

Morgan Stanley Europe SE (“MSESE”) 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 MSESE (“**Direct Clients**”) who would like their derivatives transactions to be cleared by MSESE on an EU-domiciled central counterparty (“**EU CCP**”) authorised under the European Markets Infrastructure Regulation (“**EMIR**”). Article 27(1) (as defined below) requires MSESE 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, MSESE can provide assistance – Direct Clients should contact their usual account representative.

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

MSESE 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 MSESE 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 MSESE 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 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:** MSESE 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, MSESE 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 MSESE or takes other actions, for example to set off or close out positions, MSESE 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:** MSESE will be permitted to require the Direct Client to transfer to MSESE margin that MSESE determines from time to time. The amount of margin MSESE will be permitted to call from a Direct Client will vary depending on the EU CCP in question and MSESE’s internal risk-based assessment in respect of the Direct Client. MSESE may withdraw 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 MSESE in its commercially reasonable discretion.
 - (i) **Cash:** When cash margin is transferred to MSESE, it will be transferred on a title transfer basis
 - (ii) **Non-cash:** If MSESE agrees to accept non-cash margin in respect of OTC and/or ETDs, such margin will be held by a third party custodian appointed by the Direct Client (“**Third Party Custodian**”). MSESE shall be permitted to create security over the non-cash assets transferred by a Direct Client to a Third Party Custodian.
- (f) **Force Majeure or Limited Recourse:** Under the Clearing Agreement in respect of ETDs, amongst other things, MSESE is not liable for delay or non-performance as a result of causes outside of MSESE’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) **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 MSESE, subject to fulfilling certain conditions set out in the Clearing Agreement; and (ii) following the default of MSESE. In each case, porting will be subject to the receiving clearing member accepting such transactions and the rules of the EU CCP.
- (i) **Termination of Contracts:**
 - (i) Under the Clearing Agreement in respect of OTC derivatives:

- (a) **Default of Direct Client:** MSESE 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. MSESE 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 MSESE:** If an EU CCP declares MSESE 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 MSESE. 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, MSESE 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 MSESE and the EU CCP is terminated. MSESE will then calculate the net termination amount payable in relation to the Direct Client's Contracts cleared by such EU CCP.
 - (d) **Termination:** MSESE 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:** MSESE 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, MSESE will calculate the net termination amount payable in respect of those Contracts. Where margin has been transferred on an outright transfer basis, its value will be included in the net termination amount.
 - (b) **Default of MSESE:** You will be permitted to terminate any outstanding Contracts following the occurrence of certain events, including insolvency of MSESE or MSESE 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 on an outright transfer basis, its value will be included in the net termination amount.
 - (c) **Termination:** MSESE 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.
- (j) **MSESE protections:** The liability of MSESE, its affiliates, or their respective employees, officers and directors will be limited. In addition, the Direct Client will be required to indemnify MSESE, 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 MSESE's position as an intermediary acting on a Direct Client's behalf, MSESE will only be required to perform to a Direct Client where MSESE receive reciprocal performance from the relevant EU CCP.

- (k) **Charges:** Our clearing fees are disclosed in the "Clearing Member Pricing Disclosure for Direct and Indirect Clearing". MSESE 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: euclearingsales@morganstanley.com.