

GUIDANCE NOTES TO REVISED VERSION OF THE FRENCH FINANCIAL TRANSACTIONS TAX PROTOCOL

1. INTRODUCTION

1.1 These guidance notes:

- (a) are designed to assist users of the revised version of the French Financial Transactions Tax Protocol (the *Protocol*) published by the Association for Financial Markets in Europe (*AFME*);
- (b) do not form part of, and do not amend or vary, the Protocol;
- (c) summarise the key provisions of the Protocol but are not intended to summarise all of the provisions of the Protocol; and
- (d) are not, and are not intended to be, guidance to the application or interpretation of the French financial transactions tax (*FTT*) itself.

1.2 Capitalised terms not otherwise defined in these guidance notes have the meanings given to them in the Protocol.

1.3 The purpose, basic operation and underlying principles of the Protocol are set out in the introduction to the Protocol (section 1). The Protocol was developed with the objective of creating a relatively simple set of standard terms to which parties could adhere to allocate responsibility for reporting and paying FTT pursuant to article 235 *ter* ZD of the French tax code (the *FTC*) in circumstances where transactions between them are within the scope of the FTT.

1.4 The first version of the Protocol, which came into effect on 1 August 2012 (the *Original Protocol*) was developed at a time when the FTT legislation was not final and there was no final guidance from the French tax authorities in relation to the FTT, and where there was therefore uncertainty as to parties' reporting and payment obligations in relation to the FTT. The Protocol was intended to reduce some of the uncertainty by establishing standard terms which parties could choose to apply to Covered Transactions (as defined in paragraph 1.9 below) between them to contractually allocate responsibility for reporting and paying applicable FTT. Clarifications were provided subsequently in the FTT legislation and the guidelines published by the French tax authorities concerning FTT reporting and payment obligations in situations involving chains of intermediaries (as further detailed in paragraph 1.5 below), and an updated version of the Original Protocol was prepared. The main changes introduced in the revised version are highlighted below.

Amendments to the Original Protocol

1.5 The FTT reporting and payment obligations in situations involving chains of brokers intermediaries were clarified as follows: pursuant to article 235 *ter* ZD, VI of the FTC, the FTT is due and payable by the "investment services provider" (as referred to in this article) having executed the order to purchase the security or having traded for its own account (irrespective, in each case, of whether the investment

services provider is established in France or abroad). Where more than one investment services provider is involved in executing the order (and the order does not emanate from an investment services provider acting for its own account), the FTT is due and payable by the investment services provider which receives the purchase order directly from the ultimate purchaser/ investor (the *Client*). These legal provisions are supplemented by the following guidelines of the French tax authorities in the case of chains of intermediaries:

- (i) where more than one investment services provider is involved in executing an order to purchase a chargeable security, the FTT is payable by the first investment services provider which is licensed to execute orders on behalf of third parties ⁽¹⁾ and which receives the order for execution from the Client;
- (ii) where an investment services provider, which is not licensed to execute orders on behalf of third parties, receives and transmits a Client order for execution to another investment services provider (which is licensed to execute orders), the person liable for the FTT is the second investment services provider;
- (iii) where an investment services provider (*Intermediation Desk*) which is licensed to execute orders on behalf of third parties, receives and transmits a Client order for execution to another investment services provider (which is licensed to execute orders), the person liable for FTT is (by way of exception to the rules referred to at (i) and (ii) above) the second investment services provider where the first investment services provider satisfies the following cumulative prerequisites for qualifying as an Intermediation Desk, i.e.:(a) is not part of the settlement chain of the security that is the subject matter of the order; (b) does not issue an execution report (as defined in article 314-86 of the *Autorité des marchés financiers* general regulations or in another equivalent regulation) in respect of the concerned transaction; (c) is not a member of a regulated market on which the securities are traded; and, (d) acts as the agent of the Client vis-à-vis the second investment services provider (the *Intermediation Desk Exception*);
- (iv) where an investment services provider trading for its own account transmits a purchase order for execution to another investment services provider, the first investment services provider is liable for FTT. It should not matter for these purposes whether the first investment services provider has an execution licence or just a reception/ transmission licence.

Annex 1 to these guidance notes includes an unofficial translation of guidance published by the French tax authorities, which provides transaction examples.

1.6 The main changes introduced by the revised version of the Protocol are:

- (i) the definition of “Investment Services Provider”: order receiver transmitters (*ORTs*), which are not liable for payment of the FTT based on the French tax

⁽¹⁾ As referred to in article L. 321-1, 2 of the French Monetary and Financial Code.

authorities' guidelines when they do not hold an execution license, are now excluded from the definition;

- (ii) the representations required from the Adhering Parties: in order to take into account the Intermediation Desk Exception introduced in the French tax authorities' guidelines, Adhering Parties are required to represent that they are not acting as an Intermediation Desk, unless they have informed the other Adhering Parties prior to consummation of a transaction;
- (iii) the definition of "Indemnity Event": the definition has been clarified, in particular as regard the timing of the indemnification;
- (iv) co-operation among the Adhering Parties: an information exchange mechanism among the Adhering Parties is introduced in order to enable an Adhering Party that is under French tax authorities' audit to support vis-à-vis the French tax authorities that (where relevant) it is not the liable party for FTT purposes under the French FTT legislation; and
- (v) the information to be included in their Adherence Letter by the Adhering Parties: the Adhering Party confirms that it deals on own account and is duly licensed for dealing on own account and/or the Adhering Party executes orders on behalf of clients and is duly licensed for the execution of orders on behalf of clients).

1.7 The Protocol comprises relatively simple terms. It does not, and cannot, purport to cover all the possible scenarios and transactions to which the FTT may apply.

1.8 Only "investment services providers" as referred to in article 235 *ter* ZD of the FTC, to the extent they meet certain conditions (*Investment Services Providers*), are eligible to adhere to the Protocol. The relevant "investment services" are (i) the execution of orders on behalf of clients, and (ii) dealing on own account as those services are set out in Section A of Annex I of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments (*MiFID*), and transposed into French law by article L.321-1 of the of the French monetary and financial code implementing MiFID. Eligible Investment Service Providers must (a) execute orders on behalf of clients and be duly licensed for the execution of orders on behalf of clients and/ or, (b) deal on their own account and be duly licensed for dealing on own account. ORTs are not covered by this definition. Institutions acting only as an Intermediation Desk should not adhere to the Protocol either. Where an Adhering Party acts occasionally as an Intermediation Desk, in relation to a specific Covered Transaction, it must inform the other Adhering Party prior to consummation of the Covered Transaction. Adherence is open to eligible institutions, whether or not they are members of AFME and whether or not they are based in the EEA.

1.9 The transactions which are intended to be covered by the Protocol (*Covered Transactions*) are acquisitions for valuable consideration of "affected securities" (*Affected Securities*), between a purchaser (the *Purchaser*) and a seller (the *Seller*) where each is a signatory to the Protocol (an *Adhering Party*). Affected Securities are

the listed equity securities and other assimilated securities that are referred to in article 235 *ter* ZD I of the FTC.

1.10 Under the Protocol, the Purchaser is responsible for interpreting the FTC and the guidance issued by the French tax authorities to determine which transactions incur reporting and payment obligations for the purposes of the FTT. The Protocol itself does not specify or determine when FTT is payable under the FTC and the French tax authorities' guidance, but contractually allocates responsibility to the Purchaser where FTT is payable in respect of a Covered Transaction (as determined by the Purchaser).

1.11 The Protocol is intended to create mutual rights and obligations between Adhering Parties. Any party proposing to use the Protocol must consider whether the Protocol is suitable for the circumstances in which it is proposed to be used. Parties should take their own legal advice on the terms and effect of the Protocol before deciding to adhere. AFME does not assume responsibility to advise any party on the Protocol nor for a party's use of the Protocol or any of the exhibits thereto under any circumstances.

1.12 The Protocol and all documents to be submitted by a party in connection with the Protocol (the **Protocol Documents**), and any non-contractual obligations arising in connection with the Protocol Documents, are governed by English law. An Adhering Party who does not have a UK address should appoint and maintain an agent for service of process in England throughout its adherence to the Protocol. That party may (if required) specify that the agent for service of process is only appointed in relation to proceedings arising under or in connection with the Protocol.

1.13 The Protocol can be found on AFME's website at <http://www.afme.eu/French-FTT/>. Adherence to the Protocol is free of charge.

1.14 The Original Protocol came into effect on 1 August 2012, when the FTT also came into effect. The revised Protocol will come into effect at 12.01am Paris time on 1 November 2017. The Original Protocol will be terminated at 11.59pm Paris time on 31 October 2017.

1.15 Parties who adhered to the Original Protocol must re-adhere to the Protocol if they want the Protocol to apply to their transactions. A party which fails to re-adhere to the Protocol will cease to be an Adhering Party when the Original Protocol is terminated.

2. SUMMARY OF PROVISIONS

METHOD OF ADHERENCE

2.1 A party may become an Adhering Party by following the procedure set out in section 2 of the Protocol.

2.2 In order to adhere, a party must declare his intention to become an Adhering Party by delivering two copies of a letter in the form, or substantially in the form, of Exhibit 1 to the Protocol (the **Adherence Letter**) to AFME.

2.3 One copy of the Adherence Letter delivered to AFME must be the manually signed original of the letter, whilst the second should be a conformed copy. A conformed copy of a document under the Protocol is an exact copy of the original except that each signature on the manually signed original must be replaced with the printed or typewritten name of each signatory. So if John Smith has signed the original, the “wet ink” signature would be replaced with the typed or printed words “John Smith” in the confirmed copy. The conformed copy can then be published on the AFME website without publishing the signature.

2.4 Parties should take extra care in preparing both the manually signed and the conformed copies of the Adherence Letter in accordance with the Protocol. Both a manually signed original and a conformed copy must be provided in order for a party to adhere to the Protocol. A signature should not appear on the conformed copy of the Adherence Letter.

2.5 The manually signed originals and conformed copies of the Adherence Letter must be delivered to AFME’s offices in person, by courier or mail. In addition email delivery of pdf scans of both copies of the Adherence Letter to fttprotocol@afme.eu is also required.

2.6 The Adherence Letter must include a link to the webpage on the website of the relevant regulator which sets out the party’s regulatory authorisation including the specific services and activities covered by this authorisation, if such information is publicly available. Otherwise, a copy of the party’s authorisation, including the specific services and activities covered by this authorisation, may be provided in an annex to the Adherence Letter; alternatively, these details may be provided to other Adhering Parties on a bilateral basis when requested.

2.7 No other documents are required to be delivered to AFME along with the Adherence Letter. Whilst a party must have due power, authority and capacity in order to execute the Adherence Letter and adhere to the Protocol (and has to make representations to that effect), it is not necessary to submit supporting documentation, such as board resolutions or a list of authorised signatures in order to adhere to the Protocol. AFME will not be responsible for confirming whether any party seeking to adhere to the Protocol complies with any of the representations and warranties in the Protocol nor whether the Adherence Letter is properly authorised or executed.

2.8 An Adherence Letter may apply to more than one proposed Adhering Party. The Adherence Letter must therefore make clear the name, contact details and relevant identifiers of each Adhering Party to which it applies. The Protocol will apply to an Adhering Party and all its branches, unless specified otherwise in the Adherence Letter.

2.9 A party’s adherence to the Protocol takes effect within the relevant timeframe, following AFME’s publication of the conformed copy of the Adherence Letter on the website, that is specified in the Protocol. A party whose Adherence Letter conformed copy was published by 12.01am Paris time on 1 November 2017, will become an Adhering Party with effect from 1 November 2017. In all other cases, a party will become an Adhering Party five business days following publication by AFME of the conformed copy of its Adherence Letter.

DISAPPLICATION

2.10 Section 3 of the Protocol envisages that an Adhering Party may unilaterally disapply the Protocol as between itself and another Adhering Party by serving on that other Adhering Party notice in the form, or substantially in the form, of Exhibit 2 to the Protocol (a **Disapplication Letter**). Copies of the Disapplication Letter do not need to be delivered to AFME and will not be published on the AFME website.

2.11 The service and taking effect (in accordance with the Protocol) of a Disapplication Letter:

- (a) only applies to Covered Transactions between the Adhering Party which served the Disapplication Letter and the Adhering Party which received the Disapplication Letter and shall not apply to any other Adhering Party;
- (b) only applies to transactions between those parties under the Protocol which are entered into on or after the date on which the Disapplication Letter takes effect (in accordance with the Protocol); and
- (c) is without prejudice to the accrued rights of the server and the recipient of the Disapplication Letter in respect of Covered Transactions entered into between them prior to Disapplication Letter becoming effective.

WITHDRAWAL

2.12 Under section 4 of the Protocol, an Adhering Party may voluntarily withdraw from the Protocol or may, in the circumstances described in paragraph 2.20 below, be subject to immediate withdrawal.

2.13 The Protocol will continue to apply between a party which has withdrawn from the Protocol and any other Adhering Party in respect of Covered Transactions entered into between them before the former's withdrawal and their accrued rights are preserved.

Voluntary withdrawal

2.14 An Adhering Party may at any time deliver to AFME two copies of a letter in the form, or substantially in the form, of Exhibit 3 to the Protocol (the **Withdrawal Letter**).

2.15 One copy of the Withdrawal Letter delivered to AFME must be the manually signed original of the letter, whilst the second should be a conformed copy. Parties should take extra care in preparing both the manually signed and the conformed copies of the Withdrawal Letter in accordance with the Protocol. In particular, the conformed copy should be an exact copy of the manually signed original (save for replacing the signatures with the printed or typewritten names of the signatories) letter (see paragraph 2.3 above). A signature should not appear on the conformed copy of the Withdrawal Letter.

2.16 The manually signed originals and conformed copies of the Withdrawal Letter must be delivered to AFME's offices in person, by courier or mail. In addition email delivery of pdf scans of both copies of the Withdrawal Letter to fttprotocol@afme.eu is also required.

2.17 No other documents are required to be delivered to AFME along with the Withdrawal Letter. AFME will not be responsible for confirming whether any party seeking to withdraw from the Protocol has properly authorised or executed the Withdrawal Letter.

2.18 A Withdrawal Letter may apply to more than one Adhering Party. The Withdrawal Letter must therefore make clear the name and relevant identifiers of each Adhering Party to which it applies.

2.19 An Adhering Party's voluntary withdrawal will take effect five business days following the date on which AFME publishes the conformed copy of the Withdrawal Letter on the AFME website.

Immediate withdrawal on ceasing to be an Investment Services Provider

2.20 An Adhering Party who ceases to be an Investment Services Provider must immediately notify AFME by delivery (by personal delivery, courier or mail *and* by email to fttprotocol@afme.eu) of two copies of a notice in the form, or substantially in the form, of Exhibit 4 to the Protocol: one, a manually signed original and the second, a conformed copy.

2.21 An Adhering Party which ceases to be an Investment Services Provider will cease to be an Adhering Party with effect from the date on which AFME publishes the conformed copy of the notice of ceasing to be an Investment Services Provider. AFME will not be responsible for confirming whether any party is, or has ceased to be, an Investment Services Provider.

FTT TERMS

2.22 Section 7 of the Protocol contains the main substantive provisions of the Protocol.

Allocation of responsibilities for reporting and/or paying FTT

2.23 In accordance with section 7, the Purchaser in a Covered Transaction is responsible (i) for determining whether it has an obligation to report, and if it determines it has a such obligation, for reporting, the acquisition of Affected Securities and (ii) for paying any FTT which may be due, in accordance with article 235 *ter* ZD VII of the FTC. However, as stated above, under paragraph 1.6 of the Protocol, it is the Purchaser who is responsible for determining whether any obligation to report and pay FTT in fact applies in respect of the Covered Transaction. If the Purchaser determines that no tax is payable and the Seller subsequently receives a demand from the French tax authorities then the Seller may claim under the indemnity in the Protocol.

2.24 The Purchaser may appoint a delegate to fulfil its obligations to report and pay FTT (for example an affiliate) or (where applicable) may designate a member of the central depository in order to satisfy the payment obligation on its behalf.

2.25 The Protocol provides that the Seller will not report the transaction and pay any applicable FTT, except if:

- (a) the Seller is mandated to pay by a Formal Payment Notice from the French tax authorities; or
- (b) the Seller and the Purchaser agree in writing on a different allocation of the reporting and/or payment responsibilities.

2.26 The second exception is intended to apply where the parties have a specific written agreement covering the reporting and/or paying of FTT with respect to the Acquisition. In those circumstances, the specific agreement will prevail over the Protocol. Otherwise, the Protocol will prevail (see paragraph 2.8 of the Protocol). So the Protocol would normally prevail over a generic transfer tax provision which did not deal specifically with the allocation of duties for reporting and/or paying FTT.

2.27 The Protocol is drafted without reference to the capacity in which either Purchaser or Seller is acting in respect of the relevant Covered Transaction. If the Purchaser is acting as agent, the Purchaser is responsible for determining whether either it or its principal should report the transaction and/or pay the FTT.

2.28 In addition, the Protocol provides that the Purchaser and the Seller shall cooperate reasonably with each other in the event either of them is subject to an FTT audit by the French tax authorities. This is intended to enable the party that is subject to an audit to evidence, vis-à-vis the French tax authorities, that (where relevant) it is not the liable party for FTT purposes under the French FTT legislation. Where the transmission and execution of an order in respect of chargeable securities involves multiple investment services providers and one of these investment services providers (***Downstream ISP***) is required to prove that it is not liable for FTT, it is necessary for the Downstream ISP to be able to evidence that there is another investment services provider further up the chain (i.e., closer to the Client; ***Upstream ISP***) which is either: (i) an investment services provider trading for its own account (i.e., the Client itself is an investment services provider); or, (ii) an investment services provider that is licensed for the execution of third party orders and that does not fall within the Intermediation Desk Exception.

2.29 Depending on the number of intermediaries in a chain, the nature of their respective licences, and the capacities in which they act, a Downstream ISP may need (where it seeks to prove that it is not the liable party) to receive information from the Upstream ISP which is immediately next to it in the chain but also from Upstream ISPs which are further up the chain. The examples below illustrate this:

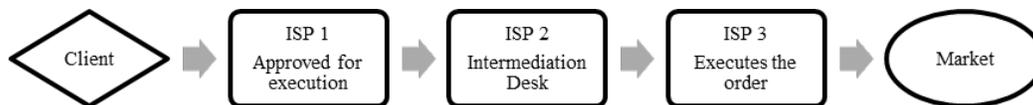
Example 1. ISP 1 is trading for its own account and transmits a purchase order to ISP 2. ISP 2, which is not licensed for execution, transmits the order to ISP 3. ISP 3 (which is licensed for execution) executes the order on the relevant market.



In this instance:

- (i) ISP 1 is liable for FTT since it is trading for its own account. ISP 1 has all the information enabling it to know that it is the liable party (ISP 1 knows that it is an ISP and that it is acting for its own account). Therefore ISP 1 does not need to require information concerning ISP 2 or ISP 3;
- (ii) ISP 2 knows that it cannot be the liable party (ISP 2 knows that it is not licensed to execute orders and that it is not trading for its own account). Therefore, ISP 2 does not require information concerning ISP 1 or ISP 3;
- (iii) ISP 3 does not know whether it is the liable party or not: it is an ISP and has an execution licence, and therefore it would be the liable party, unless it can prove that, upstream, another ISP is either trading for its own account or executing a Client order (and thus, in either case, that that other ISP is the liable party). If ISP 3 only knows that ISP 2 has no execution licence and is simply receiving and transmitting an order (ISP 3 does not have any information about the party which sent the order to ISP 2), ISP 3 would determine (wrongly) that it (ISP 3) is the liable party. Conversely, if ISP 3 knows that ISP 2 has received the order from another ISP which has an execution licence (and which acts for its own account (as is the case in this example) or executes a Client order), ISP 3 would conclude correctly that it (ISP 3) is not the liable party. Accordingly, in order to make the correct determination, ISP 3 would need to receive information about ISP 1, i.e., to know that ISP 1 is an ISP and has an execution licence.

Example 2. ISP 1 receives a purchase order from a Client (which is not an investment services provider). Although ISP 1 is licensed for execution, it transmits the order to ISP 2 because it does not have access to the relevant market (or it is momentarily unable to do so). ISP 2 has an execution licence but qualifies as an Intermediation Desk; ISP 2 transmits the order to ISP 3. ISP 3 has an execution licence and executes the order on the relevant market.



In this example:

- (i) ISP 1 is liable for FTT because it is the investment services provider nearest to the Client in the chain of transmission of the order which: (i) has an execution licence; and, (ii) does not qualify as an Intermediation Desk. (The fact that ISP 1 does not effectively execute the order but simply receives and transmits it should be irrelevant.) ISP 1 knows those facts and does not require information concerning ISP 2 or ISP 3;

- (ii) ISP 2 knows that it cannot be the liable party since it knows that it satisfies the prerequisites for qualifying as an Intermediation Desk. Therefore ISP 2 does not require information concerning ISP 1 or ISP 3;
- (iii) ISP 3 is an ISP licensed for execution and therefore may be the liable party. If ISP 3 is informed that ISP 2 qualifies as an Intermediation Desk but not that ISP 2 has received the order from ISP 1 (an investment services provider licensed for execution, nearer the Client), ISP 3 may conclude (wrongly) that it is the liable party.

2.30 The Protocol provides that no Adhering Party is required to incur significant costs in order to comply with this cooperation requirement, unless it has agreed so in writing with the other concerned Adhering Party.

Continuing indemnity

2.31 If despite the allocation of responsibilities set out in paragraphs 2.23 to 2.26 above, the Seller receives a Formal Payment Notice from the French tax authorities to pay FTT in respect of the Covered Transaction (whether as a result of the failure of the Purchaser to discharge its reporting and/or payment responsibilities, or otherwise) this will be an **Indemnity Event**. Under paragraph 7.2 of the Protocol, the Purchaser agrees to indemnify the Seller against all reasonably incurred direct costs, expenses, damages, liabilities and losses, including any penalties and interest (**Costs**) that the Seller suffers or incurs as a direct result of the occurrence of the Indemnity Event. This includes the Costs of litigating any proceedings, dispute or claim relating to the Indemnity Event (a **Claim**). Costs may not be recovered twice.

2.32 The indemnity described in paragraphs 2.31 above is subject to the following carve-outs:

- (a) the indemnity does not apply to Costs resulting from the Seller's failure to comply with:
 - (i) a Formal Payment Notice from the French tax authorities to pay the FTT in respect of the transaction; or
 - (ii) any agreement (other than the Protocol) between the Seller and the Purchaser as to the allocation of responsibility for reporting and/or paying the FTT in respect of the transaction; and
- (b) the Purchaser does not have to indemnify the Seller for loss of profit, goodwill or opportunity.

2.33 The Seller must notify the Purchaser as soon as reasonably practicable of any Indemnity Event or potential Indemnity Event. It is up to the Seller to decide whether any circumstances constitute a potential Indemnity Event.

2.34 The indemnity is payable on demand, following presentation to the Purchaser of reasonable evidence to support the Seller's claim. However, payment is not required earlier than when the Seller actually suffers or incurs the relevant Costs (in

respect of the FTT itself, this will be the due date set out in the Formal Payment Notice received from the French tax authorities).

2.35 The Seller will have conduct of any Claim and the Purchaser must cooperate with the Seller to allow the Seller to defend and conduct the Claim. However, provided there is no actual or potential conflict of interests, the Seller owes the Purchaser certain duties of information and consultation:

- (a) any legal advisors used by the Seller in relation to the Claim must be reasonably satisfactory to the Purchaser;
- (b) the Purchaser must be kept reasonably informed of the progress of the Claim and must be consulted with about any issues concerning the Claim;
- (c) the Seller must consider in good faith any request from the Purchaser relating to the Claim (for example any request from the Purchaser for the Seller to claim any refund or recovery to which the Seller is entitled or defer payment of the FTT), subject to being indemnified for any associated costs (including the costs of providing any collateral to the French tax authorities, which may be relevant where payment the FTT has been deferred);
- (d) the Seller cannot settle or otherwise terminate the Claim without the Purchaser's prior written consent but that consent cannot be unreasonably withheld or delayed.

2.36 If the Seller reasonably believes that there is an actual or potential conflict of interest between the Seller and the Purchaser in relation to the Claim, the Seller may by written notice revoke any of its obligations of information/consultation set out in paragraph 2.35 above.

2.37 The Protocol (and the indemnity created under section 7) is only intended to cover direct acquisitions between Adhering Parties and may not apply to every transaction in a chain of acquisitions. The overriding principle that for any particular acquisition (including in a chain) it is the responsibility of the Purchaser in that acquisition to determine whether it has any reporting or payment obligations in respect of that acquisition. However, there may be circumstances in which an Adhering Party in a chain of transactions cannot claim under the indemnity in the Protocol.

2.38 For example, where the Purchaser in a chain of transactions reports and pays tax in accordance with the allocation in the Protocol, but in fact there was no obligation under French law to do so, the Purchaser will not be able to claim an indemnity under the Protocol for having made that payment. The Purchaser will instead have to seek a repayment from the French tax authorities.

2.39 Similarly, a Seller (Y) under a chain of transactions between X, Y and Z will not be able to claim under the indemnity from its Purchaser (Z) if it has indemnified X for FTT which X was required to pay. This is because Y has not itself received a Formal Payment Notice from the French tax authorities to pay the FTT in respect of the acquisition by Z.

AFME'S LIABILITY

2.40 AFME's responsibility for any loss, damage, expense or claim (and that of its officers, servants and agents) under the Protocol is excluded except to the extent that the liability, loss, damage, claim or expense results from AFME's fraud. AFME (and its officers, servants and agents) are not liable for any loss of business, profit or consequential damage of any kind whatsoever.

2.41 AFME has no responsibility for checking the accuracy, conformity with the Protocol or due execution of any document submitted by a party in connection with the Protocol.

AMENDMENTS AND TERMINATION

2.42 AFME may publish amendments to the Protocol on the AFME website. Any such amendment will take effect on the date of publication of the final amended version of the Protocol, provided that AFME is required to publish proposed amendments at least 10 business days prior to such amendment taking effect, and following consultation with Adhering Parties or a committee of them appointed for the purpose. AFME must provide email notifications to each Adhering Party (which has provided a valid working email address) of any proposed amendments it has published. If an Adhering Party does not accept a proposed amendment that has been published, it may withdraw from the Protocol in accordance with the procedure described in paragraphs 2.14 to 2.19 above.

2.43 AFME may terminate the Protocol at any time following consultation with Adhering Parties or a committee of them appointed for the purpose by publishing a notice of termination on the AFME website, which must specify the date on which such termination will take effect. Termination of the Protocol is without prejudice to Adhering Parties' accrued rights and obligations. The Original Protocol will be terminated at 11.59pm Paris time on 31 October 2017.

ANNEX 1

The guidelines issued by the French tax authorities (BOI 3 P-3-12) on 4 August 2012 provide that:²

“§ 40. The party liable for the tax is the investment services provider (ISP) defined under article L. 321-1 of the French monetary and finance code, whatever its place of establishment, who executes purchase orders on behalf of third parties or who negotiates (on the buy side) for its own account.

§ 41. In France, ISPs are investment companies and credit institutions authorised to provide all or part of the investment services defined under article L. 321-1 of the French monetary and finance code (authorisation delivered by the Prudential Control Authority and the AMF for the service referred to under § 4 of article L. 321-1 of the French monetary and finance code). Operators providing similar services outside France are liable to the tax under the same terms.

§ 42. Assuming a chain of intermediaries exists, two situations must be distinguished:

1) Where several ISPs are involved in the execution of a purchase order, the tax is due from the ISP who receives, for execution, the purchase order from the final buyer;

Note: where an ISP, which is not licenced to execute orders on behalf of third parties (as referred to in § 3 of article L. 321-1 of the French monetary and finance code, receives and transmits an order for its client to another ISP responsible for the execution of that order (and therefore licensed to do so), the party liable to tax is the latter ISP.

2) Where an ISP transmits for execution (for its own account) a purchase order to another ISP, the tax is payable by the purchasing ISP.

Example: ISP B receives two orders for execution; one order on behalf of one of its clients (first transaction) and the other order for ISP A acting for its own account (second transaction). ISP B in turn sends the two purchase orders for execution to ISP C, who effectively executes the orders on the trading platform. The party liable for the tax relating to the first transaction is ISP B. The party liable for tax relating to the second transaction is ISP A.

§ 43. For purchases made without the intervention of an ISP, the tax is due from the custodian (within the meaning of # 1 of article L. 321-2 of the French monetary and finance code), whatever its place of establishment. The purchaser sends the relevant information to determine the tax due. The custodian must presume that a purchase is taxable unless the purchaser provides it with appropriate information on an applicable exemption.”

² Note that the quotations that follow are from an unofficial translation: at the time of publication of these guidance notes, no official publication was available. AFME is not responsible for the accuracy of the translation.