

Morgan Stanley & Co. International plc ("MSI plc") Direct Clearing Offering Conditions

1 Who should read this document and why?

- 1.1 This document should be reviewed by clients or prospective clients of MSI plc ("**Direct Clients**") who would like their derivatives transactions to be cleared by MSI plc on an EU-domiciled central counterparty ("**EU CCP**") authorised under the European Markets Infrastructure Regulation ("**EMIR**").¹ Article 27(1) (as defined below) requires MSI plc to publish the conditions under which it offers its clearing services. For this reason, Direct Clients should review this document in conjunction with the "EMIR/MiFIR Segregation Risks Public Disclosure" at the following link under the heading "Derivatives Clearing Disclosures" on <http://www.morganstanley.com/disclosures>
- 1.2 This document does not constitute legal or any other form of advice and must not be relied on as such. It provides high level summaries of some key issues and criteria that should be met, but does not constitute a detailed analysis of all issues which may be relevant to Direct Clients. Direct Clients should conduct their own due diligence and instruct their own professional advisors as appropriate. Should Direct Clients have questions on the content of this document, MSI plc can provide assistance – Direct Clients should contact their usual account representative.

2 What are the requirements of Article 27(1)?

MSI plc is a clearing member subject to the recast Markets in Financial Instruments Directive (Directive 2014/65/EU) ("**MiFID II**"), therefore Article 27(1) of the Commission Delegated Regulation (EU) No 2017/589 of 19 July 2016 ("**Article 27(1)**") requires MSI plc to offer direct clearing services on reasonable commercial terms and to publicly disclose the general terms and conditions under which it provides those services.

3 Direct Clearing Offering Criteria

- 3.1 **Type of derivative:** There are differences in the direct clearing offering criteria for over-the-counter derivatives ("**OTC derivatives**") and exchange-traded derivatives ("**ETDs**"). Except where indicated otherwise, the following shall apply to both OTC derivatives and ETDs.
- 3.2 **Services to be provided:** Where MSI plc agrees to provide dealing, clearing and related services (the "**Clearing Services**") to Direct Clients in relation to ETDs and/or OTC derivatives, it shall do so on mutually agreed terms pursuant to a

¹ Direct and indirect clearing on UK CCPs are currently subject to the MiFID requirements described in this document. We anticipate that this will change as a result of Brexit but that substantially similar rules are likely to continue to apply. This disclosure will be updated as appropriate.

customer service agreement entered into with the relevant Direct Client (the “**Clearing Agreement**”).

Any such Clearing Agreement will include the following terms and conditions:

- (a) **Accepting an order:** MSI plc may, in its commercially reasonable discretion, decide not to accept an order or instruction from a Direct Client. This may reflect internal limits placed in relation to cleared derivative transactions (“**Contracts**”).
- (b) **Allocation:** Under the Clearing Agreement in respect of ETDs, MSI plc may allocate Contracts not allocated at maturity by an EU CCP at random or, exercising its commercially reasonable discretion, in a way that is equitable as between Direct Clients.
- (c) **Alteration/Market Intervention:** If an EU CCP requires changes to its terms or conditions or the transaction between the EU CCP and MSI plc or takes other actions, for example to set off or close out positions, MSI plc may (and in certain circumstances will) take actions in its commercially reasonable discretion, including amending Contracts to reflect or comply with changes imposed by such EU CCP or mitigate loss resulting from such alteration.
- (d) **Margin:** MSI plc will be permitted to require the Direct Client to transfer to MSI plc margin that MSI plc determines from time to time. The amount of margin MSI plc will be permitted to call from a Direct Client will vary depending on the EU CCP in question and MSI plc’s internal risk-based assessment in respect of the Direct Client. MSI plc may withdraw money (including client money) held as margin to settle obligations to the EU CCP or relevant broker in respect of Contracts.
- (e) **Margin type:** Margin will be in the form of cash in the currency of the relevant contract, or any other collateral acceptable to MSI plc in its commercially reasonable discretion.
 - (i) **Cash:** When cash margin is transferred to MSI plc, it may be transferred on a title transfer basis (in the case of OTC derivatives) or as “client money” in accordance with the UK Financial Conduct Authority’s client asset protection rules (“**CASS**”) (in the case of ETDs). In this context, CASS provides that money held by MSI plc as Direct Client money will be ring-fenced from MSI plc’s insolvency estate upon an administration or liquidation in relation to MSI plc and will instead be held on trust for the benefit of the relevant Direct Clients.
 - (ii) **Non-cash:** If MSI plc agrees to accept non-cash margin in respect of ETDs, such margin will be held by MSI plc as custodian. MSI plc may be permitted to rehypothecate, use or create security over the non-cash assets transferred by a Direct Client to MSI plc. If MSI plc agrees to accept non-cash margin in respect of OTC derivatives, it may be transferred on a title transfer basis.
- (f) **Force Majeure or Limited Recourse:** Under the Clearing Agreement in respect of ETDs, amongst other things, MSI plc is not liable for delay or non-performance as a result of causes outside of MSI plc’s control, which includes failure of the EU CCP. Similar provisions exist as limited recourse provisions under the Clearing Agreement in respect of OTC derivatives.

- (g) **Representations:** Direct Clients are required to make various representations under the terms of the Clearing Agreement.
- (h) **Security Interest:** Under the Clearing Agreement in respect of ETDs, the Direct Client provides a wide security interest in favour of MSI plc for all liabilities under the Clearing Agreement.
- (i) **Porting:** Under the Clearing Agreement in respect of OTC derivatives, a Direct Client shall be permitted to transfer open OTC derivative Contracts to another clearing member: (i) in the absence of default of MSI plc, subject to fulfilling certain conditions set out in the Clearing Agreement; and (ii) following the default of MSI plc. In each case, porting will be subject to the receiving clearing member accepting such transactions and the rules of the EU CCP.
- (j) **Termination of Contracts:**
 - (i) Under the Clearing Agreement in respect of OTC derivatives:
 - (a) **Default of Direct Client:** MSI plc will be permitted to terminate any outstanding Contracts following the occurrence of certain events, including the insolvency of the Direct Client or the Direct Client failing to perform its obligations under the Clearing Agreement. MSI plc will calculate the net termination amount payable in respect of those Contracts which will include the value of the collateral transferred between the parties on a title transfer basis.
 - (b) **Default of MSI plc:** If an EU CCP declares MSI plc to be in default and the Direct Client elects not to, or is not able, to port its Contracts to another clearing member, all Contracts cleared through that EU CCP will automatically be terminated upon the EU CCP terminating the related contracts between it and MSI plc. The Direct Client will then be required to calculate the net termination amount payable in respect of those Contracts or, where it fails to make such calculation, MSI plc will be permitted to make such calculation.
 - (c) **Default of an EU CCP:** If an EU CCP defaults, all Contracts cleared through that EU CCP will automatically be terminated at the same time as each related transaction between MSI plc and the EU CCP is terminated. MSI plc will then calculate the net termination amount payable in relation to the Direct Client's Contracts cleared by such EU CCP.
 - (d) **Termination:** MSI plc may also terminate its provision of clearing services in relation to one or more EU CCPs on giving a minimum number of days' notice.
 - (ii) Under the Clearing Agreement in respect of ETDs:
 - (a) **Default of Direct Client:** MSI plc will be permitted to terminate any outstanding Contracts following the occurrence of certain events, including the insolvency of the Direct Client or the Direct Client failing to perform its obligations under the Clearing Agreement. In such circumstances, MSI plc will calculate the net termination amount payable in respect of those Contracts. Where margin has been transferred to MSI plc subject to a security interest or pursuant to CASS and the net termination amount is owing to MSI plc, such margin will

be available to be applied in full or partial discharge of such net termination amount. Where margin has been transferred on an outright transfer basis, its value will be included in the net termination amount.

- (b) **Default of MSI plc:** You will be permitted to terminate any outstanding Contracts following the occurrence of certain events, including insolvency of MSI plc or MSI plc failing to perform its obligations under the Clearing Agreement. In such circumstances, you will calculate the net termination amount payable in respect of those Contracts. Where margin has been transferred to MSI plc subject to a security interest or pursuant to CASS and the net termination amount is owing to MSI plc, such margin will be available to be applied in full or partial discharge of such net termination amount. Where margin has been transferred on an outright transfer basis, its value will be included in the net termination amount.
 - (c) **Termination:** MSI plc or the Direct Client may terminate without cause on giving a minimum number of days' notice but the Clearing Agreement shall continue until all liabilities in respect of the Contracts have been discharged.
- (k) **MSI plc protections:** The liability of MSI plc, its affiliates, or their respective employees, officers and directors will be limited. In addition, the Direct Client will be required to indemnify MSI plc, its affiliates and their respective personnel employees, officers and directors in respect of various losses they incur, including as a result of performing the role under the Clearing Agreement. Further, given the nature of clearing and MSI plc's position as an intermediary acting on a Direct Client's behalf, MSI plc will only be required to perform to a Direct Client where MSI plc receive reciprocal performance from the relevant EU CCP.
- (l) **Charges:** Our clearing fees are disclosed in MSI plc's "Clearing Member Pricing Disclosure for Direct and Indirect Clearing". MSI plc will notify the Direct Client of charges from time to time.

For further information on the points outlined in this document, please contact the Morgan Stanley Client Clearing sales team via the following email address: Idsaleslon@morganstanley.com.