

No. CR-2018-008017

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
COMPANIES COURT (ChD)**

The Honourable Mr Justice Norris  
5 February 2019

IN THE MATTER OF

UBS LIMITED

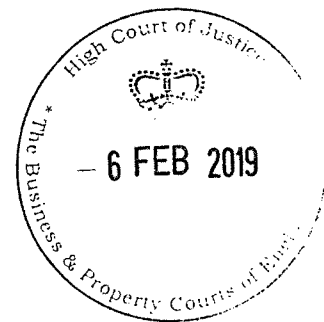
-and-

IN THE MATTER OF

UBS EUROPE SE

-and-

IN THE MATTER OF PART VII OF  
THE FINANCIAL SERVICES AND MARKETS ACT 2000



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**ORDER**

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**UPON** application by the Part 8 claim form issued in the above matters on 5 October 2018 (the "**Claim Form**");

- (1) UBS Limited, a private limited company incorporated in the United Kingdom on 9 July 1986 under the laws of England and Wales with company number 02035362 and with the PRA/FCA reference number 124343 and whose registered office is at 5 Broadgate, London EC2M 2QS (the "**Transferor**"); and

(2) UBS Europe SE, a *Societas Europaea* which is registered in Germany and is governed by the laws of Germany with registered seat (*Sitz*) in Frankfurt am Main and with registered number HRB 107046 at the Commercial Register of the Local Court (*Amtsgericht*) of Frankfurt am Main, Germany, and whose registered office is at Bockenheimer Landstraße 2-4, 60306 Frankfurt am Main (the "**Transferee**"),

(together, the "**Applicants**")

for, *inter alia*, the Court's sanction of a banking business transfer scheme (the "**Scheme**") pursuant to Part VII of the Financial Services and Markets Act 2000 ("**FSMA**") for the transfer to the Transferee of the Transferring Business (as defined in the Scheme) effected and/or carried out by the Transferor;

**UPON HEARING** Martin Moore QC and Stephen Horan, Counsel for the Applicants;

**AND UPON READING** the Claim Form and the evidence;

**AND UPON** the Court being satisfied that the appropriate certificates have been obtained as referred to in section 111 of FSMA;

**AND UPON** the Court approving the amendments to the Scheme shown in exhibit "BMJ28" to the second witness statement of Beatriz Martín Jiménez;

**AND UPON** the Court approving the attachment of the Summary of the Scheme set out in Schedule 2 hereto, such Summary providing a synopsis of the main features of the Scheme set out in Schedule 1, which is not to be relied upon in place of the Scheme itself;

**AND IT APPEARING** that a copy of the application and the statement referred to in Regulation 5(4) of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625) as amended have been given free of charge to the PRA and FCA pursuant to Regulation 5(5) of the Regulations and that a period of more than twenty-one days has elapsed since the PRA and FCA were given the aforementioned documents;

**THIS COURT HEREBY SANCTIONS**, pursuant to section 111 of FSMA, the Scheme attached as Schedule 1 hereto;

**AND IT IS ORDERED THAT** all the terms of the Scheme shall as and from the Effective Time (as defined in the Scheme) take effect under section 112 of FSMA without further act or instrument as if each were separately set out in this Order. Without prejudice to the generality of the foregoing (1) the transfers of the Transferring Business provided for by paragraphs 2 and 3 of the Scheme and the transfers of property and liabilities (as defined by ss 112(12), (13), (14) and (15) of FSMA respectively) provided for thereby take effect pursuant to s112(1)(a) of FSMA and vest or transfer as provided for by s.112(3) of FSMA as a result of this Order, (2) the provisions in paragraph 3.5 relating to the continuity of proceedings takes effect pursuant to s112(1)(c) of FSMA and (3) the provisions of paragraphs 4, 5 and 6 and all other paragraphs of the Scheme, not already mentioned, take effect pursuant to s112(1)(d).

**AND IT IS ORDERED** that:

1. the production of a copy of this Order shall, for all purposes, be evidence of the transfer to, and vesting in the Transferee of the Transferring Business, Transferring Assets and Transferring Liabilities in accordance with this Order and the terms of the Scheme;
2. in accordance with section 112(10) of FSMA, the Transferee shall within 10 days from the date of this Order, or such longer period as the PRA shall allow, deposit two office copies of this Order with the PRA; and
3. there shall be liberty to apply for such orders as may be expedient or necessary for the purposes set out in section 112 of FSMA and generally.

**SCHEDULE 1**  
**Scheme Document**

IN THE MATTER OF  
UBS LIMITED

AND

IN THE MATTER OF  
UBS EUROPE SE

AND

IN THE MATTER OF PART VII OF  
THE FINANCIAL SERVICES AND MARKETS ACT 2000

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SCHEME

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## 1. INTRODUCTION

### 1.1 Interpretation

The definitions and other provisions relating to interpretation set out in Schedule 1 apply throughout this Scheme, including the schedules.

### 1.2 Parties to the Scheme, Eligibility and Application

#### *Transferor*

- 1.2.1 UBS Limited is a private limited liability company incorporated in England and Wales on 9 July 1986 under the laws of England and Wales with registration number 02035362 (the "**Transferor**"). The Transferor is authorised by the PRA and regulated by the PRA and FCA and as such is a "UK authorised person" as defined in section 106(5) of FSMA.
- 1.2.2 The Transferor carries out investment bank business comprising, *inter alia*, deposit-taking, entering into exchange traded and OTC derivative transactions, providing clearing, settlement and custody services, providing research services, cash trading, providing advisory services, providing placing services, providing dealer and promoter services under SPV and other note programmes, underwriting, lending, and structured financing. The Transferor also conducts certain limited wealth management and asset management activity.
- 1.2.3 The Transferor has permission under Part 4 of FSMA to accept deposits; hold and control customer deposits and client money; advise on investments (except on Pension Transfers and Pension Opt Outs); advise on peer to peer (P2P) agreements; agree to carry on regulated activities; arrange deals in investments; arrange the safeguarding and administration of assets; bidding in emissions auctions; cause dematerialized instructions to be sent; deal in investments as agent and as principal; make arrangements with a view to transactions in investments; operate a multilateral trading facility; safeguard and administer assets (without arranging); and send dematerialized instructions.
- 1.2.4 In addition to carrying out its business in the United Kingdom, the Transferor has branches, on a freedom of establishment basis under the Capital Requirements Directive (2013/36/EU) ("**CRD IV**") and the Markets in Financial Instruments Directive II (2014/65/EU) ("**MiFID II**") in Germany, Italy, Sweden, Netherlands, Poland and France and also in Switzerland and has permission under CRD IV and MiFID II to carry out its business on a freedom of services basis in all other member states of the European Union.

#### *Transferee*

- 1.2.5 UBS Europe SE is a *Societas Europaea* registered in Germany and governed by the laws of Germany (with registered seat (*Sitz*) in Frankfurt am Main and with registered number HRB 107046 at the Commercial Register of the Local Court (*Amtsgericht*) of Frankfurt am Main, Germany, (the "**Transferee**"). The

Transferee is currently supervised by the German Federal Financial Supervisory Authority ("**BaFin**").

- 1.2.6 The Transferee has permission to pursue: (a) banking business of every kind pursuant to section 1 para. 1 sentence 2 of the German Banking Act (*Kreditwesengesetz*, "**KWG**") except for the *Pfandbrief* business (section 1 para. 1 sentence 2 No. 1a KWG) and acting in the capacity of a central counterparty within the meaning of section 1 para. 31 KWG (section 1 para. 1 sentence 2 No. 12 KWG); as well as (b) the provision of financial services pursuant to section 1 para. 1a sentences 2 and 3 KWG and section 32 para. 1a KWG with the exception of the operation of a multilateral trading facility (section 1 para. 1a sentence 2 No. 1b KWG), the operation of an organised trading facility (section 1 para. 1a sentence 2 No. 1d KWG) and the limited custody business (section 1 para. 1a sentence 2 No. 12 KWG). The Transferee may also conduct any other business to promote the banking business and investment services.
- 1.2.7 The Transferee has branches through which it carries out its business on a freedom of establishment basis under CRD IV and MiFID II, in Italy, Sweden, Netherlands, Austria, Denmark, Luxembourg and Spain. The Transferee will at the Effective Time also have branches in Poland, Switzerland, the UK and France. The Transferee provides services on a freedom of services basis under CRD IV and MiFID II in Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.
- 1.2.8 The Transferee will therefore have at the Effective Time the required permissions to carry on the Transferring Business following its transfer under this Scheme and does not need to apply for additional licences to operate the Transferring Business. The Transferee has notified BaFin and the Deutsche Bundesbank ("**Bundesbank**") regarding the change in the nature of the Transferee's business and has made certain licensing applications in connection with the proposed new branches of the Transferee.
- 1.2.9 The direct parent undertaking of both the Transferor and the Transferee is UBS AG, a corporation incorporated in and governed by the laws of Switzerland. The ultimate parent undertaking of both the Transferor and the Transferee is UBS Group AG, a corporation incorporated in and governed by the laws of Switzerland and whose shares are listed on the SIX Swiss Exchange and on the New York Stock Exchange.
- 1.2.10 The purpose of this Scheme is to enable the Transferring Business to continue to be conducted, and Transferring Counterparties to continue to be serviced, following the United Kingdom's expected departure from the European Union on or around 29 March 2019.
- 1.2.11 For the purposes of Section 106(1)(c) of FSMA, this Scheme is neither an "excluded scheme" under Section 106(3) of FSMA nor a "ring-fencing transfer scheme" under Section 106B of FSMA.



### **1.3 Transferring Business**

- 1.3.1 It is proposed that the Transferring Business be transferred to the Transferee, which will carry on the Transferring Business as a going concern, in accordance with this Scheme.
- 1.3.2 It is proposed that immediately following the Effective Time the Transferor merge into the Transferee by way of the Cross-Border Merger. Therefore, following sanction of this Scheme, it is proposed that an application be made to update the Frankfurt Commercial Register in accordance with the German Cross-Border Mergers Regulations for the registration of the merger of the Transferor with the Transferee pursuant to the Cross-Border Mergers Directive. Upon the Cross-Border Merger Registration the Cross-Border Merger will take effect, whereupon the Residual Business will transfer to the Transferee and the Transferor will simultaneously be dissolved.
- 1.3.3 Therefore, this Scheme shall become effective on the same date as and immediately prior to the time of the Cross-Border Merger Registration. It is proposed that this Scheme shall not become effective unless the Frankfurt Commercial Register makes the Cross-Border Merger Registration.

## **2. TRANSFER OF THE BUSINESS**

### **2.1 Transfer of Business**

- 2.1.1 At and with effect from the Effective Time, the Transferring Business shall by the Order and without any further act or instrument be transferred to and be vested in the Transferee in accordance with this Scheme.
- 2.1.2 Without prejudice to paragraph 6.2.1(b), the Transferor and the Transferee shall, as and when appropriate, execute all documents and perform all things as may be required to perfect the transfer to, and vesting in, the Transferee of the Transferring Business at the Effective Time in accordance with the terms of this Scheme (including any necessary steps where Transferring Assets are in the form of (i) securities or investments held by a third party for the account of, or to the order of, the Transferor in that third party's capacity as custodian; or (ii) monies owed by a third party to the Transferor in that capacity).

### **2.2 Transfer of Assets**

- 2.2.1 At and with effect from the Effective Time, the Transferring Assets and all interest of the Transferor in them shall, by the Order and without any further act or instrument, be transferred by the Transferor to and be vested in the Transferee subject to all Encumbrances (if any), and with the benefit of all rights in security (if any), affecting such Transferring Assets.
- 2.2.2 At and with effect from the Effective Time all Transferring Counterparty Accounts shall become accounts between the Transferee and the relevant Transferring Counterparty and each such account shall be deemed for all purposes to be a single continuing account, provided that nothing herein shall affect: (i) any right of the Transferee or the Transferring Counterparty after the

Effective Time to vary the terms or conditions subject to which any such account is kept; or (ii) any variation of the terms or conditions subject to which such account is kept pursuant to the terms of this Scheme.

- 2.2.3 The Transferee shall accept without investigation, requisition, or objection, such title as the Transferor shall have at the Effective Time to the Transferring Assets and the Transferring Business.

### **2.3 Transfer of Liabilities**

- 2.3.1 At and with effect from the Effective Time, the Transferring Liabilities shall, by the Order and without any further act or instrument, be transferred to and become liabilities of the Transferee, subject to all Encumbrances (if any), and with the benefit of all rights in security (if any), affecting such Transferring Liabilities and the Transferring Liabilities shall cease to be liabilities of the Transferor.

### **2.4 Residual Business**

- 2.4.1 No Residual Business shall be transferred to or be vested in the Transferee under or by virtue of the terms of this Scheme. It is intended that such Residual Business shall transfer to the Transferee under the Cross-Border Merger.

## **3. SPECIFIC EFFECT ON TRANSFERRING BUSINESS**

### **3.1 Transfer of Transferring Contracts**

- 3.1.1 At and with effect from the Effective Time, the Transferee shall, by the Order and without any further act or instrument, be entitled to all the rights, benefits and powers, and be subject to all the obligations and liabilities of the Transferor whatsoever subsisting at the Effective Time under or by virtue of the Transferring Contracts.
- 3.1.2 Every person who immediately prior to the Effective Time is a holder of or party to a Transferring Contract shall, at and with effect from the Effective Time, in substitution for any liability or obligation owed thereunder to the Transferor, be under the same liability or obligation to the Transferee and shall become entitled, to the exclusion of any rights which such person may have had against the Transferor under or by virtue of the relevant Transferring Contract immediately prior to the Effective Time, to the same rights against the Transferee as were available to such person against the Transferor under or by virtue of such Transferring Contract immediately prior to the Effective Time.
- 3.1.3 At and with effect from the Effective Time all amounts attributable or referable to the Transferring Contracts shall be payable to the Transferee and shall be receivable and received by the Transferee and every person who is a holder of or party to any of the Transferring Contracts immediately prior to the Effective Time shall be liable to the Transferee for any outstanding, further

or additional sums attributable or referable to such Transferring Contracts as and when the same become due and payable.

- 3.1.4 At and with effect from the Effective Time, the Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of the Transferring Contracts which would have been available to the Transferor.
- 3.1.5 At and with effect from the Effective Time, any offer or invitation to treat relating to a Transferring Counterparty made to or by the Transferor prior to the Effective Time in respect of the Transferring Business shall be construed and have effect as an offer or invitation to treat made to or by the Transferee.

### 3.2 Guarantees

- 3.2.1 At and with effect from the Effective Time, all references in any guarantee (other than the Parent Guarantee), letter of credit or similar security, which covers all or part of the Transferring Business, to the Transferor defaulting in the payment of sums due and payable in respect of any Transferring Contract or any other liability of the Transferring Business, shall be read and construed as references to such a default prior to the Effective Time by the Transferor and after the Effective Time by the Transferee and the obligations of the respective guarantor or provider of security under such guarantee, letter of credit or security shall continue in full force and effect, without amendment save for as set out above.
- 3.2.2 At and with effect from the Effective Time, notwithstanding any other provision of this Scheme the reference in the Parent Guarantee to contracts that are subject to the Parent Guarantee having been entered into between the Transferor and a counterparty shall continue to have effect as a reference to the Transferor (and not the Transferee) having entered into the contracts.
- 3.2.3 Without prejudice to paragraph 3.2.2 above, at and with effect from the Effective Time, the reference in the Parent Guarantee to the Transferor failing to discharge a liability subject to the Parent Guarantee shall be read and construed as a reference to such a failure prior to the Effective Time by the Transferor and after the Effective Time by the Transferee.
- 3.2.4 Save as set out in paragraph 3.2.3 above, the obligations and rights of UBS AG under the Parent Guarantee shall continue in full force and effect (on the terms and conditions set out therein).

### 3.3 Mandates and other instructions

- 3.3.1 Any mandate, direction, power of attorney, authority, undertaking, declaration of consent or other instruction ("**Mandate**") in force immediately prior to the Effective Time (including, without limitation, any Mandate providing for the payment of any sum under or in respect of a Transferring Contract or given to a bank by its client in the form of a direct debit or standing order) given to or by the Transferor in the course of carrying out the Transferring Business under or in respect of any Transferring Asset or Transferring Liability shall, at and

with effect from the Effective Time, take effect as if it had always been given to or, as the case may be, by the Transferee. For the avoidance of doubt, the Transferee may rely on each such Mandate in respect of any instructions given to the Transferee pursuant to such Mandate at or after the Effective Time.

- 3.3.2 Any standard settlement instructions used by counterparties in connection with the Transferring Business under or in respect of any Transferring Asset or Transferring Liability shall, at and with effect from the Effective Time, be replaced with the standard settlement instructions for the Transferee.

### **3.4 Rights and Defences etc.**

- 3.4.1 At and with effect from the Effective Time:

3.4.2 the Transferee shall have the same rights, defences, powers and remedies for ascertaining, perfecting, enforcing or resisting any Transferring Asset or Transferring Liability, as if it had at all times been an asset or liability of the Transferee; and

3.4.3 the Transferee shall be entitled to rely on and enforce any consent, waiver, representation, warranty, statement or estoppel given, made or otherwise available to the Transferor by, or against, a person in relation to any such Transferring Asset and/or Transferring Liability prior to the Effective Time, as if such consent, waiver, representation, warranty, statement or estoppel had been given, made or been available to the Transferee and to the same extent that the Transferor would have been able to rely on and enforce the same.

### **3.5 Continuity of Proceedings**

3.5.1 At and with effect from the Effective Time, any judicial, quasi-judicial, arbitration or regulatory enforcement proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim which are immediately prior to the Effective Time pending by or against the Transferor in connection with the Transferring Business or which are purported to be or commenced against the Transferor in connection with the Transferring Business after the Effective Time, shall be continued or commenced (as appropriate) by or against the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the Transferor in relation to any such proceedings.

3.5.2 At and with effect from the Effective Time, the Transferee in its absolute discretion, may seek to determine to discontinue after the Effective Time any proceedings referred to in paragraph 3.5.1 above, which have been brought by the Transferor.

### **3.6 Payment of interest or other sums**

At and with effect from the Effective Time and subject to the other terms of this Scheme, in relation to each Transferring Contract under which interest or other sums attributable or referable thereto continue to be payable the Transferee or the person

from whom any further or additional interest or other sums are due and payable at or after the Effective Time shall account to the relevant persons or the Transferee (as the context requires) for such interest or other sums.

### 3.7 Encumbrances

At and with effect from the Effective Time and subject to the terms of this Scheme:

- 3.7.1 any Encumbrance attributable to a Transferring Asset or Transferring Liability which is held by, or vested in, or enforceable by, the Transferor or a nominee of or trustee or agent for the Transferor (each a "**Transferor Entity**") (whether for the Transferor alone or for the Transferor and other persons), immediately prior to the Effective Time, shall be held by, vested in, or enforceable by the Transferee or, as applicable, that nominee, agent or trustee for the Transferee (each a "**Transferee Entity**") as if the Transferee Entity had always held, or had the benefit of, such Encumbrance;
- 3.7.2 any Encumbrance referred to in paragraph 3.7.1 above shall be available to, and enforceable by, the Transferee Entity, with respect to any Transferring Assets or Transferring Liabilities (including any principal, interest, fees, charges or other sums) to which the Encumbrance relates and which (i) have been incurred or which have arisen prior to the Effective Time; and (ii) are incurred or which arise at or after the Effective Time;
- 3.7.3 in relation to any Encumbrance referred to in paragraph 3.7.1 above and any Transferring Assets or Transferring Liabilities thereby secured, the Transferee Entity shall be entitled to the same rights, ranking and priorities as those to which the Transferor Entity was entitled immediately prior to the Effective Time and, without prejudice to the generality of the foregoing, all waivers, amendments, conditions, consents, deeds of substitution, deeds of release, ranking agreements and priority agreements attributable to any such Encumbrance shall be enforceable by and binding upon the Transferee Entity at and after the Effective Time to the same extent to which the same would have been enforceable by and binding upon the Transferor Entity prior to the Effective Time;
- 3.7.4 any Encumbrance attributable to a Transferring Asset or Transferring Liability to which a Transferor Entity is subject, immediately prior to the Effective Time, shall be enforceable against the Transferee Entity as if the Transferee Entity had always been subject to such Encumbrance;
- 3.7.5 any Encumbrance referred to in paragraph 3.7.4 above shall be enforceable against the Transferee Entity, with respect to any Transferring Assets or Transferring Liabilities (including any principal, interest, fees, charges or other sums) to which the Encumbrance relates and which (i) have been incurred or which have arisen prior to the Effective Time; and (ii) are incurred or which arise at or after the Effective Time;
- 3.7.6 in relation to any Encumbrance referred to in paragraph 3.7.4 above and any Transferring Assets or Transferring Liabilities thereby secured, the Transferee Entity shall be subject to the same obligations and incidents as those to which

the Transferor Entity was subject immediately prior to the Effective Time and, without prejudice to the generality of the foregoing, all waivers, amendments, conditions, consents, deeds of substitution, deeds of release, ranking agreements and priority agreements attributable to any such Encumbrances shall be enforceable against and binding upon the Transferee Entity at and with effect from the Effective Time, to the same extent to which the same would have been enforceable against and binding upon the Transferor Entity prior to the Effective Time.

#### 4. REFERENCES

At and with effect from the Effective Time, any references in respect of the Transferring Business or any part of it, whether in an agreement to which the Transferor is a party or not or elsewhere (including references in insurance policies for any purpose or interests noted on such policies) to:

- 4.1.1 subject to paragraph 3.2.2 above, the Transferor (howsoever defined) shall be construed as, and take effect as, a reference to the Transferee;
- 4.1.2 the Transferor's legal entity identifier (or "**LEI**") shall be construed as, and take effect as, a reference to the Transferee's legal entity identifier;
- 4.1.3 the Transferor's bank identifier code (or "**BIC**") shall be construed as, and take effect as, a reference to the Transferee's bank identifier code;
- 4.1.4 the Transferor's standard settlement instructions shall be construed as, and take effect as, a reference to the Transferee's standard settlement instructions;
- 4.1.5 the Transferor's company registration details and contact details shall be construed as, and take effect as, a reference to the Transferee's company registration details and contact details;
- 4.1.6 the Transferor being "incorporated under the laws of England and Wales" or "duly organised and validly existing under the laws of England and Wales" (in each case, however expressed) shall be construed as, and take effect as, a reference to the Transferee being "incorporated under the laws of Germany" or, as the case may be, "duly organised and validly existing under the laws of Germany";
- 4.1.7 the Transferor's address and contact details for notices to be given to the Transferor as being given to the Transferor at the Transferor's main establishment, registered office, main office, registered place of business or similar being located in London, England or the United Kingdom shall be construed as, and take effect as, a reference to the Transferee's registered office, and contact details thereof, in Frankfurt, Germany;
- 4.1.8 the Transferor's office or location out of which the Transferor may act as being London, England or the United Kingdom shall be construed as, and take effect as, a reference to the Transferee being able to act out of its registered office in Frankfurt, Germany;

- 4.1.9 the Transferor's regulators being the PRA and the FCA in the United Kingdom, and the Transferor's regulatory status under FSMA, shall be construed as, and take effect as, a reference to the Transferee's regulators being BaFin, Bundesbank and the European Central Bank and the Transferee's regulatory status under the KWG and the WpHG;
- 4.1.10 the cash account numbers allocated by the Transferor to each of the Transferring Counterparty Accounts shall be construed as, and take effect as, a reference to the cash account numbers allocated by the Transferee for each of the Transferring Counterparty Accounts after the Effective Time;
- 4.1.11 any rate, charge, tariff or scale of fees or terms and conditions published by the Transferor from time to time, shall be construed as, and take effect as, a reference to the corresponding rate, charge, tariff or scale of fees or terms and conditions published by the Transferee from time to time;
- 4.1.12 a rate, charge, tariff or scale of fees or terms and conditions published, determined, ascertained, varied or amended from time to time by the Transferor shall be construed as, and take effect as, the Transferee being afforded the same right under such contract, other document or instrument as the Transferor had to publish, determine, ascertain, vary or amend such rates, charges, tariffs, scales of fees or terms and conditions published, determined, ascertained, varied or amended;
- 4.1.13 directors, officers, representatives, employees or contractors or to any director, officer, representative, employee or contractor of the Transferor shall be construed as, and take effect as, a reference to the directors, officers, representatives, employees or contractors of the Transferee or to such director, officer, representative, employee or contractor of the Transferee as the Transferee may nominate for that purpose;
- 4.1.14 the board of directors or management committee of the Transferor, or any other officers, employees or agents of the Transferor shall be construed as and take effect as references to the management board or supervisory board of the Transferee, or any other officers, employees or agents of the Transferee or, where appropriate, agents of the Transferee to which the administration carried on by the Transferee has been delegated, in particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by, or expressed to be performed by the board of directors or management committee of the Transferor, or any other officers, employees or agents of the Transferor in relation to any Transferring Contract, shall be exercisable or required to be performed by the supervisory board or management board of the Transferee or the relevant officers, employees or agents of the Transferee;
- 4.1.15 the Transferor's duty to comply with all applicable anti-money laundering laws and regulations of the United Kingdom to which it is subject or to the Transferor performing sufficient due diligence to meet all relevant anti-money laundering laws of the United Kingdom to which it is subject, shall be construed as, and take effect as, a reference to the applicable anti-money laundering laws and regulations of Germany to which the Transferee is subject;

- 4.1.16 any legislation or regulations of the United Kingdom that are applicable to the Transferor (except to the extent such references relate to the governing law of a document and its interpretation in accordance therewith) shall be construed as, and take effect as, a reference to the equivalent legislation or regulations in Germany and applicable to the Transferee, to the extent such equivalent applicable legislation and regulations exist in Germany (and to the extent no such equivalent legislation or regulations exist in Germany the original reference shall remain unchanged); and
- 4.1.17 the Parent Guarantee in Covered Agreements shall be construed as, and take effect as, a reference to the New Parent Guarantee.

## 5. AMENDMENTS TO TRANSFERRING CONTRACTS

### 5.1 Location of booking office

At and with effect from the Effective Time, where a Transferring Contract specifies the location from which the Transferor enters into (or books) transactions as being London, England and/or the United Kingdom, such reference shall be replaced by references to the location of the Transferee through which the relevant transactions will be entered into (or booked) after the Effective Time, being the registered office of the Transferee in Frankfurt, Germany.

### 5.2 Article 55 Bank Recovery and Resolution Directive and Resolution Stay Provisions

- 5.2.1 At and with effect from the Effective Time, each Transferring Contract governed by English law or the laws of any country which is not an EU member state or subject to the jurisdiction of the English courts or the courts of any country which is not an EU member state and which is a BRRD Liability as set out in section 55 of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz*, "SAG") and/or a financial contract (*Finanzkontrakt*) pursuant to section 60a SAG shall be amended to include the following provisions which are required to ensure the Transferee is in compliance with Article 55 of the Bank Recovery and Resolution Directive (Directive 2014/59/EU) as implemented in Germany pursuant to section 55 SAG and the resolution stay provisions pursuant to section 60a SAG:

"Notwithstanding any other term of this Agreement or any other agreements, arrangements, or understanding between UBS ESE and [*name of Counterparty*], [*name of Counterparty*]:

1. Acknowledges (*anerkennen*), accepts (*einverstanden erklären*), and agrees to be bound by:
  - a. the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of UBS ESE (and any successor) to [*name of Counterparty*] under this Agreement, that (without limitation) may include and result in any of the following, or some combination thereof:



- i. the reduction of all (including to zero), or a portion, of the BRRD Liability or outstanding amounts due thereon;
    - ii. the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of UBS ESE (and any successor) or another person (and the issue to or conferral on you of such shares, securities or obligations);
    - iii. the cancellation of the BRRD Liability;
    - iv. the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period;
  - b. the variation of the terms of this Agreement, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority;
2. acknowledges (*anerkennen*) that the provisions regarding the temporary suspension of termination rights and other contractual rights (*Bestimmungen zur vorübergehenden Aussetzung von Beendigungsrechten und sonstigen vertraglichen Rechten*) pursuant to Sections 82 to 84, 144(3), and 169(5) numbers 3 and 4 of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz*) may be applied to UBS ESE's liability (*Verbindlichkeit*) under this Agreement; and
  3. accepts (*einverstanden erklären*) a suspension of termination rights and other contractual rights (*Aussetzung von Beendigungsrechten und sonstigen vertraglichen Rechten*) pursuant to Sections 82 to 84, 144(3), and 169(5) numbers 3 and 4 of the German Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz*) with respect to UBS ESE (and any successor).

**"Bail-in Legislation"** means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant implementing law, regulation, rule or requirement as described in the EU Bail-in Legislation Schedule from time to time.

**"Bail-in Powers"** means any Write-down and Conversion Powers as defined in relation to the relevant Bail-in Legislation.

**"BRRD"** means the EU Bank Recovery and Resolution Directive (Directive 2014/59/EU) establishing a framework for the recovery and resolution of credit institutions and investment firms.

**"EU Bail-in Legislation Schedule"** means the document described as such, then in effect, and published by the Loan Market Association (or any successor person) from time to time at <http://www.lma.eu.com/>.

"**BRRD Liability**" has the same meaning as in such laws, regulations, rules or requirements implementing the BRRD under the applicable Bail-in Legislation.

"**Relevant Resolution Authority**" means the resolution authority with the ability to exercise any Bail-in Powers in relation to UBS ESE (and any successor)."

5.2.2 At and with effect from the Effective Time, each Transferring Contract governed by English law or the laws of any country which is not an EU member state or subject to the jurisdiction of the English courts or the courts of any country which is not an EU member state and which is a BRRD Liability and/or a Stays Contract shall be amended to include the following provisions:

"Notwithstanding any other term of this Agreement or any other agreements, arrangements, or understanding between UBS ESE and [*name of Counterparty*]:

1. to the extent [*name of Counterparty*] is subject to an Article 55 Requirement as at the Effective Time, UBS ESE acknowledges (*anerkennen*), accepts (*einverstanden erklären*), and agrees to be bound by:
  - a. the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of [*name of Counterparty*] (and any successor) to UBS ESE under this Agreement, that (without limitation) may include and result in any of the following, or some combination thereof:
    - i. the reduction of all (including to zero), or a portion, of the BRRD Liability or outstanding amounts due thereon;
    - ii. the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of [*name of counterparty*] (and any successor) or another person (and the issue to or conferral on you of such shares, securities or obligations);
    - iii. the cancellation of the BRRD Liability;
    - iv. the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period;
  - b. the variation of the terms of this Agreement, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority;
2. to the extent [*name of Counterparty*] is subject to a Stays Recognition Requirement as at the Effective Time, UBS ESE:

- a. acknowledges that the Resolution Stays Provisions may be applied to this Agreement to the extent that it is a Stays Contract; and
- b. accepts and agrees to be bound by the effect of the application of the Resolution Stays Provisions with respect to [*name of Counterparty*] (and any successor).

"**Article 55 Requirement**" means a requirement imposed on [*name of Counterparty*] under any applicable Bail-in Legislation to obtain from its counterparties contractual recognition of the application of Bail-in Powers with respect to [*name of Counterparty*].

"**Bail-in Legislation**" means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant implementing law, regulation, rule or requirement as described in the EU Bail-in Legislation Schedule from time to time.

"**Bail-in Powers**" means any Write-down and Conversion Powers as defined in relation to the relevant Bail-in Legislation.

"**BRRD**" means the EU Bank Recovery and Resolution Directive (Directive 2014/59/EU) establishing a framework for the recovery and resolution of credit institutions and investment firms.

"**Effective Time**" means the time and date when the transfer of business from UBS Limited to UBS Europe SE pursuant to Part VII of the Financial Services and Markets Act 2000 becomes effective.

"**EU Bail-in Legislation Schedule**" means the document described as such, then in effect, and published by the Loan Market Association (or any successor person) from time to time at <http://www.lma.eu.com/>.

"**BRRD Liability**" has the same meaning as in such laws, regulations, rules or requirements implementing the BRRD under the applicable Bail-in Legislation.

"**Relevant Resolution Authority**" means the resolution authority with the ability to exercise any Bail-in Powers and/or powers under the Resolution Stays Provisions in relation to [*name of Counterparty*] (and any successor)."

"**Resolution Legislation**" means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant implementing law, regulation, rule or requirement implementing the BRRD.

"**Resolution Stays Provisions**" means the provisions under the applicable Resolution Legislation regarding the temporary suspension of termination rights and/or other contractual rights.

**"Stays Contract"** means any contract or other arrangement which falls within the scope of a Stays Recognition Requirement applicable to [*name of Counterparty*].

**"Stays Recognition Legislation"** means in relation to a member state of the European Economic Area any relevant law, regulation, rule or requirement with respect to the contractual recognition of Resolution Stay Provisions in contracts governed by the law of a country which is not a member state.

**"Stays Recognition Requirement"** means a requirement imposed on [*name of Counterparty*] (either directly or indirectly) under any applicable Stays Recognition Legislation to obtain from its counterparties contractual recognition of the application of the Resolution Stays Provisions with respect to [*name of Counterparty*]."

### 5.3 **Process Agent**

At and with effect from the Effective Time, each Transferring Contract shall be amended to include the irrevocable appointment by the Transferee of UBS AG London Branch as its agent to accept service of process for disputes arising under or in connection with the Transferring Contract.

### 5.4 **Compensation Arrangements**

At and with effect from the Effective Time Transferring Contracts will be amended to delete references to the United Kingdom's Financial Services Compensation Scheme which shall be replaced with, to the extent applicable, references to the Compensation Scheme of German Private Banks (*Entschädigungseinrichtung deutscher Banken GmbH*) and the Deposit Protection Fund for German Private Banks (*Einlagensicherungsfonds*).

5.5 The variations to the terms and conditions of the Transferring Contracts referred to in paragraphs 4 and 5.1 to 5.4 above shall be made pursuant to this Scheme and not under and notwithstanding any right or purported right within such terms and conditions or any other related plans, rules or scheme to make such variations. No right of cancellation on transfer shall arise which could otherwise arise as a result of any variation pursuant to any right or purported right within such terms and conditions or any related plans, rules or scheme. Neither the Transferee nor the Transferor nor any director, officer, employee or other person for or on behalf of the Transferor or the Transferee shall be obliged to issue a certificate, endorsement, notice, determination or any other document in relation to such variations, notwithstanding any purported obligation in the terms and conditions of the Transferring Contracts or any other related plans, rules or schemes to do so.

## 6. GENERAL PROVISIONS

### 6.1 Effective Time

- 6.1.1 Subject to paragraph 6.1.2 below, this Scheme shall become operative with effect from the time that is on the same date as and immediately prior to the time of the Cross-Border Merger Registration;
- 6.1.2 Notwithstanding paragraph 6.1.1 above, this Scheme shall not become operative unless the Frankfurt Commercial Register makes the Cross-Border Merger Registration.
- 6.1.3 If this Scheme does not become operative on or before the date falling six months following the date on which the Pre-Merger Certificate is received by the Transferor, (the "**Longstop Date**"), this Scheme shall lapse.
- 6.1.4 In the event that the Cross-Border Merger Registration is not effected prior to the Longstop Date, the Transferor and the Transferee will:
- (a) notify Transferring Counterparties by way of an advert in the European edition of the Financial Times informing them that this Scheme will not become effective;
  - (b) update their websites to include a notification that this Scheme will not become effective; and
  - (c) send written notice to any Transferring Counterparty who has raised objections or attended the hearing of the Court to sanction this Scheme informing them that this Scheme will not become effective.

### 6.2 Effect of Scheme

- 6.2.1 Unless and to the extent otherwise provided in the Order, the transfer and vesting of any rights, benefits, liabilities and obligations relating to any part of the Transferring Business pursuant to this Scheme shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any provision to the contrary in any agreement or arrangement with any person, including any restriction on transferring, assigning or otherwise dealing with the same and whether or not the Transferor would, apart from the terms of this Scheme, have the capacity to effect the same and in particular (but without prejudice to the generality of the foregoing) shall not:
- (a) invalidate or discharge any contract, security or other thing; or
  - (b) require further registration in respect of any security or charge; or
  - (c) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would otherwise be the case under any instrument or contract or arrangement to which the Transferor is a party or is bound; or

- (d) entitle any party to a contract or arrangement to which the Transferor is a party to terminate such contract or arrangement, or warranty, undertaking or obligation thereunder, when, in the absence of this Scheme, that party would not otherwise be entitled to terminate it; or
- (e) entitle any party to a contract to which the Transferor is a party to vary the terms of that contract when, in the absence of this Scheme, that party would not otherwise be entitled to vary it; or
- (f) save as provided elsewhere in this Scheme, confer any greater or lesser rights or benefits, or impose any greater or lesser obligations, under a contract on any party to such contract to which the Transferor is a party where such greater or lesser rights, benefits or obligations would not otherwise have been conferred or imposed; or
- (g) require the delivery by the Transferee of any legal opinion, tax opinion, report, certificate, evidence, corporate authorisation document or other document; or
- (h) affect the enforceability, priority or ranking of any security; or
- (i) to the extent possible under applicable law and regulation, enable an insolvency practitioner to treat the transfer effected by this Scheme or this Scheme (or the decision to enter into the transfer effected by this Scheme or this Scheme) as:
  - (i) an entry into a transaction for the purposes of Sections 238(2) and 240(1) of the Insolvency Act 1986;
  - (ii) a giving of a preference for the purposes of Sections 239(2) and 240(1) of the Insolvency Act 1986;
  - (iii) an entry into a transaction for the purposes of Section 244(2) of the Insolvency Act 1986;
  - (iv) the creation of a floating charge for the purposes of Section 245 of the Insolvency Act 1986; or
  - (v) a similar triggering event for the purposes of any other period during which an insolvency practitioner can challenge the transaction under any administration, insolvency, company voluntary arrangement or similar process.

### 6.3 Confidentiality

- 6.3.1 At and with effect from the Effective Time, any provision in a Transferring Contract that has the effect of prohibiting information in relation to any contract or the counterparty thereto to be shared between the Transferor and the Transferee (and their professional advisers, regulators or other third parties)(and for the avoidance of doubt, including if such prohibition operates only if the consent of the relevant counterparty is not obtained) shall be deemed to not apply insofar as such disclosure is intended to give effect to the purposes of this Scheme. The Transferee shall be deemed to have executed

any documents, provided any confirmations or undertakings and met any pre-conditions required by any such confidentiality provisions.

- 6.3.2 At and with effect from the Effective Time, and subject to paragraph 6.4 below, the Transferee shall owe to any person the same duties of confidentiality and privacy as those which the Transferor owed immediately prior to the Effective Time in respect of the Transferring Business.

#### 6.4 **Data Protection**

- 6.4.1 Terms defined in the GDPR have the same meanings when used in this paragraph 6.4.
- 6.4.2 At and with effect from the Effective Time, title to and control of the records relating to the Transferring Business, including (without limitation) any personal data within those records, shall be transferred to the Transferee, and those records may be used and otherwise processed by the Transferee (including any agent or contractor of the Transferee) to the same extent that and on the same legal basis as such records were lawfully used and otherwise processed by the relevant Transferor and its agents or contractors before the Effective Time for all purposes in connection with the Transferring Business including, in particular (but without limitation), administration thereof and all matters relevant or incidental thereto.
- 6.4.3 At and with effect from the Effective Time, in respect of all personal data comprised in or processed in relation to the Transferring Business of which the Transferor was a controller or processor immediately before the Effective Time:
- (a) the Transferee shall become a controller or processor (as the case may be) in place of the Transferor (unless the Transferor was a processor on behalf of the Transferee as controller, in which case the Transferor will cease to be a processor and the Transferee will remain as controller);
  - (b) any information made available or opportunity to object offered to, or consent obtained or requested from, any data subject by or on behalf of the Transferor will be deemed to have been made available, offered, obtained or requested by or on behalf of the Transferee, and any reference to the Transferor (including (without limitation) to its contact details or data protection officer (if any)) in any such information, offer, consent or request will be deemed to have included an equivalent reference to the Transferee; and
- 6.4.4 any communication received by or on behalf of the Transferor from a data subject or supervisory authority under the GDPR or any other applicable data protection or data privacy law before the Effective Time will be deemed to have been received by or on behalf of the Transferee, and any action taken by the Transferor before the Effective Time with a view to compliance with its obligations under the GDPR or any other applicable data protection law or data privacy law in relation to any such communication will be deemed to have been taken by the Transferee.

## 6.5 Evidence: books and documents

- 6.5.1 All books and other documents which would, prior to the Effective Time, have been evidence in respect of any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim ("**Proceedings**") brought by or against the Transferor prior to the Effective Time, shall be admissible in evidence in respect of the same matter for or against the Transferee at and after the Effective Time, including in respect of any such Proceedings which are transferred to the Transferee pursuant to this Scheme. In this paragraph 6.5.1, "documents" has the same meaning as in section 13 of the Civil Evidence Act 1995.
- 6.5.2 At and with effect from the Effective Time, the Bankers' Books Evidence Act 1879 shall apply to any books of the Transferor transferred to, and vested in, the Transferee by virtue of this Scheme, and to entries made in those books prior to the Effective Time, as if such books were the books of the Transferee.
- 6.5.3 For the purposes of section 4 of the Bankers' Books Evidence Act 1879, books so transferred to, and vested in, the Transferee shall be deemed to have been the ordinary books of the Transferee at the time of the making of any entry therein which purports to have been made prior to the Effective Time, and any such entry shall be deemed to have been made in the usual and ordinary course of business.
- 6.5.4 In this paragraph 6.5, "books" shall be construed in accordance with section 9(2) of the Bankers' Books Evidence Act 1879.

## 6.6 Modifications or Additions

- 6.6.1 The Transferee and the Transferor may consent for and on behalf of themselves and may consent on behalf of all other persons concerned (other than the PRA or the FCA), to any amendment, modification or addition to this Scheme or to any further condition or provision affecting this Scheme which the Court may approve or impose prior to the sanction of this Scheme.
- 6.6.2 At any time after the sanction of this Scheme, in the case of any minor or technical amendment to the terms of this Scheme, or any amendment to correct any manifest error in its terms, the amendment may be made without the consent of the Court provided that the PRA and FCA shall have been notified of the proposed amendment and (i) consent shall have been received by the Transferor or the Transferee from the PRA or FCA or (ii) no objection is received by the Transferor or the Transferee from the PRA or FCA within 21 days of such notification.

## 6.7 Contracts (Rights of Third Parties) Act 1999

A person who is not party to this Scheme may not enforce any term of this Scheme pursuant to the Contracts (Rights of Third Parties) Act 1999 provided that UBS AG may enforce the provisions of paragraph 3.2 (insofar as it relates to the rights of UBS AG under the Parent Guarantee).



**6.8 Successors and Assigns**

This Scheme will bind and enure to the benefit of the successors and assigns of each of the Transferee and the Transferor.

**6.9 Governing Law**

This Scheme shall be governed by and construed in accordance with English law.

Dated this 5th day of February 2019.

## SCHEDULE 1 INTERPRETATION

1. In this Scheme, unless inconsistent with the subject or context, the following expressions bear the meanings respectively set opposite them:

<b>"BaFin"</b>	has the meaning given to it in paragraph 1.2.5;
<b>"Branch Assets"</b>	all assets comprised in the Branch Business including without limitation those assets allocated by the Transferor to the Transferor Branches in the Transferor's books and records;
<b>"Branch Business"</b>	all business carried on by the Transferor through any and all of the Transferor Branches, including all agreements, written or unwritten between the Transferor and a counterparty to the extent such agreements relate solely to a Transferor Branch and excluding for the avoidance of doubt any agreements and arrangements which are not allocated to a Transferor Branch in the Transferor's books and records;
<b>"Branch Costs"</b>	all costs attributable to the Branch Business as shown on the profit and loss statement of each Transferor Branch;
<b>"Branch Income"</b>	all income attributable to the Branch Business as shown on the profit and loss statement of each Transferor Branch;
<b>"Branch Liabilities"</b>	all debts, liabilities and obligations allocated by the Transferor to the Transferor Branches in the Transferor's books and records including (without limitation):  (a) all debts, liabilities and obligations whatsoever under or by virtue of the Branch Business or Branch Assets;  (b) all tax liabilities which are attributable to such Branch Business or Branch Assets or the transfer thereof;
<b>"Court"</b>	the High Court of Justice in England and Wales;
<b>"Covered Agreements"</b>	Transferring Contracts that are master agreements which contain a "single agreement" clause and which provide for the netting of transaction values to produce a single net termination amount owed by one party to the other;
<b>"Cross-Border Merger"</b>	the proposed merger of the Transferor into the Transferee by way of cross-border merger pursuant to the Cross-Border Mergers Directive;

<b>"Cross-Border Mergers Directive"</b>	the Cross-Border Mergers Directive (2005/56/EC), as consolidated in Directive 2017/1132/EU;
<b>"Cross-Border Merger Registration"</b>	the registration in the Frankfurt Commercial Register of the Cross-Border Merger in accordance with the German Cross-Border Mergers Regulations
<b>"Effective Date"</b>	the date on which the Effective Time occurs;
<b>"Effective Time"</b>	the time when this Scheme shall become operative in accordance with paragraph 6.1;
<b>"Encumbrance"</b>	any charge, mortgage, pledge, security assignment, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind and any other type of preferential arrangement (including, without limitation, title transfer and retention agreements) having a similar effect;
<b>"Excluded Contracts"</b>	the FMI Contracts and the Services Contracts;
<b>"FCA"</b>	the Financial Conduct Authority of the United Kingdom or such other authority as shall from time to time carry out the functions carried out by it in the United Kingdom as at the date of this Scheme;
<b>"Financial Services Compensation Scheme"</b>	the Financial Services Compensation Scheme established under section 213 of FSMA;
<b>"Frankfurt Commercial Register"</b>	the commercial register at the local court ( <i>Amtsgericht</i> ) in Frankfurt am Main;
<b>"FMI Contracts"</b>	any agreements between the Transferor and the operators of any securities settlement systems, central securities depositories, central counterparties (CCPs), clearing houses, payment settlement systems, exchanges, trading venues or other organised multilateral trading systems;
<b>"FSMA"</b>	the Financial Services and Markets Act 2000;
<b>"GDPR"</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), taken together with the UK Data Protection Act 2018 and the German Data Protection Act ( <i>Bundesdatenschutzgesetz</i> );
<b>"German Cross-Border"</b>	the German Conversion Act ( <i>Umwandlungsgesetz</i> );

## **Mergers Regulations"**

- "KWG"** has the meaning given to it in paragraph 1.2.6;
- "Longstop Date"** has the meaning given to it in paragraph 6.1.3;
- "New Parent Guarantee"** the guarantee provided by UBS AG to counterparties of the Transferor by deed poll dated 22 January 2019;
- "Order"** an order made by the Court pursuant to section 111(1) of FSMA sanctioning this Scheme and any order (including any subsequent order, which is ancillary thereto) in relation to this Scheme made by the Court pursuant to section 112 of FSMA;
- "Parent Guarantee"** the guarantee provided by UBS AG to counterparties of the Transferor by deed poll dated 24 January 2003;
- "PRA"** the Prudential Regulation Authority of the United Kingdom or such other authority as shall from time to time carry out the functions carried out by it in the United Kingdom as at the date of this Scheme;
- "Pre-Merger Acts and Formalities"** those requirements set out in regulations 7 to 10 and 12 to 15 of the UK Merger Regulations which the Transferor is required to fulfil before the Court will issue to the Transferor a Pre-Merger Certificate pursuant to regulation 6 of the UK Merger Regulations;
- "Pre-Merger Certificate"** the certificate to be granted by the Court certifying the proper completion of the Pre-Merger Acts and Formalities in respect of the Transferor under the Cross-Border Merger;
- "Proceedings"** has the meaning given to it in paragraph 6.5.1;
- "Residual Asset"**
- (a) any asset of the Transferor falling within limb (a) of the definition of Transferring Asset but in respect of which the Court in relation to this Scheme has declined to order the transfer of such asset to the Transferee;
  - (b) any Branch Asset;
  - (c) any Branch Income;
  - (d) any Taiwan FINI Asset;
  - (e) any Taiwan FINI Income; and
  - (f) any rights, benefits and powers of the Transferor

	under or by virtue of the Excluded Contracts,
	which assets, for the avoidance of doubt, shall transfer under the Cross-Border Merger;
<b>"Residual Business"</b>	the Residual Assets and the Residual Liabilities;
<b>"Residual Liability"</b>	<p>(a) any liability whatsoever of the Transferor falling within limb (a) of the definition of Transferring Liabilities but:</p> <p>(i) which is attributable to or connected with a Residual Asset (subject to the exclusions referred to in the definition of Taiwan FINI Business); or</p> <p>(ii) in respect of which the Court has declined to order the transfer;</p> <p>(b) any Branch Liability;</p> <p>(c) any Branch Cost;</p> <p>(d) any Taiwan FINI Liabilities;</p> <p>(e) any Taiwan FINI Cost; and</p> <p>(f) any debts, liabilities and obligations of the Transferor under or by virtue of the Excluded Contracts,</p> <p>which liabilities, for the avoidance of doubt, shall transfer under the Cross-Border Merger;</p>
<b>"SAG"</b>	has the meaning given to it in paragraph 5.2;
<b>"Scheme"</b>	this Scheme in its original form or with, or subject to, any modification or addition thereto;
<b>"Services Contracts"</b>	any services agreements between UBS AG and/or its affiliates to the extent relating to the Transferor Branches;
<b>"Taiwan FINI Asset"</b>	all assets comprised in the Taiwan FINI Business including any assets which are noted as being in connection with the Transferor's Taiwan FINI Status in the Transferor's books and records;
<b>"Taiwan FINI Business"</b>	all business carried on by the Transferor in connection with its status as a foreign institutional investor for the purpose of access to Taiwan's onshore securities and futures market through registration with the Taiwan Stock Exchange (" <b>Taiwan FINI Status</b> "), including all

agreements, written or unwritten between the Transferor and a counterparty to the extent business is carried on thereunder at the Effective Time in connection with the Transferor's Taiwan FINI Status, including any agreements and arrangements which are noted as being in connection with the Transferor's Taiwan FINI Status in the Transferor's books and records, but excluding any intra-group agreements written or unwritten between the Transferor and any member of the Transferor Group in connection with such business;

- "Taiwan FINI Costs"** all costs attributable to the Taiwan FINI Business as shown in the Transferor's books and records;
- "Taiwan FINI Income"** all income attributable to the Taiwan FINI Business as shown in the Transferor's books and records;
- "Taiwan FINI Liabilities"** all debts, liabilities and obligations attributable to the Taiwan FINI Business in the Transferor's books and records including (without limitation):
- (a) all debts, liabilities and obligations whatsoever under or by virtue of the Taiwan FINI Business or Taiwan FINI Assets;
  - (b) all tax liabilities which are attributable to such Taiwan FINI Business or Taiwan FINI Assets or the transfer thereof;
- "Taiwan FINI Status"** has the meaning given to it in the definition of Taiwan FINI Business;
- "Transferee"** has the meaning given to it in paragraph 1.2.5;
- "Transferor Branches"** the Transferor's branch establishments located in France, Germany, Italy, Netherlands, Poland, Sweden and Switzerland;
- "Transferee Entity"** has the meaning given to it in paragraph 3.7.1;
- "Transferor"** has the meaning given to it in paragraph 1.2.1;
- "Transferor Entity"** has the meaning given to it in paragraph 3.7.1;
- "Transferor Group"** the Transferor and any undertaking which is, at the relevant time a subsidiary undertaking or parent undertaking of the Transferor or a subsidiary undertaking of a parent undertaking of the Transferor;
- "Transferring Assets"** (a) all assets of the Transferor including (without limitation):

- (i) all rights, benefits and powers of the Transferor under or by virtue of the Transferring Contracts; and
- (ii) all rights and claims (present or future, actual or contingent) against any third party in relation to the Transferring Business or arising as a result of the Transferor having carried on the Transferring Business; but

(b) excluding the Residual Assets;

**"Transferring Business"** the whole of the business carried out by the Transferor immediately prior to the Effective Time, including, without limitation, all rights, benefits and powers of the Transferor under or by virtue of the Transferring Assets and all liabilities and obligations of the Transferor, under and by virtue of the Transferring Liabilities but excluding the Residual Business;

**"Transferring Contracts"** all the contracts (which include, amongst other things, all agreements, arrangements, commitments, terms and conditions, offers and invitations to treat) to which the Transferor is a party or the benefit of which is held on trust for the Transferor or has been assigned to the Transferor that are not Excluded Contracts or Residual Assets;

**"Transferring Counterparty Accounts"** in respect of any Transferring Counterparty, all accounts (including securities and cash accounts) held by the Transferor on behalf of that Transferring Counterparty subsisting at the Effective Time;

**"Transferring Counterparty"** every client and counterparty to a Transferring Contract;

**"Transferring Liabilities"** (a) all debts, liabilities and obligations whatsoever of the Transferor which are present, future, actual or contingent, including (without limitation),

- (i) all debts, liabilities and obligations whatsoever under or by virtue of the Transferring Contracts;
- (ii) all debts, liabilities and obligations arising as a result of the Transferor having carried on the Transferring Business;
- (iii) all tax liabilities which are attributable to such Transferring Business or the transfer thereof (pursuant to the Scheme or

otherwise) or arising as a consequence of the provisions of the Scheme whensoever incurred; but

(b) excluding the Residual Liabilities.

"UK" the United Kingdom of Great Britain and Northern Ireland;

"UK Merger Regulations" the Companies (Cross-Border Mergers) Regulations 2007;

"WpHG" the German Securities Trading Act (*Wertpapierhandelsgesetz*).

2. In this Scheme:

2.1 "**property**" and "**asset**" include (without limitation) property, assets, rights (including, without limitation, contingent rights as to the repayment of tax) and powers of every description (whether present or future, actual or contingent) and includes property held on trust and securities, benefits, powers of any description and any interest whatsoever in any of the foregoing;

2.2 "**liabilities**" includes (without limitation) duties and obligations of every description (whether present or future, actual or contingent);

2.3 "**transfer**" includes (as the context may require) "assign", "assignation" and "assignment", "dispose", "disposal", "novate", "novation", "convey" and "conveyance";

2.4 any reference to the singular shall include a reference to the plural and vice versa;

2.5 any reference in this Scheme to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation;

2.6 expressions used in this Scheme which have meanings under FSMA shall bear those meanings unless otherwise expressly defined herein;

2.7 any reference to this Scheme shall include the Schedules to it and (unless inconsistent with the subject or context) references in this Scheme to paragraphs, parts or Schedules are to paragraphs of, parts of or the Schedules to this Scheme; and

2.8 any reference to writing shall include any mode of reproducing words in a legible and non-transitory form.



**SCHEDULE 2**

**Scheme Summary**

## **TRANSFER OF BANKING BUSINESS OF UBS LIMITED TO UBS EUROPE SE SCHEME SUMMARY**

### **1. INTRODUCTION**

- 1.1 UBS Limited (the "**Transferor**") has agreed to transfer all of its business (including the accepting of deposits) (the "**Transferring Business**") to UBS Europe SE (the "**Transferee**").
- 1.2 The Transferring Business will be transferred to the Transferee, which will carry on the Transferring Business from its headquarters in Frankfurt and in branch locations in the Netherlands, Sweden, Italy, Luxembourg, Austria, Denmark, Spain, Poland, France, Switzerland and the United Kingdom ("**UK**").
- 1.3 The transfer will in part be effected by way of a scheme under Part VII of the UK Financial Services and Markets Act 2000 ("**FSMA**") (the "**Scheme**"). This document provides a summary of the terms of the Scheme as required by Regulation 5(4) of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001. The information in this document is only a summary of the Scheme. The full Scheme can be found online at the following website: [www.ubs.com/brexit](http://www.ubs.com/brexit).
- 1.4 Immediately following the time that the Scheme becomes effective, the Transferor will merge into the Transferee by way of a cross-border merger ("**CBM**") under the Cross-Border Mergers Directive (2005/56/EC) as consolidated in Directive 2017/1132/EU. Any residual business which remains in the Transferor after the Scheme has become effective will transfer to the Transferee and the Transferor will be dissolved. Therefore, the Scheme shall become effective on the same date as and immediately prior to the time the CBM is registered by the Frankfurt Commercial Register (the "**CBM Registration**").

### **2. COURT APPROVAL OF THE TRANSFER AND THE EFFECTIVE DATE**

- 2.1 The Scheme was approved in an order made by the High Court of Justice of England and Wales (the "**Court**") (the "**Order**"). The Court hearing to consider the Scheme and the transfer under Part VII of FSMA (the "**Part VII**") was held on 5 February 2019 (the "**Final Hearing**"). The Final Hearing occurred in the Rolls Building, Fetter Lane, London, EC4A 1NL.
- 2.2 The Transferring Business shall be transferred to the Transferee on the effective date of the Scheme, currently anticipated to be 1 March 2019 (the "**Effective Date**", with the time the Scheme becomes effective being the "**Effective Time**").

### **3. EFFECT OF THE SCHEME**

#### **Transfer of the Business**

- 3.1 As the Court approved the Scheme and the Part VII transfer, each counterparty that will transfer as part of the Transferring Business (each a "**Transferring Counterparty**"), will no longer be a counterparty of the Transferor and will become a counterparty of the Transferee and their relevant agreements with the Transferor in respect of the Transferring Business (the "**Transferring Counterparty Agreements**")

will transfer to the Transferee on the Effective Date. On the Effective Date, all the relevant rights and obligations of the Transferor in relation to the Transferring Business will automatically transfer to the Transferee. This means that the Transferee will be responsible for any obligations which were previously obligations of the Transferor from the Effective Date in relation to the Transferring Business.

### **Amendments to Transferring Counterparty Agreements**

- 3.2 It is also necessary to change the terms and conditions of Transferring Counterparty Agreements to reflect that Transferring Counterparties will no longer be counterparties of the Transferor and will become counterparties of the Transferee as of the Effective Date. These changes are set out at a high level below and set out in greater detail in the Scheme.
- 3.3 References in the Transferring Counterparty Agreements or to other agreements relevant to the Transferring Business to:
- 3.3.1 subject to paragraph 3.10 below, the Transferor (howsoever defined) shall be construed as, and take effect as, a reference to the Transferee
  - 3.3.2 the Transferor (howsoever defined), its location, directors, officers, representatives or employees will, from the Effective Date, take effect as if they were references to the Transferee, its location, directors, officers, representatives or employees;
  - 3.3.3 the Transferor's standard settlement instructions ("**SSIs**"), legal entity identifier ("**LEI**") and bank identifier code ("**BIC**") shall be construed and take effect as references to the Transferee's SSIs, LEI and new BIC;
  - 3.3.4 the Transferor's company registration and incorporation details and address and contact details shall be construed as and take effect as references to the Transferee's company registration and incorporation details and address and contact details;
  - 3.3.5 the Transferor's address and contact details for notices to be given to the Transferor as being given to the Transferor at the Transferor's main establishment, registered office, main office, registered place of business or similar being located in London, England or the United Kingdom shall be construed as, and take effect as, a reference to the Transferee's registered office, and contact details thereof, in Frankfurt, Germany;
  - 3.3.6 the Transferor's office or location out of which the Transferor may act as being London, England or the United Kingdom shall be construed as, and take effect as, a reference to the Transferee being able to act out of its registered office in Frankfurt, Germany
  - 3.3.7 the Transferor's regulators as the PRA and FCA shall be construed as references to the Transferee's regulators from time to time, including the European Central Bank;

- 3.3.8 the cash account numbers allocated by the Transferor to transferring accounts to the cash account numbers allocated by the Transferee to transferring accounts;
- 3.3.9 any rate, tariff, or scale of fees or terms and conditions published by the Transferor from time to time shall be construed as, and take effect as, a reference to the corresponding rate, charge, tariff or scale of fees or terms and conditions published by the Transferee from time to time;
- 3.3.10 a rate, charge, tariff or scale of fees or terms and conditions published, determined, ascertained, varied or amended from time to time by the Transferor shall be construed as, and take effect as, the Transferee being afforded the same right under such contract, other document or instrument as the Transferor had to publish, determine, ascertain, vary or amend such rates, charges, tariffs, scales of fees or terms and conditions published, determined, ascertained, varied or amended;
- 3.3.11 directors, officers, representatives, employees or contractors or to any director, officer, representative, employee or contractor of the Transferor shall be construed as, and take effect as, a reference to the directors, officers, representatives, employees or contractors of the Transferee or to such director, officer, representative, employee or contractor of the Transferee as the Transferee may nominate for that purpose;
- 3.3.12 the board of directors or management committee of the Transferor, or any other officers, employees or agents of the Transferor shall be construed as and take effect as references to the management board or supervisory board of the Transferee, or any other officers, employees or agents of the Transferee or, where appropriate, agents of the Transferee to which the administration carried on by the Transferee has been delegated, in particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by, or expressed to be performed by the board of directors or management committee of the Transferor, or any other officers, employees or agents of the Transferor in relation to any Transferring Contract, shall be exercisable or required to be performed by the supervisory board or management board of the Transferee or the relevant officers, employees or agents of the Transferee;
- 3.3.13 the Transferor's duty to comply with all applicable anti-money laundering laws and regulations of the United Kingdom to which it is subject or to the Transferor performing sufficient due diligence to meet all relevant anti-money laundering laws of the United Kingdom to which it is subject, shall be construed as, and take effect as, a reference to the applicable anti-money laundering laws and regulations of Germany to which the Transferee is subject;
- 3.3.14 any legislation or regulations of the United Kingdom that are applicable to the Transferor (except to the extent such references relate to the governing law of a document and its interpretation in accordance therewith) shall be construed as, and take effect as, a reference to the equivalent legislation or regulations in Germany and applicable to the Transferee, to the extent such equivalent applicable legislation and regulations exist in Germany (and to the extent no

such equivalent legislation or regulations exist in Germany the original reference shall remain unchanged); and

- 3.3.15 the Parent Guarantee in Covered Agreements shall be construed as, and take effect as, a reference to the New Parent Guarantee (for more information on this see paragraph 3.12 below).
- 3.4 Where a Transferring Counterparty Agreement specifies the location from which the Transferor enters into (or books) transactions as being London, England and/or the United Kingdom, such reference shall be replaced by references to the location of the Transferee through which the relevant transactions will be entered into (or booked) after the Effective Date, being the registered office of the Transferee in Frankfurt, Germany.
- 3.5 In order to ensure Transferring Counterparty Agreements comply with applicable laws in Germany, any Transferring Counterparty Agreement which is governed by English law or any other laws of any country which is not an EU member state or subject to the jurisdiction of the English courts, or the courts of any country which is not an EU member state, and which is a contract to which the EU Bank Recovery and Resolution Directive (Directive 2014/59/EU) ("**BRRD**") applies shall be deemed to have been amended by the Scheme, such that certain provisions acknowledging the powers that certain bail-in authorities have over the Transferee, and the suspension of termination rights and other contractual rights in a resolution scenario of the Transferee are deemed included. If a Transferring Counterparty is subject to any similar requirements to obtain contractual recognition in respect of bail-in provisions and contractual stay pursuant to the BRRD, the Transferee will recognise those after the Effective Date.
- 3.6 Transferring Counterparty Agreements will be amended to refer to UBS AG, acting through its London Branch having been appointed by the Transferee as its agent to accept service of process for disputes arising in connection with Transferring Counterparty Agreements.
- 3.7 Any references in Transferring Counterparty Agreements to the United Kingdom's Financial Services Compensation Scheme shall be replaced with references to the Compensation Scheme of German Private Banks (*Entschädigungseinrichtung deutscher Banken GmbH*) and the Deposit Protection Fund for German private banks (*Einlagensicherungsfonds*), as applicable.

#### **Mandates and Other Instructions**

- 3.8 Any mandate or other instruction, for example an instruction to a bank in the form of a direct debit, which is in force at the Effective Date in respect of the Transferring Business and provides for payment to be made to the Transferor will, from the Effective Date, take effect as if it provided for payment to be made to the Transferee.
- 3.9 Any mandate or other instruction which is in force on the Effective Date in respect of the Transferring Business and which relates to the manner of payment of any amount by the Transferor will, from the Effective Date, continue in force as an effective authority to the Transferee.

### **Parent Guarantee**

- 3.10 At and with effect from the Effective Time, the reference in the parent guarantee provided by UBS AG in respect of the Transferor's payment obligations (the "**Parent Guarantee**") to contracts that are subject to the Parent Guarantee having been entered into between the Transferor and a counterparty shall continue to have effect as a reference to the Transferor (and not the Transferee) having entered into the contracts.
- 3.11 Without prejudice to the above, the reference in the Parent Guarantee to the Transferor failing to discharge a liability subject to the Parent Guarantee shall be construed as a reference to such a failure before the Effective Time by the Transferor and after the Effective Time by the Transferee and the obligations and rights of UBS AG thereunder shall continue in full force and effect (on the terms and conditions set out therein).
- 3.12 UBS AG has provided a new parent guarantee dated 22 January 2019 (the "**New Parent Guarantee**") in respect of Transferring Contracts that are master agreements which contain a "single agreement" clause and which provide for the netting of transaction values to produce a single net termination amount owed by one party to the other ("**Covered Agreements**"). For the avoidance of doubt, no double counting will be permitted under the two parent guarantees provided by UBS AG. An eligible counterparty will only be entitled to claim under the New Parent Guarantee to the extent it is not able to claim under the current Parent Guarantee.

### **Continuity of Proceedings**

- 3.13 Any judicial, quasi-judicial or arbitral proceedings, or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim brought or pending by or against the Transferor in connection with the Transferring Business will, from the Effective Date, be continued or commenced (as appropriate) by or against the Transferee. Any defences, claims, counter-claims or rights of set-off that would have been available to the Transferor may be raised in such proceedings against the Transferee.

### **Effective Date**

- 3.14 The Scheme shall not become operative on the Effective Date unless the CBM Registration occurs.
- 3.15 Unless the CBM Registration occurs within six months of the date on which the pre-merger certificate was granted by the Court in respect of the CBM (being 24 January 2019), the Scheme shall lapse. In the event that the Scheme lapses, counterparties shall be notified of such lapse.

### **Effect of the Scheme**

- 3.16 Unless and to the extent otherwise provided in the Order, the transfer and vesting of any rights, liabilities and obligations relating to any part of the Transferring Business pursuant to the Scheme shall take effect and shall be valid and binding on parties having any interest in the same notwithstanding any provision to the contrary in any agreement or arrangement with any person, including any restriction on transferring,

assigning or otherwise dealing with the same and whether or not the Transferor would, apart from the terms of the Scheme, have the capacity to effect the same and in particular (but without prejudice to the generality of the foregoing) shall not:

- 3.16.1 invalidate or discharge any contract, security or other thing; or
- 3.16.2 require further registration in respect of any security or charge; or
- 3.16.3 constitute a breach of, or default under, or require any obligation to be performed sooner or later than would otherwise be the case under any instrument or contract or arrangement to which the Transferor is a party or is bound; or
- 3.16.4 entitle any party to a contract or arrangement to which the Transferor is a party to terminate or vary such contract or arrangement; or
- 3.16.5 entitle a party to a contract where the Transferor is included for the purposes of the definition of "Specified Indebtedness" to terminate such contract; or
- 3.16.6 confer any greater or lesser rights or benefits, or impose any greater or lesser obligations, under a contract to which the Transferor is a party; or
- 3.16.7 require the delivery by the Transferee of any legal opinion, tax opinion, report, certificate, evidence, corporate authorisation document or other document; or
- 3.16.8 affect the enforceability, priority or ranking of any security; or
- 3.16.9 to the extent possible under applicable law and regulation, enable an insolvency practitioner to treat the transfer effected by the Scheme or the Scheme (or the decision to enter into the transfer effected by the Scheme or the Scheme) as:
  - (a) an entry into a transaction for the purposes of Sections 238(2) and 240(1) of the Insolvency Act 1986;
  - (b) a giving of a preference for the purposes of Sections 239(2) and 240(1) of the Insolvency Act 1986;
  - (c) an entry into a transaction for the purposes of Section 244(2) of the Insolvency Act 1986;
  - (d) the creation of a floating charge for the purposes of Section 245 of the Insolvency Act 1986; or
  - (e) a similar triggering event for the purposes of any other period during which an insolvency practitioner can challenge the transaction under any administration, insolvency, company voluntary arrangement or similar process.

4. **DATA PROTECTION**

- 4.1 On the Effective Date, the records relating to the Transferring Business, which may include personal data, will transfer to the Transferee and may be used and processed by the Transferee (including any agent or contractor of the Transferee) to the same extent that, and on the same basis that, the Transferor and its agents and contractors currently use and process such information.
- 4.2 From the Effective Date, the Transferor will cease to be a controller or processor (as relevant) in respect of all personal data relating to the Transferring Business and the Transferee will become a controller or processor (as relevant) instead.
- 4.3 Any information made available or opportunity to object offered to, or consent obtained or requested from, any data subject by or on behalf of the Transferor will be deemed to have been made available, offered, obtained or requested by or on behalf of the Transferee, and any reference to the Transferor (including (without limitation) its contact details or data protection officer (if any)) in such offer, consent or request will be deemed to have an equivalent reference to the Transferee.
- 4.4 Any communication received by or on behalf of the Transferor from a data subject or supervisory authority under the General Data Protection Regulation (Regulation (EU) 2016 (679)) ("**GDPR**") or any other applicable data protection or data privacy law before the Effective Time will be deemed to have been received by or on behalf of the Transferee, and any action taken by the Transferee before the Effective Time with a view to compliance with its obligations under the GDPR or any other applicable data protection law or data privacy law in relation to any such communication will be deemed to have been taken by the Transferee.

5. **AMENDMENTS TO THE SCHEME**

- 5.1 Minor or technical amendments to the terms of the Scheme, or any amendment to correct any manifest error in its terms, may be made without the consent of the Court, provided that the PRA and FCA shall have been notified of the proposed amendment, and: (i) consent shall have been received by the Transferor or the Transferee from the PRA or FCA or; (ii) no objection is received by the Transferor or the Transferee from the PRA or FCA within 21 days of such notification.

