

Davy SFTR Disclosure Statement

Information Statement in accordance with Article 15 of the Securities Financing Transactions Regulation and Article 6(3) of the MiFID II Delegated Directive

1. Introduction

We have provided you with this Information Statement as you have entered into or may in the future enter into one or more title transfer collateral arrangements or security collateral arrangements containing a right of use (together, “**Collateral Arrangements**”) with us.

This Information Statement has been prepared to comply with Article 15 of the Securities Financing Transactions Regulation and Article 6(3) of the MiFID II Delegated Directive by informing you of the general risks and consequences that may be involved in consenting to a right of use of collateral provided under a security collateral arrangement, or of concluding a title transfer collateral arrangement and the effect of any title transfer collateral arrangement on your financial instruments and funds. (“**Re-use Risks and Consequences**”). The information required to be provided to you pursuant to Article 15 of the Securities Financing Transactions Regulation and Article 6(3) of the MiFID II Delegated Directive relates only to Re-use Risks and Consequences, and so this Information Statement does not address any other risks or consequences or effects that may arise as a result of your particular circumstances or as a result of the terms of particular Transactions.

This Information Statement is not intended to be, and should not be relied upon as, legal, financial, tax, accounting or other advice. Unless otherwise expressly agreed in writing, we are not providing you with any such legal, financial, tax, accounting or other advice and you should consult your own advisors for advice on consenting to a right of use of collateral provided under a security collateral arrangement or on concluding a title transfer collateral arrangement and any effect of a title transfer collateral arrangement on your financial instruments and funds, including the impact on your business and the requirements of, and results of, entering into any Transaction.

Appendix 2 sets out an indicative (but not exhaustive) list of types of agreement that may constitute Collateral Arrangements.

In this Information Statement:

“**we**”, “**our**”, “**ours**” and “**us**” refer to the provider of this Information Statement that may conduct Transactions with you (or, where we are acting on behalf of another person, including where that person is an affiliate, that person);

“**you**”, “**your**” and “**yours**” refer to each of the persons to which this Information Statement is delivered or addressed in connection with entering into, continuing, executing or agreeing upon the terms of Transactions with us (or, where you are acting on behalf of other persons, each of those persons);

“**right of use**” means any right we have to use, in our own name and on our own account or the account of another counterparty, financial instruments received by us by way of collateral under a security collateral arrangement between you and us;

“**Securities Financing Transactions Regulation**” means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015; on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (as amended from time to time);

“**MiFID II**” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments; and amending Directive 2002/92/EC and Directive 2011/61/EU.

“**the MiFID II Delegated Directive**” means Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits;

“**Transaction**” means a transaction entered into, executed or agreed between you and us under which you agree to provide either financial instruments as collateral under a security collateral arrangement or financial instruments or funds as collateral under a title transfer collateral arrangement;

“**financial instruments**” has the meaning set out in MiFID II, which is set out in Appendix 1 for reference

“**security collateral arrangement**” has the meaning given to that term in the Securities Financing Transactions Regulation, as set out in Appendix 1 for reference; and

“**title transfer collateral arrangement**” means both:

- a title transfer collateral arrangement as defined in the Securities Financing Transaction Regulation; and
 - a title transfer financial collateral arrangement as defined in MiFID II,
- each as set out in Appendix 1 for reference.

2. Re-use Risks and Consequences

- (a) Where you provide financial instruments or funds to us under a title transfer collateral arrangement or if we exercise a right of use in relation to any financial instruments or funds that you have provided to us by way of collateral under a security collateral arrangement containing a right of use, we draw your attention to the following Reuse Risks and Consequences:
- (i) any rights, including any proprietary rights that you may have had, in those financial instruments or funds will be replaced by an unsecured contractual claim for delivery of equivalent financial instruments or return of funds subject to the terms of the relevant Collateral Arrangement;
 - (ii) those financial instruments will not be held by us in accordance with client asset rules, and, if they had benefited from any client asset protection rights, those protection rights will not apply (for example, the financial instruments will not be segregated from our assets and will not be held subject to a trust);
 - (iii) those funds will not be held by us in accordance with client funds rules and, if the funds had benefited from any client funds protection rights, those protection rights will not apply (for example, the funds will not be segregated from our assets and deposited with another bank or banks);
 - (iv) in the event of our insolvency or default under the relevant agreement your claim against us for delivery of equivalent financial instruments or return of funds will not be secured and will be subject to the terms of the relevant Collateral Arrangement and applicable law and, accordingly, you may not receive such equivalent financial instruments or recover the full value of the financial instruments or funds (although your exposure may be reduced to the extent that you have liabilities to us which can be set off or netted against or discharged by reference to our obligation to deliver equivalent financial instruments or return funds to you);
 - (v) in the event that a resolution authority exercises its powers under any relevant resolution regime in relation to us any rights you may have to take any action against us, such as to terminate our agreement, may be subject to a stay by the relevant resolution authority and:
 - your claim for delivery of equivalent financial instruments or return of funds may be reduced (in part or in full) or converted into equity; and/or
 - a transfer of assets or liabilities may result in your claim on us, or our claim on you, being transferred to different entities although you may be protected to the extent that the exercise of resolution powers is restricted by the availability of set-off or netting rights.

- (vi) as a result of your ceasing to have a proprietary interest in those financial instruments you will not be entitled to exercise any voting, consent or similar rights attached to the financial instruments, and even if we have agreed to exercise voting, consent or similar rights attached to any equivalent financial instruments in accordance with your instructions or the relevant Collateral Arrangement entitles you to notify us that the equivalent financial instruments to be delivered by us to you should reflect your instructions with respect to the subject matter of such vote, consent or exercise of rights, in the event that we do not hold and are not able to readily obtain equivalent financial instruments, we may not be able to comply (subject to any other solution that may have been agreed between the parties);
 - (vii) in the event that we are not able to readily obtain equivalent financial instruments to deliver to you at the time required: you may be unable to fulfil your settlement obligations under a hedging or other transaction you have entered into in relation to those financial instruments; a counterparty, exchange or other person may exercise a right to buy-in the relevant financial instruments; and you may be unable to exercise rights or take other action in relation to those financial instruments;
 - (viii) subject to any express agreement between you and us, we will have no obligation to inform you of any corporate events or actions in relation to those financial instruments;
 - (ix) you will not be entitled to receive any dividends, coupon or other payments, interests or rights (including securities or property accruing or offered at any time) payable in relation to those financial instruments, although the express written terms of the relevant Collateral Arrangement or Transaction may provide for you to receive or be credited with a payment by reference to such dividend, coupon or other payment (a “Manufactured Payment”);
 - (x) the provision of title transfer collateral to us, our exercise of a right of use in respect of any financial collateral provided to us by you and the delivery by us to you of equivalent financial instruments or the return of funds may give rise to tax consequences that differ from the tax consequences that would have otherwise applied in relation to the holding by you or by us for your account of those financial instruments or funds;
 - (xi) where you receive or are credited with a Manufactured Payment, your tax treatment may differ from your tax treatment in respect of the original dividend, coupon or other payment in relation to those financial instruments.
- (b) Where we provide you with clearing services (whether directly as a clearing member or otherwise), we draw your attention to the following additional Re-use Risks and Consequences:
- (i) If we are declared in default by an EU central counterparty (CCP), your transactions may be ported to another clearing broker or terminated;
 - (ii) in the event that other parties in the clearing structure default (e.g., a central counterparty, a custodian, settlement agent or any clearing broker that we may instruct) you may not receive all of your assets back and your rights may differ depending on the law of the country in which the party is incorporated (which may not necessarily be English law) and the specific protections that that party has put in place; and
 - (iii) in some cases a central counterparty may benefit from legislation which protects actions it may take under its default rules in relation to a defaulting clearing member (e.g., to port transactions and related assets) from being challenged under relevant insolvency law.

Appendix 1: Defined terms for the purposes of the Securities Financing Transactions Regulation, MiFID II and the MiFID II Delegated Directive

In the above legal instruments, the following terms have the following meaning:

“**financial instrument**” means the instruments set out in Section C of Annex I to MiFID II, and includes without limitation:

- 1) Transferable securities;
- 2) Money-market instruments;
- 3) Units in collective investment undertakings.

“**title transfer financial collateral arrangement**” is referred to in Recital (52) to MiFID II as being defined in Directive 2002/47/EC (the “Financial Collateral Arrangements Directive”), which is an arrangement, including repurchase agreements, under which a collateral provider transfers full ownership of financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations.

“**title transfer collateral arrangement**” as defined in the Securities Financing Transactions Regulation means a title transfer financial collateral arrangement as defined in Article 2(1)(b) of the Financial Collateral Arrangements Directive, or, for the purposes of the SFTR, in regulation 3 of the Financial Collateral Arrangements (No.2) Regulations 2003, concluded between counterparties to secure any obligation.

“**security collateral arrangement**” means an arrangement under which a collateral provider provides financial collateral by way of security in favour of, or to, a collateral taker, and where the full ownership of the financial collateral remains with the collateral provider when the security right is established.

Appendix 2: Collateral Arrangements

We have set out below examples of the types of agreements to which this Information Statement applies. These examples are for illustrative purposes only and should not be relied upon as a legal determination of the characterisation of each agreement. The fact that an agreement is grouped with Title Transfer Collateral Agreements below does not preclude its characterisation as a Security Collateral Arrangement with a right of use and vice versa. Moreover, the characterisation of an agreement may be different under U.S. and European law.

Title Transfer Collateral Arrangement

Such arrangements may include without limitation:

- Overseas Securities Lender’s Agreement;
- Global Master Securities Lending Agreement;
- Global Master Repurchase Agreement;
- SIFMA Master Repurchase Agreement;
- An ISDA Master Agreement incorporating an English Law ISDA Credit Support Annex;
- An ISDA/FIA Client Cleared OTC Derivatives Addendum which provides for title transfer collateral arrangements and in particular where entered into in connection with an English law governed ISDA Master Agreement which includes the English law CSA Collateral Terms as set out in Appendix 1 thereto, or when entered into in connection with a relevant FIA client clearing agreement;
- Master Gilt Edged Stock Lending Agreement;
- Master Equity and Fixed Interest Stock Lending Agreement;
- Prime brokerage agreements which provide for title transfer collateral arrangements;

- FIA client clearing agreements for exchange traded and other cleared derivatives which provide for title transfer collateral arrangements;
- FIA Clearing Module which provides for title transfer collateral arrangements; or
- Any bespoke agreements granting security by way of transfer of title to the secured party

Security Collateral Arrangement containing a right of use

Such arrangements may include without limitation:

- An ISDA Master Agreement incorporating a New York Law ISDA Credit Support Annex;
- An ISDA/FIA Client Cleared OTC Derivatives Addendum which provides for security collateral arrangements and in particular where entered into in connection a New York law governed ISDA Master Agreement including the New York law CSA Collateral Terms as set out in Appendix 2 thereto, or when entered into in connection with a relevant FIA client clearing agreement; or
- An ISDA Master Agreement in respect of which an English Law ISDA Credit Support Deed incorporating a right of use is a credit support document.

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