

## SPANISH FINANCIAL TRANSACTIONS TAX – 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 in circumstances where transactions are subject to the Spanish financial transactions tax under Spanish Law 5/2020, dated 15 October 2020 (*Ley 5/2020, de 15 de octubre, del Impuesto sobre las Transacciones Financieras*) (the **FTT Law**), as this Law may be amended or superseded from time to time, including any related penalty or interest for late or incorrect payment or late or incorrect filing that may be due (the **FTT**).

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Protocol shall apply to transactions covered by this Protocol by a party that has adhered to the Protocol, and has not withdrawn from or been subject to withdrawal from, in accordance with section 5 below, the Protocol (an **Adhering Party**).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 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 Investment Services Providers (as defined below).

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

1.6 For the purposes of this Protocol, the Purchaser is responsible for interpreting the relevant provisions of the FTT Law to determine which transactions incur reporting and payment obligations.

1.7 The FTT Law enters into force on 16 January 2021 and this Protocol shall become effective at 12.01am Madrid time on 11 January 2021. Notwithstanding the above, please note that the Protocol will apply to Covered Transactions agreed and/or settled and/or registered on or from a certain date (which could be prior to or after 16 January 2021), as defined by the Spanish Government or the Spanish tax authorities in any regulations, guidance or FAQs published.

### 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 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.

2.5 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; or
- (b) 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.

2.6 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.

2.7 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.

2.8 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.

2.9 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.

2.10 Any provisions 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, 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***); and
- (b) an annual adherence fee, which will be payable by all Adhering Parties on each anniversary of the Protocol Effective Date (each anniversary 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. The Adhering Party which submits the first Adherence Letter 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 Adhering Fees due to AFME under this Protocol before it is permitted to submit a new Adherence Letter;
- (b) 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 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 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 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, in which case the provisions of this Section 5 will apply to each such Group Adhering Party.

5.2 An Adhering Party intending to withdraw its adherence to the 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 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 an Investment Services Provider, it undertakes that it shall effect an immediate withdrawal of its adherence to the Protocol, in accordance with paragraph 5.5 below.

5.5 A party which has ceased to be an 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 [ftp@afme.eu](mailto:ftp@afme.eu); or
- (b) by sending to AFME at [ftp@afme.eu](mailto:ftp@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 subject to the automatic withdrawal of its adherence to the Protocol with effect from the date which is 3 Business Days following the Initial Adherence Fee Non-Payment Date (the ***Non-Payment Withdrawal Date***). 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 subject to the automatic withdrawal of their adherence to the Protocol with effect from the Non-Payment Withdrawal Date; and
- (b) at any time an Adhering Party fails to pay the Annual Adherence Fee, it shall be subject to the automatic withdrawal of its adherence to the Protocol with effect from the date which is 30 days following the Renewal Date (the ***Renewal Non-Payment Date***), unless the Adhering Party makes the payment before the Renewal Non-Payment Date. Where the Primary Group Adhering Party fails to pay the Annual Adherence Fee before the Renewal Non-Payment Date, then all Group Adhering Parties in that Corporate Group will be subject to the automatic withdrawal of their adherence to the Protocol with effect from the Renewal Non-Payment Date.

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.

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 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 8 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 the Covered Transaction:

- (a) it is an Investment Services Provider;
- (b) unless it has informed the other Adhering Party prior to entering into the Covered Transaction that it is acting, in relation to that Covered Transaction, as an Intermediation Desk, it is not acting as an Intermediation Desk;
- (c) it will immediately notify AFME if at any time its representation in subparagraph 6.1(a) ceases to be true, in accordance with paragraph 5.5 above;
- (d) it is duly incorporated and validly existing under the laws of its country of incorporation or formation;
- (e) 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;
- (f) the person executing the Adherence Letter is duly authorised to do so on its behalf;
- (e) 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;
- (f) 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;
- (g) this Protocol constitutes the legal, valid, binding and enforceable obligations of the Adhering Party and is enforceable in accordance with its terms.

## 7. DEFINITIONS AND INTERPRETATION

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

- (a) **Acquisition** has the meaning given in paragraph 8.1;
- (b) **Adherence Confirmation** has the meaning given in paragraph 2.4;
- (c) **Adherence Letter** has the meaning given in paragraph 2.1;
- (d) **Adherence Fees** means the Initial Adherence Fee and the Annual Adherence Fee, as defined in paragraph 3.1;
- (e) **Adhering Party** means a party that has adhered to this Protocol in accordance with the provisions of Section 2;
- (f) **Affected Securities** means the listed equity securities and other assimilated securities that are referred to under Article 2 of the Spanish FTT Law;
- (g) **AFME European Tax Forum** means the group of AFME members addressing AFME's work on European tax issues from time to time;
- (h) **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;
- (i) **Annual Adherence Fee** has the meaning given in paragraph 3.1(b);
- (j) **Business Day** means a day, other than a Saturday or Sunday, on which banks are generally open for business in London;
- (k) **Claim** has the meaning given in paragraph 8.5;
- (l) **Costs** has the meaning given in paragraph 8.2;
- (m) **Covered Transaction** means an acquisition for valuable consideration of Affected Securities, as such an acquisition is defined under Article 2 of the Spanish FTT Law;
- (n) **Deferral Period** means a period of time during which the Spanish tax authorities or the relevant Spanish court agree that payment of the FTT in respect of a Covered Transaction may be deferred pursuant to a suspension of payment (*suspension de la ejecución de la liquidación tributaria*) as defined in articles 224, 233, 241 of the GTA;
- (o) **Disapplication Letter** has the meaning given in paragraph 4.1;
- (p) **FAQs** means Frequently asked questions published by the Spanish tax authorities providing guidance on the interpretation and application of the FTT.



- (q) **Formal Payment Notice** means a “*liquidación tributaria*” as defined in article 101 of the GTA;
- (r) **Former Adhering Party** has the meaning given in paragraph 5.3;
- (s) **FTT** has the meaning given in paragraph 1.1;
- (t) **FTT Law** has the meaning given in paragraph 1.1;
- (u) **FTT Royal Decree** means the Spanish Royal Decree dealing with the reporting and payment obligations in respect of FTT (*Real Decreto por el que se desarrolla el procedimiento de presentación e ingreso de las autoliquidaciones del Impuesto sobre las Transacciones Financieras y se modifican otras normas*);
- (v) **Corporate Group** means a group of entities, regardless 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;
- (w) **Group Adhering Party** means an Adhering Party that is identified in an Adherence Letter as being a member of a Corporate Group;
- (x) **GTA** means the Spanish General Tax Act (*Ley 58/2003, de 17 de diciembre, General Tributaria*);
- (y) **Indemnity Event** means the Seller receiving a Formal Payment Notice from the Spanish tax authorities to pay the FTT in respect of the Acquisition, whether as a result of a failure of the Purchaser to comply with its obligations under paragraph 8.1 or otherwise;
- (z) **Initial Adherence Fee** has the meaning given in paragraph 3.1(a);
- (aa) **Initial Adherence Fee Non-Payment Date** means the later of (i) 16 February 2021; and (ii) the date falling 30 days following the date on which AFME effects the Adherence Confirmation for the relevant Adhering Party or Corporate Group;
- (bb) **Intermediation Desk** means:
  - (i) a “financial intermediary” (*intermediario financiero*) as referred to in article 6.2 of the FTT Law;
  - (ii) is duly licensed to perform services of execution of orders on behalf of third parties defined in article 140.1 of the Spanish Securities Market Act (*Ley del Mercado de Valores*), implementing Section A of Annex I of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;

- (iii) receives and transmits an order of an Affected Security to another Investment Services Provider; and
- (iv) satisfies the following cumulative conditions (or any other different or additional conditions as defined by the Spanish Government or the Spanish tax authorities in any regulation, guidance or FAQs):
  - (A) it is not a party to the settlement-delivery chain in respect of the Acquisition of the Affected Security referred to in condition (iii) above;
  - (B) in respect of the Acquisition referred to in (A), it does not issue an execution report;
  - (C) it is not a member of a regulated market on which the Affected Securities are traded; and
  - (D) in respect of the Acquisition referred to in (A) and (B), it acts vis-à-vis the Seller as the agent of the final purchaser of the concerned Affected Security.
- (cc) **Investment Services Provider** means a “financial intermediary” (*intermediario financiero*) as referred to in article 6.2 of the FTT Law that provides any of the investment services defined in article 140.1 of the Spanish Securities Market Act (*Ley del Mercado de Valores*) implementing Section A of Annex I of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments which (i) deals on its own account and is duly licensed for dealing on own account; and/or (ii) executes orders on behalf of clients and is duly licensed for the execution of orders on behalf of clients;
- (dd) **Non-Payment Withdrawal Date** has the meaning given in paragraph 5.7(a);
- (ee) **Primary Group Adhering Party** means the Adhering Party which submits the first Adherence Letter on behalf of a Corporate Group or the one subsequently designated by the Corporate Group in accordance with paragraph 3.2;
- (ff) **Protocol** means this AFME Spanish Financial Transactions Tax Protocol, as amended from time to time;
- (gg) **Protocol Effective Date** means 11 January 2021;
- (hh) **Purchaser** has the meaning given in paragraph 8.1;
- (ii) **Renewal Date** has the meaning given in paragraph 3.1(b);
- (jj) **Renewal Non-Payment Date** has the meaning given in paragraph 5.7(b);
- (kk) **Seller** has the meaning given in paragraph 8.1;

- (ll) **Tax Deduction** means a deduction or withholding for or on account of tax from a payment of Adherence Fees;
- (mm) **Withdrawal Confirmation** has the meaning given in paragraph 5.3;
- (nn) **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 FTT Law shall be deemed to include references to any accompanying legislation from the Spanish 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 (the **Purchaser**) acquires Affected Securities from another Adhering Party (the **Seller**) in a Covered Transaction (the **Acquisition**), the Purchaser and the Seller agree as follows:

- (a) the Purchaser will determine whether it has an obligation to report the Acquisition in accordance with the provisions of Articles 6 and 8 of the FTT Law;
- (b) if the Purchaser determines that it has such an obligation, the Purchaser will, in accordance with the provisions of Article 8 of the FTT Law and the FTT Royal Decree:
  - (i) report and pay any FTT which may be due in respect of the Acquisition or, where applicable,
  - (ii) report and pay any FTT through a Spanish central depository and, for that purpose, the Purchaser will designate a member of the central depository to which the Purchaser will provide the relevant information

and pay the FTT to allow the Spanish central depositary to satisfy the reporting and payment obligation on behalf of the Purchaser,

- (c) the Seller will not report the Acquisition under the procedure described under Article 8 of the FTT Law and will not pay any FTT which may be due in respect of the Acquisition and, where applicable, will not designate a Spanish central depositary in order to satisfy this reporting and payment obligation on its behalf; and
- (d) the Purchaser and the Seller will (and will use reasonable efforts to procure that their respective agents will) co-operate reasonably with each other, to the extent permitted by applicable law, in the event either of them is subject to an FTT audit by the Spanish tax authorities in respect of the Acquisition; in particular, without limitation, the Seller may require the Purchaser to provide to the Seller information supporting whether or not the Purchaser qualifies as an Investment Services Provider; 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 (i) this paragraph 8.1 shall not bind the parties to the extent that the Purchaser and the Seller agree in writing on a different allocation of duties for FTT reporting and/or paying purposes, in respect of the Acquisition, and (ii) paragraph 8.1(c) shall not bind the Seller if it receives a Formal Payment Notice from the Spanish tax authorities to pay the FTT in respect of the Acquisition,

8.2 The Purchaser shall indemnify the Seller, 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 Seller suffers or incurs as a direct result of the occurrence of an Indemnity Event, excluding however any Costs resulting from the Seller's failure to duly, and in a timely manner, comply with: (i) a Formal Payment Notice from the Spanish tax authorities to pay the FTT in respect of the Acquisition, or (ii) any agreement (other than this Protocol) between the Seller and Purchaser as to the allocation of responsibility for FTT reporting and/or paying purposes in respect of the Acquisition. In no circumstances shall the Purchaser be liable to indemnify the Seller for loss of profit, goodwill or opportunity.

8.3 Payment under the indemnity in paragraph 8.2 shall be made by the Purchaser upon demand in writing by the Seller, provided that the Seller has provided to the Purchaser reasonable evidence to support its claim under the indemnity. For the avoidance of doubt, the Purchaser shall not be required to make payment under the indemnity any earlier than when the Seller 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 Seller from the Spanish tax authorities (or the date upon which any Deferral Period expires, where applicable), and (ii) the due date for any other Costs.

8.4 The Seller undertakes to notify the Purchaser as soon as reasonably practicable of any Indemnity Event or circumstances which the Seller reasonably considers to be likely to give rise to an Indemnity Event.

8.5 Subject to paragraph 8.6 below, if the Seller requests indemnification from the Purchaser under paragraph 8.2:

- (a) the Seller shall have conduct of any proceedings, dispute or claim relating to the relevant Indemnity Event or potential Indemnity Event (a *Claim*);
- (b) the Seller agrees to use legal advisors reasonably satisfactory to the Purchaser, in relation to such Claim;
- (c) the Seller agrees to keep the Purchaser reasonably informed of the progress of, and consult with the Purchaser with respect to, issues relating to such Claim and shall in good faith consider any request from the Purchaser relating to such Claim, subject to the Seller being indemnified by the Purchaser for any associated costs (including, without limitation, the costs of providing any collateral to the Spanish tax authorities in relation to FTT claimed by the Spanish tax authorities from the Seller);
- (d) the Seller shall not settle or compromise, consent to the entry of any judgment in or otherwise seek to terminate such Claim without the Purchaser's prior written consent (such consent not to be unreasonably withheld or delayed); and
- (e) the Purchaser shall cooperate in good faith with the Seller in order to allow the Seller to defend and conduct such Claim.

8.6 If the Seller reasonably believes that there is an actual or potential conflict of interest between the Purchaser and the Seller in relation to a Claim or that any such conflict could reasonably be expected to arise, the Seller may upon written notice to the Purchaser revoke any obligation of the Seller under paragraph 8.5 above in respect of the Claim.

8.7 The Seller shall pay forthwith to the Purchaser any amount refunded to the Seller or otherwise recovered by the Seller from the Spanish tax authorities that corresponds to an amount of FTT paid by the Purchaser to the Spanish tax authorities or to Costs in respect of which the Purchaser has made a payment to the Seller under the indemnity in paragraph 8.2. If the Seller is entitled to any refund or recovery which would lead to it making a payment under this paragraph 8.7, it shall inform the Purchaser of such entitlement and shall on the request of the Purchaser use reasonable endeavours to obtain such recovery or refund, subject to the Seller being indemnified to its reasonable satisfaction by the Purchaser against any costs and expenses incurred in obtaining such recovery or refund.

8.8 The Seller cannot claim twice for the same Costs under the indemnity in paragraph 8.2.

8.9 The Purchaser and the Seller agree that nothing in this Protocol shall constitute advice on their tax or other obligations under Spanish law, or on the legal, financial or regulatory consequences of the Protocol. The Purchaser and the Seller 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 3 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 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 on 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 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. Notwithstanding the above, when the amendments to the Protocol are due to the publication of new regulations or guidance issued by the Spanish Government or the Spanish tax authorities, which affects the representations to be provided by Adhering Parties pursuant to clause 6 above or the FTT terms in clause 8 above, AFME shall have the option to reduce the 10 Business Days period mentioned in this paragraph. AFME shall, by 5.00 pm 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.

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, a committee of Adhering Parties appointed for this purpose, or the members of the AFME European Tax Forum. 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 or paragraph 3.3.

#### **14. TERMINATION**

14.1 Adhering Parties agree that AFME may terminate this Protocol at any time following consultation with Adhering Parties or a committee of Adhering Parties appointed for this purpose by publishing a notice of termination on the AFME Website, which shall specify the date on which such termination shall take effect. 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 13.1.

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 an 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.



## EXHIBIT 1

### Form of Adherence Letter

[Letterhead of Adhering Party]

**FAO The Tax Division  
Association for Financial Markets in Europe  
39<sup>th</sup> Floor  
25 Canada Square  
London  
E14 5LQ  
United Kingdom**

[Date]

Dear Sirs

#### **AFME Spanish Financial Transactions Tax 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 Spanish Financial Transactions Tax 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 article 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]*

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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.

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:

FAO:

Address:

Telephone:

Fax:

E-mail:

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

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<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.

Organisation:

Name:

Billing Address:

City:

Post Code:

Country:

VAT Number:

Invoice Contact (if different from contact details above):

Name:

FAO:

Address:

Telephone:

Fax:

E-mail:

We undertake to notify AFME of any changes to these details at any time throughout our adherence to the Protocol, by either:

- (a) delivering to AFME by (i) certified or registered mail (or airmail, if overseas) or equivalent; (ii) courier; or (iii) personal delivery to AFME's address set out in this Adherence Letter, two copies of such notice: 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 we will also send scanned pdf copies of the manually signed original and conformed copies of the notice of change of details to AFME at [fttprotocol@afme.eu](mailto:fttprotocol@afme.eu); or
- (b) sending to AFME at [fttprotocol@afme.eu](mailto:fttprotocol@afme.eu) an electronically signed original and a conformed copy of such notice.

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

Where this letter applies to a Corporate Group Party, we acknowledge that we will be the Primary Group Adhering Party for the purposes of the Protocol.

**5. 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

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

<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.

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 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:

## EXHIBIT 2

### Adherence Fees Schedule

This Exhibit 2 details the Adherence Fees regulated in Section 3 of the AFME Spanish Financial Transactions Tax 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> | 1,500 GBP.<br>One-time fee payable by any party adhering to the Protocol   |
| <b>Annual Adherence Fee for AFME members</b>           | <input type="checkbox"/> GBP <sup>6</sup><br>Payable on an annual basis on each anniversary of the Protocol Effective Date |
| <b>Annual Adherence Fee for non-AFME members</b>       | <input type="checkbox"/> GBP <sup>7</sup><br>Payable on an annual basis on each anniversary of the Protocol Effective 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.

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<sup>6</sup> NB the Annual Adherence Fee will be determined at a later date in accordance with clause 3.3 of the Protocol.

<sup>7</sup> NB the Annual Adherence Fee will be determined at a later date in accordance with clause 3.3 of the 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 Sirs

**AFME Spanish Financial Transactions Tax 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 Spanish Financial Transactions Tax 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:

**EXHIBIT 4**

**Form of Withdrawal Letter**

**[Letterhead of Adhering Party]**

**FAO The Tax Division  
Association for Financial Markets in Europe  
39<sup>th</sup> Floor  
25 Canada Square  
London  
E14 5LQ  
United Kingdom**

[Date]

Dear Sirs

**AFME Spanish Financial Transactions Tax 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 Spanish Financial Transactions Tax 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 FSA number/SEC number/other regulator reference number][Legal Entity Identifier (LEI)]]<sup>8</sup> withdrawing from to the Protocol]*

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]

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<sup>8</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.

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



**EXHIBIT 5**

**Form of Notice of ceasing to be Investment Services Provider**

**[Letterhead of Adhering Party]**

**To:   FAO The Tax Division  
         Association for Financial Markets in Europe  
         39<sup>th</sup> Floor  
         25 Canada Square  
         London  
         E14 5LQ  
         United Kingdom**

[Date]

Dear Sirs,

**AFME Spanish Financial Transactions Tax Protocol – Notice of ceasing to be  
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 an Investment Services Provider for the purposes of, and as defined in, the AFME Spanish Financial Transactions Tax 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: