

CASE AT.39745 – CDS INFORMATION MARKET

MARKIT

COMMITMENTS OFFERED TO THE EUROPEAN COMMISSION

In accordance with Article 9 of Council Regulation (EC) No 1/2003, Markit Ltd and any legal entity directly or indirectly controlled by it as defined by Council Regulation (EC) No 139/2004, including but not limited to Markit Group Holdings Limited, Markit Indices Limited, Markit North America, Inc. and Markit Group Limited ("**Markit**") hereby voluntarily offer the following commitments (the "**Commitments**") in full response to the preliminary competition concerns identified by the European Commission (the "**Commission**") in Case COMP/AT.39745 in its Statement of Objections dated 1 July 2013 (the "**SO**").

These Commitments are offered without admission of infringement or liability, and nothing in these Commitments may be construed as implying that Markit agrees with the preliminary concerns expressed in the SO, nor does Markit's submission of these Commitments constitute an admission by Markit (whether direct or indirect, explicit or implicit) as to whether there has been any infringement of Article 101 or Article 102 TFEU and Article 53 or 54 EEA or the competition laws of any other jurisdiction, and no inference may be drawn from the entering into of these Commitments.

Consistent with Article 9 of Regulation 1/2003, the Commitments are given on the understanding that the Commission will confirm that there are no grounds for further action against Markit in relation to Markit's alleged conduct which was the subject of the SO, and that the Commission will terminate the investigation against Markit without a finding of infringement under either Article 101 or Article 102 TFEU/Articles 53 or 54 EEA. These Commitments are without prejudice to Markit's position should the Commission or any other party conduct proceedings or commence other legal action against Markit.

These Commitments provide for:

- (a) arrangements relating to the governance and composition of Markit's CDS Index Advisory Committees;
- (b) a licensing commitment in respect of requests for licences to create and/or trade exchange traded financial products (including, but not limited to, swaps, futures and options products) based on Markit's iTraxx and CDX Indices;
- (c) a licensing commitment to amend or offer a new licence, in respect of existing CDS Index licences which exclude Exchange Trading;
- (d) an arbitration mechanism to resolve any failure by the Parties to reach a fair and reasonable agreement arising in connection with Markit's licensing commitment; and
- (e) the appointment of a Monitoring Trustee to monitor and report to the Commission on Markit's compliance with these Commitments.

1. GOVERNANCE COMMITMENT

1.1 Markit commits that, within 30 working days from the Effective Date and for the Term of these Commitments, it will implement and maintain Revised Terms of Reference for the CDS Index Advisory Committees which comply with the commitments set out in paragraphs 1.2 to 1.8 of these Commitments.

Scope of discussions of the CDS Index Advisory Committees

- 1.2 Markit commits to ensure that the agenda for and any discussions at meetings and/or conference calls of the CDS Index Advisory Committees shall be limited to technical, operational and administrative advice relating to the development, maintenance and operation of the applicable CDX and iTraxx indices and shall not include any of the matters listed in paragraph 1.4.
- 1.3 In particular, the CDS Index Advisory Committees shall, subject to the limitations in paragraph 1.4:
- (a) review and provide input on changes to the index rules, methodologies and constituents, including but not limited to the following topics:
 - (i) minimum debt outstanding amounts for index constituents;
 - (ii) ratings criteria for constituents of the index;
 - (iii) liquidity measures used for identifying constituents of the index;
 - (iv) possible changes in index roll dates; and
 - (v) exceptions to rules for constituent selection;
 - (b) provide input on regulatory, legal and compliance issues and general risks with respect to the CDX or iTraxx indices;
 - (c) provide input on technical matters in respect of the operation of the CDX or iTraxx indices;
 - (d) provide input to assist Markit in the legal, technical and operational administration of the CDX or iTraxx indices; and
 - (e) provide insight and feedback for the development of new CDX or iTraxx indices and for improvements in existing indices.
- 1.4 Markit commits that the CDS Index Advisory Committees shall not:
- (a) discuss, advise on or decide any licensing decision, including the terms of any such licence, taken or to be taken by Markit in respect of the CDX or iTraxx indices;
 - (b) discuss or advise on commercial aspects of or revenue generation proposals relating to the CDX or iTraxx indices;
 - (c) discuss or advise on the merits of proposed new exchange traded financial products which reference the CDX or iTraxx indices; or
 - (d) discuss or advise on the merits of any new exchange or similar platform designed for the trading of products that reference the CDX or iTraxx indices.

Meetings of the CDS Index Advisory Committees

- 1.5 All in-person meetings and conference calls of the CDS Index Advisory Committees shall be attended by a qualified lawyer from Markit's in-house legal team, who shall take formal written Minutes of the attendees and discussions that take place at the meeting or conference call. An audio recording shall also be made of all meetings and conference calls of the CDS Index Advisory Committees. Copies of the Minutes and audio recordings, together with any papers tabled for discussion at or presented to meetings or calls of the CDS Index Advisory Committees, shall be retained by Markit for a period of 5 years from

their creation and be made available to the Monitoring Trustee (in accordance with paragraphs 6.13(e) and 6.13(f) below) to facilitate the Monitoring Trustee's review pursuant to paragraph 6.10(b)(i).

Composition of the CDS Index Advisory Committees and rotation of membership

- 1.6 Markit commits that the CDS Index Advisory Committees will provide for the inclusion of a range of relevant market participants, including both large and smaller dealers, buy-side firms and trading, clearing or other platforms, in accordance with the provisions of paragraph 1.7 below.
- 1.7 Markit commits that the CDS Index Advisory Committees shall provide seats for at least 25 entities as members, which shall include representatives from the following categories of market participant ("**Membership Categories**"), appointed as described in Annex A – Appointments Procedure, with such seats allocated as follows:
- (a) the top 10 largest dealers by trading volumes or other relevant metrics in the relevant Index or underlying market in the 12 months prior to the date of appointment in accordance with the Appointments Procedure ("**large dealers**");
 - (b) up to four market makers in either the Index or the underlying market that are not large dealers;
 - (c) at least six non-dealer buy-side firms or other asset managers that trade in or use the relevant Indices; and
 - (d) at least five trading platforms, exchanges or clearing houses.
- 1.8 Markit commits to have two-year staggered terms for all members of the CDS Index Advisory Committees with the intention of creating regular opportunities for new members to participate in the CDS Index Advisory Committees. Rotation of members shall take place in accordance with the provisions of Annex B – Rotation Procedure.

2. LICENSING COMMITMENTS

- 2.1 Markit commits, subject to the following provisions of this Clause 2, that it will act and grant licences in a fair, reasonable and non-discriminatory ("**FRAND**") manner in response to requests for licences to create and/or trade exchange traded financial products (including, swaps, futures and options products) based on an Index.
- 2.2 To the extent that any clause in an existing and continuing licence issued by Markit to create and/or trade exchange traded financial products (including, swaps, futures and options products) based on an Index directly or indirectly excludes the use of an Index for Exchange Trading, or any such clause has an equivalent effect, Markit commits, upon request by the licensee, to take appropriate measures to amend such licence and/or offer a new licence on FRAND terms and conditions in accordance with the provisions of this Clause 2.
- 2.3 In order to ensure that the Commitments are capable of effective and practical implementation, and to ensure that competition and innovation are sufficiently stimulated and not impeded as result of their implementation, Markit, the Arbitrators or the Court, where appropriate, may decline a request for, and the grant of, an Index licence:
- (a) where Markit demonstrates that the proposed exchange-traded product creates a significant legal or regulatory risk, or a very significant reputational risk, for Markit and/or the Indices which cannot adequately be addressed by disclaimer or other contractual provisions; and

- (b) where Markit demonstrates that the proposed Trading Venue has insufficient experience and resources to develop and launch the proposed exchange-traded product. For the avoidance of doubt, the fact that the proposed exchange-traded product is new will not constitute a lack of experience on the part of a Trading Venue.
- 2.4 In the context of the commitment set out in paragraph 2.1, it is expressly recognised that, if the creation and development of a new product based on an Index requires the licensee to make material up-front investments, for example, in terms of product development, marketing and the generation of sufficient liquidity, it may be appropriate to confer on the licensee the benefit of preferential or advantageous terms, for a period of up to 24 months from the launch of the new product, to facilitate and support the development of that new product, without Markit being obliged to grant a licence to subsequent licensees on equivalent preferential terms unless they are in a comparable situation.
- 2.5 Where an existing and continuing licence to create exchange traded financial products (including, swaps, futures and options products) based on an Index contains an exclusivity period and granting a licence pursuant to these Commitments would be inconsistent with the terms of that exclusivity, these Commitments will apply following the expiry of any mandatory period of exclusivity in the relevant licence.
- 2.6 The commitment set out in paragraph 2.1 above shall not apply to a licence request to use an Index in a product where:
 - (a) the Index would be blended or co-mingled with data from another source;
 - (b) where the Index would be used to create a derivative dataset based on the Index;
 - (c) where the purpose is other than to create an exchange-traded product that is based upon and bears the name of an Index; or
 - (d) where the exchange traded product is not traded on a Trading Venue established in the European Economic Area or any other country in which Markit does business.
- 2.7 The Parties shall agree terms and conditions within the timeframes specified in this paragraph (the "**Negotiation Period**"):
 - (a) From the Effective Date and until the entry into application of Article 37(1) MiFIR, Markit shall seek to reach agreement on terms and conditions within three months of a licence request from a Requesting Party. If the Parties agree, the Negotiation Period may be extended by another three months to six months. Alternatively, Markit may, by reasoned written request to the Monitoring Trustee, seek an extension of the three months Negotiation Period by up to three months. This request shall be granted if Markit demonstrates it has responded promptly and in good faith, and any delay in reaching an agreement is attributable to the lack of responsiveness of the Requesting Party.
 - (b) With effect from the entry into application of Article 37(1) MiFIR, the Negotiation Period provided under Article 37(1) MiFIR or related legislative acts or regulatory technical standards shall apply in respect of any licensing of an Index subject to these Commitments and subject to Article 37(1).
- 2.8 If the Parties are unable to agree terms and conditions within the Negotiation Period, the Requesting Party may at the end of the Negotiation Period request in writing to Markit that the matter be submitted to independent third party arbitration for the Arbitrators to decide the appropriate procedure and method for determining whether and, if so, what FRAND terms and conditions shall apply, in accordance with the provisions of Clause 3 below.

2.9 Nothing herein shall prevent or restrict Markit from enforcing any licence agreement or intellectual property rights or pursuing any claims, defences or relief.

3. THIRD PARTY DETERMINATION OF FRAND TERMS

3.1 The procedure and method for determining FRAND terms and conditions, including any procedural rules governing the arbitration procedure not set out in these Commitments, will be decided by the Arbitrators.

3.2 Each Party may appoint its own expert to present evidence on its behalf to the Arbitrators.

Arbitration

3.3 The arbitration procedure shall be conducted as follows, unless the Parties mutually agree to follow a different arbitration procedure.

3.4 The arbitration panel shall be made up of three arbitrators with at least ten (10) years' relevant experience in financial services and/or in intellectual property law licensing or litigation and/or in other relevant legal practice. Each Party shall select one arbitrator within 14 days of Markit's receipt of the Requesting Party's request for arbitration. The two arbitrators so selected shall, within 14 days of the selection of the second of them, select a third arbitrator from a list of names nominated by the Parties, who shall act as the presiding arbitrator of the arbitration panel (the "**Chairman**"). The Chairman shall be an independent senior lawyer with at least 10 years' experience in financial services and/or intellectual property law licensing or litigation (e.g. a Queens Counsel in England and Wales). If there is a failure to make a selection or nomination within the specified time limits, then the LCIA Court shall make the relevant selection and appointment.

3.5 The arbitration panel's decision shall be final and binding on the Parties.

3.6 The arbitration will be conducted in English. The arbitration will be governed by the laws of England and Wales and be subject to the rules of the LCIA.

3.7 The seat, or legal place, of arbitration shall be London (England).

3.8 Unless otherwise provided for by these Commitments, the arbitration will be conducted in strict confidence and the arbitral proceedings and decision shall be confidential. Each Party shall maintain the confidentiality of the arbitral decision and the confidential documents submitted in the course of the arbitration by the other Party, unless such disclosure is required by law or pursuant to an order by a court, tribunal, or a governmental authority (which for these purposes shall include the EU Commission).

3.9 Each Party will bear their own respective costs arising from the arbitration, and the shared costs of the Arbitrators will be split equally between Markit and the Requesting Party.

3.10 With the consent of the Requesting Party, a non-confidential version of the arbitral decision shall be published by Markit on its website within 90 days following the delivery of the decision to the Parties.

3.11 If the arbitration panel has not made its decision within 9 months of the appointment of the third arbitrator, the Requesting Party may apply for the discontinuance of the arbitral proceedings, which application Markit will not contest, and bring an application to the courts of England and Wales (the "**Court**") for a determination of the FRAND licensing terms. Markit shall not contest the jurisdiction of the Court and shall comply with all procedural steps determined by the Court to facilitate a determination of the FRAND terms.

4. NON-CIRCUMVENTION

- 4.1 Markit will not in any way circumvent or attempt to circumvent the Commitments.
- 4.2 Nothing in these Commitments shall prevent Markit from selling or assigning any of its interests (including its intellectual property rights) in the Indices to any Third Party.

5. DURATION AND REVIEW

- 5.1 The Commitments will commence and take effect upon the Effective Date.
- 5.2 In respect of the Licensing Commitment set out in Clause 2 above, the Commitments will apply to all future requests for licences for Exchange Trading of the Indices made to Markit, for so long as Markit shall own and control the Indices, or for a period of ten years from the Effective Date, whichever is the earlier.
- 5.3 In respect of the Governance Commitment set out in Clause 1 above, the Commitments will be applicable for so long as Markit shall own and control the Indices, or for a period of ten years from the Effective Date. Upon sale or surrender of control of the Indices, the Commitments shall automatically cease forthwith. If Markit in its discretion decides to discontinue the CDS Index Advisory Committees and does not re-establish them, the Governance Commitments set out in Clause 1 above shall automatically cease forthwith.
- 5.4 Pursuant to the provisions of Article 9(2) of Regulation 1/2003, Markit may at any time request the Commission to reopen the proceedings with a view to modifying the Commitments where there has been a material change in any of the facts. In particular if Markit demonstrates on the fifth anniversary of the Effective Date that there has been a material change in any of the facts on which the Commitment Decision was based, the Commission will review these facts and decide whether to reopen proceedings with a view to modifying the Commitments.

6. MONITORING TRUSTEE

- 6.1 Markit shall appoint a Monitoring Trustee to monitor Markit's compliance with the Commitments for so long as the Commitments remain in effect. The Monitoring Trustee shall be independent of Markit (and any other undertaking affiliated with Markit), any Requesting Party and any competitor of Markit (and any other legal entity directly or indirectly controlled by or affiliated with a competitor of Markit). The Monitoring Trustee should be remunerated by Markit in a way that does not influence or impede the independent and effective fulfilment of its mandate.
- 6.2 The Monitoring Trustee should possess the necessary qualifications to carry out its mandate. The Monitoring Trustee should be familiar with the derivatives and financial products industries to which these Commitments relate and have the experience and competence necessary to carry out its functions. The Monitoring Trustee shall neither have nor become exposed to a conflict of interest. In particular, the Monitoring Trustee shall not provide services to, or become an employee of Markit, any Requesting Party or any competitor of Markit in CDS indices, neither during the Monitoring Trustee's mandate nor for a period of one year following termination of the Monitoring Trustee's mandate.

Proposal by Markit

- 6.3 No later than one month after the Effective Date, Markit shall submit to the Commission for approval a list of three persons, one of whom Markit proposes to appoint as the Monitoring Trustee. The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee(s) fulfil the requirements set out in paragraph 6.1 above and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties set forth in paragraph 6.10; and
- (b) the outline of a plan which describes how out the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

- 6.4 The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. The Commission shall give reasons in case of rejection of a proposed Monitoring Trustee. The Monitoring Trustee shall be appointed by Markit within two weeks of the Commission's approval, in accordance with the mandate approved by the Commission.
- 6.5 If only one person is approved, Markit shall appoint or cause to be appointed, the individual concerned as Monitoring Trustee in accordance with the mandate approved by the Commission. If more than one person is approved, Markit shall be free to choose the Monitoring Trustee to be appointed from among the persons approved. Once appointed, Markit shall ensure that the name and contact details of the Monitoring Trustee are easily available on its website.

New proposal by Markit

- 6.6 If all the proposed Monitoring Trustees are rejected, Markit shall submit the names of two other persons within one month of being informed of the rejection(s), in accordance with the requirements and the procedure set out in paragraphs 6.1 to 6.5 above.

Replacement, discharge and reappointment of the Monitoring Trustee

- 6.7 If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Monitoring Trustee, require Markit to replace the Monitoring Trustee; or
 - (b) Markit, with the prior approval of the Commission, may replace the Monitoring Trustee.
- 6.8 If the Monitoring Trustee is removed, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to at paragraphs 6.1 to 6.6 above.
- 6.9 The Monitoring Trustee shall cease to act as Monitoring Trustee only upon the expiration of these Commitments or after the Commission has discharged it from its duties.

Duties and obligations of the Monitoring Trustee

- 6.10 The Monitoring Trustee shall verify compliance with the present Commitments in the following way:
- (a) review the Annual Report and accompanying documentation submitted by Markit in accordance with paragraphs 6.12 to 6.14;
 - (b) in carrying out the review of the Annual Report:

- (i) review the content of discussions of the CDS Index Advisory Committees on the basis of the audio recordings and Minutes to establish that members of the CDS Index Advisory Committees have not engaged in discussions that are prohibited under the provisions of paragraph 1.4; and
 - (ii) verify that Markit has complied with its obligations relating to the composition of the CDS Index Advisory Committees under paragraphs 1.6 to 1.8 and Annexes A and B;
 - (iii) verify that Markit has complied with its obligations relating to the Licensing Commitment under Clause 2, including, if appropriate, by hearing the views of the Requesting Parties;
 - (iv) verify that where the arbitration process specified under Clause 3 has been initiated, that process has been followed and that any decision of the Arbitrators has been implemented;
 - (v) verify whether there is evidence or other indication that Markit has sought to circumvent the Commitments;
- (c) having regard to (a) and (b) above, provide to the Commission, sending Markit a copy at the same time, a written report on Markit's compliance with the Commitments within two months of each anniversary of the Effective Date;
 - (d) within fifteen working days of receipt of a notification from Markit pursuant to paragraph 6.15 below, provide a report in writing to the Commission in relation to that notification; and
 - (e) report in writing to the Commission, sending Markit a copy at the same time, if it concludes on reasonable grounds that Markit is failing to comply with these Commitments.

6.11 The Monitoring Trustee shall not:

- (a) have any involvement in the arbitration or court adjudication relating to Markit's Indices or its intellectual property rights relating to the Indices;
- (b) participate in commercial licensing negotiations of Markit;
- (c) have any decision-making powers or powers of investigation of the kind vested in the Commission pursuant to Council Regulation (EC) No 1/2003; or
- (d) disclose any confidential information to anyone other than the Commission or Markit where such information is not confidential as regards Markit. Any confidential information obtained by the Monitoring Trustee in performance of the duties and obligations specified in these Commitments shall be kept in the strictest confidence and shall be used solely for the purpose of performing the duties and obligations specified in these Commitments. The Monitoring Trustee shall ensure that adequate safeguards are established and adhered to in taking delivery of, tracking the dissemination of, monitoring the use of, protecting against the disclosure of and determining the safe disposal of confidential information. These safeguards must be effective to protect the confidential information, but shall not be such as to prevent the Monitoring Trustee from effectively fulfilling its duties and obligations specified in these Commitments. The Monitoring Trustee shall not make any public statements relating to the performance of its functions in relation to these Commitments. The Monitoring Trustee shall sign confidentiality undertakings warranting its knowledge of and compliance with its duties and obligations specified in these Commitments. The Monitoring Trustee shall abide by the obligations of non-disclosure imposed in Article 28(2) of Council Regulation

(EC) No 1/2003 with regard to any information acquired in performing its functions under these Commitments or received from the Commission, even after the term of its mandate.

Duties and obligations of Markit

- 6.12 During the Term of these Commitments, Markit shall provide to the Monitoring Trustee an annual report detailing its compliance with the Commitments during the preceding year (the "**reporting period**") within 20 working days of each anniversary of the Effective Date (the "**Annual Report**").
- 6.13 In respect of the Governance Commitment, the Annual Report shall include the following information and documentation as regards the reporting period:
- (a) a list of the members (including the firm and representative) of each of the CDS Index Advisory Committees and the dates of service by each member;
 - (b) copies of any registration of interest received in response to a Notice;
 - (c) confirmation that any new members have been appointed in accordance with the Appointments Procedure above;
 - (d) confirmation of the dates and attendees at meetings and/or conference calls held by the CDS Index Advisory Committees;
 - (e) copies of all papers tabled to or presented at any meeting and/or conference calls held by the CDS Index Advisory Committees; and
 - (f) copies of the minutes and audio recordings of all meetings and/or conference calls held by the CDS Index Advisory Committees.
- 6.14 In respect of the Licensing Commitment, the Annual Report shall include the following information and documentation as regards the reporting period:
- (a) a list of all written requests received by Markit for a licence to create and/or trade exchange traded financial products (including, but not limited to, swaps, futures and options products) based on the Indices, including the identity of the Requesting Party and the scope of the licence requested;
 - (b) a list of all requests received by Markit from existing licensees to amend the terms of an existing licence which excludes the use of an Index for Exchange Trading;
 - (c) details of all licences granted or amended by Markit in accordance with the Licensing Commitment during the reporting period;
 - (d) details of any requests to extend the Negotiation Period until the entry into application of Article 37(1) MiFIR, pursuant to paragraph 2.7;
 - (e) confirmation of whether any requests for a licence to use the Indices were submitted to independent third party arbitration; and
 - (f) the outcome of any request for independent third party arbitration, including the licence terms established by the Arbitrators.
- 6.15 In the event that Markit refuses a request for a licence for reasons set out in either of paragraphs 2.3(a) or 2.3(b) then, whether or not the arbitration procedure in Clause 3 has been initiated, Markit shall:

- (a) within five working days of the date of that refusal notify the Monitoring Trustee; and
- (b) within ten working days of the date of the notice provided in accordance with paragraph 6.15(a) above, provide the Monitoring Trustee with an explanation of the reasons for that refusal and all relevant correspondence between Markit and the Requesting Party.

7. COMMITMENT IN RESPECT OF THE FINAL PRICE

7.1 Markit commits that it will:

- (a) within 30 working days from the Effective Date, remove from the Use Agreement on the www.creditfixings.com website any clause that directly or indirectly excludes the use of the Final Price for Exchange Trading or any clause with equivalent effect; and
- (b) where ISDA has granted a party a licence for the Final Price for use in any exchange-traded product, Markit will not require that party to obtain a further licence for the Final Price for such a use from Markit or charge royalties or other licence fees in respect of the Final Price in addition to those charged by ISDA.

7.2 The foregoing is without prejudice to Markit's intellectual property and other rights in the Final Price.

8. APPLICATION OF RELEVANT LAWS AND REGULATIONS

8.1 These Commitments are without prejudice to any obligations imposed by any applicable laws or regulations to which Markit is, or will be, subject (including, without limitation, MiFIR) that would restrict or limit Markit's ability to perform the Commitments. Nothing in these Commitments is intended to place Markit in a position of conflict with duties owed under other laws, rules or regulations and in so far as there is a conflict between these Commitments and any laws, rules or regulations (including, without limitation, MiFIR) to which Markit is subject the latter shall prevail.

9. DEFINITIONS

For the purpose of the Commitments, the following terms shall have the following meaning:

Appointments Procedure:	has the meaning set out in Annex A
Arbitrator(s):	means the arbitrator or arbitrators appointed in accordance with the provisions of Clause 3
CDS:	means credit default swap
CDS Index Advisory Committees:	means the CDX Index Advisory Committee (" CDX Committee ") and the iTraxx Europe Index Advisory Committee (" IMC "), their successors and any other such similar Markit CDS index advisory committee or sub-committee which Markit consults in relation to the operation and maintenance of the Indices
CLOB:	means central limit order book
Commission:	means the European Commission's Directorate General for Competition

Commitment Decision:	means the decision adopted in respect of Markit by the European Commission in Case COMP/AT.39745 pursuant to Article 9(1) of Council Regulation (EC) No 1/2003
EEA:	means the Agreement on the European Economic Area
Effective Date:	means the date on which Markit receives formal notification of the Commitment Decision by which the Commission makes the Commitments binding on Markit
Exchange Trading:	means all-to-all trading on a Trading Venue including anonymous all-to-all trading on a central limit order book (CLOB), and " exchange traded " shall be construed accordingly
Governance Commitment:	means the Commitments set out in Clause 1
Index:	means the iTraxx and/or the CDX CDS indices, and all of the subordinate indices within those respective index families, including, for the avoidance of doubt, all historical series of, and any successor to, the iTraxx and/or CDX CDS indices (collectively the " Indices ")
LCIA or LCIA Court:	means the London Court of International Arbitration, a private alternative dispute resolution provider, with headquarters at 70 Fleet Street, London EC4Y 1EU, United Kingdom
Licensing Commitment:	means the Commitments set out in Clause 2
MiFIR:	means Regulation No 600/2014 on markets in financial instruments
Notice:	has the meaning set out in Annex A, paragraph 1.2
Party:	means Markit and the Requesting Party (collectively the " Parties ")
Requesting Party:	means a party that requests a licence to create and/or trade on a Trading Venue in the European Economic Areas on in another country in which Markit does business, exchange traded financial products (including, but not limited to, swaps, futures and options products) based on an Index
Revised Terms of Reference:	means the terms of reference for the CDS Index Advisory Committees prepared in accordance with these Commitments
Rotation Procedure:	has the meaning set out in Annex B
Term:	means the duration of these Commitments as set out in paragraphs 5.2 and 5.3
TFEU:	means the Treaty on the Functioning of the European Union
Trading Venue:	has the meaning set out in Article 4(1)(24) Directive 2014/65/EU

Working day:

means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a bank holiday in England and Wales.

ANNEX A

APPOINTMENTS PROCEDURE

- 1.1 The process in this Annex A shall be referred to herein as the "**Appointments Procedure**".
- 1.2 Markit commits to use its reasonable endeavours to generate interest amongst prospective members in participating in the CDS Index Advisory Committees, with the goal of having a diverse set of members, by advertising membership of the CDS Index Advisory Committees to active market participants and by encouraging firms within each of the Membership Categories to apply, including by publishing a notice on Markit's website (the "**Notice**") and, where appropriate, through direct communication with prospective member firms. Markit shall request that expressions of interest to join a CDS Index Advisory Committee should be received by Markit on or before the date specified in the Notice, such date to be at least two weeks following publication of the Notice.
- 1.3 In response to the Notice, prospective member firms that are interested in joining a CDS Index Advisory Committee ("**Interested Firms**") should identify their proposed representatives and provide details of their roles and responsibilities. Interested Firms shall be considered eligible for membership of a CDS Index Advisory Committee ("**Eligible Firms**") if:
 - (a) the firm has entered into a licence with Markit in respect of the relevant CDX or iTraxx index and acts as a market maker;
 - (b) the firm is not required to have a licence, but has entered into a trade of a financial product based on an Index within the preceding six months with a licensed market maker or on a licensed exchange, clearing house or trading platform; or
 - (c) the firm is a Trading Venue or clearing house, in relation to CDS products.
- 1.4 If at any time during the Membership Term a member ceases to be an Eligible Firm, Markit shall be entitled to terminate the membership of the relevant firm and appoint a replacement member in accordance with this Appointments Procedure.
- 1.5 Interested Firms should declare any conflicts of interest in respect of the CDX or iTraxx indices. If an Interested Firm or its affiliate is the owner of an index which competes with the CDX or iTraxx indices, the relevant firm may be excluded from consideration as a potential member in order to ensure compliance with relevant competition laws. All members of a CDS Index Advisory Committee will be required to sign an appropriate confidentiality agreement before they may participate in CDS Index Advisory Committee meetings.
- 1.6 It is expected that the actual size of each of the CDS Index Advisory Committees will vary, depending on the level of interest and activity in the relevant Indices and the willingness of market participants to sit on CDS Index Advisory Committees. If, in respect of any Membership Category, the number of Eligible Firms within each Membership Category exceeds the number of seats allocated to the relevant Membership Category, Markit shall, acting reasonably and in good faith, choose firms from the pool of Eligible Firms to join a CDS Index Advisory Committee having regard to the need to ensure sufficient diversity of representation within each Membership Category. Any Eligible Firms that are not appointed as members will be included on a waiting list (the "**Waiting List**") and where appropriate given preference on a subsequent rotation.

ANNEX B

ROTATION PROCEDURE

- 1.1 The process in this Annex B shall be referred to herein as the "**Rotation Procedure**".
- 1.2 Subject to the transitional provisions set out below, each member firm of the CDS Index Advisory Committees shall serve for a period of up to 2 years (the "**Membership Term**"). At the conclusion of each Membership Term, member firms shall resign and membership of the CDS Index Advisory Committees shall rotate. Firms on the Waiting List shall be given the first opportunity to replace existing members. Markit shall use its reasonable endeavours to fill any remaining seats within each Membership Category in accordance with the Appointments Procedure.
- 1.3 If, following the conclusion of the Appointments Procedure, insufficient new members have registered an interest in joining the CDS Index Advisory Committees such that, on the expiry of a member's Membership Term a replacement member cannot be appointed, an existing member firm may, at the discretion of Markit, be asked to extend its period of membership for the following term.
- 1.4 The following transitional provisions shall apply in respect of the first members appointed to the CDS Index Advisory Committees in accordance with the above procedures after the Effective Date (the "**Initial Members**"). On the first anniversary of the appointment of the Initial Members, at least 50% of the Initial Members within each Membership Category shall volunteer for rotation and shall be replaced by new members appointed in accordance with the Appointments Procedure. If insufficient Initial Members volunteer for rotation, a random ballot shall be held to select additional firms for rotation. The remaining Initial Members shall remain members of the relevant CDS Index Advisory Committee for a further year, following which they shall resign and be replaced by members appointed in accordance with the Appointments Procedure. If insufficient new members are identified, the provisions of Annex B, paragraph 1.3 shall apply. Thereafter, the membership of the CDS Index Advisory Committees shall rotate every year, following the conclusion of a member's Membership Term.