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MERCHANT SECURITIES LIMITED - TERMS OF BUSINESS FOR PROFESSIONAL CLIENTS (DISCRETIONARY)

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### GENERAL TERMS

1. This Agreement of which these Terms, Supplementary Terms, any covering letter or Special Terms letter or Special Terms of Business, the Fact-Find and any subsequent Fact-Find, the Fees, Commission and Charges Schedule and the Risk Warnings form part ("this Agreement") shall apply to all the Services (as defined in Clause 9. below) we provide for you in relation to the Permitted Investments (as defined in Clause 6. below). You should retain a copy of this Agreement for your records.
2. We may change the terms of this Agreement (including, for the avoidance of doubt, the nature, basis or amount of any of the fees or charges you pay) by giving you notice of the new terms. Any such amendment will be effective on the date specified in such notice. Except as otherwise required by FSA rules, we will give you as much notice as possible, but in any event at least ten (10) business days notice of any such change before providing the Services to you on the amended terms unless it is impracticable in the circumstances to do so. No other amendments shall be made without written agreement.

### OUR STATUS

3. We are regulated by the Financial Services Authority ("FSA") which is at 25, The North Colonnade, Canary Wharf, London E14 5HS and are bound by FSA Rules. Our FSA registration number is 124345. We are members of the London Stock Exchange.
4. We maintain professional indemnity insurance in accordance with current FSA Rules.
5. Each contract between you and us under this Agreement (each a "Customer Contract") is made on the clear understanding that we both contemplate actual performance in accordance with this Agreement and with the terms of such Customer Contract.

### PERMITTED INVESTMENTS

6. We are permitted to provide the Services described in Clause 9. below in respect of the following investments ("Permitted Investments"):
  - (i) Shares and stock in the share capital of British or foreign companies;
  - (ii) Debentures, including debenture stock creating or acknowledging indebtedness not being instruments falling within paragraph (iii) below, loan stock, bonds, notes, depository receipts, certificates of deposit and other instruments;
  - (iii) Loan stock, bonds or other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority;
  - (iv) Warrants or other instruments entitling the holder to subscribe for investments falling within the scope of paragraphs (i), (ii) or (iii) above;
  - (v) Certificates or other instruments which confer: (a) property rights in respect of any investment falling within paragraphs 6.(i), (ii), (iii) or (iv) above; (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or (c) a contractual right (other than an option) to acquire any such investment other than by subscription;
  - (vi) Units in collective investment schemes whether regulated or unregulated, including unit trusts, investment trusts, mutual funds and shares in or securities of an open-ended investment company;
  - (vii) Options (but not including writing of uncovered options) to acquire or dispose of: (a) an investment falling within any of paragraphs 6.(i) to 6.(v) above; (b) index contracts; (c) an option to acquire or dispose of an investment falling within this paragraph by virtue of paragraphs (6)(i), (ii) or (iii) above;
  - (viii) Contracts for differences (or any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in -
    - (a) the value or price of property of any description; or (b) an index or other factor designated for that purpose in the contract;
  - (ix) Spread bet;
  - (x) Personal Pension Scheme; and
  - (xi) Stakeholder Pension Scheme.
7. Except as expressly agreed in writing you agree that there are no restrictions within the range of Permitted Investments on:
  - (i) the types of investments in which your funds can be invested;
  - (ii) the amount or the proportion of those funds which may be invested in any kind of Investment or in any one investment; or
  - (ii) the markets in which those funds can be invested.



## CLIENT CATEGORISATION

8. These Terms authorise us to act in connection with the services listed herein. In performing such services, we will treat you as a Professional Client for the purposes of FSA's conduct of business rules. The categorisation is based on an assessment of your knowledge, experience and understanding of the risks involved in the services provided to you. Under MiFID you are entitled to request a different categorisation, i.e. as a Retail Client which affords you a greater degree of protection. In the event that you wish to discuss your categorisation in more detail, please do not hesitate to contact us.

## THE SERVICES

9. Upon your instruction and pursuant to this Agreement we may, as agreed between us from time to time, provide one or more of the following services to you ("the Services"):
- (i) General dealing services including buying, selling, subscribing for or underwriting Permitted Investments in all cases as your agent;
  - (ii) Arranging deals for you including arrangements with a view to you (or a third party) buying, selling, subscribing for or underwriting units in collective investment schemes;
  - (iii) Discretionary portfolio management services;
  - (iv) Providing periodic valuation reports of your investments; and
  - (v) Such other services as we may agree with you in writing from time to time.

## DISCRETIONARY SERVICE

10. You hereby confer on us discretion to effect any transaction on your behalf except to the extent of any restrictions you have set out in the fact find which forms part of this Agreement.

## INVESTMENT MANAGEMENT

11. We will provide investment management services according to your instructions as set out in the fact-find which forms part of this Agreement and in accordance with Term 17.

## BORROWING ON BEHALF OF THE CLIENT

- 11A We will not commit you to supplement funds in the portfolio by borrowing on your behalf.

## UNDERWRITING COMMITMENTS

- 11B We will not commit you to any obligation to underwrite or sub-underwrite any issue or offer for the sale of securities.

## POLARISATION STATUS

12. Where we advise a transaction in packaged products we will act solely independently and in your interest.

## EXCHANGES

13. (i) The provision of Services will also be subject to the rules, regulations, procedures and customs of the relevant exchange or market ("Exchange") and any relevant clearing house.  
(ii) In respect of each Customer Contract which is subject to the rules of an Exchange we or our agent will have made a contract ("Exchange Contract") or will have accepted the allocation of an Exchange Contract.  
(iii) You acknowledge that most Exchanges and their clearing houses reserve to themselves wide powers under certain situations to close Exchange Contracts (or contracts registered under the Exchange's rules), to effect invoicing back, exercise rights of set-off and to take such other steps as the Exchange or clearing house thinks fit. You agree that if any relevant Exchange or clearing house takes any action which affects any Exchange Contract or any contract we may have with an intermediate broker relating in either case to a Customer contract, then we may take any action which we consider expedient to correspond with such action or to mitigate any loss under such Exchange Contract or intermediate broker contract. Any such action shall be binding on you.

## CAPACITY

14. (i) We contract as agent only in all Customer Contracts. You warrant that you contract as principal only and that no other person will have any interest in any Customer Contract.  
(ii) You warrant that you have full power, and have taken all steps necessary, to lawfully enter into and perform this Agreement and any Customer Contract and undertake that you will maintain in full force and effect all necessary consents, licences, or authorisations of any governmental or regulatory authority or Exchange.

## UNINVITED CALLS

15. We may telephone you at any time between 9.00 a.m. and 9.00 p.m. where there is an existing customer relationship.

## COMPLAINTS

16. (i) If you should have any complaint about the company's provision of, or failure to provide, a financial service please write to: The Compliance Officer, Merchant Securities Limited, John Stow House, 51-55 Gresham Street, London, EC2V 7HQ The company shall ensure that complaints are handled fairly, consistently and promptly. A copy of the company's internal complaint handling procedure is available upon request.

## INSTRUCTIONS



17. (i) You may give us oral or written instructions. Such instructions must be properly communicated to the person responsible for their execution in accordance with our normal business practice. We may require you to confirm instructions in writing where we deem it necessary and we reserve the right to refuse instructions to arrange or execute any particular transaction.
- (ii) If you have given investment authority to someone else, the persons authorised to give us instructions on your behalf shall be the persons named in the client agreement. You may vary such authority by written notice to us. We shall not be bound by such notice until it is actually received by us. We shall be entitled to act upon the oral or written instructions of any person so authorised or anyone who appears to us to be such a person.
- (iii) Once given, your instructions may only be withdrawn or amended with our consent.
- (iv) Dealing instructions shall only be carried out on receipt of sufficient cleared funds in the case of a purchase or sufficient evidence of good title in the case of a sale.
- (v) Execution by us of any instruction to sell does not imply our satisfaction or warranty that title will pass on execution.
- (vi) We may execute your dealing instructions upon any Exchange which we may select unless you specifically instruct us to the contrary.
- (vii) You will promptly (and in any event within any time limit stipulated by the Company) give any instructions we may from time to time require from you in respect of any Customer Contract or proposed Customer Contract. If you do not do so, the Company in its sole discretion may take such steps as it considers expedient for its protection or for your protection.
- (viii) If you do not give us instructions to exercise an option together with any monies or property or documents required therewith by the time stipulated by us, we may at our discretion treat such option as having been abandoned and shall under such circumstances notify you accordingly.

#### INDEMNITY

18. (i) You shall, and hereby undertake that you shall at all times, indemnify and hold us harmless from, against and in respect of all payments, liabilities, damages, losses and costs (including legal costs, duties, taxes (other than corporation tax on our overall net income) and expenses made, suffered or incurred (directly or indirectly) by us: (a) in the proper performance of our obligations or the enforcement of our rights or otherwise pursuant to this Agreement; and (b) by reason of any default, breach or failure by you in the performance of your obligations, undertakings, representations or warranties under the terms of any transactions with or through us.
- (ii) The foregoing indemnities shall be in addition to any other right, indemnity or claim which we may have under the Agreement or the general law and shall not be affected by any variation or termination of this Agreement or the general law or by any forbearance whether as to payment, time, performance or otherwise whatsoever.
- (iii) Nothing in this term or this Agreement shall entitle us to be compensated or indemnified against any liabilities which we incur or may incur or any other consequences of any kind which will or may arise as a result of a regulatory breach of the FSA's Rules.

#### SET-OFF

19. Without prejudice to any other right we may have we shall be entitled to combine all accounts and set-off any amount which you owe us at any time under this Agreement or in respect of any Customer Contract or otherwise against any amount which we owe you under the same or any other Customer Contract or otherwise against all monies at any time standing to your credit on any current or other account with us and any security, guarantee or indemnity which you have given to us for any purpose shall extend to any amount which you owe after exercise of such right of set-off.

#### TERMINATION

20. (i) This Agreement may be cancelled by either party, verbally or in writing. The Agreement may be cancelled at any time without notice. This Agreement will automatically terminate upon: (a) any breach by you of any of your obligations to us; (b) the making of a receiving order in bankruptcy against you or any of you or (where you are a company) upon the appointment of a receiver or an administrator or upon the convening of a meeting of creditors for any reason whatsoever or a meeting of shareholders for the purpose of considering a resolution for winding up; or (c) the levying of distress or execution over any of your assets; or (d) your death (where an individual) or your ceasing to exist (in the case of a company). Where "you" comprise two or more persons jointly, in the event of the death of one or more the survivor or survivors will continue to be bound by and entitled under the terms of this Agreement.
- (ii) Termination will be subject to immediate settlement of all outstanding transactions and obligations. No penalty will become due from either you or us in respect of the termination of these arrangements. If these arrangements are terminated, that will not affect any outstanding order or transaction of any legal rights or obligations which may already have arisen.

#### SUCCESSORS AND ASSIGNS

- 20A. (i) You agree that this Agreement shall extend to and be binding on you and us, and our respective successors and assigns.
- (ii) We may assign this Agreement at any time by way of novation to any Group Company on written notice from us provided that such Group Company is similarly authorised and regulated by the FSA (the **Novation**) and you hereby give your irrevocable consent to such Novation and, subject only to the Novation taking place, you (and where you are acting as agent on behalf of an underlying client, the underlying client) agree to be bound by the obligations under this Agreement in every way as if such a Group Company had been party to this Agreement in place of ourselves. The provisions of this Term 20A shall override any contrary provisions in this Agreement, express or implied.
- (iii) For the purposes of this Term 20A "**Group Company**" means any entity controlled, directly or indirectly by us, any entity that controls, directly or indirectly, us, or any entity directly or indirectly under common control with us.

#### CURRENCY



21. (i) We shall be entitled without prior notice to you, to make any currency conversions we consider necessary or desirable for the purpose of complying with our obligations or exercising our rights under this Agreement, or any Customer Contract. Any such conversion shall be effected by us in such manner and at such rates as we may in our discretion determine having due regard to the prevailing rates for freely convertible currencies.
- (ii) All foreign currency exchange risk arising from any Customer Contract or from our compliance with our obligations or our exercise of our rights under this Agreement shall be borne by you.

#### CONFIDENTIALITY

22. (i) You hereby undertake as a condition of this Agreement not to disclose to any person any information relating to the affairs of the Company in your knowledge or control, the fact of, or the term of your dealings with the Company or any settlement with this company, except as required under the order of a court or statutory body having jurisdiction in respect of such information. You hereby acknowledge that any disclosure in breach of this clause by you, your servants, agents or any other person, will result in the Company suffering damage which cannot adequately be compensated by payment of damages and you acknowledge our right in such circumstances to apply for injunctive relief to restrain any disclosure in breach of this Agreement and that you will consent to the granting of such relief.
- (ii) We may from time to time be required to disclose to officials of Exchanges or Clearing Houses or to regulatory authorities particulars of your dealings with us. You irrevocably authorise us to make such disclosures without prior reference to you.
- (iii) We confirm that we will not disclose any information concerning your Account with us so long as you comply with its conditions except in respect of any disclosures we are required to make by Law.

#### COMMUNICATIONS

23. (i) Communications may be made to you at the address as notified to us for this purpose. You must ensure that at all times we shall be able to communicate with you by telephone, fax or e-mail.
- (ii) Communications may be made to us at the address printed on the back cover of this document or such other address notified to you for the purpose. Such communications shall be considered to have been duly made only upon actual receipt by us.
- (iii) Your attention is drawn to the fact that all telephone conversations are recorded and copies of such conversations kept. Copies remain the sole property of the Company but may be used in evidence by either of us in the event of a dispute.

#### LIABILITY

24. (i) We do not accept any liability or responsibility for any act or omission of any third party including, but without limitation, the Bank or any Eligible Custodian in whose name your investments are registered.
- (ii) In no circumstances whatsoever shall we be responsible or liable for any claim, loss damage, expense or cost arising by reason of any of the following: (a) anything done or omitted to be done by us or the delay in the performance of our functions where such default or delay arises in whole or in part directly or indirectly as a result of the failure of any third party in meeting any of its obligations to us; (b) any delay or default in the performance of our obligations hereunder where such delay or default arises in whole or in part directly or indirectly as a result of any adverse circumstances beyond our reasonable control; (c) consequential loss of profit or loss of trading arising directly or indirectly out of or in consequence of anything done or omitted to be done by us; (d) the accuracy of information provided to us by a third party.
- (iii) Nothing in this Agreement or any Customer Contract shall be construed as excluding or restricting our duties to you under the Financial Services and Markets Act 2000 or any applicable rules or regulations made under it or the Financial Services Authority's Rules, or your exercise of or benefit from your rights there-under.
- (iv) If you are a partnership or otherwise comprise more than one person, the liability of each such person under this Agreement and under each Customer Contract shall be the joint and several liability of every such person.

#### LAW AND JURISDICTION

25. (i) This Agreement and all Customer Contracts shall be deemed to have been made in England, and to be performed there notwithstanding any correspondence in reference to the nature of any permitted investment, place of payment of funds in settlement or otherwise, and the Courts of England and Wales or arbitrators appointed in England or Wales, as the case may be, shall, except for the purpose of enforcing any award made against you in pursuance of the arbitration clause hereof, have exclusive jurisdiction over all disputes which may arise under this Agreement.
- (ii) Such disputes shall be settled according to the Laws of England and Wales, whatever the domicile, residence or place of business of either party to this Agreement may be or become.

#### ARBITRATION

26. (i) Any dispute arising out of or under this Agreement or a Customer Contract, unless resolved between us, shall be referred to arbitration under the arbitration rules of FSA or such other dispute resolution method as may from time to time be adopted by FSA or such other regulatory body as might regulate our investment business.
- (ii) The obtaining of an arbitration or other award as provided by paragraph (i) above shall be a condition precedent to the right of either of us to bring or maintain any action, suit, or other legal proceedings against the other, except only for proceedings to obtain security for a claim.

#### DISCLOSURE OF MATERIAL INTERESTS

27. (i) We draw your attention to the fact that when we give you investment advice or recommend a transaction to you, we may have an interest, relationship or arrangement that is material in relation to the service concerned.
- (ii) When we recommend a transaction to you or enter into a transaction for you we could be: (a) matching your transaction with that of another customer by acting on his behalf as well as yours; (b) receiving payments or other benefits from the person with whom your order is placed.



- (iii) In such circumstances we aim to inform you of our interest before we carry out your instructions. However, we will have no obligation to obtain your consent to our interest in a transaction, whether or not it may conflict with yours or with the interests of other clients of ours nor shall our interest preclude us from acting on your instructions to buy or sell or arrange the purchase or sale of any Permitted Investments. Our employees are required to comply with a policy of independence and to follow Financial Services Authority's Rules and Principles in relation to conflicts of interest. Further information on our Conflict's of Interest Policy can be found on our website at [www.merchantjohneast.com](http://www.merchantjohneast.com)

#### AGGREGATION OF ORDERS

28. We may combine your orders with our own orders, with those of persons connected with us or with orders of other clients without further reference to you. Combining your orders with those of other clients may result in you obtaining on some occasions a more favourable price and on others a less favourable price than if your order had been executed separately.

#### ALLOCATION

29. (i) We will use our reasonable endeavours to complete your dealing instructions but accept no responsibility for non-completion. You agree to accept partial completion of orders unless we are expressly instructed otherwise.
- (ii) Where the relevant clearing house or intermediate broker does not allocate open purchase contracts on maturity directly to our client account or open sale contracts, or vice versa, we may allocate contracts in a way which seems to us to be most equitable.

#### STOP LOSS LEVEL

30. If at any time the market price moves to the level of any stop loss level we may agree in advance for positions which you may hold or in relation to any option transaction or order we will immediately close the contract or option and will not be obliged to refer to you beforehand. You acknowledge, however, that market conditions may inhibit the orderly closing of positions and that whilst we will use all reasonable endeavours to close out the position it may not be possible to liquidate or close out positions immediately (e.g. in a fast or illiquid market) and that it may not be possible to restrict losses to any agreed stop loss level.

#### FEES, COMMISSION AND CHARGES

31. (i) The fees, commission and charges together with the Value Added Tax payable by you shall be those set out in the Fees, Commission and Charges Schedule in effect at the time the commission or charges are incurred. A copy of our current Schedule is provided in the appendix at the end of this Terms of Business. We may amend this Schedule at any time by sending you an amended Schedule. We may also pass on any broker's commission or mark-up payable on any transaction which we execute for you through an intermediate broker. Where we deal on your behalf in Permitted Investments outside the scope of the Commission and Charges Schedule and Term 32 we will charge a commission calculated by reference to the value of the transaction. We will notify you of the commission level prior to dealing and, in any event, will notify you of details as soon as practicable after your request.
- (ii) Unless otherwise agreed, transaction commission will be payable in Sterling in freely transferable cleared and available funds, on the day after the date of the transaction on delivery to you of a contract note or such later date as maybe agreed. We may also debit commissions and charges to any account which you hold with us.
- (iii) We do not normally charge fees in respect of transactions or services for which we are otherwise remunerated, however, in the event that we propose to charge any fee we will notify you in writing before we carry out any chargeable work, explaining how much it will be or how the fee will be calculated and paid. Where we charge a commission in connection with any transaction, then (unless otherwise agreed) any commission or other remuneration which we receive from a third party in connection with that transaction will be paid to you, unless from a Unit Trust provider (as detailed in the Fees, Commission and Charges Schedule).

#### COMMISSION FROM THIRD PARTIES

32. If we receive a commission or other form of benefit from the issuer of a security or from another intermediary, we will advise you of the existence but not the amount of that commission or benefit. If you wish to know the amount of commission or benefit payable to us on any investment which we have arranged, or are proposing to arrange, for you, we will advise you of the amount of the commission but subject to paragraph (iii) of Term 31 above will not be required to pass on to you any such commission or benefit.

#### DELEGATION

- 32A We may, in performing our duties and discretions under this Agreement, appoint and use any service provider, custodian, nominee companies, agents or other delegates, including any Group Company which we select on such terms as we, in our discretion, determine to perform in whole or in part any of our duties or discretions (including giving powers of sub-delegation in the appointment) provided that, except in relation to our or any Group Company's nominees for which we accept the same level of responsibility as we do for ourselves, we are not liable for any act or omission (whether negligent or otherwise) of or loss directly or indirectly caused by any such person or persons, however appointed, except where the loss arises directly from our negligence, fraud or willful default.

#### RELATIONSHIP WITH PERSHING SECURITIES LIMITED

33. (i) We have entered into an agreement with Pershing Securities Limited ("PSL") on behalf of ourselves and each of our clients whereby PSL has agreed to provide clearing and settlement, safe custody and associated services for clients whom we introduce to them. PSL may also provide additional services such as investment dealing services as we may from time to time agree with PSL. PSL is registered in England, company number 2474912, and has its registered office at Capstan House, One Clove Crescent, East India Dock, London E14 2BH. PSL is authorised and regulated by the FSA and bound by its rules. PSL's FSA registration number is 146576. PSL is a member of the London Stock Exchange.



- (ii) The current terms and conditions of PSL and the principal terms of the agreement with them as applicable to our clients including you ("the Pershing Agreement") are set out or summarised below. By acceptance of this agreement, you agree that:
  - (a) we are authorised to enter into the Pershing Agreement on your behalf as your agent on the terms summarised below;
  - (b) acceptance of these terms will constitute the formation of a contract between you and ourselves and also between you and PSL and that you will be bound by the terms of the Pershing Agreement and the terms and conditions of PSL (as set out or summarised below) accordingly;
  - (c) we are authorised to give instructions (as provided for in these Terms of Business and the Pershing Agreement) and provide information concerning you to PSL and PSL shall be entitled to rely on any such instructions or information without further enquiry; and
  - (d) PSL is authorised to hold cash and investments on your behalf and is authorised to transfer cash or investments from your account to meet your settlement or other obligations to PSL.
- (iii) under the Pershing Agreement you will remain a customer of ours but will also become a client of PSL for settlement and safe custody purposes only. We retain responsibility for compliance and regulatory requirements regarding our own operations and the supervision and operation of your account and generally for our on-going relationship with you. In particular, we remain responsible for approving the opening of accounts, money laundering compliance and to the extent required by applicable rules, explaining to you the types of investments covered and the nature and risks of investments and investment transactions and investment strategy, accepting and executing orders in investments, assessing the suitability or appropriateness of transactions and investments or, where permitted, warning you of their possible inappropriateness, providing any investment advice to you or where relevant taking investment management decisions. PSL is not responsible to you for those matters and in particular neither provides investment advice nor gives advice or offers any opinion regarding the suitability or appropriateness (as appropriate) of any transaction or order and relies on information provided to it by us in respect of all such matters.

#### CLASSIFICATION AND CAPACITY

- 34. (i) For the purposes of the FSA rules, PSL shall (unless otherwise separately notified to you by them) adopt the same client classification in relation to you as that determined by us and rely on information provided to them by us as to that classification. The following provisions shall apply to you if you fall within the categories specified below:
  - (a) joint account holders shall be jointly and severally liable to PSL and PSL may discharge its obligations to make any payment or account to all such holders by making such payment or account to any one or more of them;
  - (b) the trustees of any trust shall be regarded as PSL's client (as opposed to any beneficiary) and shall be jointly and severally liable to PSL; and
  - (c) all the partners of any partnership which is PSL's client shall be jointly and severally liable to PSL.
- (ii) Where you are acting as agent on behalf of another (whether disclosed to us or not) you will be, and at all times remain, liable to PSL as principal in relation to any transactions which are to be performed under these terms and PSL will treat you as its client under the FSA rules. You agree that you will be liable to PSL jointly and severally with any such underlying person in respect of all obligations and liabilities arising from instructions given to PSL.

#### CLIENT ACCOUNTS

- 35. (i) PSL shall open and maintain one or more account(s) on its books in your name in connection with the services to be provided by PSL under these terms. Any cash and investments delivered by you or held for your account shall be recorded in such account(s).
- (ii) PSL may, in its absolute discretion, cease to provide any services under these terms and close any such account(s) maintained in your name. PSL will advise us of its decision and the reasons for its decision unless PSL is precluded from doing so owing to any legal or regulatory constraints.

#### COMMUNICATION AND INSTRUCTIONS

- 36. (i) PSL shall only accept instructions concerning your account(s) from us and not directly from you, unless you are a Professional Client and a separate specific agreement has been entered into relating to the giving of instructions, including such further mandate and/or indemnities as PSL may require. In the absence of actual notice in writing to the contrary received from us in sufficient time to prevent the processing of any instructions, PSL shall be entitled to rely upon and act in accordance with any instruction which PSL believes in good faith to have been given by us or our representatives. PSL reserves the right to take such action as it considers appropriate in the event that it has sought instructions from us and we have failed to respond within a reasonable time. PSL will not be responsible for any delays or inaccuracies in the transmission of any instructions or other information due to any cause outside PSL's reasonable control.
- (ii) PSL may, in its absolute discretion, refuse to accept any order or other instruction for your account(s). PSL will advise us of its decision and the reason for its decision unless PSL is precluded from doing so owing to any legal or regulatory constraints. You should direct all enquiries regarding your account to us and not to PSL. Any communications (whether written, oral, electronic or otherwise) between you, us and/or PSL shall be in English.

#### DEALING / BEST EXECUTION

- 37. (i) Unless otherwise agreed with PSL, we shall be responsible for the execution of any transactions on your behalf. PSL shall not owe you any duty of best execution under the FSA rules or otherwise with respect to any such transactions executed by us. We will take all reasonable care to provide best execution in fulfilling orders or executing transactions for you, save that we shall not be responsible for any delays or inaccuracies in the transmission of orders or the execution thereof in either case due to any cause whatsoever beyond our reasonable control. A copy of our Best Execution Policy can be found on our website at [www.merchantjohnneast.com](http://www.merchantjohnneast.com) or by contacting us at the address at the end of these terms of business. In some circumstances we may transmit orders to PSL for it to execute for your account. In such circumstances we have agreed that we, rather than you, shall be PSL's client for the purposes of the FSA Rules. If PSL provides dealing services for your account and in doing so executes a transaction on your behalf the following provisions shall apply:



- (a) all such transactions shall be executed by PSL subject to applicable FSA rules and the rules of any relevant investment exchange or multilateral or other trading facility;
- (b) instructions from us in relation to such transactions will be regarded by PSL as specific instructions from you;
- (c) information on PSL's execution policy for such transactions is set out in Appendix A to these terms and you hereby consent to that policy as amended from time to time including the possibility that it will execute some transactions otherwise than on an EEA regulated market or multilateral trading facility;
- (d) PSL may combine orders that are received for your account with orders that are received for the accounts of its other clients or with its own orders. You acknowledge that aggregation of such orders may operate on some occasions to your advantage and on some occasions to your disadvantage;
- (e) following the execution of any transactions by PSL, PSL shall, unless you have otherwise instructed us, either directly or through us, send a contract note to you. The terms of any contract note shall be conclusive as to any matter contained or provided in such note unless PSL is notified in writing by us forthwith or, in any event, prior to the settlement date for such transaction.

#### SETTLEMENT OF TRANSACTIONS

- 38.
- (i) We will send to you with due dispatch a contract note in respect of each Customer contract. All transactions will be due for settlement in accordance with market requirements and the relevant contract note or advice. You undertake to ensure that all investments and other documents of title and/or transfer forms that are required and or/any relevant cash balance are delivered, transferred or paid to PSL (or to PSL's order) in reasonably sufficient time on or before the contractual settlement date to enable PSL to settle the transaction and that all cash and investments held by, or transferred to PSL will be and remain free from any lien, charge or encumbrance. All payments due to PSL will be made without set-off, counterclaim or deduction.
  - (ii) You acknowledge that in settling transactions on your behalf, PSL is acting as agent on your behalf and that PSL will not be responsible for any default or failure on the part of any counterparty to a transaction or of any depository or transfer agent and delivery or payment will be at your entire risk.
  - (iii) You acknowledge that you shall not have any rights in respect of any cash or investments that are due to be received pursuant to a transaction and that PSL shall have no obligation to account to you for any such cash or investments until you have performed your obligations in relation to such transactions and PSL, as your agent, has been able to settle the transaction. PSL shall, without further notice to you, be entitled to sell or otherwise dispose of any such investments and apply any proceeds or any such cash received by PSL under a relevant settlement in discharge or reduction of any of your obligations in relation to such transactions.
  - (iv) Any transactions undertaken on your behalf on non-UK markets shall be subject to the rules of the relevant overseas exchange, clearing system or depository and any terms of the foreign agent or custodian employed by PSL, including but not limited to, any right of reversal of any transaction (including any delivery or redelivery of any investment and any payment) on the part of any such entity or person.

#### CLIENT MONEY

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- (i) PSL shall hold any money it receives for your account in accordance with the FSA client asset rules (to the extent it is required to do so in accordance with such rules), which, inter alia, require PSL to hold your money in a client bank account segregated from PSL's own funds. PSL will exercise due skill, care and diligence in the selection, appointment and periodic review of any credit institution or bank (other than a central bank) where your money is deposited and for the arrangements for holding your money but PSL shall not be responsible for any acts, omissions or default of any such credit institution or bank.
  - (ii) Your money may be pooled with money belonging to other clients which means that you do not have a claim against a specific sum in a specific account; your claim is against the client money pool in general.
  - (iii) PSL may use a bank which is affiliated to PSL to hold client money on your behalf.
  - (iv) Any uninvested client money, i.e. money not immediately required to settle an investment transaction, will attract interest at a rate no lower than the relevant bank's or depository's minimum deposit rate. Interest, calculated on a daily basis, will be credited to your account every six months. PSL may not distribute interest amounts until they reach a minimum threshold amount agreed with us but such amounts will nevertheless be credited to your account.
  - (v) You agree that PSL will cease to treat as client money any unclaimed balances after a period of six years and PSL has otherwise taken reasonable steps to trace you and return any balance to you. PSL will nevertheless make good any subsequent valid claim against such balances.
  - (vi) We or PSL may undertake a transaction for you that involves your money or investments being passed by us or PSL to any third party in connection with that transaction or to meet obligations to provide margin or collateral, including (but not exclusively) an exchange, clearing house, intermediate broker, settlement agent or OTC counterparty located either in the UK, or in a jurisdiction outside the United Kingdom, which may also be outside the EEA. In such circumstances your money or investments may be at risk in the event of the insolvency of such third party.
  - (vii) Where your money is held in a credit institution or bank outside the UK or EEA or your money or investments are passed to such a third party, the legal and regulatory regime applying to such person may be different to that of the United Kingdom or the EEA and your rights in relation to it may therefore differ, particularly in the event of a default of such person.

#### CUSTODY

- 40.
- (i) Investments which are held by PSL for your account will be registered either:
    - (a) in your name where this has been requested by and agreed with you;
    - (b) in the name of a nominee company controlled by PSL, a member of its group or by a recognised or designated investment exchange; or
    - (c) in the name of a third party (or its nominee) selected by PSL in accordance with the FSA rules (an "Eligible Custodian").
  - (ii) If any investments are registered in your name, you will bear the risks and obligations in relation to such registration. PSL shall, where it has agreed to do so, administer any such investments in accordance with the provisions of these terms. Any bearer investments shall not be held by PSL, but may be held by an Eligible Custodian.
  - (iii) Overseas investments may be registered or recorded either in the name of PSL (and by agreeing in writing to these terms you consent to such registration) or in the name of an Eligible Custodian but only where PSL has taken



- reasonable steps to determine that it is in your best interests to do so or it is not feasible to do otherwise because of the nature of the applicable law and market practice. As a consequence of this, your investments may not be segregated from investments belonging to PSL or the relevant Eligible Custodian and therefore, your protection may be less should a default occur on the part of the person in whose name the investments belonging to you are so recorded because your investments will not necessarily be separately identifiable and may be subject to third party claims (including claims by general creditors) made against PSL or the relevant Eligible Custodian.
- (iv) Investments belonging to you which are held overseas may in any event be subject to different settlement, legal and regulatory requirements than those that apply in the United Kingdom or the EEA and your rights in relation to them may therefore differ.
  - (v) You acknowledge that any investments held with an Eligible Custodian or depositary may be subject under the applicable laws to a right of security, lien, set-off, retention or sale or other encumbrance in favour of such custodian or depositary.
  - (vi) Investments registered or recorded in the name of PSL or an Eligible Custodian or a relevant nominee company may be held in an omnibus account and/or will otherwise be pooled with those of one or more of our or PSL's other clients. Accordingly, your individual entitlements may not be identifiable by separate certificates, physical documents or equivalent electronic entries on the register. In the event of an irreconcilable shortfall following any loss by or default of the custodian responsible for such pooled investments, you may not receive your full entitlement and may share in that shortfall pro-rata. A further effect of pooling can be that following an allocation or share issue that favours the small investor, your allocation may be less than it otherwise would have been, had your investments been registered in your own name.
  - (vii) PSL uses a wide range of Eligible Custodians globally to hold your investments which may include an associate of PSL.
  - (viii) PSL will exercise due skill, care and diligence in the selection, appointment and periodic review of any Eligible Custodian and the arrangements for holding and safekeeping of your investments but PSL shall not be responsible for any acts, omissions or default of any such Eligible Custodian save where such a default is caused by negligence, fraud or wilful default on the part of PSL or its nominee company. Although PSL will seek to ensure that adequate arrangements are made to safeguard your ownership rights, especially in the event of its own insolvency, your investments may be at risk if an Eligible Custodian becomes insolvent.
  - (ix) All instructions regarding the administration of investments held by PSL on your behalf should be made in writing, to us, for onward transmission to PSL. We do not accept from, or send instructions to third parties, unless a valid power of attorney has been established for this purpose.
  - (x) PSL will inform us of any rights issues, take-over offers, capital reorganisations, conversion or subscription rights that affect any investments that are held for your account by PSL or any Eligible Custodian as soon as reasonably practicable after receiving notice of those events.
  - (xi) PSL will be responsible for claiming and receiving dividends, interest payments and other entitlements accruing but is not responsible for taking any decisions in relation to any rights. We will be responsible for instructing PSL to:
    - (a) exercise conversion and subscription rights
    - (b) deal with takeovers or other offers or capital reorganisations
    - (c) exercise voting rights (where PSL exercises such rights)
  - (xii) The consequences of a failure on your part to provide instructions to us by the stated time once notification has been given are entirely your own responsibility.
  - (xiii) Dividends, interest and other rights and payments may be received by PSL or any Eligible Custodian net of local withholding or similar taxes or deductions and PSL or any Eligible Custodian may, if required to do so to comply with legal or regulatory requirements, itself withhold or deduct tax or other amounts from dividend or interest payments received. You shall reimburse to PSL any costs incurred by PSL or any Eligible Custodian in complying with its obligations to apply withholdings or deductions. For the avoidance of doubt, responsibility for reclaiming amounts withheld or deducted shall remain with you and not PSL or any Eligible Custodian.
  - (xiv) If PSL receives any investments for the account of more than one client, PSL may in accordance with FSA rules allocate such investments between clients on whatever basis it considers fair and reasonable in accordance with its allocation policy in force from time to time.
  - (xv) As your investments are held on a pooled basis, from time to time various amounts may arise in relation to your investments (for example, following certain corporate actions) that would not otherwise have arisen if the investments had been registered in your own name. You may not be entitled to any such additional amounts.
  - (xvi) On an annual basis, PSL will provide you with a statement detailing any cash balances and all investments held on your behalf by PSL. The value of any investments held, as identified on the annual statement is calculated using the mid-market closing price at the close of business on the date of the valuation, except for futures and options which are calculated at bid and offer prices. Holdings are reported on a trade date basis. We will periodically send you without additional charge and in respect of each of your accounts a statement detailing open Customer Contracts and a valuation and financial statement in respect of your Permitted Investments.
  - (xvii) PSL reserves the right to refuse to hold any investments on your behalf but PSL will advise of its decision to do so and the reasons for such decision unless precluded from doing so owing to nay legal or regulatory constraints.
  - (xviii) PSL may enter into arrangements for securities lending or financing transactions in relation to investments it holds for you or otherwise use such investments for its own account if you have entered into a separate specific agreement with PSL in relation to such use.

## SECURITY AND DEFAULT

41. (i) You hereby grant to PSL a first fixed charge (with full title guarantee) and a general lien and right of set-off with respect to all cash, investments or other assets of any description paid or delivered (or which are due to be paid or delivered) to PSL for your account in settlement of any transaction. You warrant that all such cash, investments or other assets are beneficially owned by you or are paid or delivered to PSL with the beneficial owner's consent and free and clear of any charge, lien or encumbrance and that you will not charge, assign or otherwise dispose of or create any interest in such cash, investments or other assets other than in accordance with these terms without PSL's prior consent.
- (ii) You agree, at PSL's request, to take such action as PSL may require to perfect or enforce any security interest referred to above and you hereby irrevocably appoint PSL as your attorney to take any such action on your behalf. You acknowledge and agree that if you fail to comply with any of your obligations under these terms, the security interests referred to above shall be enforceable and the powers conferred by Section 101 of the Law of Property Act 1925 (as varied and extended by these terms) shall be exercisable. Section 103 of the Law of Property Act 1925 shall not apply to these terms.



- (iii) In the event that PSL does not receive cash or investments when due (as shown in the relevant contract note or advice) or in the event of you not taking all such steps as may be necessary to secure the due and prompt settlement of any such transaction (or if PSL reasonably consider that you have not or are unlikely to perform your obligations under these terms), PSL may, inter alia, without further notice to you, enforce its security and/or cancel, close out, terminate or reverse all or any contracts or transactions and sell, charge, pledge or otherwise dispose of any investment or other assets held by PSL at such time for the purposes of settlement at whatever price and in whatever manner PSL, acting in good faith, sees fit in its absolute discretion (without being responsible for any loss or diminution in price) and may enter into any other transaction or do or not do anything which would or could have the effect of reducing or eliminating liability under any transaction, position or commitment undertaken for you.
- (iv) For the avoidance of doubt, any asset held for you can be realised in order to discharge any obligation you have to PSL, including any investments held in safekeeping by PSL and any investments held in the course of settlement.
- (v) PSL shall not be liable to you in respect of any choice made by PSL in selecting the investments sold. The proceeds of sale (net of costs) will be applied in or towards the discharge of your liabilities and PSL will account to you for any balance. In the event that such proceeds are insufficient to cover the whole of your liabilities, you will remain liable to PSL for the balance.
- (vi) You hereby authorise PSL to set-off, transfer or apply (without prior notice) any indebtedness, liabilities or obligations of PSL to you in or towards the satisfaction of any indebtedness, liabilities or obligations or any sum that is due from you to PSL in any respect whatsoever (whether or not expressed in the same currency and including, without limitation, any payment of fees or charges due to us or PSL and payments pursuant to any indemnity).
- (vii) In exercising any right or remedy pursuant to these terms, PSL is authorised to effect such currency conversions and enter into such foreign exchange transactions with, or on behalf of you, at such rates and in such manner as PSL may, in its absolute discretion, determine. You acknowledge and accept that in exercising any right or remedy pursuant to these terms PSL will be acting on its own behalf rather than executing your orders.

#### LIABILITY AND INDEMNITY

42. (i) Neither PSL, nor any of its directors, employees or agents, shall be liable for any loss or damage sustained by you as a direct or indirect result of the provision by PSL of its services, save that nothing in these terms shall exclude or restrict any liability of PSL resulting from the negligence, fraud or willful default of PSL or any contravention by PSL of the FSA Rules. PSL shall not, in any event, be liable for any indirect or consequential loss (including any loss of profit), or for any losses that arise from any damage to your business or reputation.
- (ii) You undertake to indemnify PSL and each of its directors, employees and agents ("Indemnified Persons") on an after-tax basis, against any liabilities, reasonable costs and expenses (including legal costs) and all duties and taxes (other than our corporation tax) which are caused by:
- (a) the provision by PSL of its services to you;
  - (b) any material breach by you of any of these terms;
  - (iii) any default or failure by you in performing your obligations to make delivery or payment when due; or
  - (iv) any defect in title or any fraud or forgery in relation to any investments delivered to PSL by or on your behalf or in relation to any instrument of transfer in relation to such investments (including any electronic instruction) purporting to transfer such investments.
- (v) PSL shall not be entitled to be indemnified against the consequences to PSL of its own negligence or willful default or any contravention by PSL of any provision of FSA rules  
PSL shall have no liability for any circumstance or failure to provide any of the services if such circumstance or failure results wholly or partly from any event or state of affairs beyond PSL's reasonable control (including, without limitation, any failure of communication, settlement, computer or accounting system or equipment, any failure or interruption in the supply of data, any political crisis or terrorist action, the suspension or limitation of trading by any exchange or clearing house or any fire, flood or other natural disaster) and, in such circumstances, any of PSL's obligations shall be suspended pending resolution of the event or state of affairs in question.
- (vi) The provisions of this clause 42 shall continue to apply notwithstanding the fact that we or PSL cease to provide services and shall be in addition to any other right of indemnity or claim of any Indemnified Person whether pursuant to these terms or otherwise and shall not be affected by any forbearance, whether as to payment, time, performance or otherwise.

#### CHARGES

- 43 Any fees or charges payable by you in relation to the services provided by PSL and taxes payable via PSL will be set out in our charging schedule as notified to you from time to time. PSL is entitled to pay such charges out of assets and money held for you or by set off under Clause 19 or to require you to pay them direct to it or via us. You may be liable for other taxes or charges not payable via PSL.

#### CONFLICTS OF INTEREST

44. (i) PSL or its associates may provide services or enter into transactions in relation to which PSL or its associates has, directly or indirectly, a material interest or a relationship of any description with a third party which may involve a conflict of interest or potential conflict of interest with you. PSL or any of its associates may, for example:
- (a) be the counterparty to a transaction that is executed by PSL (whether or not involving a mark-up or a mark-down by PSL or its associates);
  - (b) be the financial adviser to the issuer of the investment to which any instructions relate;
  - (c) have a (long or a short) position in the investments to which any instructions relate; or
  - (d) be connected to the issuer of the investment to which any instructions relate.
- (ii) PSL may receive remuneration from fund managers in connection with PSL providing services to them through the PSL Nexus Funds platform. These payments are calculated by reference to the value of assets that PSL holds in custody for its clients.  
PSL may place money held for your account with a bank (in accordance with the FSA rules) and earn and retain interest payments from such bank.
- (iii) A summary of PSL's conflicts policy is set out in Appendix B.
- (iv) You acknowledge that neither PSL nor any of its associates is required to disclose or account to you for any profit made as a result of acting in any manner described above.

#### DATA PROTECTION AND CONFIDENTIALITY OF INFORMATION



45. (i) PSL may use, store or otherwise process personal information provided by you or us in connection with the provision of the services for the purposes of providing the services, administering your account or for purposes ancillary thereto, including, without limitation, for the purposes of credit enquiries or assessments. In the UK, PSL operates, and has made all appropriate notifications in accordance with, applicable data protection legislation.
- (ii) The information we and PSL hold about you is confidential and will not be used for any purpose other than in connection with the provision of the services. Information of a confidential nature will be treated as such provided that such information is not already in the public domain. PSL will only disclose your information to third parties in the following circumstances:
- (a) where required by law or if requested by any regulatory authority or exchange having control or jurisdiction over us or PSL (or any respective associate);
- (b) to investigate or prevent fraud or other illegal activity;
- (c) in connection with the provision of services to you by us or PSL;
- (d) for purposes ancillary to the provision of the services or the administration of your account, including, without limitation, for the purposes of credit enquiries or assessments;
- (e) if it is in the public interest to disclose such information; and
- (f) at your request or with your consent. This is of course subject to the proviso that PSL may disclose your information to certain permitted third parties, such as members of its own group and its professional advisers who are bound by confidentiality codes.
- (iii) We and PSL do not sell, rent or trade your personal information to third parties for marketing purposes without your express consent.
- (iv) Please be advised that, by signing or otherwise consenting to this agreement, you agree that PSL may send your information internationally including to countries outside the EEA, including the United States of America. Some of these jurisdictions offer differing levels of protection of personal information, not all of which may be as high as the UK. However, PSL will always take steps to ensure that your information is used by third parties in accordance with its policy from time to time.
- (v) In accordance with data protection laws you are entitled to a copy of the information PSL hold about you. In the first instance, you should direct any such request to us and we will pass your request on to PSL. PSL is entitled by law to charge a fee of £10 to meet its costs in providing you with details of the information PSL holds about you. You should let us know if you think any information PSL holds about you is inaccurate and we will ask PSL to correct it.

#### COMPLAINTS

46. All complaints should be directed in the first instance to our Compliance Officer, details shown above. If however, your complaint concerns an aspect of the service provided to you by PSL and you wish to copy your complaint to PSL directly, copies should be sent to:

The Compliance Officer  
Pershing Securities Limited  
One Clove Crescent  
East India Dock  
London E14 2BH

We and PSL will endeavour to resolve your complaint as quickly as possible, but in any event, will acknowledge receipt of your letter within five business days. The acknowledgement will include a full copy of our or PSL's internal complaints handling procedure. Upon resolution of your complaint, we or PSL will send you a final response letter, which sets out the nature of that resolution and any applicable remedy. If for any reason you are dissatisfied with our or PSL's final response, please note that you may be entitled to refer your complaint to the Financial Ombudsman Service. A leaflet detailing the procedure is provided in our or PSL's final response.

#### COMPENSATION

47. PSL is covered by the UK Financial Services Compensation Scheme. Compensation may be available from that scheme if PSL cannot meet its obligations to you.

#### AMENDMENT

48. PSL reserves the right to alter these terms at any time, upon giving prior notice to us unless it is impracticable in the circumstances to give such notice.

#### GENERAL

49. (i) PSL's obligations to you shall be limited to those set out in these terms and PSL shall, in particular, not owe any wider duties of a fiduciary nature to you.
- (ii) No third party shall be entitled to enforce these terms in any circumstances.
- (iii) Any failure by PSL (whether continued or not) to insist upon strict compliance with any of these terms shall not constitute nor be deemed to constitute a waiver by PSL of any of its rights or remedies. The rights and remedies conferred upon PSL shall be cumulative and the exercise or waiver of any part thereof shall not preclude or inhibit the exercise by PSL of any other additional rights and remedies.
- (iv) These terms shall be governed by English law and you hereby irrevocably submit for the benefit of PSL to the non-exclusive jurisdiction of the courts of England.



## Introduction

From 1 November 2007, and in accordance with regulatory requirements set out by the Financial Services Authority ("FSA"), we are required to provide clients with information about the steps we take to obtain the best possible result where we are executing their order. These are set out in our 'Execution Policy', a summary of which is shown below.

## Scope

Our Execution Policy is applicable to underlying Pershing clients, and where we have received an order from Merchant Securities Limited:

- a) to execute on their behalf in respect of financial instruments covered by the Markets in Financial Instruments Directive<sup>1</sup> (Annex 1, Section C - see also our website for a list of these); or
- b) which we pass on (i.e. transmit) at our discretion to another broker or dealer ("third party") for execution.

## Execution Factors

In considering how we might achieve the best possible result for an underlying client order, we will take a number of factors into account, including price (or total consideration in the case of retail clients), costs, speed, likelihood of execution and settlement, size, nature of the order or any other considerations relevant to the execution of that order.

In determining the relative importance of these factors, we will use our own commercial experience and judgement, as well as take into account how Merchant Securities Limited and PSL have categorised you (e.g. as retail client or as a professional client), together with the size and nature of the order, the characteristics of the financial instruments to which the order relates, as well as the possible execution venues to which that order can be directed.

In general, we will regard price as the most important of these factors for obtaining the best possible result. However, we recognise that there may from time to time be circumstances for some clients, particular instruments or markets where other factors may be deemed to have a higher priority. In the case of retail clients, we will always regard the most important factors as those which result in the best total consideration in terms of the price combined with the costs of execution.

## Execution Venue

In establishing our Execution Policy, we have identified a variety of different execution venues that we intend to use as we consider these enable us to obtain the best possible result on a consistent basis when executing orders on behalf of clients. It is therefore possible that client orders may be executed on a venue which is not a Regulated Market or a Multilateral Trading Facility ("MTF"). You should also note that some financial instruments may only be traded on one venue (notably if we execute a trade for units in a fund, the venue will be the fund manager or the fund itself).

A list of the execution venues on which we place significant reliance can be found on our website ([www.pershing.co.uk](http://www.pershing.co.uk)). It will also be available from Merchant Securities Limited. We will regularly assess the execution venues available so that we can continue to include those which enable us to obtain the best possible result on a consistent basis. You should, from time to time, refer to our website or ask Merchant Securities Limited for the current list of principal execution venues, as changes will not be separately notified.

We may transmit client orders to another broker or dealer (including a retail service provider ("RSP")) for execution. In such cases we may:

- determine the ultimate execution venue ourselves by accessing specific execution venues through such third parties; or
- instruct this other broker or dealer accordingly (having already satisfied ourselves that they have arrangements in place to enable us to comply with our execution obligations to you).

Where we direct an order to an RSP, then the RSP and not PSL may be executing the order.

## Specific Instructions

Where we receive specific instructions from Merchant Securities Limited, we shall follow those instructions and to the extent they apply we may not be able to apply our Execution Policy and this may have an effect on whether we can obtain the best possible result for the execution of your order.

## Limit Orders

If an order has been placed with us with a limit on the price for execution, we may not be able to execute it immediately. Consequently, in accordance with regulatory requirements and unless otherwise specifically instructed, we will publicly disclose details of any unexecuted part of such "limit" order.

<sup>1</sup> - EU Directive 2004/39/EC, dated 21 April 2004.



### Monitoring and Review

We will monitor regularly our order execution arrangements, as well as the quality of both our execution and that of third parties to whom we have passed orders. Such review will enable us to identify and implement changes to our Execution Policy and execution arrangements as necessary. You should note that it may not always be possible to make an effective comparison of execution performance because reliable data is not always available for some markets.

Clients will be advised of any material changes to our policy as necessary.

### Consent

Regulations require that we must obtain clients' prior consent to this Execution Policy. We will deem that you have provided such consent where we receive an order for your account on or after 1 November 2007.

We must, however, obtain your express consent, prior to executing an order in an instrument admitted to trading on a Regulated Market or an MTF outside of such a Regulated Market or MTF. Your written consent in form of an Express Consent Form must be sent to Merchant Securities Limited, since we will otherwise be prevented from achieving the best possible result where this is achieved by executing your order outside of a Regulated Market or MTF. Merchant Securities Limited will then hold a record of your consent to our order and inform us that you have consented to this Execution Policy.



We have also reviewed the organisational and administrative arrangements in place to manage such conflicts and are of the view that, save for the matters outlined below, they are sufficient to ensure with reasonable confidence, that risk of damage to clients' interests will be prevented.

From our Conflicts of Interest Policy, we have identified the following areas where we are not certain that we can manage the conflict (or potential conflicts) fully and thus we hereby advise our clients of this fact: The general nature and/or source of these conflicts are:

- Pershing Europe<sup>2</sup> provides integrated execution, clearing, settlement and custody services to a number of financial services organisations and therefore has potentially competing client interests.
- Pershing Europe entities hold positions and/or provide transactional related services for more than one client and such clients may have competing objectives in relation to a position or transaction.
- Pershing Europe entities may enter into a transaction in relation to which a Pershing Europe entity has indirectly or directly, a material interest or relationship.
- Pershing Europe entities may combine orders received from one client with those received for the accounts of other clients (and exceptionally may combine with its own orders). Such aggregation may operate on some occasions to a client's advantage and on some occasions to their disadvantage. Where orders have been aggregated, they will be allocated out to clients on a pro-rata basis.
- Pershing Securities Limited may pass orders to an affiliated company for execution. This will, however, be done in accordance with its Execution Policy.
- Where Pershing Europe entities exercise a right to vote in relation to a corporate action, it will do so in accordance with clients' instructions and these may reflect competing interests.
- Pershing Europe entities may place money held on behalf of clients and/or their underlying clients with a bank (in accordance with the relevant regulatory requirements) and earn and retain interest payments from such bank.
- Pershing Europe entities may have other business relationships with a company in relation to whose securities you are entering into a transaction e.g. as a client, supplier, custodian or banker.
- As a result of Pershing Europe's relationships with its customers and with customers across the Bank of New York Mellon Corporation ("BNYM") Group, there may be circumstances in which we are unable to execute transactions with or for clients, in relation to particular counterparties or in particular investments and we shall not be obliged to disclose the reason why or provide any further information thereto.
- It is possible that an affiliate and member of BNYM Group may have a material interest or a conflict of interest in the service or transactions we carry out with or for you. While there may be some cross-board memberships, the day-to-day management of Pershing Europe act independently.
- In carrying out Pershing Europe's business, employees may learn confidential or proprietary information about its clients, their underlying clients, prospective clients and underlying clients or other third parties. Employees are required to maintain the confidentiality of all such information entrusted to them, except where disclosure is otherwise authorised or legally mandated. Further, employees are not permitted to use such information for their personal gain.
- Pershing Europe employees are not permitted to trade in the shares of its clients unless the client's shares are widely traded on a regulated market and where the service provided by Pershing Europe represents a very small fraction of the client's total business.
- Pershing Europe employees are required to disclose and in most cases must obtain approval for any outside business interest or employment.

This conflicts disclosure is not intended to, and does not, create rights or duties that would not exist if the disclosure had not been made available, nor does it form part of any contract between Pershing Europe entities and any Client.

<sup>2</sup> - including Pershing Limited (UK) and its two subsidiaries Pershing Securities Limited (UK) and Pershing Securities International Limited (Ireland).



## Appendix C – MSL Commission and Charges Schedule

### Commission: Equities & Investment Trusts

First £10,000	1.85%
Next £10,000	1.00%
Thereafter	0.5%

(Plus third party movement charges may apply on overseas securities)

### Commission: UK and Overseas Government Securities.

First £10,000	1.25%
Next £10,000	0.25%
Thereafter	0.125%

(Plus third party movement charges may apply on overseas securities)

### Minimum Commission

UK- Registered Securities	£35.00
Overseas Securities (including Euroclear)	£75.00

### Unit Trusts and OEICs

Our standard fees for Collective Investments and Structured Products are the same as Equities and Investment Trusts identified above. Where possible we will endeavour to purchase collective investments at net asset value, although we may receive trail commission from the fund manager which will be paid from their standard management fee. We may receive a fee in relation to the design and setting up of structured products.

### Other Charges

Compliance Administration Charge	£25.00 (Per transaction)
Certificated Transaction	£50.00
Annual Nominee Charge	£200.00 (Debited half-yearly)

### Discretionary Management Fee

Management fee is by arrangement, subject to a minimum annual fee of £200.00

### Advisory Portfolio Management Fee

Management Fee is by arrangement, subject to a minimum annual fee of £200.00

### Advisory Dealing Charges

Valuations	No Charge
Dividend Charge	£2.00

### Execution-Only Dealing Charges

Valuations	No Charge
Dividend Charge	£2.00

### ISA Charges

Please request our ISA commission rates and fee sheet for further details.

### 'Off-Market' Movement Charges

#### UK Transfers

Transfers into CREST/nominee	Free
Transfers out of CREST/nominee	£15

#### Overseas/residual Transfers

Transfers in	Free (plus any local agent charges)
Transfers out	£25 (plus any local agent charges)

### Other Charges

#### Debit interest on late settlement

GBP,USD,EUR – central bank base rate plus	5% (Debited monthly)
Other currencies – local agent rate plus	5% (Debited monthly)

Credit interest on cleared client money balances 2% below central bank base (credited half-yearly)

Cheque, BACS	No Charge
CHAPS	£25.00
Non-UK payments (any local bank charges will be applied)	£30.00
Ad-hoc Proxy Voting (by prior arrangement)	£25
Duplicate Statement or Tax Voucher	£20
Probate valuations (first 10 lines of stock)	£30 (plus £2.00 per additional line)

Please note that in the case of a UK or EU resident, UK VAT is levied at the standard rate on charges which are not transaction-related.

**Any commissions, fees or charges not specified above will be notified to you prior to dealing**



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