

# Futures and Derivatives Client Clearing Disclosures

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## RISK DISCLOSURE STATEMENT FOR FUTURES AND OPTIONS

The risk of loss in trading commodity futures contracts can be substantial. You should, therefore, carefully consider whether such trading is suitable for you in light of your circumstances and financial resources. You should be aware of the following points:

### FUTURES

(1) You may sustain a total loss of the funds that you deposit with your broker to establish or maintain a position in the commodity futures market, and you may incur losses beyond these amounts. If the market moves against your position, you may be called upon by your broker to deposit a substantial amount of additional margin funds, on short notice, in order to maintain your position. If you do not provide the required funds within the time required by your broker, your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.

(2) The funds you deposit with a futures commission merchant for trading futures positions are not protected by insurance in the event of the bankruptcy or insolvency of the futures commission merchant, or in the event your funds are misappropriated.

(3) The funds you deposit with a futures commission merchant for trading futures positions are not protected by the Securities Investor Protection Corporation even if the futures commission merchant is registered with the Securities and Exchange Commission as a broker or dealer.

(4) The funds you deposit with a futures commission merchant are generally not guaranteed or insured by a derivatives clearing organization in the event of the bankruptcy or insolvency of the futures commission merchant, or if the futures commission merchant is otherwise unable to refund your funds. Certain derivatives clearing organizations, however, may have programs that provide limited insurance to customers. You should inquire of your futures commission merchant whether your funds will be insured by a derivatives clearing organization and you should understand the benefits and limitations of such insurance programs.

(5) The funds you deposit with a futures commission merchant are not held by the futures commission merchant in a separate account for your individual benefit. Futures commission merchants commingle the funds received from customers in one or more accounts and you may be exposed to losses incurred by other customers if the futures commission merchant does not have sufficient capital to cover such other customers' trading losses.

(6) The funds you deposit with a futures commission merchant may be invested by the futures commission merchant in certain types of financial instruments that have been approved by the Commission for the purpose of such investments. Permitted investments are listed in Commission Regulation 1.25 and include: U.S. government securities; municipal securities; money market mutual funds; and certain corporate notes and bonds. The futures commission merchant may retain the interest and other earnings realized from its investment of customer funds. You should be familiar with the types of financial instruments that a futures commission merchant may invest customer funds in.

(7) Futures commission merchants are permitted to deposit customer funds with affiliated entities, such as affiliated banks, securities brokers or dealers, or foreign brokers. You should inquire as to whether your futures commission merchant deposits funds with affiliates and assess whether such deposits by the futures commission merchant with its affiliates increases the risks to your funds.

(8) You should consult your futures commission merchant concerning the nature of the protections available to safeguard funds or property deposited for your account.

(9) Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market reaches a daily price fluctuation limit ("limit move").

(10) All futures positions involve risk, and a "spread" position may not be less risky than an outright "long" or "short" position.

(11) The high degree of leverage (gearing) that is often obtainable in futures trading because the small margin requirements can work against you as well as for you. Leverage (gearing) can lead to large losses as well as gains.

(12) In addition to the risks noted in the paragraphs enumerated above, you should be familiar with the futures commission merchant you select to entrust your funds for trading futures positions. The Commodity Futures Trading Commission requires each futures commission merchant to make publicly available on its Web site firm specific disclosures and financial information to assist you with your assessment and selection of a futures commission merchant. Information regarding this futures commission merchant may be obtained by visiting our Web site, <https://www.bofaml.com/en-us/content/futures-options-otc-clearing.html>.

## OPTIONS

### Variable degree of risk

(13) Transactions in options carry a high degree of risk. Purchasers and seller of options should familiarize themselves with the type of option (*i.e.*, put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options must increase for your position to become profitable, taking into account the premium and all transaction costs.

(14) The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a future, the purchaser will acquire a futures position with associated liabilities for margin (see the section on Futures above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that the chance of such options becoming profitable is ordinarily remote.

(15) Selling ('writing' or 'granting') an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavorably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a future, the seller will acquire a position in a future with associated liabilities for margin (see the section on Futures above). If the position is 'covered' by the seller holding a corresponding position in the underlying interest or a future or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

(16) Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

## ADDITIONAL RISKS COMMON TO FUTURES AND OPTIONS

### Terms and conditions of contracts

(17) You should ask the firm with which you deal about the term and conditions of the specific futures or options which you are trading and associated obligations (*e.g.*, the circumstances under which you may become obligated to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

### Suspension or restriction of trading and pricing relationships

(18) Market conditions (*e.g.*, illiquidity) and/or the operation of the rules of certain markets (*e.g.*, the suspension of trading in any contract or contract month because of price limits or 'circuit breakers') may increase

the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

(19) Further, normal pricing relationships between the underlying interest and the future, and the underlying interest and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge 'fair' value.

### **Deposited cash and property**

(20) You should familiarize yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

### **Commission and other charges**

(21) Before you begin to trade, you should obtain a clear explanation of all commission, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

### **Currency risks**

(22) The profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

### **Trading facilities**

(23) Most open-outcry and electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Your ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or member firms. Such limits may vary; you should ask the firm with which you deal for details in this respect.

### **Electronic trading**

(24) Trading on an electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risk associated with the system including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instructions or is not executed at all.

### **Off-exchange transactions**

(25) In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange transactions. The firm with which you deal may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarize yourself with applicable rules and attendant risks.

**ALL OF THE POINTS NOTED ABOVE APPLY TO ALL FUTURES TRADING WHETHER FOREIGN OR DOMESTIC. IN ADDITION, IF YOU ARE CONTEMPLATING TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS, YOU SHOULD BE AWARE OF THE FOLLOWING ADDITIONAL RISKS:**

(26) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange, whereby a trade executed on

one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery, and clearing of transactions on such an exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use domestic alternative dispute resolution procedures. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

(27) Finally, you should be aware that the price of any foreign futures or option contract and, therefore, the potential profit and loss resulting therefrom may be affected by any fluctuation in the foreign exchange rate between the time the order is placed and the foreign futures contract is liquidated or the foreign option contract is liquidated or exercised.

**THIS BRIEF STATEMENT CANNOT, OF COURSE, DISCLOSE ALL THE RISKS AND OTHER ASPECTS OF THE COMMODITY MARKETS.**

## **CROSS TRADE CONSENT**

BofAS, its officers, directors, employees or affiliates or other customers of BofAS or of the servicing floor broker may be from time to time on the opposite side of orders for physicals or for purchase or sale of futures contracts and option contracts placed for your Account in conformity with regulations of the CFTC and the by-laws, rules and regulations of the applicable market (and its clearing organization, if any) on which such order is executed.

## **ELECTRONIC TRADING AND ORDER ROUTING SYSTEMS DISCLOSURE STATEMENT<sup>1</sup>**

Electronic trading and order routing systems differ from traditional open outcry pit trading and manual order routing methods. Transactions using an electronic system are subject to the rules and regulations of the exchange(s) offering the system and/or listing the contract. Before you engage in transactions using an electronic system, you should carefully review the rules and regulations of the exchange(s) offering the system and/or listing contracts you intend to trade.

### **DIFFERENCES AMONG ELECTRONIC TRADING SYSTEMS**

Trading or routing orders through electronic systems vary widely among the different electronic systems. You should consult the rules and regulations of the exchange offering the electronic system and/or listing the contract traded or order routed to understand, among other things, in the case of trading systems, the system's order matching procedure, opening and closing procedures and prices, error trade policies, and trading limitations or requirements; and in the case of all systems, qualifications for access and grounds for termination and limitations on the types of orders that may be entered into the system. Each of these matters may present different risk factors with respect to trading on or using a particular system. Each system may also present risks related to system access, varying response times, and security. In the case of internet-based systems, there may be additional types of risks related to system access, varying response times and security, as well as risks related to service providers and the receipt and monitoring of electronic mail.

### **RISK ASSOCIATED WITH SYSTEM FAILURE**

Trading through an electronic trading or order routing system exposes you to risks associated with system or component failure. In the event of system or component failure, it is possible that, for a certain time period, you may not be able to enter new orders, execute existing orders, or modify or cancel orders that were previously entered. System or component failure may also result in loss of orders or order priority.

### **SIMULTANEOUS OPEN OUTCRY PIT AND ELECTRONIC TRADING**

Some contracts offered on an electric trading system may be traded electronically and through open outcry during the same trading hours. You should review the rules and regulations of the exchange offering the system and/or listing the contract to determine how orders that do not designate a particular process will be executed.

### **LIMITATION OF LIABILITY**

Exchanges offering an electronic trading or order routing system and/or listing the contract may have adopted rules to limit their liability, the liability of Futures Commission Merchants, and software and communication system vendors and the amount of damages you may collect for system failure and delays. These limitations of liability provisions vary among the exchanges. You should consult the rules and regulations of the relevant exchanges(s) in order to understand these liability limitations.

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<sup>1</sup> Each exchange's relevant rules are available upon request from the industry professional with whom you have an account. Some exchanges' relevant rules also are available on the exchange's internet home page.

## DISCLOSURE OF FUTURES COMMISSION MERCHANT MATERIAL CONFLICTS OF INTEREST

The purpose of this document is to provide you with information about some of the material conflicts of interest that may arise between you and BofAS in connection with BofAS entering into with you or performing services for you with respect to futures, options on futures, swaps (as defined in the Commodity Exchange Act), forwards or other commodity derivatives ("Contracts"). Conflicts of interests can arise in particular when BofAS has an economic or other incentive to act, or persuade you to act, in a way that favors BofAS or its affiliates.

Under applicable law, including regulations of the Commodity Futures Trading Commission ("CFTC"), not all swaps are required to be executed on an exchange or swap execution facility (each, a "Trading Facility"), even if a Trading Facility lists the swap for trading. In such circumstances, it may be financially advantageous for BofAS or its affiliates to execute a swap with you bilaterally in the over-the-counter market rather than on a Trading Facility and, to the extent permitted by applicable law, we may have an incentive to persuade you to execute your swap bilaterally.

Applicable law may permit you to choose the CFTC-registered derivatives clearing organization ("Clearing House") to which you submit a swap for clearing. You should be aware that BofAS may not be a member of, or may not otherwise be able to submit your swap to, the Clearing House of your choice. BofAS consequently has an incentive to persuade you to use a Clearing House in which BofAS or its affiliates is a member.

You also should be aware that BofAS or one or more of its affiliates may own stock in, or have some other form of ownership interest in, one or more U.S. or foreign Trading Facilities or Clearing Houses where your transactions in Contracts may be executed and/or cleared. As a result, BofAS or its affiliates may receive financial or other benefits related to its ownership interest when Contracts are executed on a given Trading Facility or cleared through a given Clearing House, and BofAS would, in such circumstances, have an incentive to cause Contracts to be executed on that Trading Facility or cleared by that Clearing House. In addition, employees and officers of BofAS or its affiliates may also serve on the board of directors or on one or more committees of a Trading Facility or Clearing House.

In addition, Trading Facilities and Clearing Houses from time to time may have in place other arrangements that provide their members or participants with volume, market-making or other discounts or credits, may call for members or participants to pre-pay fees based on volume thresholds, or may provide other incentive or arrangements that are intended to encourage market participants to trade on or direct trades to that Trading Facility or Clearing House. BofAS, or one or more of its affiliates, may participate in and obtain financial benefits from such incentive programs.

When we provide execution services to you (either in conjunction with clearing services or in an execution-only capacity), we may direct orders to affiliated or unaffiliated market-makers, other executing firms, individual brokers or brokerage groups for execution. When such affiliated or unaffiliated parties are used, they may, where permitted, agree to price concessions, volume discounts or refunds, rebates or similar payments in return for receiving such business. Likewise, where permitted by law and the rules of the applicable Trading Facility, we may solicit a counterparty to trade opposite your order or enter into transactions for its own account or the account of other counterparties that may, at times, be adverse to your interests in a Contract. In such circumstances, that counterparty may make payments and/or pay a commission to BofAS in connection with that transaction. The results of your transactions may differ significantly from the results achieved by us for our own account, our affiliates, or for other customers.

In addition, where permitted by applicable law (including, where applicable, the rules of the applicable Trading Facility), BofAS, its directors, officers, employees and affiliates may act on the other side of your order or transaction by the purchase or sale for an account, or the execution of a transaction with a counterparty, in which BofAS or a person affiliated with BofAS has a direct or indirect interest, or may effect any such order with a counterparty that provides BofAS or its affiliates with discounts related to fees for Contracts or other products. In cases where we have offered you a discounted commission or clearing fee for Contracts executed through BofAS as agent or with BofAS or its affiliate acting as counterparty, BofAS or its affiliate may do so because of the enhanced profit potential resulting from acting as executing broker or counterparty.

BofAS or its affiliates may act as, among other things, an investor, research provider, placement agent, underwriter, distributor, remarketing agent, structurer, securitizer, lender, investment manager, investment adviser, commodity

trading advisor, municipal advisor, market maker, trader, prime broker or clearing broker. In those and other capacities, BofAS, its directors, officers, employees and affiliates may take or hold positions in, or advise other customers and counterparties concerning, or publish research or express a view with respect to, a Contract or a related financial instrument that may be the subject of advice from us to you. Any such positions and other advice may not be consistent with, or contrary to, your interests or to positions which are the subject of advice previously provided by BofAS or any of its affiliates to you, and unless otherwise disclosed in writing, BofAS or any of its affiliates are not necessarily acting in your best interest and are not assessing the suitability for you of any such Contract or related financial instrument. Our acting in one or more of the capacities noted above may give BofAS or any of its affiliates access to information relating to markets, investments and products. As a result BofAS or any of its affiliates may be in possession of information which, if known to you, might cause you to seek to dispose of, retain or increase your investment in one or more Contracts or other financial instruments. BofAS or any of its affiliates will be under no duty to make any such information available to you, except to the extent we have agreed in writing or as may be required under applicable law.

## DIRECT ORDER TRANSMITTAL CLIENT DISCLOSURE STATEMENT<sup>2</sup>

This statement applies to the ability of authorized clients of BofAS to place orders for foreign futures and options transactions directly with non-US entities (each, an “**Executing Firm**”) that execute transactions on behalf of BofAS’ foreign futures and options customer omnibus accounts.

Please be aware of the following should you be permitted to place the type of orders specified above.

- The orders you place with an Executing Firm are for BofAS’ foreign futures and options customer omnibus account maintained with a foreign clearing firm. Consequently, BofAS may limit or otherwise condition the orders you place with the Executing Firm.
- You should be aware of the relationship of the Executing Firm and BofAS. BofAS may not be responsible for the acts, omissions, or errors of the Executing Firm, or its representatives, with which you place your orders. In addition, the Executing Firm may not be affiliated with BofAS. If you choose to place orders directly with an Executing Firm, you may be doing so at your own risk.
- It is your responsibility to inquire about the applicable laws and regulations that govern the foreign exchanges on which transactions will be executed on your behalf. Any orders placed by you for execution on that exchange will be subject to such rules and regulations, its customs and usages, as well as any local laws that may govern transactions on that exchange. These laws, rules, regulations, customs and usages may offer different or diminished protection from those that govern transactions on US exchanges. In particular, funds received from clients to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction. United States regulatory authorities may be unable to compel the enforcement of the rules of regulatory authorities or markets in non-US jurisdictions where transactions may be effected.
- It is your responsibility to determine whether the Executing Firm has consented to the jurisdiction of the courts in the United States. In general, neither the Executing Firm nor any individuals associated with the Executing Firm will be registered in any capacity with the Commodity Futures Trading Commission. Similarly, your contacts with the Executing Firm may not be sufficient to subject the Executing Firm to the jurisdiction of courts in the United States in the absence of the Executing Firm’s consent. Accordingly, neither the courts of the United States nor the Commission’s reparations program may be available as a forum for resolution of any disagreements you may have with the Executing Firm, and your recourse may be limited to actions outside the United States.

Unless you object within five (5) days, by giving us written notice, BofAS will assume your consent to the aforementioned conditions. Any such notice should be directed to BofAS, 540 W Madison St., Chicago, IL 60661, Attention: Futures New Accounts.

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<sup>2</sup> This disclosure statement is relevant only if BofAS has granted the direct order transmittal authorization described above to you. Pursuant to CFTC Regulation 30.12, you are eligible to receive such authorization only if (1) you are an eligible swap participant, as defined in former CFTC Regulation 35.1(b)(2), or (2) your decisions to invest in foreign futures or foreign options transactions are made by a commodity trading advisor (“CTA”) that is subject to regulation under the Commodity Exchange Act or by a foreign person performing a similar role or function subject as such to foreign regulation, and certain other conditions are met.

## FOREIGN BROKER OR TRADER DISCLOSURE STATEMENT AND SPECIAL CALLS FOR INFORMATION

In accordance with Rules 15.05 and 21.03 of the CFTC, 17 C.F.R. §§15.05 and 21.03, we are considered to be your agent for purposes of accepting delivery and service of communications from or on behalf of the CFTC regarding any commodity futures contracts or commodity option contracts which are or have been maintained in your account(s) with us. In the event that you are acting as agent or broker for any other person(s), we are also considered to be their agent, and the agent of any person(s) for whom they may be acting as agent or broker, for purposes of accepting delivery and service of such communications. Service or delivery to us of any communication issued by or on behalf of the CFTC (including any summons, complaint, order, subpoena, special call, request for information, notice, correspondence or other written document) will be considered valid and effective service or delivery upon you or any person for whom you may be acting, directly or indirectly, as agent or broker.

You should be aware that Rule 15.05 also provides that you may designate an agent other than BofAS. Any such alternative designation of agency must be evidenced by a written agency agreement which you must furnish to us and which we, in turn, must forward to the CFTC. If you wish to designate an agent other than us, please contact us in writing. You should consult 17 C.F.R. § 15.05 for a more complete explanation of the foregoing.

Upon a determination by the CFTC that information concerning your account(s) with us may be relevant in enabling the CFTC to determine whether the threat of a market manipulation, corner, squeeze, or other market disorder exists, the CFTC may issue a call for specific information from us or from you. In the event that the CFTC directs a call for information to us, we must provide the information requested within the time specified by the CFTC. If the CFTC directs a call for information to you through us as your agent, we must promptly transmit the call to you, and you must provide the information requested within the time specified by the CFTC. If any call by the CFTC for information regarding your account(s) with us is not met, the CFTC has authority to restrict such account(s) to trading for liquidation only. You have the right to a hearing before the CFTC to contest any call for information concerning your account(s) with us, but your request for a hearing will not suspend the CFTC's call for information unless the CFTC modifies or withdraws the call. Please consult 17 C.F.R. §21.03 for a more complete description of the foregoing (including the type of information you may be required to provide).

**Certain additional regulations may affect you. Part 17 of the CFTC Regulations, 17 C.F.R. Part 17, requires each futures commission merchant and foreign broker to submit a report to the CFTC with respect to each account carried by such futures commission merchant or foreign broker which contains a reportable futures position. (Specific reportable position levels for all futures contracts traded on U.S. exchanges are established in Rule 15.03.) In addition, Part 18 of the CFTC Regulations, 17 C.F.R. Part 18, requires all traders (including foreign traders) who own or control a reportable futures or options position and who have received a special call from the CFTC to file a Large Trader Reporting Form (Form 103) with the CFTC within one day after the special call upon such trader by the CFTC. Please consult 17 C.F.R. Parts 17 and 18 for more complete information with respect to the foregoing.**

## NOTICE TO CUSTOMERS: EXCHANGE FOR RELATED POSITIONS

Certain futures exchanges permit eligible customers to enter into privately-negotiated off-exchange futures or option on futures transactions (collectively, “**futures**”) known as exchange for related positions (“**EFRP**”). An EFRP involves the simultaneous execution of a futures transaction and an equivalent related position. A “related position” is defined to mean the cash commodity underlying the exchange contract or a by-product, a related product or an over-the-counter (“**OTC**”) derivative instrument of such commodity that has a reasonable degree of price correlation to the commodity underlying the exchange contract.

Types of EFRPs include:

- Exchange of Futures for Physical (“**EFP**”) or Against Actual (“**AA**”) – the simultaneous execution of a futures contract and a corresponding physical transaction or a forward contract on a physical transaction.
- Exchange of Futures for Risk (“**EFR**”) or Exchange of Futures for Swap (“**EFS**”) – the simultaneous execution of a futures contract and a corresponding OTC swap or other OTC derivative transaction.
- Exchange of Option for Option (“**EOO**”) – the simultaneous execution of an option contract and a corresponding transaction in an OTC option or other OTC instrument with similar characteristics.

EFRP transactions are subject to Applicable Law, as defined in the agreement between a futures commission merchant (“**FCM**”) and its customers. Customers that engage in EFRP transactions are responsible for reviewing, understanding and complying with the provisions of Applicable Law governing EFRP transactions, including, but not limited to, Rule 538 of the CME Group (CME, CBOT and NYMEX) and Rule 4.06 of ICE Futures US, and the frequently asked questions and other guidance that each exchange has issued with respect thereto.<sup>3</sup>

Customers are subject to the jurisdiction of the exchange through which the EFRP transaction is entered into and, therefore, may be required to produce records and otherwise cooperate in any inquiry that the exchange may undertake with respect to the EFRP transaction. Moreover, customers may be sanctioned by the exchange if an EFRP transaction does not comply with the requirements of applicable exchange rules and guidance. For this reason, customers are encouraged to review these requirements with any employees that may engage in EFRP transactions on their behalf.

Certain common requirements of the rules and guidance issued by CME Group and ICE Futures US are summarized below. However, this summary is not a substitute for the customer’s obligation to review and understand such rules and related guidance in their entirety.

- The futures contract and the related position must be effected for the account of the same beneficial owner. If the customer is the seller of (or the holder of the short market exposure associated with) the related position, the customer must be the buyer of the futures contract(s) being exchanged in the EFRP; conversely, if the customer is the buyer of (or the holder of the long market exposure associated with) the related position, the customer must be the seller of the futures contract(s) being exchanged in the EFRP.
- The opposing accounts to an EFRP transaction must be: (a) independently controlled accounts with different beneficial ownership; (b) independently controlled accounts of separate legal entities with common beneficial ownership; or (c) independently controlled accounts of the same legal entity, *provided* the account controllers operate in separate business units. For EFRP transactions between accounts with common beneficial ownership, the parties to the trade must be able to demonstrate the independent control of the accounts and that the transaction had economic substance for each party to the trade.
- Generally, there may be only two parties to an EFRP transaction. However, a third party, acting as principal, may facilitate the related position component of an EFRP on behalf of a customer, *provided* the third party is able to demonstrate that the related position was passed through to the customer that received the exchange contract as part of the EFRP.

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<sup>3</sup> The CME Group’s most recent guidance with respect to EFRP transactions may be found at <http://www.cmegroup.com/rulebook/rulebook-harmonization.html>; ICE Futures US’ most recent guidance with respect to EFRPs may be found at <https://www.theice.com/futures-us/market-resources>. This guidance may be revised from time-to-time. Customers should confirm that they are reviewing the most current guidance.

- Each EFRP requires a *bona fide* transfer of ownership of the cash commodity between the parties or a *bona fide*, legally binding contract between the parties consistent with relevant market conventions for the particular related position transaction.
- Each side of an EFRP transaction must be independent. For example, confirmation of the related position may not be contingent on the acceptance of the futures transaction for clearing.
- Contingent EFRP transactions are prohibited. EFRP transactions may not be contingent upon the execution of another EFRP or related transaction that results in the offset of the related position without the incurrence of market risk that is material in the context of the related position transactions.
- Foreign currency EFPs, with immediate offset of the cash component of the transaction, are permitted, *provided* the parties to the transaction have acknowledged that, in the event the futures component of the transaction fails to clear, their responsibility for any resultant profit or loss associated with an offset of the cash component of the transaction.
- A party providing inventory financing for a storable agricultural, energy or metals commodity may, through the execution of an EFP, purchase the commodity and sell the equivalent quantity of futures contracts to a counterparty, and grant to the counterparty the non-transferable right, but not the obligation, to execute a second EFP during a specified time period in the future which will have the effect of reversing the original EFP.
- An EFRP may incorporate multiple exchange components with different market bias, *provided* the related components incur material market risk. An EFRP may incorporate multiple related position components, *provided* the net exposure of the related position components is approximately equivalent to the quantity of futures exchanged or, in the case of an EOO, the net delta-adjusted quantity of the OTC option components is approximately equivalent to the delta-adjusted quantity of the exchange-listed option.
- EFRP transactions may be executed at any commercially reasonable price agreed by the parties, *provided* the price of the exchange component of the EFRP transaction conforms to the minimum tick increment of the futures contract under exchange rules. Parties may be asked to demonstrate that EFRPs executed at prices away from the prevailing market price were executed at such prices for legitimate commercial purposes.
- The customer must maintain all records relevant to the futures transaction and the related cash, swap or derivative transaction in accordance with applicable exchange rules. Upon request, the customer must provide its FCM with documentation sufficient to verify its purchase or sale of the related position.
- EFR and EOO participants must comply with applicable Commodity Futures Trading Commission requirements governing eligibility to transact the related position component of an EFR or EOO. Generally, EFR and EOO participants must be "eligible contract participants," as defined in section 1a(18) of the Commodity Exchange Act.
- A swap that is traded on or subject to the rules of an exchange or a swap execution facility ("**SEF**") is ineligible to be the related position component of an EFR or EOO transaction. OTC swaps that are bilaterally negotiated and submitted for clearing-only to a DCO qualify as a related position, *provided* such swaps have a reasonable degree of correlation to the underlying exchange product. Such swaps should be governed by the terms and conditions of an ISDA agreement negotiated between the parties.

## POSITION LIMIT AND LARGE OPEN POSITION REPORTING REQUIREMENTS FOR OPTIONS AND FUTURES TRADED ON THE HONG KONG EXCHANGES

The Hong Kong regulatory regime imposes position limit and reportable position requirements for stock options and futures contracts traded on the Stock Exchange of Hong Kong and on the Hong Kong Futures Exchange.

These requirements are set out in the Hong Kong Securities and Futures (Contracts Limits and Reportable Positions) Rules (as amended, the “**Rules**”) made by the Securities and Futures Commission (“**SFC**”) under the Securities and Futures Ordinance. The Rules impose monitoring and reporting obligations with regard to large open positions. Where you are holding a reportable position for your client, you must also disclose the identity of the client. For the purposes of the Rules, a person holding or controlling a reportable position is required to notify the Hong Kong exchanges of that reportable position and this will in general cover both the owner of the position – i.e. the beneficial owner, and the person who is ultimately responsible for originating instructions you receive for transactions - *i.e.*, the transaction originator.

Further guidance on the Rules and what they require is set out in the SFC’s Guidance Note on Position Limits and Large Open Position Reporting Requirements. Copies of the Rules and Guidance Note can be downloaded from the SFC’s website ([www.sfc.hk](http://www.sfc.hk)).

### Purpose of the Rules

The purpose of the Rules is to avoid potentially destabilizing market conditions arising from an over-concentration of futures/options positions accumulated by a single person or group of persons acting in concert, and to increase market transparency.

Some of the major requirements of the Rules and Guidance Note are summarised below. However, you should review the Rules and Guidance Note in their entirety, and consult with your legal counsel in order to ensure that you have a full understanding of your obligations in connection with trading in Hong Kong.

Please note that the Rules make you responsible for ensuring that you comply with the Rules. Section 8 of the Rules makes it a criminal offence not to comply (subject to a maximum fine of HK\$100,000 and imprisonment for up to 2 years).

There have been various SFC investigations and enforcement actions with respect to breaches of the Rules, including breaches by non-Hong Kong persons. It should be noted that the SFC has expressly stated that it is not sympathetic to claims by overseas persons that they are not aware of the Hong Kong restrictions, and that a failure to trade within the limits or make reports reflects badly on a firm’s internal control measures (which might itself lead to disciplinary action).

### Position Limits

The Rules say that you may not hold or control futures contracts or stock options contracts in excess of the prescribed limit, unless you have obtained the prior authorisation of the Hong Kong regulators. For example, the prescribed limit for Hang Seng Index futures and options contracts and Mini-Hang Seng Index futures and options contracts is 10,000 long or short position delta limit for all contract months combined, provided the position delta for the Mini-Hang Seng Index futures contracts or Mini-Hang Seng Index options contracts shall not at any time exceed 2,000 long or short for all contract months combined. For many futures contracts and stock options contracts, the position limit is set at 5,000 contracts for any one contract/expiry month.

The prescribed limit for each contract traded on the Hong Kong exchanges is set out in the Rules and the website of the Hong Kong exchanges ([www.hkex.com.hk](http://www.hkex.com.hk)).

### Reportable Positions

If you hold or control an open position in futures contracts or stock options contracts in excess of the specified level, the Rules require you to report that position in writing to the relevant Hong Kong exchange (i) within one day

(ignoring Hong Kong public holidays and Saturdays) of first holding or controlling that position, and (ii) on each succeeding day on which you continue to hold or control that position.

The specified reporting level for each contract traded on the Hong Kong exchanges is set out in the Rules and the website of the Hong Kong exchanges ([www.hkex.com.hk](http://www.hkex.com.hk)). The report must state (among others):

- (a) the number of contracts held or controlled in respect of the position in each relevant contract month; and
- (b) if the position is held or controlled for a client, the identity of the client, and the number of contracts held or controlled for such person in respect of the reportable position in each relevant contract month.

### Scope of the Rules

You should note:

- The prescribed limits and reportable position requirements apply to all positions held or controlled by any person, including positions in any account(s) that such person controls, whether directly or indirectly. The SFC takes the view that a person is regarded as having control of positions if, for example, the person is allowed to exercise discretion to trade or dispose of the positions independently without the day-to-day direction of the owner of the positions. (Section 7 of the Rules and Para. 2.6 of the Guidance Note)
- If a person holds or controls positions in accounts at more than one intermediary, the Rules require him to aggregate the positions for the purposes of applying the prescribed limits and reportable position requirements. (Para. 6.1 of the Guidance Note)
- The person holding or controlling a reportable position in accounts at more than one intermediary has the sole responsibility to notify the relevant exchange of the reportable position. The person may request its intermediary to submit the notice of the reportable position. If an intermediary agrees to submit the notice on its behalf, the person should provide to the intermediary its total positions held at other intermediaries so that the intermediary can submit the notice of the reportable position. Alternatively, the person can ask all of its intermediaries to report the positions in each of the accounts separately to the exchange, even if the positions in the individual accounts do not reach the reportable level. (Paras. 4.6 and 6.2 of the Guidance Note)
- Where you are holding a reportable position for your client, the Rules say that you must disclose the identity of the client. The SFC's view is that, for the purposes of the Rules, a person holding or controlling a reportable position is required to notify the Hong Kong exchanges of that reportable position and this will in general cover both the owner of the position – i.e. the beneficial owner, and the person who is ultimately responsible for originating instructions you receive for transactions - i.e., the transaction originator. (Paras. 5.4 and 6.4 of the Guidance Note)
- The Rules apply separately to the positions held by each of the underlying clients of an omnibus account, except where the omnibus account operator has discretion over the positions in which case the account operator must also aggregate these positions with his own positions. Positions held by different underlying clients should not be netted off for purposes of calculating and reporting reportable positions or determining compliance with the prescribed limits. (Para. 6.8 of the Guidance Note)

### Requirements of the Hong Kong exchanges

The Hong Kong exchanges have developed more detailed reporting requirements to facilitate their monitoring of reportable positions as required under Section 6 of the Rules. These requirements include the use of a prescribed form for reporting and the specific deadline for submission of the notice of reportable positions (by 12:00 noon (Hong Kong time) of the next business day after the reportable positions are opened or accumulated). The Hong Kong exchanges also request provision of additional information other than that specified under the Rules such as (i) the account number, account name and identity of the transaction originator of a reportable position, (ii) the nature of a reportable position, and (iii) account type.

Pursuant to the Frequently Asked Questions on Position Limits and Large Open Position Reporting published by the Hong Kong exchanges, it has been clarified that an exchange participant may include all positions (for its own account and for all or certain clients) in its large open position report to the Hong Kong exchanges even though there is no statutory or regulatory requirement to report positions below the applicable reporting level under the Rules.

The Hong Kong Futures Exchange has separately implemented a large open position reporting requirement on stock index futures and options products. Exchange participants with open positions held for their own account or any client exceeding 60% of the position limit of stock index futures and option products with the same underlying index, will be required to report all outstanding positions in the products concerned to the Hong Kong Futures Exchange, including those positions that are below the reporting threshold under the Rules.

In light of the above, we will, as determined in our discretion, seek to report any or all positions of your account(s) (including information relating to such account(s)) to the Hong Kong exchanges as required by us to (i) administer the terms of business in providing services to you, (ii) implement the appropriate operational arrangements for the purposes of complying with the Rules and/or the requirements of the Hong Kong exchanges, and/or (iii) otherwise act consistently with market practice of exchange participants, whether or not such reporting or disclosure of information is with respect to positions above the reporting level under the Rules.

## **A GUIDE TO THE STRUCTURE, MARKET TERMINOLOGY AND ORDER EXECUTION OF THE LONDON METAL EXCHANGE INTRODUCTION AND PURPOSE**

1. This document is designed to provide market participants of the London Metal Exchange (LME), and particularly Client of Members, with an overview of the structure of the LME, market terminology, and order execution. It is not a comprehensive trading guide, nor a complete guide to market terminology. Market participants should always ensure that their requirements are explained in detail to the Member responsible for order execution.
2. This document is not a substitute for reading the LME Rulebook, relevant Notices, or the terms of business agreed between Clients and Members. It is not binding on the LME and is provided by way of guidance only.
3. Capitalised terms not otherwise defined herein shall have the meaning ascribed to them in the LME Rulebook, as amended from time to time.

### **THE LME**

#### **Execution Venues**

4. Trades on the LME may be agreed on any of the LME's three trading venues (defined as Execution Venues in the LME Rulebook): by open outcry in the Ring (during ring and kerb sessions), between Members in the inter-office market, and over the Exchange's electronic trading system, 'LMEselect'. LME trading times are available on the LME website at <https://www.lme.com/en-GB/Trading/Trading-venues/Trading-times#tabIndex=0>.

#### **The Ring**

5. Only Category 1 Members may trade in the Ring.
6. Clients can follow the market activity by monitoring quoted and traded prices disseminated via the LME market data dissemination system, or by listening to the simultaneous floor commentary provided by Member(s). The LME market data dissemination system publishes prices traded during Ring and kerb sessions on price vendor information services such as Reuters.
7. Members can continue to 'make a market' when requested by a Client during the Ring and kerb sessions, although this is entirely at the Member's discretion. Alternatively, the Client can decide whether to place an order using the 'order styles' mentioned below.
8. Certain Contracts (including Ferrous Futures and LMEprecious Contracts – see below) are not available for trading in the Ring.

#### **Inter-office**

9. Inter-office trading is conducted between Members, or between Members and their Clients, by telephone or by electronic means. On contacting a Member for a quote, Clients will usually be provided with the Member's current bid and offer. The Client may trade on this quote, call another Member in an attempt to improve the quote, leave a resting order with a Member, or wait and monitor prices on the LME market data dissemination system.

#### **LMEselect**

10. Category 1, 2, 3 and 4 Members and LMEprecious Members may be LMEselect Participants and enter into Contracts ('LME Contracts') on LMEselect.
11. LMEselect allows LMEselect Participants to trade LME Contracts, including (but not limited to) Futures Contracts, Metal Options, Traded Average Price Options, Monthly Average Price Futures, LMEmini Contracts and Index Futures. Some brokers offer their Clients an order-routing facility via an API where they can view LMEselect prices, execute trades, and place resting orders. All trading on LMEselect is in US dollars.

12. Depending on the time of day, it is possible for Members to deal by telephone or electronically in the inter-office, by LMEselect, or in the Ring. Clients should specify which mechanism their broker should use to effect an order, where they have a preference.
13. Information vendors will display, amongst other things, firm prices of the best bid and offer available on LMEselect, the total volumes available at these prices (subject to iceberg orders – see paragraph 57 below), and the price and volume of each trade. Clients may effect back-to-back Client Contracts with Category 1, 2 and 4 Members based upon prices available on LMEselect, whether on the telephone or via electronic order-routing systems.
14. Where a Member permits a Client to use the order-routing facility of the LME Select API, this will give rise to a Client Contract as well as one or more Cleared Contracts. The Client Contract must be on the same commercial terms as the relevant Cleared Contract (save that it may be marked up or down to reflect a commission payable by the Client). The Clearing Member must ensure that the Client Contract and the relevant Cleared Contracts are inputted into the Matching System, and that Client orders are not offset against each other (see also “Transacting on behalf of Clients” below).

### **Contract Formation & Clearing**

15. Trades agreed on the LME shall give rise either to (a) Cleared Contracts, or (b) Cleared Contracts and back-to-back Client Contracts. Each Trading Member is responsible for the input into the Exchange’s Matching System, ‘LMEsmart’, of all Agreed Trades by it in relation to Contracts.
16. Cleared Contracts are cleared by the LME’s appointed clearing house, LME Clear. LME Clear clears LME Contracts on an open offer basis. LME Clear will make an offer to each party to the trade: it will offer to act as the buyer to the party who wishes to be the seller, and it will offer to act as the seller to the party who wishes to be the buyer. On acceptance of LME Clear’s offer by each party, two Cleared Contracts will be formed: one between LME Clear and the seller; another between LME Clear and the buyer. The time of execution will depend on the Execution Venue:
  - transactions (i.e. Agreed Trades) agreed in the Ring – the Cleared Contracts will arise at the time the trade is agreed in the Ring;
  - Agreed Trades arising in LMEselect – the execution time of the Cleared Contracts will be the point at which LMEselect confirms that the Agreed Trade has been matched and that all pre-execution checks have been satisfied; and
  - Agreed Trades in the inter-office telephone market – these will initially form “Contingent Agreements to Trade”, the particulars of which the parties must then submit to the LME Matching System. The time of execution of the Cleared Contracts will be at the point that the Matching System confirms that the trades have been matched and that all pre-execution checks have been satisfied.
17. Where an Agreed Trade is made with a Client, upon execution of the Agreed Trade a Cleared Contract shall be formed between the responsible Clearing Member and LME Clear and a back-to-back Client Contract shall automatically and immediately come into effect between the Client and the Member on the same terms as the Cleared Contract.<sup>4</sup>
18. In order to maintain the smooth and orderly operation of the market, the LME and LME Clear will carry out a number of pre-trade and post-trade checks. Further, Members must have adequate processes in place to ensure both they and their Clients have sufficient collateral in place before entering into trades.

### **LME Base & LMEprecious**

19. The LME offers contracts in base and ferrous metals (described in the Rules as “LME Base Contracts”) and precious metals (described in the Rules as “LMEprecious Contracts”). The LME has seven different categories of membership for the LME Base Service and three different categories of membership for the LMEprecious

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<sup>4</sup> There are specific arrangements where the Client is a Category 4 Member or LMEprecious Non-Clearing Member. These are covered by LME Notice 17/184 dated 25 May 2017.

Service. LMEprecious Contracts are operationally traded in the same way as existing LME Base Contracts, using the same systems, connectivity and rulebook, with some minor differences.

20. One of the key differences is that the LME Base Service and the LMEprecious Service differ in the way that Agreed Trades are booked in LMEsmart. Where an Agreed Trade relates to an LME Base Contract, it shall be booked in LMEsmart in a manner to ensure the following allocation:
- a. an Agreed Trade between two Clearing Members shall be allocated to each Clearing Member's house account at LME Clear;
  - b. an Agreed Trade between a Client and the Clearing Member responsible for clearing the Agreed Trade shall result in the allocation of Cleared Contracts to both the Clearing Member's house account and the Clearing Member's appropriate client account at LME Clear; and
  - c. an Agreed Trade between a Client and any other person shall result in the allocation of Cleared Contracts to both the house account of the Clearing Member responsible for clearing the Agreed Trade and the client account of the Clearing Member responsible for clearing the Agreed Trade.
21. This is sometimes referred to as a "T4" model. In cases (b) and (c) above, the trade must initially be entered into the house account, and then crossed out of the house account into the client account.
22. On the other hand, where an Agreed Trade relates to an LMEprecious Contract it shall be booked in LMEsmart in a manner to ensure the following allocation:
- a. an Agreed Trade that is a proprietary trade of an LMEprecious Clearing Member shall be allocated to the house account of the LMEprecious Clearing Member at LME Clear; and
  - b. an Agreed Trade made by a Member, and for which an LMEprecious General Clearing Member is responsible for clearing such Agreed Trade, may be allocated either to a house account of the LMEprecious General Clearing Member (where the Agreed Trade is a proprietary trade of the LMEprecious General Clearing Member) or a client account of the LMEprecious General Clearing Member (in any other circumstance).
23. This is sometimes referred to as a "T2" model. In contrast to the T4 model, there is no need initially to enter an Agreed Trade on behalf of a Client into the house account and then cross it out of the house account into the client account.
24. There are also different settlement mechanisms for different Contracts: most LME Base Contracts are physically deliverable (with the exception of certain Contracts, including Ferrous Futures, which are cash-settled), and so certain categories of Members must be LMEsword Account Holders for the LME Base Service. LMEprecious Contracts, on the other hand, settle against unallocated precious metal via an account at a Precious Metal Clearer.

### Principal Nature

25. All LME Contracts are between parties acting as principals. This prevents any party entering into an LME Contract as agent for someone else but does not prevent an agent arranging a Contract between two parties if the resulting LME Contract is between disclosed parties, each acting as a principal. It is an essential requirement of an LME Client Contract that one party must be Category 1, 2 or 4 Member (or the equivalent LMEprecious category<sup>5</sup>). A list of members is on the LME website: [www.lme.com](http://www.lme.com). A principal relationship does not mean that members do not take on quasi-fiduciary responsibilities when they execute trades for Clients. In particular, if a Member undertakes to deliver a particular service, for example, to deal a specific number of lots 'in the Ring', then it should take care to ensure that it complies with all the terms of such a transaction.

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<sup>5</sup> A Category 2 Member is equivalent to an LMEprecious General Clearing Member. A Category 4 Member is equivalent to an LMEprecious Non-Clearing Member.

26. In respect of Agreed Trades between Members, an LME broker buying metal from another LME broker cannot do so as agent for its Client. Where an LME broker buys metal from another LME broker with a view to selling that metal to its Client, this is achieved by entering into a back-to-back Client Contract with the Client. Brokers and Clients can agree the conditions that apply to their Client Contracts. For example, a Client may make it a condition to its entry of a Client Contract that the broker must enter into a back-to-back Agreed Trade with another Member for the metal being bought or sold. This does not make the customer a party to the Agreed Trade but does create additional duties and obligations owed by the broker under the Client Contract.
27. Open position statements issued to Clients must state clearly 'THIS IS AN LME REGISTERED CLIENT CONTRACT'. Contract criteria relating to LME Contracts, including metal specifications, acceptable currencies, prompt dates, option strike prices for metals etc. are detailed in the LME Rulebook and relevant Notices.

### **OTC Contracts and Use of LME IP**

28. Instead of entering into Contracts governed by the LME Rules, Members and other third parties may enter into 'over-the-counter' (OTC) contracts in respect of LME deliverable metal. Where this is the case, the contract should clearly state that 'THIS IS NOT AN LME REGISTERED CLIENT CONTRACT'. OTC contracts are not governed by the LME Rules and are not registered with, and cleared by, LME Clear, meaning that both parties to the contract could be exposed to losses if the either party defaults. Unlike LME Contracts, OTC contracts do not benefit from Part VII protection in the event of the default of the Member, which means that the general law of insolvency would apply on default rather than the LME and LME Clear's purpose-designed default rules. Also, contracts that are opened and closed at the same broker do not benefit from the transparent global pool of competitive offers which the LME facilitates. Members providing their clients with OTC contracts should explain to their clients the difference between OTC contracts and LME Contracts, and the different levels of protection afforded by each.
29. The LME applies a "Financial OTC Booking Fee Policy" to Members and other third party financial intermediaries who reference LME prices or other proprietary information in their OTC contracts. Such entities must register with the LME, report relevant OTC trades, and pay the relevant fees.<sup>6</sup> Members and other third parties who reference LME prices or other LME proprietary information in OTC contracts or otherwise use LME proprietary information must ensure that they have entered into the appropriate licences with the LME.
30. The LME Rules also contain restrictions on: (a) the use of LME Data, Product Specifications or other Intellectual Property Rights for the purpose of trading, clearing or settling Non-LME Platform Contracts; (b) using LME Warrants to settle Non-LME Platform Contracts or the Ex-Cleared functionality of LMEsword to facilitate the settlement of Non-LME Platform Contracts; (c) using the inter-office market to route Non-LME Platform Contracts through the systems of the Exchange; and (d) bringing onto the LME Non-LME Platform Contracts.
31. Any Member operating electronic dealer-to-client platforms for OTC contracts will also need to consider the relevant provisions of MiFID II relating to systematic internalisers, pre- and post- trade transparency, etc.

### **Transacting on Behalf of Clients**

32. When transacting on the LME's Execution Venues, Members may transact both for their own account (i.e. on a proprietary basis, including where they are making prices on the LME) and on behalf of market participants (i.e. as broker).

### **Dual Capacity**

33. The LME's market model operates such that liquidity in the dealer-to-dealer space may be different to that in the dealer-to-client space. This feature arises primarily due to the LME's daily date structure. For example, an industrial client may wish to hedge the average of the LME's cash price in respect of a quotation period between, for example, 6 January and 7 May. This is clearly a bespoke requirement, and it is unlikely that any central marketplace could provide liquid execution for such an order. Rather, the general approach on the LME market will be that a Member provides the contract to the Client, and executes related contracts in the market to lay-

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<sup>6</sup> For further information, see <https://www.lme.com/Trading/New-initiatives/Financial-OTC-Booking-Fee>

off some or all of the associated risk. However, the nature of the contracts traded by the Member with the Client, and the Member with the market, will be different. In this context, the Member is acting in so-called "dual capacity". This differs from so-called "agency execution", whereby the Member trades the same contract with the market as with the Client. It should be noted that some execution on the LME market (generally in respect of more liquid prompt dates) will be undertaken under an agency execution model.

34. Members may act in a particular manner depending on a number of circumstances, including the size of the order, the liquidity of the market at the time the order was placed, and (in relation to Client business), not least, the Client's instructions. Client orders may be filled directly from a Member's 'book', following the purchase/sale of metal in the LME market, or a combination of the two.
35. The validity and desirability of this market structure has been confirmed during the LME's 2017 Discussion Paper, and the LME is committed to its maintenance for as long as it remains consistent with both the needs of its users and the LME's regulatory obligations.

#### Considerations Around Dual Capacity Execution

36. Clearly, the dual capacity model places a greater onus on Members to demonstrate that they act in the best interests of their Client. While it is for Members to satisfy themselves and their Clients of the sufficiency of their arrangements, the LME would make certain observations as to the behaviours which it would expect to observe in a dual capacity market. This represents a non-exhaustive list.
37. At the heart of such a model must be a clear understanding between Member and Client as to the basis on which execution is being undertaken - in particular, whether a particular Client order is to be executed under a dual capacity or an agency model. It is expected that Members are clear with their Clients in respect of the execution model.
38. Furthermore, Clients should be made aware of the fact that - as a natural corollary of the dual capacity model - the Member may eventually be able to hedge the risk at a more attractive price than that offered to the Client. The LME understands that Clients are, in general, satisfied with such a model (given that the Member is, in effect, being compensated for accepting the risk associated with the trade).
39. The dual capacity model also places responsibilities on Clients – for example, Clients with specific order requirements must make these known to the Member at the time the order is placed.
40. The LME further recognises that certain Client execution scenarios may be more complex. For example, a Member may execute a Client order on an agency model, while guaranteeing the Client a particular price for their order. In such a case, it would again clearly be necessary for the Client to be fully aware of the Member's execution approach - and, in particular, the impact on the Client's economic terms, were the Member to subsequently obtain a price better than that guaranteed to the Client.
41. Clearly, the broader rules of market conduct (arising from, among other places, the European Market Abuse Regulation) apply to firms trading on the LME market, whether such firms are operating in an agency execution or dual capacity model. Restrictions on activities such as front-running apply when operating in a dual capacity market and also when acting in agency execution - and, in particular, the LME would differentiate between (i) Member trades made purely for the purposes of offsetting risk from a Client position, and (ii) Member proprietary trading. The latter activity, in particular, must be appropriately segregated from Client execution (whether such Client execution is under a dual capacity or agency execution model).
42. Clients should be clear about the conditions that apply to the terms on which their Client Contracts are traded and about the obligations and duties that the broker owes as a result of those conditions. Members should be clear about the duties and obligations they owe as a result of the conditions attaching to the terms on which their Client Contracts are traded.

#### Rules preventing “netting up” or “crossing up”

43. LME is concerned to ensure that the market can view a transparent post-trade record of market activity and that financial advantage is not extracted by the systematic “netting-up” of trading designed to reduce the fee

burden. Consequently, Members must ensure that, in respect of trades arranged in the inter-office market, the details of each Agreed Trade entered into the Matching System constitute the details of a single transaction, without the application of any prior netting, compression or aggregation of multiple transactions. However, prompt date adjustments are permissible. Furthermore, Members must ensure that, in respect of both Client and Member's house orders executed by Members via LMEselect, Members must not cross-up any such trades in their own systems before they are executed as Agreed Trades in LMEselect.

## Conduct of Business Rules

44. Members are reminded that they may be subject to certain conduct of business rules, and other regulatory obligations, pursuant to MiFID II and the rules and regulations of the FCA. Members may also be subject to additional regulatory obligations in the jurisdictions in which they are incorporated or otherwise operate. The extent to, and way in which, these obligations may apply will depend on a range of factors including, amongst others, the nature of the relationship between the relevant Member and its Client, the Execution Venue in question, the terms of business between the Member and its Client, the Member's regulatory status, and any internal compliance policies and procedures to which the Member is subject. Compliance with these obligations is (where applicable) the responsibility of the Member, and Members must seek their own advice in this regard. Of particular relevance in the context of Client business are the following broad obligations (but note this is not an exhaustive list and primarily focuses on UK and EU requirements):

**Best execution** – Members within the scope of the best execution rules are required to take all sufficient steps to obtain the best possible result for their Clients when executing Client orders (or passing them onto other firms for execution). To the extent that firms follow specific instructions from their clients relating to the order, the firm should satisfy its best execution obligations. Members should be aware that in an LME context, the best execution obligation may apply differently depending on the Execution Venue where the relevant trade is executed. It may also apply differently depending on whether, for example (i) a Client has requested a price from a Member and subsequently elects to trade on the basis of that price at a later time; or (ii) a Client directly instructs a Member to execute an order in the market at a specific price.

**Client order handling** – Members that execute orders on behalf of Clients must implement procedures and arrangements to provide for the prompt, fair and expeditious execution of Client orders relative to other orders or the trading interests of the Member. In accordance with MiFID II and the FCA conduct of business requirements, Members must also satisfy certain conditions when carrying out Client orders, and when carrying out a Client order or a transaction for their own account in aggregation with another Client order.

**Fees and inducements** – Members must disclose certain information to Clients in relation to the services to be provided to them. This information includes, amongst other things, information regarding all of the costs and related charges that apply to the relevant service(s). In an LME context, this is likely to include any commission or mark-up on LME fees that may be applied by a Member to the fees charged to their Client. Members should not pay or accept any inducement (i.e. payment and receipt of fees, commissions and non-monetary benefits) in relation to an investment service unless it falls within a "safe harbour" (e.g. where a payment received by the Member is paid to the Client).

**Conflicts of interest** – Members must take all appropriate steps to identify and to prevent or manage conflicts of interest. This requires Members to actively identify circumstances in which potential and actual conflicts of interest may arise, and to establish arrangements to prevent or manage them effectively.

## ORDER STYLES

45. The principal order styles for Client orders are summarised below. These order styles do not represent all possible methods of order execution on the LME. Members and Clients should ensure that orders are communicated in meaningful terms that deliver the required execution in accordance with LME Rules.

## Ring

46. Client orders are not traded in the Ring, so an order using the term 'in/on/during the Ring/kerb' will be executed on the basis of the prices traded/quoted during the particular session. If a Client requires their order to be 'shown' or traded across the ring/kerb then they should make this requirement known to their executor, who may or may not accept this as a term of the order. The equivalent Member-to-Member Agreed Trade for a Client order may not replicate its terms. As the Client is not a party to any Cleared Contracts which arise from Agreed Trades made in the Ring, in specifying ring/kerb, the Client is merely identifying a pricing mechanism. A member which undertakes to match a price traded in the ring/kerb is not necessarily undertaking that it will trade during that ring/kerb, only that it may do so. However, a Client may place an order with the specific request that the Member concludes an Agreed Trade in the Ring, replicating its order. In such circumstance the Category 1 Member can only trade this order by open outcry in the Ring.
47. If a Client trades at the prevailing market quote proffered in the ring/kerb, their executor is not necessarily obliged to effect an Agreed Trade in the Ring at the same price. This can lead to situations where the Client has traded at the prevailing market quote, without that same price trading in open outcry across the Ring. However, if the instructions from the Client are to achieve a specific price i.e. close of Ring 2, then this is the price that should be given, if that specific order is accepted.
48. The timings for the acceptance of orders from a Client to a Member which are executed 'on the close' of the relevant Ring/Kerb should be agreed between the two parties. The timings may be dependent on the nature of the order (for example "large in size" orders may have different timings from smaller orders). However, the instructions should be clearly understood so there is no doubt how and when the order may be executed by the Member. If an 'on the close' order is not placed in sufficient time before the close of the relevant Ring/Kerb, the Member may reserve the right to decline acceptance of any such order.

## Market

49. In normal circumstances a market order is one executed on a timely basis at the prevailing market price. As mentioned above, at certain times of the business day, trading is taking place simultaneously in the Ring or kerb, on LMEselect, and in the inter-office market. Traditionally, when open outcry trading is in session, the market tends to be led by activity within the Ring/kerb. At other times, the market is split between inter-office trading and trading on LMEselect. During LMEselect trading periods, firm prices are available on LMEselect and the LMEselect page on information vendors' systems.

## Best

50. Order styles on the LME using the word 'best' confer some discretion upon the Members when executing the order, requiring them to use their 'best endeavours' on the Client's behalf. The extent of the discretion is fixed by the terms of the order. This type of order is distinct from 'best execution' obligations (as defined by MiFID II and by the FCA) that may apply.
51. Best orders may be executed on any of the Ring, inter-office market and on LMEselect. Inter-office trades rely upon the Members' skill in determining the level of the market at any particular time. Best orders received during Ring/kerb times may not result in the Client receiving the 'best' price achieved during the session if the price improves after the Member has booked the metal intended to fill the order. At any given time, the best price on LMEselect will be displayed on the system and by the information vendors. Clients should be aware that depending on market conditions, the best price may move during the period from when the order was placed and when it was executed.

## Close

52. Most orders placed 'on the close' are for either the close of the second Ring (Official Prices) or the final kerb (Closing Prices). Both these prices are published. Closing prices for other sessions are harder to determine, although the LME does publish unofficial prices which are established at the close of the fourth Ring. In all circumstances, Clients and Members need to agree the style of execution i.e. bid/offer, mean or traded price. Members may not always be able to guarantee execution (price or volume) due to prevailing market conditions. A closing price on LMEselect is the last price traded before the system closes.

## Open

53. Clients placing orders to trade on the opening of a market session must provide clear instructions to the Member which indicate how this order should be activated i.e. basis the opening bid/offer or basis the first trade in the session. Clients will also need to inform their executor of their requirements if the executor is unable to fill the order basis the 'opening' price in its entirety, due to market constraints such as insufficient liquidity. Clients may place orders with Members for LMEselect that can be placed into the system for activation when the market opens.

## Resting Orders

54. When placing resting orders such as 'good 'til cancelled' ('GTC', or any derivations thereof) or stop loss orders, Clients should ensure that they are in agreement with their executor's definition of the 'trigger' point of the order. Usually, this is interpreted as being the point when the order price is seen to be trading in the market, but it is possible to request the order be activated when the order level is either bid or offered as appropriate, via the prevailing market quote. Stop loss orders become market orders when a trade, or a bid or an offer triggers the stop, with members then executing the order at the current market price.

55. It is possible for a Client not to receive a 'fill' on a resting order despite the 'trigger' point being 'touched'. This could be due to a number of circumstances such as order priority, illiquidity, prevailing market conditions etc. Whatever the reason, the executor should be able to provide the Client with a full explanation of why it was unable to fill the order.

56. Clients should be aware that resting orders might be activated during periods of illiquidity in the market. As previously mentioned, this could result in the trade not being filled, or for 'stop' orders, a worse fill than anticipated ('slippage'). Clients should ensure the executor is fully aware of their requirements regarding the execution of an order, and adheres to any limitations, especially if the Client is not in contact with the market/member when the trigger point is reached.

## LMEselect

57. It is possible for customers to ask members to place resting orders in LMEselect. Where the broker has an order-routing system into LMEselect, Clients will be able to place orders through that order routing system. The system accepts GTC orders (for Cash and 3 Month prompt dates only) and will also permit other variations such as 'Good for Day.' There are also certain other LMEselect-specific order types such as Iceberg,<sup>7</sup> Discretionary,<sup>8</sup> Scaling<sup>9</sup> and Fill or Kill orders.<sup>10</sup>

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<sup>7</sup> Iceberg orders allow a trader to place an order without disclosing the full order quantity to the market. The trader specifies the open quantity amount seen by the market and the subsequent open order amounts at the time of the order placement. Any subsequent amendments to open quantity amount only take affect with the next order quantity to be placed, the current open quantity seen by the market does not change.

<sup>8</sup> A discretionary order allows a trader to place an order with a discretionary price. This discretionary price remains hidden from view by the market. A discretionary 'Bid' order will only trade when an opposing order is placed with an order price equal to or less than the discretionary price. For an 'Ask' order the opposing order price must equal to or exceed the discretionary order price.

<sup>9</sup> A scaling order allows the user to automatically place repeat orders for an outright valid prompt date with a scaled order price. I.e. scaled down buying or scaled up selling; although the user is not forced to change the order price and therefore can enter repeat order at the same price level. This function will place an order with the same quantity and prompt date with an adjusted order price if desired, once the previous order has traded in the LMEselect system.

<sup>10</sup> A Fill and Kill Order is entered at a specific price with the intention to execute immediately and therefore fill all or part of, the order and immediately cancel any unfulfilled balance.

## SEGREGATION & PORTABILITY

### Segregation

58. When registering Agreed Trades in the Matching System, a Clearing Member must specify which account at the Clearing House the resulting Cleared Contracts should be allocated. Where any Cleared Contract is to be allocated to a “client account” (because there is an accompanying back-to-back Client Contract) the registration must align the Contract to a specific “omnibus” (which may be net or gross) or “individually segregated” account at LME Clear. Members are required to offer Clients a choice of accounts. The distinguishing factor between the two is: either (i) an “omnibus” account which has assets and positions allocated to it for multiple Clients; or (ii) an “individually segregated” account which has assets and positions allocated to it for a single Client. Members and Clients wishing to know more about segregation options may review LME Clear’s EMIR Article 39(7) disclosure on the LME Clear website.

### Portability

59. Where there is an Event of Default in relation to a Member and a Client wishes to transfer its positions from an account maintained with the defaulting Member to a solvent Member, it must notify LME Clear in accordance with the procedures set out by LME Clear from time to time. Failure to adhere to the procedures of LME Clear within the prescribed timescales may result in the positions of a Client being closed out by the clearing house. The LME Rules contain provisions to ensure that, where any Cleared Contract is ported in accordance with LME Clear’s Rules, the back-to-back Client Contracts shall also port. Members and Clients wishing to know more about default porting may review LME Clear’s Article 39(7) disclosure on the LME Clear website.

## SECURITIES FINANCING TRANSACTIONS REGULATION DISCLOSURE OF RE-USE RISKS AND CONSEQUENCES

In accordance with Article 15 of the Securities Financing Transactions Regulation,<sup>11</sup> Client confirms that it has been duly informed in writing by BofAS of the risks and consequences that may be involved in consenting to a right of use of financial instruments received as collateral under a security collateral arrangement or of concluding a title transfer collateral arrangement (which are set out at: [http://www.bofam.com/SFTR\\_Information\\_Statement\\_EN.html](http://www.bofam.com/SFTR_Information_Statement_EN.html) or as otherwise advised by BofAS from time to time).

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<sup>11</sup> Securities Financing Transactions Regulation means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

## Disclosures Required to be Provided to Disclosed Singapore Market Participants

On May 18, 2016, the Monetary Authority of Singapore issued an order authorizing Chicago Mercantile Exchange Inc. (“**CME**”) as a recognized clearing house in Singapore. Pursuant to the terms of its recognition, the clearing house division of CME (“**CME Clearing**”) is required to make certain disclosures available to new Singapore-based participants at CME Clearing. Accordingly, CME Clearing is providing this notification to be included among the risk disclosures provided to new Singapore-based customers or affiliates for whom the clearing member will provide clearing services at CME. A clearing member’s obligation to provide this notice to a new participant applies only to the extent such participant is disclosed to the firm as Singapore-based. Clearing members must also make this disclosure accessible to any existing Singapore-based participant upon request.

- CME Clearing’s operations are subject to the laws of the United States and regulations promulgated by the U.S. CFTC;
- The rights and remedies available to Singapore-based participants as stated in CME’s rules, policies and procedures may be governed by U.S. law. Such rights and remedies under U.S. law may differ from those available to Singapore-based participants when accessing Singapore-based clearing houses which are primarily regulated by Singapore laws;
- Funds and collateral posted to a clearing intermediary registered as a U.S. FCM are subject to customer protection provisions of U.S. law;
- U.S. law and regulation mandate segregation of customer positions and collateral from the positions and collateral of FCM clearing members and prescribe the customer segregation model for futures and swaps, respectively, at both the FCM- and clearing house-levels. The structure and insolvency law impacts of the U.S. customer protection regime may differ from those of Singapore;
- Trades cleared at CME will be subject to U.S. business hours and settlement timelines as set forth in Exchange or Clearing House rules;
- Trades cleared at CME may be subject to U.S. tax law and applicable provisions of the U.S. Internal Revenue Code, which may have a different impact than Singapore tax law; and
- Costs associated with clearing should be discussed with the clearing member offering clearing services.

Nothing included in this bulletin should be regarded as legal advice. Tax advisors, legal counsel and Exchange or Clearing House rules, as applicable, should be consulted in all cases where a Singapore-based participant has questions concerning the conduct of their business or the impact of U.S. law or regulation thereon.

Please direct questions regarding this bulletin to the following email addresses:

- [InternationalLegalRegulatoryTeam@cmegroup.com](mailto:InternationalLegalRegulatoryTeam@cmegroup.com);
- [Timothy.Maher@cmegroup.com](mailto:Timothy.Maher@cmegroup.com); and
- [Jane.Moon@cmegroup.com](mailto:Jane.Moon@cmegroup.com).

See also <http://www.cmegroup.com/notices/clearing/2016/09/frb-16-03.html#pageNumber=1>.

## NOTICE REGARDING AVERAGE PRICE SYSTEM (“APS”)

You should be aware that certain US and non-US exchanges, including the CME and CBOT, may now or in the future allow an FCM such as BofAS to confirm trades executed on such exchanges to some or all of their customers on an average price basis regardless of whether the exchanges have average price systems of their own. Average prices that are not calculated by an exchange system will be calculated by your FCM. In either case, trades that are confirmed to you at average prices will be designated as such on your daily and monthly statements.

APS enables a clearing firm to confirm to customers an average price when multiple execution prices are received on an order or series of orders for the same accounts. For example, if an order transmitted by an account manager on behalf of several customers is executed at more than one price, those prices may be averaged and the average may be confirmed to each customer. Customers may choose whether to use APS, and may request that APS be used for discretionary or non-discretionary accounts.

An order subject to APS must be for the same commodity. An APS order may be used for futures, options or combination transactions. An APS order for futures must be for the same commodity and month, and for options, it must be for the same commodity, month, put/call and strike.

An APS indicator will appear on the confirmation and monthly statement for a customer whose positions have been confirmed at an average price. This indicator will notify the customer that the confirmed price represents an average price or rounded average price.

The average price is not the actual execution price. APS will calculate the same price for all customers that participate in the order.

APS may be used when a series of orders are entered for a group of accounts. For example, a bunched APS order (an order that represents more than one customer account) executed at 10:00 a.m. could be averaged with a bunched APS order executed at 12:00 p.m. provided that each of the bunched orders is for the same accounts. In addition, market orders and limit orders may be averaged, as may limit orders at different prices, provided that each order is for the same accounts.

The following scenario exemplifies what occurs if an APS order is only partially executed. At 10:00 a.m. an APS order to buy 100 Dec S & P 500 futures contracts is transmitted at a limit price of 376.00; 50 are executed at 376.00, and the balance is not filled. At 12:00 p.m. an APS order to buy 100 Dec S & P 500 futures contracts is transmitted at a limit price of 375.00; 50 are executed at 375.00, and the balance is not filled. Both orders are part of a series for the same group of accounts. In this example, the two prices will be averaged. If the order was placed for more than one account, the account controller must rely on pre-existing allocation procedures to determine the proportions in which each account will share in the partial fill.

Upon receipt of an execution at multiple prices for an order with an APS indicator, an average will be computed by multiplying the execution prices by the quantities at those prices divided by the total quantities. An average price for a series of orders will be computed based on the average prices of each order in that series. The actual average price or the average price rounded to the next price increment may be confirmed to customers. If a clearing member confirms the rounded average price, the clearing member must round the average price up to the next price increment for a sell order. The rounding process will create a cash residual of the difference between the actual average price and the rounded average price that must be paid to the customer.

APS may produce prices that do not conform to whole cent increments. In such cases, any amounts less than one cent may be retained by the clearing member. For example, if the total residual to be paid to a customer on a rounded average price for 10 contracts is \$83.333333, the clearing member may pay \$83.33 to the customer. If you would like more information on APS orders, please contact your account representative.

## UNIFORM NOTIFICATION REGARDING ACCESS TO EXCHANGE MARKET DATA

As a market user you may obtain access to exchange Market Data available through an electronic trading system, software or device that is provided or made available to you by a broker or an affiliate of such. Market Data may include, but is not limited to, "real time" or delayed market prices, opening and closing prices and ranges, high-low prices, settlement prices, estimated and actual volume information, bids or offers and the applicable sizes and numbers of such bids or offers.

You are hereby notified that Market Data constitutes valuable confidential information that is the exclusive proprietary property of the applicable exchange, and is not within the public domain. Such Market Data may only be used for your firm's internal use. You may not, without the authorization of the applicable exchange, redistribute, sell, license, retransmit or otherwise provide Market Data, internally or externally and in any format by electronic or other means, including, but not limited to the Internet.

You must provide upon request of the broker through which your firm has obtained access to Market Data, or the applicable exchange, information demonstrating your firm's use of the Market Data in accordance with this Notification. Each applicable exchange reserves the right to terminate a market user's access to Market Data for any reason. You also agree that you will cooperate with an exchange and permit an exchange reasonable access to your premises should an exchange wish to conduct an audit or review connected to the distribution of Market Data.

NEITHER THE EXCHANGE NOR THE BROKER, NOR THEIR RESPECTIVE MEMBERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, GUARANTEE THE TIMELINESS, SEQUENCE, ACCURACY OR COMPLETENESS OF THE DESIGNATED MARKET DATA, MARKET INFORMATION OR OTHER INFORMATION FURNISHED NOR THAT THE MARKET DATA HAVE BEEN VERIFIED. YOU AGREE THAT THE MARKET DATA AND OTHER INFORMATION PROVIDED IS FOR INFORMATION PURPOSES ONLY AND IS NOT INTENDED AS AN OFFER OR SOLICITATION WITH RESPECT TO THE PURCHASE OR SALE OF ANY SECURITY OR COMMODITY.

NEITHER THE EXCHANGE NOR THE BROKER NOR THEIR RESPECTIVE MEMBERS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, SHALL BE LIABLE TO YOU OR TO ANY OTHER PERSON, FIRM OR CORPORATION WHATSOEVER FOR ANY LOSSES, DAMAGES, CLAIMS, PENALTIES, COSTS OR EXPENSES (INCLUDING LOST PROFITS) ARISING OUT OF OR RELATING TO THE MARKET DATA IN ANY WAY, INCLUDING BUT NOT LIMITED TO ANY DELAY, INACCURACIES, ERRORS OR OMISSIONS IN THE MARKET DATA OR IN THE TRANSMISSION THEREOF OR FOR NONPERFORMANCE, DISCONTINUANCE, TERMINATION OR INTERRUPTION OF SERVICE OR FOR ANY DAMAGES ARISING THEREFROM OR OCCASIONED THEREBY, DUE TO ANY CAUSE WHATSOEVER, WHETHER OR NOT RESULTING FROM NEGLIGENCE ON THEIR PART. IF THE FOREGOING DISCLAIMER AND WAIVER OF LIABILITY SHOULD BE DEEMED INVALID OR INEFFECTIVE, NEITHER THE EXCHANGE NOR THE BROKER, NOR THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL BE LIABLE IN ANY EVENT, INCLUDING THEIR OWN NEGLIGENCE, BEYOND THE ACTUAL AMOUNT OF LOSS OR DAMAGE, OR THE AMOUNT OF THE MONTHLY FEE PAID BY YOU TO BROKER, WHICHEVER IS LESS. YOU AGREE THAT NEITHER THE EXCHANGE NOR THE BROKER NOR THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, SHALL BE LIABLE TO YOU OR TO ANY OTHER PERSON, FIRM OR CORPORATION WHATSOEVER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, OR COSTS OF LOST OR DAMAGED DATA.

## DISCLOSURE ON LIMITATION OF LIABILITY RULES

When you execute a trade on or pursuant to the rules of an exchange or other trading facility or clear a trade through a clearing organization, your trade is subject to rules of the applicable exchange, trading facility and/or clearing organization. Such exchanges, trading facilities and clearing organizations have adopted rules that generally limit their liability for any failure, malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption, termination, or any other cause, in connection with the furnishing, performance, operation, maintenance, use of or inability to use all or any part of any of the systems and services of the exchange, trading facility or clearing house or one of their independent software vendors or network providers. For example, if you trade on Nasdaq Futures, Inc. ("**NFX**"), any limitation of liability in an agreement between you and BofAS will, pursuant to NFX rules, also apply to NFX as a third party beneficiary. In addition, exchanges, trading facilities and clearing organizations typically disclaim liability for error, inaccuracies in information and unauthorized access or use of a system or service. These limitations of liability may increase your risk of loss in certain circumstances.

## BOFAS BUSINESS CONTINUITY STATEMENT

BofAS is responsible for creating and maintaining business continuity plans for all of its businesses. In the event of a business disruption, we have plans designed to allow us to continue operations of critical business functions, such as entering of client orders, completing securities transactions and providing clients access to their cash and securities. We accomplish this in part by:

- Relocating impacted businesses to designated recovery locations.
- Using redundant processing capacity at other locations.
- Designing our technology and systems to support the recovery processes for critical business functions.
- Using business and technology teams that are responsible for activating and managing the recovery process.
- Adopting a communication plan to ensure that BofAS employees receive emergency notifications and instructions via a variety of sources, including in-building announcements, telephone contact, toll-free phone numbers and websites.
- Rehearsing our recovery procedures and testing those procedures on a regular basis.

As part of our plans, BofAS has identified the applications that are critical to each of our business divisions. These applications are implemented in separate production and recovery data centers using industry-standard practices to copy data from the production site to the recovery site in real time. In most cases, recovery times will range from nearly instantaneous to approximately four hours. For some business functions, next-day recovery is projected.

With regard to client assets, nearly all market-traded securities are held in central depositories (such as the Depository Trust Co. in the U.S.) or with custodian banks, rather than in physical certificates. Ownership of the securities is reflected on a book-entry record-keeping basis with our custodian banks or depositories' participants (such as BofAS) maintaining on their records the beneficial ownership positions of their clients. This structure is recognized worldwide as providing investors with an unsurpassed level of liquidity and security for the assets they choose to custody with major financial institutions.

As a premier financial service firm, we take our commitment to our clients very seriously and participate globally in various industry-level discussions regarding business continuity planning under the auspices of industry organizations. Participation in these types of forums increases our ability to proactively recognize and manage business disruption risks and coordinate recovery efforts across the financial service industry.

Although we have taken significant steps to develop and implement sound business recovery plans, we cannot guarantee that systems will always be available or recoverable after a disaster or significant business disruption. However, we believe that our planning for such events is robust and consistent with many of the best practices established within the industry. Any material changes to the above information will be available on our website or upon request.

If you have further questions regarding our business continuity plans, please contact your BofAS representative.

## PRIVACY AND DATA SECURITY INFORMATION STATEMENT

With respect to any personal information delivered or made available to BofAS pursuant to the Institutional Futures Client Account Agreement (the "**Agreement**"), BofAS agrees that:

- (a) it shall use and process such personal information solely for the purposes of carrying out its obligations under, and as expressly set forth in, the Agreement and not for any other purposes;
- (b) it shall maintain an effective information security program, keep such personal information confidential and take appropriate administrative, technical and physical measures to secure and protect such personal information against unauthorized, unlawful or accidental access, disclosure, transfer, destruction, loss or alteration;
- (c) it shall limit access to such information to employees and agents who require such access in order to perform the services described in the Agreement and shall inform its employees and agents who have access to such personal information of its highly confidential nature and the limitations and procedures that apply to access and use of such personal information;
- (d) it may make such information available to vendors which provide services to BofAS for its futures trading and processing, however, it shall not disclose or make such personal information available to a vendor without entering into an agreement in writing with the vendor whereby the vendor agrees to comply with, and treat such personal information in accordance with, these policies
- (e) it shall promptly notify Client if it becomes aware of any unauthorized access of such personal information or if it becomes the subject of any government, other enforcement or private proceeding relating to its data handling practices with respect to such personal information and
- (f) it shall, upon the reasonable request of Client, provide Client with information regarding its privacy/data protection practices.

Nothing herein shall affect any data or information that BofAS validly receives from a source apart from the Agreement or the relationship established pursuant to the Agreement, nor affect BofAS' rights to use certain data or information in a non-identifiable, statistical manner.

**DISCLOSURE UNDER ERISA SECTION 408(B)(2)**

Pursuant to regulations under ERISA section 408(b)(2), under certain circumstances, the U.S. Department of Labor requires service providers to furnish disclosures concerning their services and compensation arrangements to the responsible plan fiduciary of a pension plan governed by ERISA. There may be similar requirements under laws applicable to governmental and other plans which are not governed by ERISA.

This disclosure for all relevant lines of business and products in Bank of America's Global Banking & Markets (GBAM) business segment is available at the following web address:

<https://www.bofaml.com/en-us/content/erisa-408-b-2.html>

Please note that the disclosure in this website will be updated periodically as required under these rules. Please check this website from time to time for any updates.

## NOTIFICATION FOR CANADIAN-DOMICILED CLIENTS

This notice is provided to you pursuant to National Instrument 31-103 and certain exemption orders granted by the provincial securities commissions. .

Please note that:

- (i) BofAS is not registered in your jurisdiction and accordingly the protections under the Canadian securities acts are not available to you. BofAS is a U.S.-based broker-dealer subsidiary of Bank of America Corporation and a member of the Financial Industry Regulatory Authority. Its head office is in New York, New York and there may be difficulty enforcing legal rights against BofAS or any of its directors, officers, employees or agents because they are resident outside Canada and all or substantially all of their assets are situated outside of Canada;
- (ii) Merrill Lynch Canada Inc. (the Canadian affiliate of BofAS) is registered in all Canadian jurisdictions and provides execution services to BofAS and you may use any of the following as agents for service of process:

### BOFAS' AGENTS FOR SERVICE OF PROCESS IN CANADA

<u>Ontario</u> Merrill Lynch Canada Inc. Brookfield Place, 181 Bay Street, Suite 400 Toronto ON M5J 2V8 Attn: Legal Department	<u>Saskatchewan</u> MacPherson Leslie & Tyerman LLP 1500-1874 Scarth Street Regina SK S4P 4E9
<u>Québec</u> Merrill Lynch Canada Inc. 1250 Rene-Levesque Blvd. West, Suite 3715 Montréal QC H3B 4W8 Attn: Legal Department	<u>Prince Edward Island</u> Stewart McKelvey 65 Grafton St. Charlottetown, P.E.I. C1A 1K8
<u>Manitoba</u> Thompson Dorfman Sweatman LLP 2200 – 201 Portage Avenue Winnipeg, Manitoba R3B 3L3	<u>New Brunswick</u> Stewart McKelvey 10th Floor, Brunswick House, 44 Chipman Hill PO Box 7289 RPO Brunswick Sq. Saint John NB E2L 4S6
<u>Alberta</u> Merrill Lynch Canada Inc. 255- 5th Avenue SW, Bow Valley Square 3 Calgary AB T2P 3G6 Attn: Legal Department	<u>Nova Scotia</u> Stewart McKelvey Suite 900, Purdy's Wharf Tower One 1959 Upper Water Street, PO Box 997 Halifax NS B3J 2X2
<u>British Columbia</u> Merrill Lynch Canada, Inc. Cathedral Place, 925 West Georgia Street, Suite 708, Vancouver BC V6C 3L2 Attn: Legal Department	<u>Newfoundland and Labrador</u> Stewart McKelvey Cabot Place, 100 New Gower Street P.O. Box 5038, Station C St. John's NF A1C 5V3

**FIRM SPECIFIC DISLCOSURE STATEMENT  
REQUIRED BY  
CFTC RULE 1.55(i), (k) and (o)**

Information that may be material to entering into a futures and/or derivatives clearing account agreement with BofAS or entrusting your funds to BofAS is set forth in a disclosure statement that can be viewed on this website: <http://www.bofam.com/en-us/content/futures-options-otc-clearing.html>.

You may download a paper copy of that statement from the website or request one from your client services representative.