



FEDERATION BANCAIRE DE L'UNION EUROPEENNE  
BANKING FEDERATION OF THE EUROPEAN UNION  
BANKENVEREINIGUNG DER EUROPÄISCHEN UNION

in co-operation with



EUROPEAN SAVINGS BANKS GROUP  
GROUPEMENT EUROPEEN DE SCAISSES D'EPARGNE  
EUROPÄISCHE SPARKASSENVEREINIGUNG



EUROPEAN ASSOCIATION OF COOPERATIVE BANKS  
GROUPEMENT EUROPEEN DES BANQUES COOPERATIVES  
EUROPÄISCHE VEREINIGUNG DER GENOSSENSCHAFTSBANKEN

## MASTER AGREEMENT FOR FINANCIAL TRANSACTIONS

### EMIR ANNEX

Edition 2020

This Annex supplements the General Provisions and the Derivative Annex which form part of any Master Agreement for Financial Transactions based on the form published by the FBE.

#### 1. Purpose, Applicability and Business Day

(1) *Purpose.* The purpose of this Annex (“EMIR Annex”) is to enable the parties to comply with certain regulatory requirements provided for under Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (“EMIR”) and under Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 (“Regulation No 149/2013”), each as amended and supplemented from time to time.

(2) *Applicability.* This Annex applies to OTC-derivatives within the meaning of Article 2(7) EMIR. Sections 4, 5, 6 and 7 of this Annex do not apply to Transactions, which are cleared by an Authorized CCP (“Cleared Transactions”). “Authorized CCP” means a central counterparty within the meaning of Article 2(1) EMIR which has been authorized under Article 14 EMIR or recognised under Article 25 EMIR.

(3) *Business Day.* “Business Day” means, in relation to Sections 5 and 6 and the performance of any obligation thereunder, a day (other than a Saturday or Sunday) on which commercial banks are open for business in the cities specified in the Special Provisions and, failing such agreement, the cities of the parties’ organisation, incorporation, principal office or residence.

#### 2. Clearing Status

(1) *Determination of Clearing Status.* In order to comply with the requirements under the EMIR and the Regulation No 149/2013, it is necessary to determine whether the parties are subject to the obligation under Article 4(1) or Article 10(1)(b) EMIR to clear certain transactions through an Authorized CCP (“Clearing Obligation”). Whether or not a party is subject to the Clearing Obligation (“Clearing Status”) will be determined by way of a process chosen by the parties independently of this Annex or, if so agreed between the parties, by a representation made by the parties in the Special Provisions.

(2) *Change of Clearing Status.* Each party undertakes that, in case its Clearing Status changes, it will notify the other party of that fact and will, if so required by the other party, furnish the other party with such additional information as the other party may reasonably request. The notification has to be made to the address specified in the Special Provisions.

#### 3. Transaction Reporting

(1) *Reporting.* Unless otherwise agreed, each party shall report in accordance with Article 9 EMIR, the Commission Implementing

Regulation (EU) No 1247/2012 of 19 December 2012, as amended and supplemented from time to time (“Regulation No 1247/2012”) and the Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012, as amended and supplemented from time to time (“Regulation No 148/2013”) the details of any Transaction they have concluded and any modification or termination of the Transaction to an Authorized Trade Repository or, if such Authorized Trade Repository is not available, to the European Securities and Markets Authority (“ESMA”), by no later than the next Business Day (“Reporting Obligation”). “Authorized Trade Repository” means a trade repository within the meaning of Article 2(2) EMIR, which has been registered in accordance with Article 55 EMIR or recognised in accordance with Article 77 EMIR.

(2) *Delegation*. Each party may delegate its reporting obligation to a third party.

(3) *Record*. The parties agree to keep a record of any Transaction they have concluded and any modification for at least five years following the termination of the Transaction.

#### 4. Timely Confirmation

Each party shall ensure that each Transaction is confirmed at the latest by the end of the day referred to in Article 12 of Regulation No 149/2013. A failure to confirm Transaction by the end of such day does not constitute Other Breach of Agreement within the meaning of Section 6(1)(a)(iii) of the General Provisions.

#### 5. Portfolio Reconciliation

(1) *Reconciliation*. The parties shall, with the frequency specified in paragraph 2 and in accordance with the procedure agreed in paragraph 3, reconcile all data (“Portfolio Data”) which are relevant for the valuation or the settlement of each outstanding Transaction. The Portfolio Data may include the reference number, the trade date, the effective date or start date, the termination date, the settlement dates, the notional amount or deliverable quantities, the day count fraction, the business day convention, the underlying rates (including interest or exchange rates, credit spreads, prices, market or economic indices, statistics, weather conditions, economic conditions or other measurement) and the underlying assets (including currencies, securities, financial instruments, commodities, precious metals, energy or other assets). The Portfolio Data include the Value of the transaction, if one party is subject to Article 11(2) EMIR. “Value” means the value as determined by the party on the Valuation Day by marking-to-market the relevant outstanding Transaction or, where market conditions prevent such marking-to-market, by applying reliable and prudent marking-to-model. “Valuation Day” means

the day agreed between the parties in the Special Provisions and, failing such agreement, the Business Day immediately prior to the Data Submission Day.

(2) *Frequency*. Unless the parties agree on shorter intervals, or any applicable law requires so, the parties shall make reasonable efforts to perform the reconciliation pursuant to paragraph 1 on the following days (each a “Reconciliation Day”):

(a) If both parties are subject to the Clearing Obligation and

(i) where 500 or more Transactions are outstanding between the parties: on each Business Day;

(ii) where more than 50 but less than 500 Transactions are outstanding between the parties: once per week on the day agreed in the Special Provisions;

(iii) where 50 or less Transactions are outstanding between the parties: once per quarter on the day agreed in the Special Provisions.

(b) If one party is not subject to the Clearing Obligation and

(i) where more than 100 Transactions are outstanding between the parties: once per quarter on the day agreed in the Special Provisions;

(ii) where 100 or less Transactions are outstanding between the parties: once per year on the day agreed in the Special Provisions.

If the day so determined is not a Business Day, the Reconciliation Day will be the following Business Day.

(3) *Procedure*. On each Data Submission Day, the Data Transferor shall not provide to the other party or parties the Portfolio Data later than by the Transfer Time. “Data Submission Day” means the Business Day immediately prior to the Reconciliation Day. “Data Transferor” means the party, parties or the third party service provider agreed between the parties in the Special Provisions. “Transfer Time” means the time agreed between the parties in the Special Provisions, and, failing such agreement, the close of business of commercial banks in the cities specified for purposes of Section 1(3) and if more than one city are specified, the earliest close of business. The provision of Portfolio Data includes any form of notice or other communication agreed between the parties for purposes of Section 8(1) of the General Provisions or the provision of data in a data processing system to which the other party or parties have access. The party or parties receiving Portfolio Data shall reconcile such data with its/their own data on the Reconciliation Day.

(4) *Discrepancies*. Each party that identifies a Discrepancy between the data received and its own data, shall immediately notify the other party of the Discrepancy by specifying the relevant Portfolio

Data. On or following such notification, the parties will consult in good faith to resolve the Discrepancy, including by exchanging any relevant information, by no later than five Business Days following such notification. "Discrepancy" means (i) in relation to the Value of a Transaction, any deviation that exceeds the Materiality Threshold agreed between the parties in the Special Provisions or, failing such agreement, any deviation that in the sole discretion of the notifying party is a considerable deviation, and (ii) in relation to other Portfolio Data, any deviation.

(5) *Confidentiality*. Each party undertakes to treat and keep as confidential the Portfolio Data, as well as any other information received during the consultation on any Discrepancy and not to use it for purposes other than those permitted under the Agreement.

(6) *Involvement of Third Parties*. Each party may delegate all or parts of the reconciliation, including the resolution of any Discrepancy, to a third party. The other party may object to the involvement of the third party if the transfer of Portfolio Data to, or the reconciliation of Discrepancies with, such third party would be unduly expensive or burdensome or where there is reason to conclude that the third party or the systems used by such third party are inappropriate or not sufficiently reliable. If a party delegates all or parts of the reconciliation to a third party, such third party shall be entitled to receive and process the Portfolio Data and any other information necessary for the reconciliation or the resolution of any Discrepancy, provided that the third party undertakes to treat and keep the relevant data confidential.

## 6. Dispute Resolution

(1) *Escalation*. In the event a party decides that a Discrepancy has not been resolved in accordance with Section 5(4) within five Business Days, it shall notify the other party accordingly. Upon such notification, the Discrepancy shall be considered to constitute a dispute. Each party shall immediately

refer such dispute to an internal escalation procedure designated for this purpose.

(2) *Margin Maintenance*. Any dispute with respect to the parties' obligation to transfer cash or Securities as Margin under certain circumstances shall be exclusively governed by and resolved in accordance with the provisions of the applicable Title Transfer or Security Interest Margin arrangement, or with any other rules to be separately agreed.

## 7. Portfolio Compression

Where the parties have 500 or more Transactions outstanding, which are not Cleared Transactions, the parties agree to regularly, and at least twice a year, assess the need to engage in a portfolio compression exercise within the meaning of Article 14 of Regulation No 149/2013. The details regarding the procedures to be implemented with a view to effecting a portfolio compression shall be agreed upon in a separate agreement.

## 8. Consent to Reporting of Transactions

The following shall apply where a party is not established within the European Union: The parties herewith consent to the transfer of information to the extent required to comply with the Reporting Obligation. Such transfer of information entails the disclosure of transaction data, including the Portfolio Data of a Transaction, the collateral posted for such Transaction, and the identity of the parties. The disclosure is made to an Authorized Trade Repository, or where such Authorized Trade Repository is not available, to ESMA, or where the parties have delegated the Reporting Obligation to a third party, in accordance with Section 3(b), to such third party. The Authorized Trade Repository or ESMA may make the information available to national supervisory authorities; this may include supervisory authorities in third countries, the laws of which may not necessarily provide a comparable protection of personal data. To the extent applicable, the parties release each other to the above described extent from any bank secrecy requirement.