

## Dodd-Frank: External Business Conduct Disclosures

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), prior to entering into a swap transaction (“Transaction”), Commerzbank AG (“Commerzbank” or “we”) as a Non-U.S. Swap Dealer must provide several disclosures to a U.S. person who is not a “Swap Dealer”, “Major Swap Participant”, “Security Based Swap Dealer” or “Major Security Based Swap Participant”.

The disclosures that we provide may not be relevant to all recipients. These disclosures are only required to be made where all of the following circumstances apply:

- (i) You are a "U.S. person", as defined by the CFTC;
- (ii) You are not a “Swap Dealer”, "Major Swap Participant", "Security Based Swap Dealer", or "Major Security Based Swap Participant"; and
- (iii) You are entering into or contemplating entry into a Transaction with Commerzbank AG that constitutes a "swap".

For ease of reference, the table below sets out which disclosures are applicable based on counterparty type:

Disclosure Type	Counterparty Classification				
	U.S. Person	Swap Dealer / Major Swap Participant / Security-based Swap Dealer / Major Security- based Swap Participant	Significant Risk Subsidiary <sup>1</sup>	Guaranteed Entity <sup>2</sup>	U.S. Branch of a non-US banking organization
General Disclosures & Product Specific Disclosures	Yes	No	No	No	Yes
Material Characteristics	Yes	No	No	No	Yes
Scenario Analysis	Yes	No	No	No	Yes
Clearing Notice	Yes	No	No	No	Yes
Daily (Post-Trade) Mid Market Marks	Yes	No	No	No	Yes

If any of the foregoing circumstances do not apply, then the disclosures are not relevant to you and you need not read any further. If the above circumstances do apply, then you should read the following documents carefully.

### General Disclosures and Product Specific Disclosures

The International Swaps and Derivatives Association (ISDA) has created standard industry documentation, such as general and product specific risk disclosures, to capture general risks of Transactions. These disclosures describe generally the material characteristics, material risks, and typical material incentives and conflicts of interest. These Transactions may relate to one or more of the following classes of reference assets: interest rates, foreign exchange rates and currencies,

<sup>1</sup> The CFTC’s Cross-Border Rules 2020 and their counterparty definitions eliminate the Conduit Affiliate Status as of 14th September 2021. It will be replaced with the newly introduced term Significant Risk Subsidiary, which will be used for any counterparties meeting its objective definition criteria.

<sup>2</sup> By way of the new Cross-Border Rules, the definition of the term Guaranteed Affiliate has been changed to Guaranteed Entity, with a revised definition of “guarantee”.

credit instruments, asset-backed instruments, equities, and commodities. The latest published documents are included on our website:

ISDA General Disclosure Statement  
ISDA Disclosure Annex Commodity Derivative Transactions  
ISDA Disclosure Annex for Credit Derivatives Transactions  
ISDA Disclosure Annex for ABS Derivatives Transactions  
ISDA Disclosure Annex for Equity Derivatives Transactions  
ISDA Disclosure Annex for FX Transactions  
ISDA Disclosure Annex for Interest Rate Transactions

From time to time ISDA may update these documents, therefore please refer to the [ISDA Disclosure Website](#) to ensure that you are familiar with the latest versions.

## **Material Characteristics Disclosures**

### **Disclosure Statement Regarding Transaction Terms**

This disclosure statement describes the manner in which the terms of any Transaction that Commerzbank may enter into with you will be determined. The term “Transaction” has the meaning set forth in the ISDA General Disclosure Statement.

Before entering into any Transaction, you should conduct a thorough and independent evaluation of the terms of the Transaction in light of your particular circumstances and the nature and extent of your exposure to, and willingness to incur, risk. You should also consider whether the Transaction is appropriate for you in light of your experience, objectives, financial and operational resources and other relevant circumstances. Unless expressly agreed in writing, we are not providing you with legal, financial, tax, accounting or other advice in connection with any Transaction.

The terms of any Transaction that you and we enter into will be set forth in the confirmation or other agreement evidencing the Transaction, including any terms incorporated by reference therein. Subject to the exceptions described below, any Transaction that you and we enter into will have the terms that you and we expressly agree upon (orally, via email or in any other manner) in connection with the Transaction and other terms determined as follows:

- (1) Specified prior transaction, form confirmation or term sheet. If we notify you that the Transaction will have the terms set forth in a specified prior transaction, form confirmation or term sheet, the Transaction will have such terms, subject to any express agreement between you and us in connection with the Transaction.
- (2) Master confirmation agreement. If (1) does not apply and you and we are party to a master confirmation agreement that governs the Transaction, the Transaction will have the terms set forth in the master confirmation agreement, subject to any express agreement between you and us in connection with the Transaction.
- (3) Unspecified prior transaction. If neither (1) nor (2) applies and you and we have previously entered into a transaction of the same type, the Transaction will have the terms set forth in the most recent transaction of the same type that you and we entered into, subject to any express agreement between you and us in connection with the Transaction.

- (4) Unspecified form confirmation or term sheet. If none of (1), (2) or (3) applies and the Transaction is of a type that is covered by a form confirmation and/or a term sheet that is available on this site, then the Transaction will have the terms set forth in the form confirmation and/or term sheet, as applicable, subject to any express agreement between you and us in connection with the Transaction. In the event of any inconsistency between a form confirmation and a term sheet that relate to the same type of transaction, the terms set forth in the term sheet control.

The description above of the manner in which the terms of any Transaction that you and we enter into will be determined is subject to the following important exceptions:

- (1) If you and we enter into a Transaction that is cleared through a clearinghouse or executed through a trading platform that prescribes the terms of the Transaction, the Transaction will have the terms specified by the applicable clearing-house or trading platform and, subject to the rules of the clearinghouse or trading platform, any additional terms that you and we expressly agree upon in connection with the Transaction.
- (2) If you and we enter into a Transaction for “give-up” to a third party, the terms of the Transaction will be subject to the terms of any agreement with that third party.

Our website contains forms of confirmations and term sheets of material economic terms relating to a variety of types of Transactions that we may enter into with counterparties from time to time. Any confirmation or other documentation we directly provide to you in respect of an actual or potential Transaction will supersede the information on our website and, to the extent inconsistent, such confirmation or other documentation will control. In addition, the agreed upon terms of any Transaction that we enter into with you will be set forth in the confirmation or other agreement that you and we enter into with respect to that Transaction and may differ materially from the terms set forth in the forms and term sheets found on our website. By making this information available to our counterparties, we are not indicating that we are willing to enter into any Transaction with any counterparty on any terms.

With respect to the material terms and characteristics of any Transaction entered or to be entered into between Commerzbank and you, you should also refer to the applicable transaction level and relationship level documentation including, without limitation, any term sheet, confirmation (including any confirmation relating to a previously executed Transaction), master agreement, or master confirmation agreement.

If you believe that a material term of the Transaction has not been provided to you, please contact your usual Commerzbank sales representative, who will provide this information to you upon request. Relevant documentation provided by Commerzbank may incorporate by reference certain other documents and definitions, including those published by ISDA which can be made available upon request. In the event of any conflict between transaction specific pre trade information provided to you by Commerzbank AG and any template, standard product terms or market convention, or the standardized disclosures provided above, the transaction specific information will prevail.

It is your responsibility to notify your usual Commerzbank sales contact if you have any additional questions regarding any Transaction that have not been otherwise addressed by the information and documents that have been provided to you prior to entry into the Transaction. By entering into a Transaction, you will be deemed to acknowledge that you have received from Commerzbank AG prior to entry into such Transaction, and in a manner acceptable to you, disclosures, notifications and other information sufficient for you to evaluate:

- (1) the material risks of the Transaction, including market, credit, liquidity, foreign currency, legal, operational and other applicable risks,

- (2) the material characteristics of the Transaction, including the material economic terms, operational terms, and the rights and obligations of the parties during the term of the Transaction, and
- (3) the material incentives and conflicts of interest that may apply with respect to the Transaction. Where applicable or relevant, we may from time to time provide you with additional notifications and disclosures relating to a particular Transaction or trading strategy, including disclosures regarding the material risks and characteristics of such Transaction or trading strategy, in addition to the notifications and disclosures provided on our website.

The disclosure of the methodologies and assumptions described below are for the sole purpose of satisfying Commerzbank AG's obligations to you under CFTC Rule 23.431(d). You should not construe the content of this disclosure statement as legal, financial, tax, accounting or other advice.

## **Scenario Analysis**

We hereby notify you that prior to entering into a Transaction with us that is not available for trading on a designated contract market or swap execution facility, you may request and consult with us on the design of a scenario analysis to allow you to assess your potential exposure in connection with the Transaction. If you wish to request a bespoke analysis beyond what is contained in Commerzbank's standard scenario analysis, you should contact your usual salesperson who will assist you accordingly. Any such requests will be handled appropriately in accordance with our internal processes consistent with the relevant CFTC rules.

## **Clearing Notice**

You have the sole right to select the derivatives clearing organization in respect of any Transaction you execute with us that is subject to the mandatory clearing requirements under Section 2(h) of the Commodity Exchange Act. With respect to any Transaction you execute with us that is not subject such mandatory clearing requirements, you may elect to clear such Transaction and you have the sole right to select the derivatives clearing organization at which the Transaction will be cleared.

## Pre-Trade Mid-Market Mark Disclosure<sup>3</sup>

Commerzbank AG, as a provisionally registered Swap Dealer with the CFTC, is required to provide you a Pre-Trade Mid-Market Mark (PTMMM) prior to execution of a swap transaction. For swap transactions executed on electronic platforms, the PTMMM may be delivered to you by stream via the platform user interface.

The PTMMM is the indication of the mid-market mark of the product that you want to trade. The mid-market mark of the swap shall not include amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments.

Any PTMMM provided to you may not necessarily be a price at which either you or Commerzbank would agree to execute, replace or terminate the swap.

The PTMMM may not reflect the price at which you could execute the swap transaction, or any similar swap transaction, with any other market participant.

At our sole discretion, we may use a variety of pricing models and methodologies, to calculate the PTMMM. For each asset class, spot and forward curves, correlation and volatility levels are determined on the basis of observable market inputs where available and on the basis of estimates when observable market inputs are not available.

Every PTMMM provided to you is only current for the time it is provided to you. As a consequence, the PTMMM might change over time even if the price agreed for the Swap has not changed in the same period of time.

## Daily (Post Trade) Mid-Market Marks

### Cleared Transactions:

We hereby notify you for cleared Transactions originally executed by you with us, you have the right to receive the daily mark from the relevant derivatives clearing organisation upon request.

### Uncleared Transactions:

With respect to uncleared Transactions executed by you with us, we will provide you with a daily mid-market mark.

The value shown by us to you for each uncleared Transaction represents our current indicative daily mark which is the mid-price of the marked to market product (each, the "DM") (including as relevant, any underlying or related transactions or securities) as at the date shown and at the close

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<sup>3</sup> As a consequence of the CFTC's Cross-Border Rules 2020 and their counterparty definitions, Commerzbank AG as a Non-U.S. Person Swap Dealer will, from September 14th, 2021 onwards, not be required to disclose PTMMM to Dodd-Frank relevant counterparties with the following person of types:

Significant Risk Subsidiary (SRS), Guaranteed Entity (GE) and "No – Out of Scope".

This does not apply to a client who is not a Swap Dealer, Major Swap Participant, Security-Based Swap Dealer or Major Security-Based Swap Participant; and executes the swap transaction in its U.S. Branch, which means that the counterparty books the swap transaction in the local U.S. Branch account where the risk is held for that trade.

In this specific case, the client's U.S. Branch must be treated as a U.S. Person for PTMMM purposes. Clients must notify Commerzbank AG about this fact in Section II F of the U.S. Self Disclosure Letter for appropriate tracking and classification.

of business in Frankfurt. The value is based on the notional/nominal amount of the product rather than on a per unit basis. The DM excludes amounts for profits, credit reserves, hedging, funding, liquidity, collateral or any other costs or adjustments.

The DM is provided in good faith and was determined by using our standard methodology for valuing transactions or securities of this kind or we have sourced such DM from third parties. That methodology may involve models, empirical data and assumptions regarding past, present and future market conditions or other factors. Vanilla products (e.g. FX forwards, NDF, IRS, CCS) are in general priced from zero coupon discounting cashflow based methodologies or screen quotations; however, in certain cases, we may use probabilistic models, simulation models or other mathematical pricing models to determine the expected value of future cash flows before discounting. The models may utilize inputs from volatility levels, forward curves, spot, forward rates, correlations and other factors. Products with optionality or path dependency would use the bank's proprietary models in most cases. All values used to: i) directly mark a product or ii) mark a product as an input to a model are assumed to be at mid-market and are based on our view of the market at that particular time.

The DM may not reflect our internal records or our theoretical valuation models. Any value shown herein is not an indicative quotation of the price at which we would agree to replace, buy, unwind or terminate the product. Without limitation, any such value may not reflect such factors as hedging and transaction costs, credit considerations, market liquidity, etc. all of which could be relevant in establishing a firm price quotation. Any calls for margin and collateral top up (as relevant) may not be based on the DM.

The DM may reflect the components of a structured product and value those components individually. If it is the case that these components form a single product that has been entered into with us, nothing contained in the statement shall imply that these components can be treated as individual transactions.

The DM is provided for information purposes only and is not intended to be relied upon by any party as the basis for making any trading, hedging or investment decision. We believe that the methodologies and models used to determine the DM are accurate and reasonable, but we make no representation or warranty as to their accuracy or appropriateness.

The DM may vary significantly from market participant to market participant. We do not warrant or imply in any way that the Daily Marks are or will be representative of the valuations that may be provided to you by other dealers.

The provision of the DM for a swap transaction is not intended to imply that an actual trading market exists for that swap transaction or that it is appropriate to assume (for accounting or other purposes) that such a trading market exists.

We expressly disclaim any responsibility for the accuracy of the values shown, any errors or omissions in any statement provided by us to you, and any uses to which the statement is put. No representation or warranty is made as to the value other dealers might ascribe to the relevant Transaction. This DM therefore does not constitute any offer (or solicitation of any offer) by us, nor does it represent the price at which we would be willing to replace, buy, unwind or terminate the Transaction.

We do not take into account specific tax rules or accounting methods applicable to you in its preparation of the DM and, therefore, we shall not be liable for differences, if any, between a DM and mid-market marks provided by third-parties as such difference may arise as a result of the application and implementation of alternative accounting methods, tax rules or valuation models. You should consult with your auditors and other advisors you deem appropriate as to whether the

DM may be useful in connection with the preparation of your financial statements (and, in particular, whether and to what extent these DMs may be treated as being indicative of prices at which trades could be executed) or for any other purpose.

## **Conflict of Interests**

Commerzbank AG aims to conduct business with transparency and integrity and to implement the guidelines and requirements of industry groups and regulatory bodies in all our relationships with clients. However, we draw attention to the fact that, due to the nature of the business, Commerzbank AG and its clients may have divergent or conflicting interests.

Conflicts of interest may arise between clients, between clients and Commerzbank AG, clients and staff, staff and Commerzbank AG, as well as between the Bank's Group entities or business segments.

As a matter of principle, Commerzbank AG conducts its business in a manner designed to avoid conflicts of interest. This principle is enshrined in the Code of Conduct, which is binding upon senior management and all of Commerzbank AG employees. The majority of conflicts can be neutralized at an early stage, through appropriate organizational measures, including the establishment of areas of confidentiality, the separation of functions, disclosing the conflict to the client, and obtaining the consent of the parties involved. Whenever a conflict of interest is unavoidable, it will be handled fairly; this applies both to conflicts of interest between Commerzbank AG and its clients, as well as to those arising between clients. The Compliance Department is one of those whose task it is to ensure Commerzbank AG handles conflicts of interest fairly. Compliance is an independent unit reporting directly to senior management; its duties include ensuring that Commerzbank AG deals appropriately with conflicts of interest.

The fundamental conflict of interest that is inherent in every swap because a positive performance for one party will inevitably be a negative performance for the other party. Because of this unavoidable conflict of interest, communications from Commerzbank AG with respect to swaps are not, and should not be treated or relied upon as, or considered by you to be, investment advice or an offer, inducement, recommendation, suggestion or call for you to enter into any swap.

Additional conflicts of interest may arise between you and Commerzbank AG in connection with swaps that are subject to mandatory clearing. Under applicable law, including regulations of the CFTC, all such swaps are required to be executed on an exchange or swap execution facility (SEF) if at least one Trading Facility makes such swaps available to trade. In such circumstances, Commerzbank AG may receive fees, discounts and/or other financial benefits if the swap is executed on a Trading Facility in which Commerzbank AG has an interest as a member, market-maker, equity owner, board member and/or some other form of interested party.

If more than one Trading Facility makes a cleared swap available to trade, Commerzbank AG may decline to execute the swap unless it is executed on a Trading Facility preferred by Commerzbank AG. Applicable law also permits an end-user counterparty to choose the CFTC-registered DCO to which a cleared swap is submitted for clearing. Commerzbank AG may receive fees, discounts and/or other financial benefits if the swap is cleared at a DCO in which Commerzbank AG has an interest as a member, market-maker, equity owner, board member and/or some other form of interested party.

Commerzbank AG may decline to execute a swap unless it will be cleared at a DCO preferred by Commerzbank AG rather than one chosen by you. Commerzbank AG may also decline to execute

a swap to be cleared at a DCO chosen by you if it does not have the ability to submit swaps for clearing to that DCO.

Another potential conflict of interest with respect to Trading Facilities and DCOs in which Commerzbank AG has an interest is that individual employees and officers of Commerzbank AG may also serve on the board of directors or on one or more committees of such a Trading Facility or DCO and may consequently be able to influence policies and practices of the organization.

Conflicts of interest may arise, in particular:

- from performance-related remuneration of employees;
- when granting inducements to employees or agents;
- from the Bank's other business activities, especially given the Bank's interest in generating proprietary trading profits, or in selling its own securities;
- from the Bank's interest in generating profits on fixed price transactions;
- from obtaining information that is not publicly known;
- from personal relationships between the Bank's employees, its senior management or related parties and other companies or persons;
- from the engagement of such individuals in supervisory boards or advisory councils of other companies.

The Bank has taken organizational measures, including the ones listed below, to prevent conflicts of interest, or to deal with them in an appropriate manner:

- The Bank's departments and subsidiaries maintain an appropriate level of independence from each another.
- The flow of information between different areas of the Bank which may give rise to conflicts of interest is regulated.
- In certain cases, the Bank deals with potential conflicts of interest through prohibitions of certain transactions, of giving advice, or of publishing financial analyses.
- Information which may have a significant impact upon the price of securities (inside information), as well as employees who have access to such information, are included in an Insider List.
- Where the Bank prepares or disseminates financial analyses, it provides information concerning relevant potential conflicts of interest with respect to the issuers analyzed, and/or their financial instruments.
- The Bank's employees must observe rules governing personal account dealing. For instance, employees who regularly have access to inside information must report their personal account transactions to the Compliance department.
- Transactions entered into by the Bank and its employees are monitored as to whether legal regulations for the prevention of market abuse are being complied with.
- The Bank's sales guidelines and remuneration systems have been designed, involving Compliance, in such a way as to prevent client interests from being compromised, especially when giving investment advice.

- Before launching any new products, or selecting products for sales activities, they will be examined regarding potential conflicts of interest.
- The Bank documents the acceptance and granting of inducements; an approval procedure ascertains that inducements are dealt with in line with legal rules.
- The Bank qualifies its staff through regular training measures.

In the event of any conflicts of interest which cannot be avoided despite all these measures, the Bank will disclose such conflicts of interest to affected clients prior to concluding a trade or giving advice.

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