

# BofA Securities – Terms for Bookbuilt Offers of Securities

Version 4.0 – Updated September 2020

This document outlines the terms which apply to Bookbuilt Offer of Securities by Merrill Lynch International, Bank of America Europe Designated Activity Company, BofA Securities Europe Société Anonyme, and other applicable affiliates or subsidiaries of Bank of America Corporation (collectively referred to as “BAC”, or “we”). See the [BofA Entities List](#) for additional information. Where not otherwise defined in these Terms for Bookbuilt Offers of Securities, capitalised terms shall have the meanings given to them in BofA Securities’ General Terms & Conditions of Business for Professional Clients and Eligible Counterparties, of which these Terms for Bookbuilt Offers of Securities form part and a copy of which is available on the BofA Securities MiFID II Website. [www.bofa.com/mifid2](http://www.bofa.com/mifid2).

## 1. Offers of securities

- 1.1. You may from time to time contact us or be contacted by us to buy or sell in relation to Documented<sup>1</sup> or Undocumented<sup>2</sup> Offers<sup>3</sup>.
- 1.2. Unless expressly stated otherwise, in relation to each relevant EEA member state, the Offers will be made to or directed only at “qualified investors” (such term having the meaning given to it in Article 2(1)(e) of the Prospectus Directive<sup>4</sup>) in accordance with the exemption provided by Article 3(2) of the Prospectus Directive from the requirement to prepare a prospectus in respect of the Offer.

- 1.3. Unless expressly stated otherwise, any Offer made and any securities allocated in an Offer by us to you will be on the basis, and in reliance on the fact, that you are a qualified investor.
- 1.4. We and/or third parties for whom we are acting as agent, may enter into transactions with you either as buyer or as seller of securities in connection with any Offer.
- 1.5. We consider you to be a qualified investor on the basis that you are a person or entity that is described in points (1) to (4) of Section I of Annex II to MiFID II or a person or entity that can, on request, be treated as a professional client in accordance with Annex II to MiFID II, or recognised as an eligible counterparty in accordance with Article 30 of MiFID II.

## 2. Representations and warranties

- 2.1. In circumstances where we are interacting with you in connection with an Offer where we are acting for the issuer and/or seller (as the case may be) of the securities which are the subject of the Offer, you will be deemed to have represented, warranted and agreed that:
  - 2.1.1. You have made, and will make, your own assessment of (a) the securities and transaction in question, (b) any entity which is an obligor in respect of such securities and its business and any information in respect thereof and (c) any other entity or factors which may affect the price or value of such securities ((a) to (c) being the “relevant factors”) based on such information as is: (i) in

<sup>1</sup> “**Documented**” means, in relation to an Offer, where a prospectus, an information memorandum or other offering document is produced and distributed to you prior to settlement.

<sup>2</sup> “**Undocumented**” means, in relation to an Offer, where no prospectus, information memorandum or other offering document is produced and distributed to you prior to settlement.

<sup>3</sup> “**Offer**” means an offer of securities that will be or is being bookbuilt by our Equity Capital Markets syndicate desk, Debt Capital Markets syndicate desk or otherwise, in respect of which we are acting as underwriter, manager or are buying, offering, placing or selling such securities as principal or as agent.

<sup>4</sup> “**Prospectus Directive**” means Directive 2003/71/EC of the European Parliament and of the Council (as amended from time to time).

- the case of an Undocumented Offer, publicly available; or (ii) in the case of a Document Offer, as set out in the final offering circular or prospectus or information memorandum (as supplemented) as the case may be;
- 2.1.2. You are not relying on any information relating to the relevant factors provided by us or our Officers or on any investigation that we or any of our Officers may have conducted with respect to the relevant factors;
- 2.1.3. You acknowledge that neither we nor our Officers accept any responsibility for any information relating to the relevant factors which is available to you at any relevant time and neither we nor any of our Officers makes any representation or warranty as to the accuracy or completeness of such information at any relevant time;
- 2.1.4. You acknowledge that the terms of the transaction in question may include rights which we have against the relevant issuer and/or seller (as the case may be) to terminate such transaction prior to settlement for reasons of force majeure or otherwise and that to the extent we exercise any such rights prior to settlement for any reason, we shall not be responsible for any loss suffered by you arising out of, resulting from, or otherwise in connection with, the exercise of such rights;
- 2.1.5. You understand that in connection with such transactions, no action may have been, or will be, taken that would, or is intended to, permit a public offer of the securities in question in any jurisdiction where any such action for that purpose is required and accordingly, such securities may not be offered, sold or marketed by you or on your behalf except under circumstances that will result in compliance with Applicable Rules and in circumstances in which no obligation arises for us or any other person to produce a prospectus;
- 2.1.6. You are not aware of any non-public fact or circumstance, which, if made public, would or would be likely to have a material effect upon the market price of the securities or the issuer of the securities;
- 2.1.7. You will at all times comply with all Applicable Rules (whether inside or outside the EEA) relating to the promotion, offering, distribution and/or sale of the securities subject to the Offer (or any beneficial interests therein), including (without limitation) any such laws, regulations and regulatory guidance relating to determining the appropriateness and/or suitability of an investment in the relevant securities (or any beneficial interests therein) by investors in any relevant jurisdiction;
- 2.1.8. Neither you nor any of your affiliates nor any person acting on your or their behalf, (i) has made or will make any offers or sales of any security, or has solicited or will solicit offers to buy, or has otherwise negotiated or will negotiate in respect of any security under circumstances that would require the registration of the securities under the Securities Act 1933; or (ii) has engaged or will engage in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act 1933) in connection with the offer and sale of the securities in the United States; and
- 2.1.9. Neither you nor any of your affiliates nor any person acting on its or their behalf has engaged or will engage in any "directed selling efforts" (as defined in Regulation S under the Securities Act 1933) with respect to the securities.
- 2.2. You will also be deemed to have represented, warranted and agreed that any securities acquired by you in the Offer have not been acquired on behalf of persons in the EEA and/or the UK other than: (i) qualified investors; or (ii) persons in the UK and EEA member states (where equivalent legislation exists) for whom you have authority to make decisions on a wholly discretionary basis nor have the securities been acquired with a view to their offer or resale in the EEA and/or the UK to any persons where this would result in a requirement for publication by the Issuer, us or any other manager of a prospectus pursuant to Article 3 of the Prospectus Directive.
- 2.3. In relation to any such Offer, we will be acting solely for the relevant seller and/or issuer (as the case may be) of the securities which are the subject of the Offer and strictly not for or on behalf of any other entity or person including any purchaser or subscriber of such securities, and we will not be responsible to anyone other than such relevant seller and/or issuer for providing protections afforded to clients in relation to the Offer.

2.4. Solely for the purposes of the product governance requirements contained within: (a) MiFID II; (b) Articles 9 and 10 of Commission Delegated Directive (EU) 2017/593 supplementing MiFID II; and (c) local implementing measures (together, the “**Product Governance Requirements**”), and disclaiming all and any liability to the extent permitted by Applicable Rules, whether arising in tort, contract or otherwise, which we may otherwise have with respect thereto, we may provide you with information regarding a positive and/or a negative target market for whose needs, characteristics and objectives the securities subject to the Offer are/are not compatible (collectively, the “**Target Market Assessment**”), and such other information as may be required by the Product Governance Requirements. The Target Market Assessment is without prejudice to the requirements of any contractual, legal or regulatory selling restrictions in relation to the Offer. You shall be deemed to acknowledge the communication of such Target Market Assessment and such other information, and shall be deemed to have represented, warranted and agreed that to the extent that you subsequently offer or sell the securities, you shall have regard to the Target Market Assessment. For the avoidance of doubt, the Target Market Assessment does not constitute: (a) an assessment of suitability or appropriateness for the purposes of MiFID II; or (b) a recommendation to any investor or group of investors to invest in, or purchase, or take any other action whatsoever with respect to the securities. The foregoing shall be without prejudice to any more detailed or extensive agreement(s) that you and we may put in place from time to time concerning the Product Governance Requirements.

2.5. Notwithstanding Clause 2.4 above, to the extent that you are a “distributor” subject to the Product Governance Requirements you acknowledge that you remain responsible for compliance with any relevant Product Governance Requirements applicable to you.

2.6. Your attention is also drawn to Clause 5 of our General Terms & Conditions of Business for Professional Clients and Eligible Counterparties.

2.7. The issuer and/or seller of the securities which are the subject of any Offer, we and our Associated Companies, and others will rely upon the truth and accuracy of the foregoing representations and agreements in connection with each Offer.

“Bank of America” and “BofA Securities” are the marketing names used by the Global Banking and Global Markets divisions of Bank of America Corporation. Lending, other commercial banking activities, and trading in certain financial instruments are performed globally by banking affiliates of Bank of America Corporation, including Bank of America, N.A., Member FDIC. Trading in securities and financial instruments, and strategic advisory, and other investment banking activities, are performed globally by investment banking affiliates of Bank of America Corporation (“Investment Banking Affiliates”), including, in the United States, BofA Securities, Inc. and Merrill Lynch Professional Clearing Corp., both of which are registered broker-dealers and Members of SIPC, and, in other jurisdictions, by locally registered entities. BofA Securities, Inc. and Merrill Lynch Professional Clearing Corp. are registered as futures commission merchants with the CFTC and are members of the NFA.

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