

To: All members

Ref: 17 355

Classification: Consultation

Date: 23 October 2017

Subject: **CONSULTATION ON MARKET MAKING AGREEMENT FOR MIFID II**

## Summary

- 1 The Exchange (the “**LME**”) is seeking the views of its Members in relation to the introduction of a market making agreement to incorporate certain requirements of MiFID II (the “**Consultation**”).

## Defined Terms

- 2 Terms not otherwise defined in this notice (this “**Notice**”) shall have the meaning ascribed to them in the proposed revised Rules and Regulations of the LME (the “**Rulebook**” or “**LME Rulebook**”).

## Regulatory Background

- 3 Pursuant to Article 17(3) of MiFID II, an investment firm that engages in algorithmic trading to pursue a market making strategy shall, taking into account the liquidity, scale and nature of the specific market and the characteristics of the instrument traded: (a) carry out this market making continuously during a specified proportion of the trading venue’s trading hours, except under exceptional circumstances, with the result of providing liquidity on a regular and predictable basis to the trading venue; (b) enter into a binding written agreement with the trading venue which shall at least specify the obligations of the investment firm in accordance with point (a); and (c) have in place effective systems and controls to ensure that it fulfils its obligations under the agreement referred to in point (b) at all times.
- 4 Pursuant to Article 48(2) of MiFID II, a regulated market such as the LME shall have in place: (a) written agreements with all investment firms pursuing



a market making strategy on the regulated market; and (b) programmes to ensure that a sufficient number of investment firms participate in such agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis, where such a requirement is appropriate to the nature and scale of the trading on that regulated market.

- 5 Article 48(3) states that the written agreement referred to in Article 48(2) shall at least specify (a) the obligations of the investment firm in relation to the provision of liquidity and where applicable any other obligation arising from participation in the scheme referred to in Article 48(2)(b); and (b) any incentives offered by the regulated market to an investment firm so as to provide liquidity to the market on a regular and predictable basis and, where applicable, any other rights accruing to the investment firm as a result of participation in the scheme referred to in Article 48(2)(b). It further states that the regulated market shall monitor and enforce compliance by investment firms with the requirements of such binding written agreements. The regulated market shall inform the competent authority about the content of the binding written agreement and shall, upon request, provide all further information to the competent authority necessary to enable the competent authority to satisfy itself of compliance by the regulated market the provisions of Article 48(3).
- 6 Commission Delegated Regulation EU 2017/578 (“**RTS 8**”) states at Article 1 that investment firms shall enter into a market making agreement regarding the financial instrument or instruments in which they pursue a market making strategy with the trading venue or venues at which this strategy takes place where, during half of the trading days over a one month period, in execution of the market making strategy, they: (a) post firm, simultaneous two-way quotes of comparable size and competitive prices; and (b) deal on their own account in at least one financial instrument on one trading venue for at least 50% of the daily trading hours of continuous trading at the respective trading venue, excluding opening and closing auctions. Article 2 states that, for the purposes of Article 1(1) of RTS 8: (a) a quote shall be deemed to be a firm quote where it includes orders and quotes that under the rules of a trading venue can be matched against an opposite order or quote; (b) quotes shall be deemed simultaneous two-way quotes if they are posted in such a way



that both the bid and the ask-price are present in the order book at the same time; (c) two quotes shall be deemed of comparable size when their sizes do not diverge by more than 50% from each other; (d) quotes shall be deemed to have competitive prices where they are posted at or within the maximum bid-ask range set by the trading venue and imposed upon every investment firm that has signed a market making agreement with that trading venue. RTS 8 also prescribes various requirements for the content of the binding written agreement and further information about the calculation of exceptional circumstances.

- 7 The LME intends to comply with the requirements of Article 48(2) and RTS 8 by requiring all investment firms pursuing a market making strategy on the LME to enter into a market making agreement with it. In this notice, the LME is consulting market participants on the proposed form of the market making agreement.
- 8 Following its recent consultation (LME Notice 17/246, dated 17 July 2017 and LME Notice 17/340, dated 17 October 2017), the LME set out the addition of a provision to the Rulebook, which will apply from 3 January 2018, which obligates investment firms to enter into a market making agreement with the LME (Regulation 20.12 of Part 2 and Regulations 21.3 – 21.5 of Part 3):

*Part 2 Regulation 20.12 Subject to Trading Regulation 21, a Member must not pursue, or permit any Client of the Member to pursue, a Market Making Strategy on the Exchange without first notifying the Exchange and entering into such agreements as the Exchange may specify, including any agreement required to satisfy any applicable legal or regulatory requirement. The Member must ensure that any activity it undertakes on the Exchange in pursuing a Market Making Strategy complies with the term of any such agreement, the Rules, including but not limited to the applicable requirements in Trading Regulation 21, and any relevant administrative procedure.*

*Part 3 Regulation 21.3 Where any Member, or any Client of a Member engages in Algorithmic Trading, to pursue a Market Making Strategy:  
(a) the Member shall provide, and shall ensure that any such Client provides, market making continuously during the opening hours of the Exchange, with the result of providing liquidity on a regular and predictable basis;*



*(b) the Member shall, and shall procure that any such Client shall, enter into a market making agreement with the Exchange where required to do so by Regulation 21.4 regarding its obligations in (a) in relation to the Contracts in which it or, where appropriate, its Client, pursues a Market Making Strategy;*  
*(c) the Member must have in place, and ensure that any such Client has in place, the systems and controls required to ensure it performs its obligations under the market making agreement specified in (b); and*  
*(d) the Member shall comply with any additional requirements that the Exchange may specify by Administrative Procedure.*

*21.4 A Member shall, and shall procure that a Client shall, enter into a market making agreement with the Exchange:*

*(a) if it or such Client, during half of the trading days over a one-month period, in execution of such Market Making Strategy:*

*(1) posts Firm Quotes that are simultaneous two-way quotes of comparable size and competitive prices; and*

*(2) Deals On Own Account in at least one Contract on the Exchange for at least 50 per cent of the daily trading hours of continuous trading at the Exchange, or*

*(b) where otherwise required to do so pursuant to MiFID II or any law or regulations made pursuant thereto.*

*21.5 For the purposes of Regulation 21.4:*

*(a) Firm Quotes shall be deemed to be simultaneous two-way quotes if they are posted in such a way that both the bid and the ask-price are present in the order book at the same time;*

*(b) two Firm Quotes shall be deemed of comparable size when their sizes do not diverge by more than 50 per cent from each other; and*

*(c) Firm Quotes shall be deemed to have competitive prices where they are posted at or within the maximum bid-ask range for the relevant Contract, as specified by the Exchange from time to time by Notice.*

## **The Consultation process**

- 9 The Consultation is open to all interested market participants, including, without limitation, Members and Clients of Members.



- 10 Formal responses to the Consultation should be submitted in writing. The Consultation will remain open for responses until close of business on 20 November 2017. Responses made after the closing date of the Consultation will not be taken into consideration. The LME will take into account all responses received by the closing date.
- 11 Any market participant wishing to submit a response to the Consultation, or to ask questions or to seek clarification on any issue covered by the Consultation, is asked to contact Kishan Chandarana on +44 (0) 20 7113 8510 or at [kishan.chandarana@lme.com](mailto:kishan.chandarana@lme.com).
- 12 Although the LME will consider responses submitted in any format, it would be helpful if respondents could reply to the numbered consultation questions ("**Consultation Questions**") set out in this Notice.
- 13 The LME may need to share responses received with regulatory authorities, members of its group including LME Clear, its legal or other professional advisers, or as required by law. Apart from this, all responses received will be treated in confidence.

## **The Proposal**

- 14 This section explains the market making agreement (the "**Proposal**").
- 15 The market making agreement is intended to be entered into by any person who is required, pursuant to MiFID II and / or the Exchange's Rules<sup>1</sup> to enter into a market making agreement with a trading venue on which such person undertakes a Market Making Strategy. For the purposes of the market making agreement, a "**Market Making Strategy**" shall mean a strategy performed by the firm, when dealing on own account, that involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more Contracts, with the result of providing liquidity on a regular and frequent basis to the overall market. This shall include, but is not limited to, anyone who undertakes a Market Making Strategy pursuant to any market making programme offered by the Exchange from time to time (such

---

<sup>1</sup> See Regulation 20.12 of Part 2 and Regulations 21.3 – 21.5 of Part 3 of the Rules, set out in full at paragraph 8 above



as the LME's market making programmes for its ferrous contracts or LMEprecious contracts). The agreement applies where such Market Making Strategy relates to Contracts, and shall, for the avoidance of doubt, be used where a person pursues a Market Making Strategy for such Contracts using an Algorithmic Trading System, or where otherwise required pursuant to MiFID II or any law or regulations made pursuant thereto.

- 16 The agreement refers to (a) the obligations of the firm in relation to market making, including but not limited to the provision of liquidity; and (b) the incentives offered to the firm to provide liquidity on a regular and predictable basis and, to the extent applicable, other rights accruing to the firm as a result of participation in any market making programme facilitated by the Exchange. The key obligations of the investment firm are set out at clause 6 of the proposed market making agreement. The agreement sets out the obligations of firms in normal market circumstances, stressed market circumstances and exceptional market circumstances. The agreement includes a relaxation of obligations in stressed market circumstances. Although the LME is not strictly required by MiFID II to include this (the obligation to have market making schemes in place and to differentiate between normal and stressed market conditions only applies to shares, exchange-traded funds ("ETFs") and related contracts, not commodity derivatives), the LME nevertheless considers it is beneficial for the market to do this. It is worth noting that, in relation to the definition of stressed market circumstances, the LME proposes to issue a policy on 'fast market' circumstances, and the definition will be further expanded upon in that policy. Broadly, however, stressed market circumstances will be characterised by significant short term changes in price and liquidity.
- 17 Pursuant to clause 6 of the market making agreement, under normal conditions, the firm undertakes to post firm quotes that are: (a) simultaneous two-way quotes; (b) of comparable size; (c) at competitive prices; and (d) in each Contract for which it applies a market making strategy, during at least 50 per cent of the opening hours of each business day on which continuous trading takes place (excluding opening and closing auctions). The meaning of certain key terms are defined at clause 6.7 of the market making agreement. Amongst other things, firm quotes shall be deemed to have competitive prices where they are posted at or within the maximum bid-ask range for the



relevant Contract, as specified by the Exchange from time to time. The LME will publish on its website and by Notice the minimum bid-ask range. The LME's current intention is to specify a maximum bid-ask range of 1 tick for all Contracts. Investment firms should refer to this information when assessing whether the quotes they are submitting are deemed to be at competitive prices. Investment firms should also refer to this information when assessing whether they will be required to enter into a market making agreement pursuant to the requirement to post competitive prices contained in Regulation 21.4 of Part 3. In practice, it may be the case that many investment firms do not meet the relevant criteria and will not be required to enter into a market making agreement.

- 18 The LME expects investment firms which have signed the market making agreement to adhere to its terms. The LME will monitor compliance with the terms of the agreement by investment firms, as is required by MiFID II. In the event of a failure to comply which constituted a material breach of the agreement, the LME may (a) terminate the agreement with immediate effect, and (b) withdraw the right of the firm to participate in any applicable market making programme as prescribed by the LME by Notice from time to time (clause 11.4 of the proposed market making agreement). For the avoidance of doubt, these provisions would apply equally to both Members and Clients, and would constitute the mechanism for enforcement of the terms of the agreement pursuant to the LME's obligations under MiFID II. The LME would not generally expect to take disciplinary action pursuant to Part 2 of the LME Rulebook against Members for failure to comply with the terms of the market making agreement.

### **The LME's Current Incentive Programmes**

- 19 For the avoidance of doubt, any incentive programmes currently offered by the LME (including without limitation the new market participant programme, the liquidity provider programme and the market making programmes for ferrous and LMEprecious) will continue in full force and effect. The market making agreement contemplated pursuant to this Notice shall form a separate obligation which is intended to enable compliance by Members and the Exchange with MiFID II.

### **Consultation Questions**



20 The LME requests that respondents to the Consultation answer the following questions:

**Question 1** – Do you have any comments on the proposed market making agreement? If possible, please use the table below to provide comments.

Market making agreement reference	Comment / proposed change	Rationale
Clause [ ]	[Please complete]	[Please complete]

**Question 2** – Do you have any other comments in relation to this Consultation?

### Timing and steps following the Consultation

21 The market making agreement and any future incentive programmes are subject to regulatory approval before they can become effective. Following due consideration, the LME may implement:

- (a) in respect of the Proposal, that Proposal, a modified version of that Proposal, an alternative to that Proposal, or no measure in respect of that Proposal;
- (b) any other measure(s); or
- (c) no measures.

22 Following this Consultation, the LME will issue a decision notice confirming the final version of the market making agreement. The market making agreement will then be a standard form agreement and the LME will accept no amendments or additions to the standard form: it is imperative that the market making agreement is a level playing field and that all investment firms enter into the market making agreement on identical terms.

### Benefits & Unintended Consequences

23 The LME acknowledges that there may be costs for Members in complying with the Proposal. However, the Proposal is necessary in order to comply



with the requirements of MiFID II; therefore the LME is legally obligated to introduce a market making agreement. The LME has not identified any unintended consequences as a result of the Proposal. The LME is interested in the views of respondents to the Consultation in this regard.

**Tom Hine**  
**General Counsel & Head of Enforcement**

cc: Board Directors



**Appendix I**  
**Proposed Market Making Agreement**

*Distributed with this Notice.*

## MARKET MAKING AGREEMENT

This Market Making Agreement (“**Agreement**”) is made between:

- (1) **THE LONDON METAL EXCHANGE** a company incorporated in England (registered number 2128666) whose registered office is at 10 Finsbury Square, London, EC2A 1AJ (the “**Exchange**”); and
- (2)

<b>FIRM'S FULL NAME:</b>	
<b>FIRM'S COMPANY NUMBER:</b>	
<b>FIRM'S PLACE OF INCORPORATION:</b>	
<b>ADDRESS:</b>	
<b>EMAIL FOR NOTICES:</b>	

(the “**Firm**”)

(each a “**Party**” and together the “**Parties**”).

### 1. RECITALS

- (A) This Agreement is intended to be entered into by any person who is required, pursuant to MiFID II and / or the Exchange's Rules to enter into a market making agreement with a trading venue on which such person undertakes a Market Making Strategy. This Agreement applies where such Market Making Strategy relates to Contracts, as defined in the Exchange's Rules and shall, for the avoidance of doubt, be used where a person pursues a Market Making Strategy in such Contracts using Algorithmic Trading, or where otherwise required pursuant to MiFID II or any law or regulations made pursuant thereto.
- (B) This Agreement refers to:
- (a) the obligations of the Firm in relation to market making, including but not limited to the provision of liquidity; and
  - (b) the incentives in terms of rebates or as otherwise offered to the Firm to provide liquidity on a regular and predictable basis and, to the extent applicable, other rights accruing to the Firm as a result of participation in any market making programme facilitated by the Exchange.

## 2. INTERPRETATION

2.1 Terms not otherwise defined in this Agreement shall have the meaning ascribed to them in the Exchange's Rules (as amended from time to time) available on the Exchange's website at: <https://www.lme.com/regulation/rules/rulebook/> ("**Rules**"). Any reference in this Agreement to any part of any legislation, statute or regulation includes the equivalent provision under any related or replacement legislation, statute or regulation from time to time.

2.2 In this Agreement the following terms shall have the following meanings (such meanings shall be equally applicable to the singular and plural forms of the terms defined):

"**Competent Authority**" shall mean the authority designated by a member state of the European Union in accordance with Article 67 of the MiFID II Directive, or as otherwise specified in the MiFID II Directive;

"**Exceptional Circumstances**" shall mean the circumstances described in Article 3 of Commission Delegated Regulation (EU) 2017/578 of 13 June 2016, which shall include circumstances in which Extreme Market Volatility has occurred;

"**Extreme Market Volatility**" shall mean a situation of extreme volatility that affects:

- (a) the majority of Contracts available for trading on the Exchange or any specific type of Contract; or
- (b) the underlyings of such products,

such situation being identified by the LME at its absolute discretion;

"**Normal Market Circumstances**" shall mean circumstances other than Stressed Market Circumstances and Exceptional Circumstances; and

"**Stressed Market Circumstances**" shall mean 'fast market' circumstances where the markets are more volatile than usual, as further explained and defined in the LME policy on Fast Markets as such policy is revised and updated by the LME by Notice from time to time.

## 3. STATUS

3.1 This Agreement shall be treated as a market making agreement for the purposes of Article 17(3)(b) and Article 48(2) of the MiFID II Directive and Regulation 21.5 of Part 3 (*Trading Regulations*) of the Exchange's Rules.

## 4. SCOPE

4.1 This Agreement shall apply to any person who is required, pursuant to MiFID II and / or the Exchange's Rules, to enter into a market making agreement with a trading venue on which such person undertakes a Market Making Strategy relating to

Contracts. For the avoidance of doubt, this shall include, but is not limited to, anyone who undertakes a Market Making Strategy pursuant to any market making programme offered by the Exchange from time to time.

4.2 The Firm must notify the Exchange of each Contract in respect of which it applies a Market Making Strategy falling within Clause 4.1 above prior to the application of such Market Making Strategy. This Agreement shall apply in respect of each such Contract and Market Making Strategy so notified to the Exchange subject, in the case of any market making programme offered by the Exchange, to the acceptance by the Exchange of the Firm's application to participate in such market making programme.

## 5. OBLIGATIONS OF THE EXCHANGE

5.1 The Exchange may issue Notices from time to time specifying the terms of applicable market making programmes.

5.2 The Exchange may provide incentives to the Firm in respect of its market making activities falling within Clause 4.1 above as set out in the Notice applicable to the relevant market making programme, provided that the Firm meets the requirements for accessing such incentives under :

(a) Normal Market Circumstances; and/or

(b) Stressed Market Circumstances.

5.3 The Exchange may from time to time, amend, add to or replace (a) any requirements for accessing incentives or (b) the incentives available to the Firm, as set out in the Notice applicable to the relevant market making programme by updating or replacing the relevant Notice published on the public website of the Exchange.

5.4 Nothing in this Agreement shall prevent the Exchange from establishing other types of Incentive Programme that do not involve a Market Making Strategy.

## 6. OBLIGATIONS OF THE FIRM

6.1 The Firm shall comply with the applicable requirements of MiFID II and the Exchange's Rules, including without limitation Regulation 21 of Part 3 (*Trading Regulations*) in relation to its market making activity.

6.2 If the Firm intends to pursue a Market Making Strategy in a way that would fall within Clause 4.1 above in relation to a market making programme, the Firm must, prior to doing so, have completed the required application form to enter the relevant market making programme as specified by the Exchange from time to time and shall provide all relevant information as required by the Exchange. The Exchange reserves the right to, in its sole discretion, approve or refuse any application for participation in any market making programme. The Exchange's decision as to whether or not an application for participation in a market making programme meets the criteria shall be final and binding.

- 6.3 The Firm shall comply with the terms of any applicable market making programme as set out in the relevant Notice, as revised and updated from time to time.
- 6.4 The Firm shall maintain an electronic connection to the Exchange and shall provide quotes relating to the Contracts for which it applies a Market Making Strategy using LME's electronic trading platform.
- 6.5 Under Normal Market Circumstances, the Firm undertakes to post Firm Quotes that are:
- (a) simultaneous two-way quotes;
  - (b) of comparable size;
  - (c) at competitive prices;
  - (d) in each Contract for which it applies a Market Making Strategy,
- during at least 50 per cent (50%) of the Opening Hours of each Business Day on which continuous trading takes place (excluding opening and closing auctions).
- 6.6 Under Stressed Market Circumstances, the Firm undertakes to post Firm Quotes that are:
- (a) simultaneous two-way quotes;
  - (b) at risk adjusted quotation parameters in spread and size;
  - (c) in each Contract for which it applies a Market Making Strategy,
- during at least 50 per cent (50%) of the Opening Hours of each Business Day on which continuous trading takes place (excluding opening and closing auctions).
- 6.7 For the purposes of Clauses 6.5 and 6.6:
- (a) Firm Quotes shall be deemed to be simultaneous two-way quotes if they are posted in such a way that both the bid and the ask-price are present in the order book at the same time;
  - (b) two Firm Quotes shall be deemed of comparable size when their sizes do not diverge by more than 50 per cent from each other; and
  - (c) Firm Quotes shall be deemed to have competitive prices where they are posted at or within the maximum bid-ask range for the relevant Contract, as specified by the Exchange from time to time by Notice.
- 6.8 The Exchange will endeavour to determine in its absolute discretion and make public the occurrence of Exceptional Circumstances. In the event of such an occurrence, the Exchange may issue a Notice to Members.

6.9 Where the Exchange has notified Members of any Exceptional Circumstance, the Exchange may notify Members when it considers that such Exceptional Circumstance has ceased to exist, from which time Normal Market Circumstances shall be treated as having recommenced.

6.10 In the event that:

- (a) the Firm becomes aware that Exceptional Circumstances have occurred; and
- (b) due to such Exceptional Circumstances, the Firm's ability to maintain prudent risk management practices is prevented by any of the following:
  - (i) technological issues, including problems with a data feed or other system that is essential to carry out a market making strategy;
  - (ii) risk management issues in relation to regulatory capital, margining and access to clearing; or
  - (iii) the inability to hedge a position due to a short selling ban,

the Firm shall notify the Exchange immediately and shall provide to the Exchange, upon request, evidence satisfactory to the Exchange of such circumstances demonstrating that its ability to maintain prudent risk management practices has been prevented.

6.11 The Firm shall notify the Exchange immediately if the Exceptional Circumstances notified by it to the Exchange in accordance with Clause 6.10 have ceased to exist.

6.12 The Exchange reserves the right at its absolute discretion to:

- (a) treat any occurrence notified by the Firm in accordance with Clause 6.10 as Normal Market Circumstances; and
- (b) require that the Firm continues to provide liquidity in accordance with Clause 6.5.

6.13 The Firm shall not be obliged to provide liquidity in accordance with Clauses 6.5 or 6.6 during the period in which the Exceptional Circumstances, including but not limited to Extreme Market Volatility, notified pursuant to Clause 6.8 or 6.10 persist.

## 7. RESUMPTION OF TRADING

7.1 After the Exceptional Circumstances have ceased to exist, the Exchange may announce the resumption of Normal Market Circumstances and normal trading in accordance with the Exchange's procedures. Such announcement may be issued by the Exchange by way of: (i) Notice; (ii) front-end message on LME Select; and/or (iii) email.

7.2 The Firm shall follow the procedures described in Clause 7.1.

## 8. SURVEILLANCE, COMPLIANCE AND AUDIT

8.1 The Firm shall monitor its market making activity by ensuring that it has in place procedures that enable it to:

- (a) identify potential risks relating to its market making activity, including but not limited to the occurrence of Exceptional Circumstances;
- (b) report such potential risks to the Firm's compliance function, which shall have sufficient powers to mitigate and/or prevent such risks arising;
- (c) carry out an audit of the Firm's market making activity at least annually, and the results of such audits shall be made available to the Exchange on request
- (d) promptly respond to queries from the Exchange including but not limited to information requests relating to Firm Quotes; and
- (e) maintain at all times up to date market surveillance systems software that is appropriate and in line with current industry standards for such market surveillance systems and software.

8.2 The Firm shall flag Firm Quotes submitted to the Exchange under this Agreement by using a unique combination of the FIX Key and tag 58 such that Firm Quotes submitted under this Agreement shall be separately identifiable from other orders submitted to the Exchange by the Firm.

8.3 The Firm shall maintain records of Firm Quotes, Agreed Trades and Contracts relating to its market making activities which are clearly distinguished from its other trading activities and shall make those records available to the Exchange and the relevant Competent Authority upon request.

## 9. REPRESENTATIONS AND WARRANTIES

9.1 The Firm hereby warrants, represents and undertakes to the Exchange that:

- (a) the Firm is of good standing, duly incorporated and validly existing under the laws of its country of incorporation with all applicable powers, authority and the legal rights to enter into the Agreement and to perform its obligations under it;
- (b) the Firm has completed all corporate actions required by it to authorise the execution and delivery of, and to exercise its rights and perform its obligations, under the Agreement;
- (c) this Agreement is executed by the Firm's duly authorised representative and the terms of this Agreement constitute legal, valid and binding obligations on it that are enforceable against the Firm;
- (d) all information which is provided to the Exchange, whether requested by the Exchange or otherwise, in relation to the Firm shall be true, complete and

accurate in all material respects and shall be produced to the Exchange as soon as reasonably practicable;

- (e) it shall deal with and communicate with the Exchange in an open, clear, transparent and co-operative manner; and
- (f) it has the technical and operational capacity to provide liquidity in accordance with Clauses 5.5 and 5.6 and fulfil its obligations under this Agreement.

9.2 The Firm shall notify the Exchange as soon as reasonably practicable if any of the representations, warranties and/or undertakings in Clause 9.1 cease to be true and accurate.

9.3 The Firm shall on demand indemnify the Exchange from and against all losses incurred by the Exchange arising out of or in connection with the Firm's breach of Clause 9.1.

## 10. LIMITS OF LIABILITY

10.1 The Exchange does not provide any warranties, representations or undertakings in respect of its obligations in this Agreement.

10.2 Save where such losses are proved by the Firm to be the result of bad faith on the part of the Exchange, the Exchange will not be liable in contract, tort (including negligence), breach of a statutory duty, restitution, or otherwise to the Firm for any losses whatsoever arising under this Agreement (including but not limited to: direct loss; special, indirect or consequential loss; or for any of the following types of loss or damage even if, in each case, the Exchange has been advised of the possibility of such loss or damage: (a) pure economic loss, costs, damages or charges; (b) loss of profits; (c) loss of revenue; (d) loss of contracts; (e) loss of anticipated savings; (f) loss of business; (g) loss of use; (h) loss of goodwill; and (i) loss or damage arising from loss, damage or corruption of any data, (in each case, whether direct or indirect)).

10.3 If the Firm has proved that it has suffered loss arising from an act or omission of bad faith on the part of the Exchange under this Agreement, the following restrictions and limitations on liability shall apply instead of those set out in Clause 10.2: (1) the Exchange's aggregate liability under or in connection with this Agreement, whether arising from contract, tort (including negligence), breach of a statutory duty, restitution, or otherwise, shall be limited to an amount equal to the amount paid or payable by the Exchange to the Firm in the 6 months preceding the date on which a claim arises; and (2) the Exchange shall not be liable to the Firm for any of the following types of loss or damage even if, in each case, the Exchange has been advised of the possibility of such loss or damage: (a) special, indirect or consequential loss; (b) pure economic loss, costs, damages or charges; (c) loss of profits; (d) loss of revenue; (e) loss of contracts; (f) loss of anticipated savings; (g) loss of business; (h) loss of use; (g) loss of goodwill; and (h) loss or damage arising

from loss, damage or corruption of any data, (in the case of (b) to (h), whether direct or indirect).

- 10.4 The exclusions and limitation of liability set out in Clause 10.3 do not apply to: (a) liability arising from death or injury to persons caused by negligence; or (b) any liability which cannot be limited and/or excluded by virtue of any applicable law.
- 10.5 All other conditions, warranties or other terms which might be implied or incorporated into this Agreement, whether by statute, common law or otherwise that might place obligations on the Exchange are hereby excluded to the extent permitted by law, including but not limited to the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 10.6 The Firm hereby acknowledges and agrees that it shall bring any claim arising under or relating to this Agreement within twelve (12) months from the date of the claim arising, or if later, within twelve (12) months from the date the Firm first becomes aware of the matters leading to the claim, and failure by the Firm to do so shall result in any such claim automatically and irrevocably expiring.
- 10.7 This Clause 10 is without prejudice to the provisions of Section 291 of FSMA, which excludes the liability of a recognised investment exchange for the performance of its regulatory functions.

## 11. TERM AND TERMINATION

- 11.1 This Agreement shall come into effect upon the later of: (a) the date when it has been executed by both of the Parties or such other date as the Parties shall agree between themselves; and (b) 3 January 2018, and shall continue until the Agreement is terminated in accordance with Clause 11.4.
- 11.2 Termination of the Agreement shall not affect either of the parties' accrued rights or liabilities, or affect the coming into force or the continuance in force of any provision of the Agreement, which are expressly or by implication intended to come into or continue in force on or after such termination.
- 11.3 The Exchange may restrict, suspend or terminate any market making programme at any time by Notice, or restrict, suspend or terminate the market making activity of the Firm.
- 11.4 This Agreement may be terminated by either party by giving one month's notice. If this Agreement is terminated, then the Firm shall immediately cease to perform market making on the Exchange. In the event that the Firm is in material breach of this Agreement, the Exchange may (a) terminate the Agreement with immediate effect, and (b) withdraw the right of the Firm to participate in any applicable market making programme as prescribed by the LME by Notice from time to time.

**12. CONFIDENTIALITY**

- 12.1 Each Party acknowledges that the confidential information of the other Party may be disclosed to it under this Agreement. Each Party undertakes to hold all confidential information of the other Party in confidence and not, without the consent of the other, disclose it to any third party nor use it for any purpose other than in the performance of this Agreement.
- 12.2 The Firm undertakes to ensure that its affiliates, employees, subcontractors and agents shall comply with this Clause 12.
- 12.3 The obligations under Clauses 12.1 and 12.2 do not apply to Confidential Information (excluding the Exchange's trade marks) which:
- (a) at the time of disclosure by the disclosing Party, is already in the public domain through no fault by or on behalf of the receiving Party;
  - (b) the disclosing Party has confirmed to the other Party in writing is not or no longer confidential;
  - (c) is already lawfully possessed by the receiving Party without any restrictions on use or disclosure on use prior to receiving it from the disclosing Party;
  - (d) is obtained subsequently by the receiving Party from a third Party without any restriction on use or disclosure and such third party is in lawful possession of the confidential information and not in violation of any obligation on it to maintain the confidentiality of the confidential information; or
  - (e) is required to be disclosed by legal or regulatory authorities.
- 12.4 All documents, materials and other items (including items in electronic form), and any intellectual property rights therein, provided by a Party to the other Party, containing confidential information of the first mentioned Party shall remain the absolute property of such Party.
- 12.5 Each Party shall at all times maintain documents, materials and other items (including items in electronic form) containing confidential information of the other Party and any copies thereof, in a secure fashion by taking reasonable measures to protect and safeguard them from theft and unauthorised copying, disclosure and without prejudice to the foregoing shall exercise at least the same degree of care to prevent unauthorised disclosure and/or use of the confidential information belonging to the other Party as it exercises in respect of its own confidential material of like importance.

**13. FRAUD, BRIBERY AND CORRUPTION**

- 13.1 For the purposes of this Clause 13, "Malpractice" includes giving or receiving any financial or other advantage that may be construed as a bribe, whether for the purpose of the Bribery Act 2010 or any other applicable laws of any jurisdiction.
- 13.2 Neither Party shall engage in any fraud or Malpractice relating to the subject matter of the Agreement.
- 13.3 Each Party shall notify the other in writing (notifying the LME's General Counsel & Head of Enforcement in the case of the Exchange) as soon as possible, if it becomes aware of, or has grounds for suspecting any fraud or Malpractice.

**14. RELATIONSHIP OF PARTIES**

- 14.1 Nothing in the Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties. No Party shall have the authority to bind the other Party or to contract in the name of, or create a liability against, the other Party in any way or for any purpose.

**15. WAIVER**

- 15.1 A failure or delay in exercising any right or remedy under the Agreement shall not constitute a waiver of that right or remedy. A single or partial exercise of any right or remedy shall not prevent the further exercise of that right or remedy under the Agreement. A waiver of a breach of the Agreement shall not constitute a waiver of any other breach.

**16. CUMULATIVE RIGHTS**

- 16.1 The rights and remedies expressly conferred by the Agreement are cumulative and additional to any other rights or remedies a Party may have, subject to the terms of the Agreement.

**17. COUNTERPARTS**

- 17.1 The Agreement may be executed in any number of counterparts, which shall each constitute an original and together constitute one agreement. If the Agreement is executed in counterpart, it shall not be effective unless each Party has executed at least one counterpart.

**18. SEVERABILITY**

- 18.1 If any provision of the Agreement is found to be wholly or partly illegal, invalid or unenforceable in any respect then to the extent it is illegal, invalid or unenforceable, that provision will be given no effect and will be treated as though it were not included in the Agreement, but the validity or enforceability of the remaining provisions of the Agreement will not be affected.

**19. VARIATION**

- 19.1 The Exchange may make changes to the terms of the Agreement at any point upon giving one month's prior written notice to the Firm.
- 19.2 The Agreement may be varied by the Exchange without the Firm's consent and without giving one month's prior written notice to the Firm, where such variation is necessary in order for the Exchange to comply with any applicable laws or any requirement imposed by a competent regulatory body.

**20. NOTICES**

20.1 A notice, permission or other communication under or in connection with this Agreement must be served (unless otherwise notified under Clause 20.4) to:

(a) in the case of the Exchange, as follows:

FAO: The General Counsel  
The London Metal Exchange  
10 Finsbury Square  
London  
EC2A 1AJ

(b) in the case of the Firm, as follows:

Either the postal address and or email address of the Firm set out in the table on page 1 of this Market Making agreement.

20.2 Unless there is evidence that it was received earlier, a notice or other communication that complies with Clause 20.1 is deemed given:

- (a) if delivered by hand, at the time of delivery, except as provided in Clause 20.3; and
- (b) if sent by recorded delivery post, at 9.00 am on the second Business Day after the day of posting.

20.3 If deemed delivery under Clause 20.2 of a notice or other communication delivered by hand occurs before 9.00 am on a Business Day, the notice or other communication is deemed delivered at 9.00 am on that day. If deemed delivery under Clause 20.2 of a notice or other communication delivered by hand occurs after 6.00 pm on a Business Day or on a day which is not a Business Day, the notice or communication is deemed to have been given at 9.00 am on the next Business Day.

20.4 A party may notify the other party of a change to any of the details for it referred to in Clause 20.1. The notice must comply with the terms of this Clause 20 and must state the date on which the change is to occur. That date must be on or after the fifth Business Day after the date on which the notice is delivered.

21. **FORCE MAJEURE**

21.1 For the purposes of this Clause 21, "**Force Majeure Event**" means any event beyond the reasonable control of a Party, which is not attributable to its fault or negligence, including acts of God, expropriation or confiscation of facilities, any form of government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, strikes and other industrial action, sabotage or riots, floods, fires, explosions or other catastrophes and any other event which is beyond the reasonable control of such Party.

21.2 Neither Party shall be responsible for any failure to carry out any of its obligations or duties under the Agreement, but only to the extent that such failure is the result of a Force Majeure Event.

22. **FURTHER ASSURANCE**

22.1 Each Party shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing as may be reasonably requested of it by the other Party by written notice to implement the terms of the Agreement.

23. **THIRD PARTY RIGHTS**

23.1 The Parties do not intend any third party to have the right to enforce any provision of the Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise, except where such third party is an assignee of rights under the Agreement and such assignment is in accordance with Clause 24.

23.2 The Parties may terminate or vary the Agreement without the consent of any third party.

24. **ASSIGNMENT**

24.1 The Firm may not, without the written consent of the Exchange assign or transfer (including by way of novation) any of its rights or obligations under the Agreement or any interest in them.

24.2 The Exchange may, without the consent of the Firm, assign or novate all or any of its rights and (in the case of novation) its obligations under the Agreement to any member of the Exchange's group by giving notice to the Firm. In the case of novation, the Firm hereby irrevocably consents in advance to any such novation and acknowledges and agrees that any such novation shall be effective without any further consent from the Firm. Following such notice, the Agreement (in whole and maintaining the same terms as are then in force) shall automatically novate to the nominated member of the Exchange's group on the date specified in the relevant notice. Before ceasing to be a member of the Exchange's group, any assignee/novatee shall assign or novate all assigned rights back to the Exchange or to another member of the Exchange's group.

**25. GOVERNING LAW AND JURISDICTION**

25.1 The Agreement and any non-contractual obligations of any kind arising out of or in relation to the Agreement are governed by and shall be interpreted and construed in accordance with the laws of England and Wales.

25.2 The courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the Agreement. The Firm irrevocably submits to this jurisdiction for the benefit of the Exchange and waives any objection on the grounds of venue or forum non convenienc e or any similar grounds.

**26. REMEDIES**

26.1 Without prejudice to any other rights or remedies of the Exchange, the Firm acknowledges and agrees that damages may not be an adequate remedy for any breach of the Agreement and that the Exchange shall be entitled to seek the remedies of injunction, interim relief, specific performance and/or any other equitable relief for any threatened or actual breach of the Agreement, and no proof of special damages shall be necessary for the enforcement of such rights under the Agreement.

**27. STATE IMMUNITY**

27.1 Where the Firm is a government body or agency, a state-owned or controlled entity or an entity that is otherwise entitled to benefit from any immunity from suit or equivalent protections customarily or legally available to states or their representative bodies under the law of any jurisdiction it hereby:

- (a) consents generally in accordance with the State Immunity Act 1978 to the issue of any proceedings or to relief being given against it by way of injunction or order for specific performance or for the recovery of any property whatsoever, and to its property being subject to any process for the enforcement of any order or judgement or any process effected in the course of or as a result of any action in rem; and
- (b) irrevocably waives and shall not claim immunity from suits and proceedings and from all forms of execution or attachment (including attachment prior to judgement and attachment in aid of execution) to which it or its property is now or may hereafter become entitled in accordance with the laws of any jurisdiction and declares that any such waiver shall be effective to the fullest extent permitted by such laws.

Each of the Parties confirms: (i) its agreement to the terms set out in this Agreement; and (ii) that this Agreement shall come into effect from the date on which the Agreement has been executed below by both Parties:

<b>SIGNED BEHALF THE FIRM</b>	<b>ON OF</b>	
---------------------------------------	------------------	--

<b>PRINTED NAME OF AUTHORISED SIGNATORY</b>	
<b>DATE OF SIGNATURE</b>	

<b>SIGNED ON BEHALF OF THE EXCHANGE</b>	
<b>PRINTED NAME OF AUTHORISED SIGNATORY</b>	
<b>DATE OF SIGNATURE</b>	

DRAFT