whether or not the other Counterparty qualifies as a White-Listed Investment Services Provider in relation to the concerned Covered Transaction; provided, however, that nothing in this paragraph shall require any concerned Adhering Party to incur material costs unless it has agreed so in writing with the other concerned Adhering Party.

Provided always that the provisions of this paragraph 8.1 shall not bind the Counterparties to the extent that (i) a Counterparty receives a final, binding direction from the Italian tax authorities to pay the FTT for which the other Counterparty is liable under article 10 of the Treasury Decree in respect of the Covered Transaction (it being

understood however that the former Counterparty shall retain its right to request an indemnity under paragraph 8.3 in case of occurrence of an Counterparty Indemnity Event in relation to Covered Transaction in Exchange Traded Derivatives executed prior to the reception of the above mentioned final, binding direction from the Italian tax authorities); or (ii) the Counterparties agree in writing, on a different allocation of duties for FTT Reporting Obligations and/or paying purposes, in respect of the Covered Transaction.

8.2 Where an Executing Broker executes a Covered Transaction in Exchange Traded Derivatives for and on behalf of a Customer and this Covered Transaction in Exchange Traded Derivatives is given-up for clearing to a Clearing Broker:

- (a) the Counterparties and the Executing Broker acknowledge the following:
  - (i) according to article 10 of the Treasury Decree, each Counterparty is liable, unless it can benefit from an exclusion as set out in article 15 of the Treasury Decree or an exemption as set out in article 16 of the Treasury Decree, to the FTT due on the relevant Covered Transaction in Exchange Traded Derivatives, in the amount set out by article 11 of the Treasury Decree;
  - (ii) according to article 19 of the Treasury Decree and par. 3.1.4 of the Payment Regulation, each Counterparty is exclusively required to pay the FTT for which it is liable under article 10 of the Treasury Decree, without being responsible for paying the FTT for which the other Counterparty is liable under the same article 10 of the Treasury Decree;
  - (iii) according to article 19 of the Treasury Decree and the Payment Regulation, each Counterparty is required to report the relevant Covered Transaction in Exchange Traded Derivatives in compliance with the Reporting Obligations;
  - (iv) according to article 10 and article 19 of the Treasury Decree and according to the Payment Regulation, the Executing Broker is not liable for FTT in relation to the relevant Covered Transaction in Exchange Traded Derivatives and is not required to report the relevant Covered Transaction in Exchange Traded Derivatives in compliance with the Reporting Obligations;
- (b) the Counterparties and the Executing Broker agree as follows:
  - (i) each Counterparty (or its delegate) will report the Covered Transaction in Exchange Traded Derivatives in compliance with the Reporting Obligations or, where applicable, will designate for this purpose the central depository in order to satisfy the Reporting Obligations on its behalf, in each case in accordance with the provisions of the Payment Regulation;
  - (ii) each Counterparty (or its delegate) will exclusively pay any FTT for which it is liable under article 10 of the Treasury Decree in respect of

the Covered Transaction in Exchange Traded Derivatives or, where applicable, will designate for this purpose the central depository in order to satisfy this payment obligation on its behalf, in each case in accordance with the provisions of article 19 of the Treasury Decree and the Payment Regulation;

- (iii) each Counterparty will not pay the FTT for which the other Counterparty is liable under article 10 of the Treasury Decree and, where applicable, will not designate the central depository in order to satisfy this payment obligation on its behalf;
- (iv) the Executing Broker will not pay the FTT for which the Customer and the Clearing Broker are liable under article 10 of the Treasury Decree and, where applicable, will not designate the central depository in order to satisfy this payment obligation on its behalf;
- (v) the Executing Broker will not report the Covered Transaction in Exchange Traded Derivatives in compliance with the Reporting Obligations.

Provided always that the provisions of this paragraph 8.2 shall not bind the Counterparties and the Executing Broker to the extent that (i) the Executing Broker receives a final, binding direction from the Italian tax authorities to report the Covered Transaction in Exchange Traded Derivatives in compliance with the Reporting Obligations and/or to pay the FTT for which the Customer and/or the Clearing Broker are liable under article 10 of the Treasury Decree in respect of the Covered Transaction in Exchange Traded Derivatives (it being understood however that the Executing Broker shall retain its right to request an indemnity under paragraph 8.3 in case of occurrence of an Executing Broker Indemnity Event in relation to Covered Transaction in Exchange Traded Derivatives executed prior to the reception of the above mentioned final, binding direction from the Italian tax authorities); or (ii) a Counterparty receives a final, binding direction from the Italian tax authorities to pay the FTT for which the other Counterparty is liable under article 10 of the Treasury Decree in respect of the Covered Transaction (it being understood however that the former Counterparty shall retain its right to request an indemnity under paragraph 8.3 in case of occurrence of an Counterparty Indemnity Event in relation to Covered Transaction in Exchange Traded Derivatives executed prior to the reception of the above mentioned final, binding direction from the Italian tax authorities); or (iii) the Executing Broker and the Counterparties agree in writing, on a different allocation of duties for FTT reporting and/or paying purposes, in respect of the Covered Transaction in Exchange Traded Derivatives.

8.3 The Claimed Party shall indemnify the Claiming Party, on a continuing basis, against all reasonably incurred direct costs, expenses (including reasonable legal expenses), damages, liabilities and losses, including any penalties and interest (**Costs**) (including, without limitation, in relation to any Claim), that the Claiming Party suffers or incurs as a direct result of the occurrence of an Indemnity Event, excluding however (i) in the case of a Counterparty Indemnity Event, any Costs resulting from the Claiming Party's failure to duly, and in a timely manner, comply with a binding direction from

the Italian tax authorities concerning the payment of the FTT for which the Claimed Party is liable under article 10 of the Treasury Decree in respect of the Covered Transaction, (ii) in the case of an Executing Broker Indemnity Event, any Costs resulting from the Executing Broker's failure to duly, and in a timely manner, comply with a binding direction from the Italian tax authorities concerning the reporting of the Covered Transaction in Exchange Traded Derivatives in compliance with the Reporting Obligations and/or the payment of the FTT for which the Customer and/or the Clearing Broker are liable under article 10 of the Treasury Decree in respect of the Covered Transaction in Exchange Traded Derivatives, and (iii) in case of both a Counterparty Indemnity Event and an Executing Broker Indemnity Event, any Costs resulting from the Claiming Party's failure to duly, and in a timely manner, comply with any agreement (other than this Protocol) between the parties as to the allocation of responsibility for FTT Reporting Obligations and/or paying purposes in respect of the Covered Transaction in Exchange Traded Derivatives. In no circumstances shall an Adhering Party be liable to indemnify another Adhering Party for loss of profit, goodwill or opportunity.

8.4 Payment under the indemnity in paragraph 8.3 shall be made by the Claimed Party upon demand in writing by the Claiming Party, provided that the Claiming Party has provided to the Claimed Party reasonable evidence to support its claim under the indemnity. For the avoidance of doubt, the Claimed Party shall not be required to make payment under the indemnity any earlier than when the Claiming Party actually suffers or incurs the relevant Costs, which shall be (i) in respect of the FTT, the due date set out in a formal payment notice received by the Claiming Party from the Italian tax authorities (or the date upon which any Deferral Period expires, where applicable), and (ii) the due date for any other Costs.

8.5 The Claiming Party undertakes to notify the Claimed Party as soon as reasonably practicable of any Indemnity Event or circumstances which the Claiming Party reasonably considers to be likely to give rise to an Indemnity Event.

8.6 Subject to paragraph 8.7 below, if the Claiming Party requests indemnification from the Claimed Party under paragraph 8.3:

- (a) the Claiming Party shall have conduct of any proceedings, dispute or claim relating to the relevant Indemnity Event or potential Indemnity Event (a **Claim**);
- (b) the Claiming Party agrees to use legal advisors reasonably satisfactory to the Claimed Party, in relation to such Claim;
- (c) the Claiming Party agrees to keep the Claimed Party reasonably informed of the progress of, and consult with the Claimed Party with respect to, issues relating to such Claim and shall in good faith consider any request from the Claimed Party relating to such Claim, subject to the Claiming Party being indemnified by the Claimed Party for any associated costs (including, without limitation, the costs of providing any collateral to the Italian tax authorities in relation to FTT claimed by the Italian tax authorities from the Claiming Party);
- (d) the Claiming Party shall not settle or compromise, consent to the entry of any judgment in or otherwise seek to terminate such Claim without the Claimed

Party's prior written consent (such consent not to be unreasonably withheld or delayed); and

- (e) the Claimed Party shall cooperate in good faith with the Claiming Party in order to allow the Claiming Party to defend and conduct such Claim.

8.7 If the Claiming Party reasonably believes that there is an actual or potential conflict of interest between the Claimed Party and the Claiming Party in relation to a Claim or that any such conflict could reasonably be expected to arise, the Claiming Party may upon written notice to the Claimed Party revoke any obligation of the Claiming Party under paragraph 8.6 above in respect of the Claim.

8.8 The Claiming Party shall pay forthwith to the Claimed Party any amount refunded to the Claiming Party or otherwise recovered by the Claiming Party from the Italian tax authorities that corresponds to an amount of FTT paid by the Claimed Party to the Italian tax authorities or to Costs in respect of which the Claimed Party has made a payment to the Claiming Party under the indemnity in paragraph 8.3. If the Claiming Party is entitled to any refund or recovery which would lead to it making a payment under this paragraph 8.8, it shall inform the Claimed Party of such entitlement and shall on the request of the Claimed Party use reasonable endeavours to obtain such recovery or refund, subject to the Claiming Party being indemnified to its reasonable satisfaction by the Claimed Party against any costs and expenses incurred in obtaining such recovery or refund.

8.9 The Claiming Party cannot claim twice for the same Costs under the indemnity in paragraph 8.3.

8.10 The Counterparties and the Executing Broker agree that nothing in this Protocol shall constitute advice on their tax or other obligations under Italian law, or on the legal, financial or regulatory consequences of the Protocol. The Counterparties and the Executing Broker each agree that if they consider it necessary to seek advice, they will consult their own legal, tax and regulatory advisers as appropriate.

## **9. NO WAIVER**

No failure or delay by AFME or 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.

## **10. NOTICES**

10.1 Subject to any provision to the contrary in Section 4 above, any notice or other communication to be given to an Adhering Party 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 in that Adhering Party's Adherence Letter or most recent notice of change of contact details published on the AFME Website (as applicable) 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 5.00 pm London time 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.

10.2 An Adhering Party may from time to time give notice to AFME of any change of its contact details, as set out in its Adherence Letter. AFME shall, following receipt of any such notice, publish the conformed copy of the notice on the AFME Website.

10.3 Notices from AFME to any Group Adhering Party shall be effective if given to the Primary Group Adhering Party.

## **11. RIGHTS OF THIRD PARTIES**

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.

## **12. LIMITATION OF LIABILITY**

12.1 Neither AFME nor any of its officers, servants or agents will incur any liability to any Adhering Party, Former Adhering Party or any other person or be responsible for any loss, damage, expense or claim whatsoever suffered or incurred by any Adhering Party, Former Adhering Party or any other person as a result of performing or failing to perform any function under this Protocol (including, without limitation, the inability of any Adhering Party, Former Adhering Party or any other person to access the AFME Website for any reason) except to the extent that such liability, loss, damage, claim or expense is shown to be attributable to the fraud 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.

12.2 In particular, but without prejudice to the generality of paragraph 12.1 above, AFME's role in effecting Adherence Confirmations or Withdrawal Confirmations or in publishing any changes to the contact details of Adhering Parties (as notified to AFME)

shall be limited to the publication of the conformed copies of any Adherence Letters, Withdrawal Letters, notices in the form of Exhibit 5 or notices of change of contact details, in the form received by AFME. AFME shall not be responsible for checking the accuracy of any such letters, notices, website links or other information relating to the licences held by an Adhering Party, nor their conformity with the relevant Exhibit to this Protocol or their due execution.

12.3 Each Primary Group Adhering Party undertakes to review the information and documentation related to its Corporate Group published by AFME in accordance with this Protocol and to inform AFME of any inaccuracy.

### **13. AMENDMENTS**

13.1 Except as provided in paragraph 3.3 in relation to amendments to Exhibit 2, amendments to this Protocol may be made by AFME publishing the proposed amendment on the AFME Website at least 10 Business Days prior to such amendment taking effect. AFME shall, by 5.00 pm London time on any Business Day that it publishes a proposed amendment to this Protocol on the AFME Website, notify, via e-mail, each currently Adhering Party of the fact. Where an Adhering Party has failed to provide a valid working e-mail address to AFME for the purposes of this Protocol then AFME shall have no obligation to provide notice to such Adhering Party under this paragraph 13.1 or paragraph 3.3.

13.2 Following the publication of proposed amendments to the Protocol in accordance with paragraph 13.1, the relevant amendments to the Protocol will become effective upon AFME publishing the final amended version of the Protocol on the AFME 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 5 prior to the amendment taking effect. AFME will, prior to publishing any proposed amendments to the Protocol, consult with Adhering Parties or a committee of Adhering Parties appointed for this purpose, or the members of the AFME European Tax Forum.

13.3 For 12 months after the effective date of this Protocol as specified in paragraph 1.7, AFME may make such amendments to this Protocol as it considers necessary or desirable to reflect any amendments to the Treasury Decree or any FTT regulations enacted by the tax authorities or any guidance given by the Italian Treasury or tax authorities in relation to the Law 228 or the Treasury Decree. Amendments to this Protocol made pursuant to this paragraph 13.3 shall become effective immediately upon AFME publishing an amended version of the Protocol on the AFME Website, and each Adhering Party shall be bound by the terms of this Protocol as amended. AFME may, but is not required to, consult with any Adhering Parties or give prior notice to Adhering Parties of any amendment to the Protocol made pursuant to this paragraph 13.3. Following publication of an amended version of the Protocol on the AFME Website, AFME will notify, via e-mail, each currently Adhering Party of the fact. Where an Adhering Party has failed to provide a valid working e-mail address to AFME for the purposes of this Protocol then AFME shall have no obligation to provide notice to such Adhering Party under this paragraph 13.3.

13.4 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 13.

## **14. TERMINATION**

14.1 Adhering Parties agree that AFME may terminate this Protocol following consultation with Adhering Parties or a committee of Adhering Parties appointed for this purpose or the members of the AFME European Tax Forum by publishing a notice of termination on the AFME Website, which shall specify the date on which such termination shall take effect. Such date of effective termination shall not be less than three calendar months after the date of publication of the notice of termination, unless otherwise agreed with the AFME European Tax Forum. AFME shall, by 5.00 pm on any Business Day that it publishes a notice of termination of this Protocol on the AFME Website, notify, via e-mail, each currently Adhering Party of the fact. Where an Adhering Party has failed to provide a valid working e-mail address to AFME for the purposes of this Protocol then AFME shall have no obligation to provide notice to such Adhering Party under this paragraph 14.1.

14.2 Termination of the Protocol in accordance with paragraph 14.1 above shall be without prejudice to any rights or obligations of Adhering Parties which have accrued prior to such termination. In particular, but without limitation, termination of the Protocol shall not prejudice the accrued rights of an Adhering Party under Section 8 above, which shall survive any such termination.

## **15. GOVERNING LAW**

This Protocol and any Adherence Letter, Disapplication Letter, Withdrawal Letter or notice of ceasing to be a White-Listed Investment Services Provider under paragraph 5.5 (together the ***Protocol Documents***) and 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 exclusive jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.



## ITALIAN FTT DERIVATIVE PROTOCOL - EXHIBIT 1

### Form of Adherence Letter

[Letterhead of Adhering Party]

**FAO The Tax Division  
Association for Financial Markets in Europe  
Level 10  
20 Churchill Place  
London  
E14 5HJ  
United Kingdom**

[Date]

Dear Sir/Madam

### **AFME Italian Financial Transactions Tax Derivatives Protocol – Adherence Letter**

#### **1. ADHERENCE**

The purpose of this letter is to declare our adherence and that of each other party whose name is listed in paragraph 2 below (for whom we act as agent for the purposes of this Adherence Letter) (each a ***Group Adhering Party***), to the AFME Italian Financial Transactions Tax Derivatives Protocol (the ***Protocol***).

By executing this letter, on our behalf and on behalf of each Group Adhering Party, we make the representations set out in section 6 of the Protocol and confirm our intention to be bound by the terms of the Protocol as amended from time to time. We represent and warrant that we are authorised to submit this letter on behalf of each Group Adhering Party. 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. CORPORATE GROUP PARTIES TO WHOM THIS ADHERENCE LETTER APPLIES

*[Insert full legal names of all entities<sup>1</sup> [and [BIC code][DTC ID][Euroclear number][UK PRA/FCA number/SEC number/other regulator reference number][Legal Entity Identifier (LEI)]]<sup>2</sup> to become adherents to the Protocol]*

Each party listed above shall be a separate Adhering Party.

We hereby confirm that each Adhering Party listed above deals on its own account and is duly licensed for dealing on own account and/or it executes orders on behalf of clients and is duly licensed for the execution of orders on behalf of clients.

*Please select one of the following options for each adhering party.*

A. [We provide a link to the relevant regulator's register of investment service providers to confirm our accreditation

*[Insert link]*

*or*

B [We attach a copy of our licence showing the services and activities for which we are authorised in the annex to this Adherence Letter.]

*or*

C. [We confirm that we will provide details of our licence to other Adhering Parties on a bilateral basis when requested.]

## 3. APPOINTMENT AS ADMINISTRATOR AND RELEASE

We (on our own behalf and as agent for all Adhering Parties listed above) hereby appoint AFME as administrator 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.

## 4. CONTACT DETAILS<sup>3</sup>

Our contact details for the purposes of the Protocol are:

Name:

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<sup>1</sup> This must include the entity writing this letter. If the Protocol is to apply only to one or more branches of each legal entity, please make this clear and specify which branch or branches.

<sup>2</sup> For each entity, please provide as many of such identifiers as relevant.

<sup>3</sup> To the extent that each adhering entity does not share the same contact details, please provide the contact details for each adhering entity.

FAO:

Address:

Telephone:

E-mail:

Our contact details for receipt of invoices for Adherence Fees are:<sup>4</sup>

Organisation:

Name:

Billing Address:

City:

Post Code:

Country:

VAT Number:

Invoice Contact (if different from contact details above):

Name:

FAO:

Address:

Telephone:

E-mail:

We undertake to notify AFME of any changes to these details at any time throughout our adherence to the Protocol, by sending a manually or electronically signed notice to AFME at [fitprotocol@afme.eu](mailto:fitprotocol@afme.eu).

We agree to the publication by AFME of the conformed copy of any such notice.

## **5. OPTIONAL REPRESENTATION FOR EXECUTION ON A REGULATED MARKET OR MTF**

*[If you wish to make the Optional Representation and give the associated indemnity please check the box below. This representation will apply to all Covered Transactions in Exchange Traded Derivatives and all Covered Transactions in Securitised Derivatives unless you explicitly notify the relevant Purchaser at the time the transaction is entered into.]*

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<sup>4</sup> Please also provide any additional details which are required to process the invoice for Adherence Fees.

Where the box is checked, we opt to give the Optional Representation as set out in paragraph 6.3 of the Protocol.

**6. AGENT FOR SERVICE OF PROCESS<sup>5</sup>**

We have appointed [*Insert details of agent for service of process*] as our agent for service of process and any other documents in proceedings in England. We [each] agree that 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. 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:

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<sup>5</sup> Non-UK Adhering Parties only. To the extent that each non-UK Adhering Party is not using the same agent, please modify this paragraph as necessary.

## EXHIBIT 2

### Adherence Fees Schedule

This Exhibit 2 details the Adherence Fees regulated in Section 3 of the AFME Italian Financial Transactions Tax (Derivatives) Protocol.

Capitalised terms not defined in this Exhibit will have the meaning given in the Protocol.

<b>Initial Adherence Fee for all Adhering Entities</b>	1,650 GBP One-time fee payable by any party adhering to the Protocol
<b>Annual Adherence Fee for AFME members</b>	550 GBP Payable on an annual basis on each Renewal Date
<b>Annual Adherence Fee for non-AFME members</b>	550 GBP Payable on an annual basis on each Renewal Date

Adherence Fees will be payable on a Corporate Group basis.

Payment of the Adherence Fees by the Primary Group Adhering Party shall be treated as payment of the Adherence Fees by all Group Adhering Parties that are part of the same Corporate Group. Non-payment of the Adherence Fees will result in each Group Adhering Party in the same Corporate Group ceasing to be an Adhering Party in accordance with the terms of the Protocol.

As per paragraph 3.7 of the Protocol, the above Adherence Fees are exclusive of any VAT or similar tax, which will be chargeable by AFME to Adhering Parties in accordance with the relevant applicable law.

## ITALIAN FTT DERIVATIVE PROTOCOL - EXHIBIT 3

### Form of Disapplication Letter

[Letterhead of Adhering Party]

To:                      **FAO [                      ]**  
                              **[Name and address of Adhering Party to which the**  
                              **Disapplication Letter is being addressed]**

[Date]

Dear Sir/Madam

#### **AFME Italian Financial Transactions Tax Derivatives Protocol – Disapplication Letter**

The purpose of this letter is to notify you, that we / each Group Adhering Party whose name is listed below (for whom we act as agent for the purposes of this Disapplication Letter) wish to exclude the application of the AFME Italian Financial Transactions Tax Derivatives Protocol (the ***Protocol***) with respect to any trades between you and each of us, from the date upon which this letter shall take effect in accordance with the Protocol.

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

Adhering Parties to whom this Disapplication Letter applies

Yours faithfully

[ADHERING PARTY]

Signed by: \_\_\_\_\_  
                  Name:  
                  Title:

## ITALIAN FTT DERIVATIVE PROTOCOL - EXHIBIT 4

### Form of Withdrawal Letter

[Letterhead of Adhering Party]

**To:   FAO The Tax Division  
         Association for Financial Markets in Europe  
         Level 10  
         20 Churchill Place  
         London  
         E14 5HJ  
         United Kingdom**

[Date]

Dear Sir/Madam

#### **AFME Italian Financial Transactions Tax Derivatives Protocol – Withdrawal Letter**

The purpose of this letter is to notify you that we / each Group Adhering Party listed below (for whom we act as agent for the purposes of this Withdrawal Letter) wish to withdraw from adherence to the AFME Italian Financial Transactions Tax Derivatives Protocol (the ***Protocol***).

#### **Adhering Parties to whom this Withdrawal Letter applies**

*[Insert full legal names of all entities [and [BIC code][DTC ID][Euroclear number][UK FCA/PRA number/SEC number/other regulator reference number][Legal Entity Identifier (LEI)]]<sup>6</sup> withdrawing from to the Protocol]*

[The replacement Primary Group Adhering Party will be *[Insert full legal name of replacement Primary Group Adhering Party]*.<sup>7</sup>]

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.

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<sup>6</sup> This must include the entity writing this letter. If this letter applies only to one or more branches of each legal entity, please make this clear and specify which branch or branches. For each entity, please provide as many of such identifiers as relevant.

<sup>7</sup> [Where the party withdrawing is the Primary Group Adhering Party, but other Group Adhering Parties will remain Adhering Parties the withdrawing Primary Group Adhering Party must nominate a replacement Primary Group Adhering Party.]

Yours faithfully

[ADHERING PARTY]

Signed by: \_\_\_\_\_  
Name:  
Title:



## ITALIAN FTT DERIVATIVE PROTOCOL - EXHIBIT 5

### Form of Notice of ceasing to be a White-Listed Investment Services Provider

#### [Letterhead of Adhering Party]

**To:   FAO The Tax Division  
         Association for Financial Markets in Europe  
         Level 10  
         20 Churchill Place  
         London  
         E14 5HJ  
         United Kingdom**

[Date]

Dear Sir/Madam,

#### **AFME Italian Financial Transactions Tax Derivatives Protocol – Notice of ceasing to be a White-Listed Investment Services Provider**

The purpose of this letter is to notify you that we / each Group Adhering Party listed below (for whom we act as agent for the purposes of this letter) have ceased to be a White-Listed Investment Services Provider for the purposes of, and as defined in, the AFME Italian Financial Transactions Tax Derivatives Protocol (the ***Protocol***).

We acknowledge that we shall cease to be an Adhering Party under the Protocol from the time of publication of this notice on the AFME Website.

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:

## ITALIAN FTT DERIVATIVE PROTOCOL - EXHIBIT 6

### Corporate Group Notification

**FAO The Tax Division  
Association for Financial Markets in Europe  
Level 10  
20 Churchill Place  
London  
E14 5HJ  
United Kingdom**

[Date]

Dear Sir / Madam

#### **AFME Italian Financial Transactions Tax Derivatives Protocol – Corporate Group Notification**

The following Adhering Parties form part of the same Corporate Group and we request that these entities be treated as Group Adhering Parties:

*[Insert full legal names of all entities<sup>8</sup>]*

We agree and acknowledge that we will be the Primary Group Adhering Party for the purposes of the Protocol. We represent and warrant that we are authorised to submit this letter on behalf of each Group Adhering Party.

Our contact details for the purposes of the Protocol are:

Name:

FAO:

Address:

Telephone:

E-mail:

Our contact details for receipt of invoices for Adherence Fees are:<sup>9</sup>

#### Organisation:

Name:

Billing Address:

City:

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<sup>8</sup> This must include the entity writing this letter. If the Protocol is to apply only to one or more branches of each legal entity, please make this clear and specify which branch or branches.

<sup>9</sup> Please also provide any additional details which are required to process the invoice for Adhering Fees.

Post Code:  
Country:  
VAT Number:

Invoice Contact (if different from contact details above):

Name:  
FAO:  
Address:  
Telephone:  
E-mail:

We undertake to notify AFME of any changes to these contact details at any time throughout our adherence to the Protocol by sending manually or electronically signed notice containing the updated details to AFME at [ftprotocol@afme.eu](mailto:ftprotocol@afme.eu).

Your faithfully

[ADHERING PARTY *Insert full legal name of Adhering Party*]

Signed by: \_\_\_\_\_  
Name:  
Title:

**ITALIAN FTT DERIVATIVE PROTOCOL – EXHIBIT 7**

**Form of Optional Representation Notice**

**[Letterhead of Adhering Party]**

**To:   FAO The Tax Division  
      Association for Financial Markets in Europe  
      Level 10  
      20 Churchill Place  
      London  
      E14 5HJ  
      United Kingdom**

[Date]

Dear Sir/Madam,

**AFME Italian Financial Transactions Tax Derivatives Protocol Optional  
Representation Notice**

The purpose of this letter is to notify you that we opt to give the Optional Representation as set out in paragraph 6.3 the AFME Italian Financial Transactions Tax Derivatives Protocol (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:

## ITALIAN FTT DERIVATIVE PROTOCOL - EXHIBIT 8

### Form of Optional Representation Withdrawal Notice

[Letterhead of Adhering Party]

**To:   FAO The Tax Division  
         Association for Financial Markets in Europe  
         Level 10  
         20 Churchill Place  
         London  
         E14 5HJ  
         United Kingdom**

[Date]

Dear Sir/Madam,

#### **AFME Italian Financial Transactions Tax Derivatives Protocol Optional Representation Withdrawal Notice**

The purpose of this letter is to notify you that we are withdrawing the Optional Representation as set out in paragraph 6.3 the AFME Italian Financial Transactions Tax Derivatives Protocol (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: