

PEOPLE OF THE STATE OF NEW YORK
NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL

IN THE MATTER OF THE INVESTIGATION OF
BARBARA D. UNDERWOOD, ATTORNEY
GENERAL OF THE STATE OF NEW YORK,

IN REGARDS TO:

TFS-ICAP LLC and TFS-ICAP LIMITED

MEMORANDUM OF
AGREEMENT

1. This is the Memorandum of Agreement ("Agreement") between the Office of the Attorney General for the State of New York ("the OAG") and TFS-ICAP LLC and TFS-ICAP LIMITED, who for all purposes of this Agreement shall be deemed jointly and severally liable under the terms herein. There are no promises, agreements, or conditions, express or implied, other than those set forth in this document. No modification, deletion, or addition to this Agreement will be valid or binding on either party unless put into writing and signed by both parties.

2. TFS-ICAP LLC is a Limited Liability Company organized under the laws of the State of New York and maintains offices in the County and State of New York at 32 Old Slip, New York, New York 10005. TFS-ICAP LLC represents and warrants that the signatory below has been duly authorized and has the authority to execute this Agreement, as per the document attached hereto as Exhibit "A."

3. TFS-ICAP LIMITED is a private limited company organized under the laws of the United Kingdom and maintains offices in the United Kingdom at Beaufort House, 15 St. Botolph Street, London, EC3A 7QX. TFS-ICAP LIMITED represents and warrants that the signatory below has been duly authorized and has the authority to execute this Agreement, as per the document attached hereto as Exhibit "B."

4. In or about 2015, the OAG's Criminal Enforcement and Financial Crimes Bureau commenced an investigation pursuant to Article 23-A, Section 352 *et seq.* of the General Business Law of New York (the "Martin Act") concerning TFS-ICAP LLC and TFS-ICAP LIMITED and examined whether, from on or about January 1, 2007 to December 31, 2015, TFS-ICAP LLC and TFS-ICAP LIMITED, as inter-dealer brokers of foreign exchange currency options ("FX Options"), committed fraudulent acts and practices as defined under the Martin Act. This Agreement contains the findings of the OAG's investigation. This Agreement also contains the relief agreed to by the OAG and TFS-ICAP LLC and TFS-ICAP LIMITED (collectively, the "Parties"). This Agreement is intended as a global resolution of all potential criminal and civil charges and associated penalties that could have been brought against TFS-ICAP LLC and TFS-ICAP LIMITED by the OAG in conjunction with the OAG's investigation.

LEGAL FRAMEWORK

New York State General Business Law

5. New York State's General Business Law ("GBL") Article 23-A, Section 352 *et seq.* (the "Martin Act") protects the public from fraudulent practices in the commodities and securities industries. The Martin Act provides the Attorney General with authority to investigate and criminally prosecute all fraudulent acts and practices relating to, *inter alia*, the purchase and sale of commodities and securities. See GBL §§ 352, 352-c, 358, 359-g. In addition, the Martin Act provides the Attorney General with authority to seek civil remedies. See GBL §§ 352-i; 353; 353-a; 359-g.

6. In particular, the Martin Act prohibits acts involving "any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale" of commodities and securities. See GBL § 352-c(1)(a), 352-c(2); Article 23-A *et seq.* GBL § 352-c describes specific felony and misdemeanor conduct. For instance, it is an unclassified misdemeanor under the Martin Act for "a person ... [or] corporation ... [to employ] any act or practice declared to be illegal and prohibited by this section." See GBL § 352-c(1), c(4); Penal Law § 55.10(2)(b).

7. The Martin Act further provides that it is a class “E” felony for “[a]ny person ... [or] corporation ... [to] intentionally engage[] in any scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtain[s] property from one or more of such persons while engaged in inducing or promoting the issuance, distribution, exchange, sale, negotiation or purchase of any securities or commodities ...” GBL § 352-c(5).

8. In addition, GBL § 352-c(6) makes it a class “E” felony for “[a]ny person...[or] corporation ... [to] intentionally engage[] in fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale, or [to] make[] any material false representation or statement with intent to deceive or defraud, while engaged in inducing or promoting the issuance, distribution, exchange, sale, negotiation or purchase ... of any securities or commodities ... and thereby wrongfully obtains property of a value in excess of \$250.”

9. Civil relief and remedies under the Martin Act and Executive Law include, *inter alia*, permanent injunction, appointment of a receiver, and disgorgement of gains. See GBL § 352-i; 353-a; Executive Law § 63(12); People v. Ernst & Young LLP, 114 A.D.3d 569 (1st Dept. 2014); People v. Greenberg et al, 27 N.Y.3d 490 (2016).

New York State Penal Law

10. Penal Law (“P.L.”) Section 190.65 provides that “[a] person is guilty of a scheme to defraud in the first degree when he or she:¹ (a) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons; or (b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons ...” Scheme to defraud in the first degree is a class “E” felony.

¹ PL § 10.00(7) provides that “Person” means a human being, and where appropriate, a public or private corporation.

11. P.L. Section 175.10 provides that “[a] person is guilty of falsifying business records in the first degree when he commits the crime of falsifying business records in the second degree, and when his intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof.” P.L. Section 175.05 provides that “[a] person is guilty of falsifying business records in the second degree when, with intent to defraud, he ... (1) [m]akes or causes a false entry in the business records of an enterprise ...” Falsifying business records in the first degree is a class “E” felony.

New York State Executive Law

12. “Whenever any person ... engage[s] in the repeated fraudulent or illegal acts or otherwise demonstrate[s] persistent fraud or illegality in the carrying on, conducting or transaction of business” the attorney general has the authority to seek, *inter alia*, “an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages ...” Executive Law (“Exec. L.”) Article 5, Section 63(12). This provision of the Executive Law defines the terms “fraud” and “fraudulent” to “include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions” *Id.* It further defines the terms “persistent fraud” and “illegality” to “include continuance or carrying on of any fraudulent or illegal act or conduct. *Id.* The term ‘repeated’ ... [is defined as] repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person ...” *Id.*

13. When the Attorney General has authority to “institute a civil action or proceeding in connection with the enforcement of a law of this state, in lieu thereof he may accept an assurance of discontinuance of any act or practice in violation of such law ...” Exec. L. Article 5, Section 63(15).

THE OAG’S FINDINGS

14. From approximately January 1, 2007 to December 31, 2015, TFS-ICAP LLC and TFS-ICAP LIMITED were inter-dealer brokers that solicited and accepted orders to buy and sell FX Options to and from traders who were both based in the New York State offices of certain financial institutions and physically located within the state of New York (“New York-Based

Traders"). TFS-ICAP LLC and TFS-ICAP LIMITED earned commission-based fees for matching buyers and sellers of FX Options.

15. From approximately January 1, 2007 to at least December 31, 2015, employees at TFS-ICAP LLC and TFS-ICAP LIMITED used and employed fraudulent practices to solicit and accept orders to buy and sell FX Options to and from New York-Based Traders, in violation of the Martin Act. By way of example, TFS-ICAP LLC and TFS-ICAP LIMITED brokers repeatedly and intentionally engaged in the fraudulent practice of showing and announcing fake trades in FX Options to New York-Based Traders via instant message chats and voice transmissions, in order to create a false appearance of liquidity, to induce New York-Based Traders to buy and sell FX Options at TFS-ICAP LLC and TFS-ICAP LIMITED, and to thereby obtain commissions.

16. High Managerial Agent 1 and High Managerial Agent 2 of TFS-ICAP LLC and TFS-ICAP LIMITED, whose identities are known to the OAG and TFS-ICAP LLC and TFS-ICAP LIMITED, were aware of the conduct set forth in Paragraph 15 and recklessly tolerated it.

17. The OAG finds that the practices described above constitute both civil and criminal violations under the Martin Act, Article 23-A of the New York State General Business Law, as well as civil violations under New York State Executive Law Section 63(12) and criminal violations under, *inter alia*, Articles 190 and 175 of the New York State Penal Law.

UNDERSTANDING OF THE PARTIES

18. The OAG finds the relief, remediation, and criminal pleas contained in this Agreement appropriate and in the public interest. Therefore, the OAG is willing to accept an Assurance of Discontinuance by TFS-ICAP LLC and TFS-ICAP LIMITED pursuant to Executive Law § 63(15) in lieu of commencing a statutory proceeding for civil violations of Article 23-A of the New York State General Business Law and Section 63(12) *et seq.* of the New York State Executive Law, and other applicable civil laws, in conjunction with misdemeanor criminal pleas by TFS-ICAP LLC and TFS-ICAP LIMITED, respectively, pursuant to Section 352-(c)(1) of the New York State General Business Law, as set forth below in Paragraphs 41-57,

to address the conduct described above during the time period from about January 1, 2007 to the date of this Agreement.

19. TFS-ICAP LLC and TFS-ICAP LIMITED have agreed to the terms set forth below in settlement of the violations alleged by the OAG in Paragraphs 14-17 above, and to avoid the time, expense, and distraction of litigation, and in furtherance of the Agreement admit the conduct specified in paragraph 53 below. The terms set forth below shall be effective after execution of this Agreement by the Parties and upon the date of the criminal pleas set forth in paragraph 43.

WHEREFORE, IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF AND ASSURANCE OF DISCONTINUANCE
BY TFS-ICAP LLC AND TFS-ICAP LIMITED
(OAG Assurance No. 17-214)

RELIEF

Programmatic Relief

20. TFS-ICAP LLC and TFS-ICAP LIMITED shall not use or employ any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale related to any FX Options bid, offer, or trade.

21. TFS-ICAP LLC and TFS-ICAP LIMITED will affirmatively implement policies and procedures, provide training to their employees, and implement reasonable and practicable means by which to monitor their brokers in order to seek to:

- a. ensure transparency in all FX Options bids and offers shown or announced to the financial markets or to customers of TFS-ICAP LLC and TFS-ICAP LIMITED, by clearly distinguishing between a bid or offer that, at the time of posting, is specifically authorized by a financial institution as an immediately tradeable bid or offer; and a bid or offer that, at the time of posting, is based on any other general market information and is not expressly authorized by a specific financial institution as an immediately tradeable bid or offer; and

b. ensure transparency in all FX Options trades shown or announced to the financial markets or to customers of TFS-ICAP LLC and TFS-ICAP LIMITED, by clearly distinguishing between announcements of actual, real-time trades brokered by TFS-ICAP LLC and TFS-ICAP LIMITED and announcements of actual, real-time trades that were not brokered by TFS-ICAP LLC and TFS-ICAP LIMITED.

Positions of Certain High Managerial Agents of TFS-ICAP LLC and TFS-ICAP LIMITED

22. As it relates to High Managerial Agent 1 of TFS-ICAP LLC and TFS-ICAP LIMITED, whose identity is known to the OAG and to TFS-ICAP LLC and TFS-ICAP LIMITED, TFS-ICAP LLC and TFS-ICAP LIMITED shall take all necessary steps to remove High Managerial Agent 1 from his managerial position at TFS-ICAP LLC and TFS-ICAP LIMITED, from his position as a member of the boards of directors for TFS-ICAP LLC and TFS-ICAP LIMITED, from any supervisory role related to the brokering of FX Options to New York-Based Traders, and from any position as a broker of FX Options to New York-Based Traders, and shall agree not to re-appoint High Managerial Agent 1 to any such position for a period of five (5) years. TFS-ICAP LLC and TFS-ICAP LIMITED are permitted to accept a voluntary resignation from High Managerial Agent 1 and to pay High Managerial Agent 1 a settlement amount in connection with that resignation.

23. As it relates to High Managerial Agent 2 of TFS-ICAP LLC and TFS-ICAP LIMITED, whose identity is known to the OAG and to TFS-ICAP LLC and TFS-ICAP LIMITED, TFS-ICAP LLC and TFS-ICAP LIMITED shall take all necessary steps to remove High Managerial Agent 2 from his managerial position at TFS-ICAP LLC and TFS-ICAP LIMITED, from any supervisory role related to the brokering of FX Options to New York-Based Traders, and from any position as a broker of FX Options to New York-Based Traders, and shall agree not to re-appoint High Managerial Agent 2 to any such position for a period of five (5) years. TFS-ICAP LLC and TFS-ICAP LIMITED are permitted to accept a voluntary resignation from High Managerial Agent 2 and to pay High Managerial Agent 2 a settlement amount in connection with that resignation.

Oversight/Monitoring

24. TFS-ICAP LLC and TFS-ICAP LIMITED agree to retain, at their own cost and expense, an Independent Monitor acceptable to, and for the benefit of, the OAG, to monitor, assess, and provide the OAG with periodic reports, as set forth below, detailing the compliance of TFS-ICAP LLC and TFS-ICAP LIMITED with the requirements set forth in this Assurance, to wit: paragraphs 20-21 (Programmatic Relief) and paragraphs 22-23 (Positions of Certain High Managerial Agents of TFS-ICAP LLC and TFS-ICAP LIMITED), *supra*.

25. The Independent Monitor shall be selected and retained as follows:

a. The Independent Monitor must have sufficient knowledge of the FX Options market, or equivalent and comparable knowledge of financial products, to understand, monitor, and assess the policies, procedures, and practices of TFS-ICAP LLC and TFS-ICAP LIMITED, in accordance with this Assurance. Furthermore, the Independent Monitor must be impartial, distinct, and independent from TFS-ICAP LLC and TFS-ICAP LIMITED and their directors, officers, employees, counsel, and other representatives.

b. TFS-ICAP LLC and TFS-ICAP LIMITED shall each have the right to recommend an Independent Monitor to the OAG. However, as set forth in this paragraph, in the event that TFS-ICAP LLC or TFS-ICAP LIMITED fail to timely provide the OAG with an acceptable Independent Monitor, the OAG will provide TFS-ICAP LLC and TFS-ICAP LIMITED with a list of Independent Monitors acceptable to the OAG, from which TFS-ICAP LLC and TFS-ICAP LIMITED shall choose an Independent Monitor and retain the same in a timely manner.

(i) Within 60 days of the effective date of this Agreement, TFS-ICAP LLC and TFS-ICAP LIMITED shall recommend to the OAG up to three (3) Independent Monitors. TFS-ICAP LLC and TFS-ICAP LIMITED may propose the same Independent Monitors. The OAG, in its sole discretion, shall either accept or reject the proposed Independent Monitors.

(ii) In the event the OAG rejects the proposed Independent Monitors, TFS-ICAP LLC and TFS-ICAP LIMITED shall have an additional thirty (30) days to recommend up to three (3) additional Independent Monitors. In the event that the OAG rejects the additional proposed Independent Monitors, or TFS-ICAP LLC and TFS-ICAP LIMITED fail to timely provide the OAG with acceptable Independent Monitors, the OAG will provide TFS-ICAP LLC and TFS-ICAP LIMITED with a list of up to three (3) Independent Monitors acceptable to the OAG, from which TFS-ICAP LLC and TFS-ICAP LIMITED shall choose an Independent Monitor and shall retain the same in a timely manner.

(iii) Although the OAG shall not be a party to the agreements between the Independent Monitor and TFS-ICAP LLC and TFS-ICAP LIMITED, respectively, any agreement with the Independent Monitor retained by TFS-ICAP LLC and TFS-ICAP LIMITED must include language that the Independent Monitor agrees to provide its services for the benefit of the OAG and that any and all reports and information provided to the OAG shall be deemed the property of the OAG.

26. Scope of Independent Monitor.

a. The Independent Monitor shall have reasonable access to TFS-ICAP LLC and TFS-ICAP LIMITED books, records, computer systems, and employees to conduct periodic compliance audits and/or investigations reasonably necessary to assess compliance with the requirements set forth in this Assurance.

b. The Independent Monitor shall have the right to discuss the facts and circumstances of the OAG's findings with the OAG, and the OAG may disclose those portions of its investigation that may assist the Independent Monitor in reviewing and monitoring TFS-ICAP LLC and TFS-ICAP LIMITED's policies and procedures in accordance with this Assurance. The Independent Monitor is also permitted to communicate at any time with the OAG as it relates to its monitorship, review, findings, assessments, and reports.

c. The Independent Monitor shall immediately inform the OAG in writing if the Independent Monitor discovers that, during the course of its monitorship, TFS-ICAP LLC and TFS-ICAP LIMITED have used or employed any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale related to any FX Options bid, offer, or trade, and may also advise the OAG in writing, in advance of a scheduled report, if TFS-ICAP LLC or TFS-ICAP LIMITED is otherwise not complying with the provisions of this Assurance.

d. The Independent Monitor shall, where appropriate, propose internal controls and ethics and compliance programs in accordance with this Assurance. If either TFS-ICAP LLC or TFS-ICAP LIMITED chooses not to adopt the Independent Monitor's recommendations within a reasonable time, either the Independent Monitor or either of the entities shall report that fact to the OAG, along with the reason for not adopting the same.

e. The Independent Monitor shall provide the OAG with periodic reports detailing compliance by TFS-ICAP LLC and TFS-ICAP LIMITED with the requirements set forth in this Assurance, as set forth in Paragraph 27, below.

27. Periodic Reports and Certification of Compliance.

a. The Independent Monitor's reports shall be in writing and shall set forth in detail the manner and form of compliance with this Assurance.

b. The initial compliance report shall be submitted to the OAG within ninety (90) days of the retention of the Independent Monitor.

c. Thereafter, a compliance report shall be submitted to the OAG every six (6) months for a twenty-four (24) month period.

d. Additionally, where the circumstances warrant, the OAG may require the Independent Monitor to file an interim report of compliance upon thirty (30) days' notice. If the OAG requires the Independent Monitor to file such an interim report of

compliance, it shall do so with notice to the designated representatives of TFS-ICAP LLC and TFS-ICAP LIMITED.

e. A copy of each compliance report shall be provided by the Independent Monitor to the designated representatives of TFS-ICAP LLC and TFS-ICAP LIMITED ten (10) days prior to the due date to the OAG. During that 10-day period, TFS-ICAP LLC and TFS-ICAP LIMITED shall have the opportunity to respond to any findings by the Independent Monitor. TFS-ICAP LLC and TFS-ICAP LIMITED shall provide the OAG with a certification affirming their compliance with the requirements set forth in this Assurance and shall provide the same with each compliance report, or as demanded by the OAG. These certifications shall be in writing and signed by authorized agents of TFS-ICAP LLC and TFS-ICAP LIMITED.

28. Extension of Duration of Monitor. The duration of the Independent Monitor as contemplated above is for a period of twenty-four (24) months after the date of submission of the initial compliance report to the OAG. In the event that TFS-ICAP LLC and TFS-ICAP LIMITED have not successfully satisfied their obligations under this Assurance after such 24-month period, the duration of the Independent Monitor shall be extended and shall continue until such time that there is successful satisfaction of such obligations or a New York State court enjoins such conduct. In no event shall the duration of the Independent Monitor exceed a total period of thirty-six (36) months from the date of the original retention of the Independent Monitor. The written agreement between the parties tolling certain statutes of limitations or other time-related defenses beginning on January 27, 2017, and the Tolling Period referenced and defined therein, shall terminate immediately upon the conclusion of the duration of the Independent Monitor as set forth in this paragraph, without the need for any further written notice of termination and without the need for the passage of the 90-day notice period referenced in such agreement.

Monetary Relief

29. On or before the criminal court arraignment of TFS-ICAP LLC and TFS-ICAP LIMITED in the Criminal Courts of the City of New York, as set forth below in Paragraphs 42 and 43, TFS-ICAP LLC and TFS-ICAP LIMITED, jointly and severally, shall pay the collective

sum of One Million One Hundred and Fifty Thousand United States Dollars (USD \$1,150,000.00) representing monetary penalties, costs, disbursements, and disgorgement to the OAG.

30. Payment must be made by certified or bank check for the entire amount and made payable to "State of New York, Office of the Attorney General."

Cooperation with the OAG's Ongoing Investigation

31. TFS-ICAP LLC and TFS-ICAP LIMITED, consistent with and without waiving attorney-client privilege or the attorney work product doctrine, shall fully and promptly cooperate with the OAG with respect to any investigation by the OAG related to the use of any fraudulent practices by employees of TFS-ICAP LLC and TFS-ICAP LIMITED to solicit and accept orders to buy and sell FX Options to and from New York-Based Traders between January 1, 2007 and December 31, 2015, and with respect to any related proceedings and actions in New York State, including but not limited to court or grand jury proceedings. This includes, without limitation, TFS-ICAP LLC and TFS-ICAP LIMITED using their best efforts to ensure that their officers, directors, employees, records custodians, and agents fully and promptly cooperate with any such investigation and related proceedings and actions in New York State, as set forth in this paragraph, such cooperation to be provided so far as consistent with their obligations under the United Kingdom Data Protection Act of 2018 and related and future United Kingdom laws that govern such matters (the "UK Data Protection Laws"). Willful and material failure to comply with this paragraph in any respect shall be a violation of this Assurance.

a. TFS-ICAP LLC and TFS-ICAP LIMITED, upon demand by the OAG, shall produce a records custodian in any New York State proceeding or action brought by the OAG, including but not limited to court and grand jury proceedings, to provide testimony sufficient to authenticate documents and records, including but not limited to any and all documents and records previously produced by TFS-ICAP LLC and TFS-ICAP LIMITED to the OAG or which may be produced in the future to the OAG. This shall include testimony sufficient to authenticate any such documents and records that were produced by TFS-ICAP LLC and TFS-ICAP LIMITED in the first instance to the United Kingdom Financial Conduct Authority ("FCA"), in order to facilitate further disclosure of

such documents and records to the United States Commodity Futures Trading Commission ("CFTC") and OAG, in accordance with the provisions of the United Kingdom Data Protection Laws.

b. TFS-ICAP LLC and TFS-ICAP LIMITED, upon demand by the OAG, shall produce a competent witness to provide testimony in any New York State proceeding or action brought by the OAG, including but not limited to court and grand jury proceedings, regarding the positions held by, and the duties, responsibilities, and authorities of: High Managerial Agent 1; High Managerial Agent 2; and brokers employed by TFS-ICAP LLC and TFS-ICAP LIMITED who solicited, accepted, or executed orders to buy and sell FX Options to or from New York-Based Traders, regardless of whether such brokers were located in New York, New Jersey, or London, between January 1, 2007 and December 31, 2015.

c. TFS-ICAP LLC and TFS-ICAP LIMITED, upon demand by the OAG, shall produce any additional documents requested that relate to the use and employment of any fraudulent practices by employees of TFS-ICAP LLC and TFS-ICAP LIMITED to solicit and accept orders to buy and sell FX Options to and from New York-Based Traders and documents related to positions held by, and the duties, responsibilities, and authorities of: High Managerial Agent 1; High Managerial Agent 2; and brokers employed by TFS-ICAP LLC and TFS-ICAP LIMITED who solicited, accepted, or executed orders to buy and sell FX Options to or from New York-Based Traders, regardless of whether such brokers were located in New York, New Jersey, or London, between January 1, 2007 and December 31, 2015.

d. TFS-ICAP LLC and TFS-ICAP LIMITED, upon demand by the OAG, shall provide any other reasonable and necessary cooperation, consistent with the examples set forth above in Paragraph 31(a)-31(c), related to OAG's investigation of the use and employment of any fraudulent practices by employees of TFS-ICAP LLC and TFS-ICAP LIMITED to solicit and accept orders to buy and sell FX Options to and from New York-Based Traders, between January 1, 2007 and December 31, 2015.

e. To the extent that cooperation under any part of this paragraph is subject to any requirements or limitations imposed by the UK Data Protection Laws, TFS-ICAP LLC and TFS-ICAP LIMITED shall take any and all permissible and necessary steps required to facilitate such cooperation and to comply with such demands by the OAG consistent with the UK Data Protection Laws.

f. As to all of the above, TFS-ICAP LLC and TFS-ICAP LIMITED agree to waive any claim, including but not limited to any claim under United Kingdom, United States, or New York law, that any and all documents produced to the OAG by TFS-ICAP LLC and TFS-ICAP LIMITED, including documents and records that have already been produced to the OAG via the CFTC or FCA, and documents and records which may be produced in the future to the OAG pursuant to this Assurance, are not permitted to be authenticated in a New York State proceeding or action, including but not limited to court and grand jury proceedings, by a records custodians of TFS-ICAP LLC or TFS-ICAP LIMITED. TFS-ICAP LLC and TFS-ICAP LIMITED further agree to waive any claim, including but not limited to any claim under United Kingdom, United States, or New York law, that would otherwise limit or prevent a witness or records custodian from TFS-ICAP LLC or TFS-ICAP LIMITED from testifying to authenticate such records and/or testifying as to the positions held by, and the duties, responsibilities, and authorities, of: High Managerial Agent 1; High Managerial Agent 2; and brokers employed by TFS-ICAP LLC and TFS-ICAP LIMITED who solicited and accepted orders to buy and sell FX Options to or from New York-Based Traders, regardless of whether such brokers were located in New York, New Jersey, or London, between January 1, 2007 and December 31, 2015, or that would otherwise hinder, prevent or limit cooperation with the OAG's investigation, as set forth in this paragraph. This waiver of claims includes a waiver of all privileges, immunities, and protections previously asserted by Winston & Strawn, LLP, as counsel for TFS-ICAP LLC and TFS-ICAP LIMITED, in correspondence accompanying responses by TFS-ICAP LLC and TFS-ICAP LIMITED, dated between on or about January 15, 2016 and September 8, 2017, to subpoenas issued by the OAG and the CFTC including, *inter alia*, claims under the United States Trade Secrets Act, 18 U.S.C. § 1905, New York common law, and any other applicable privilege, immunity, or protection. However, this waiver shall not be deemed to be a waiver by TFS-ICAP LLC and TFS-ICAP LIMITED of

attorney-client privilege or the attorney work product doctrine, or any applicable obligations under the UK Data Protection Laws that cannot be waived as a matter of law.

Record Keeping Requirements

32. TFS-ICAP LLC and TFS-ICAP LIMITED shall retain true and accurate copies of all documents and records previously produced to the OAG during the OAG's investigation, as well as true and accurate copies of all documents and records that are produced to the OAG pursuant to this Assurance, and true and accurate copies of all documents and records that are produced to the Independent Monitor.

33. TFS-ICAP LLC and TFS-ICAP LIMITED shall, upon fourteen (14) days written notice from the OAG, provide to the OAG all documents and records that were produced, subject to any requirements imposed by the UK Data Protection Laws, to the Independent Monitor to verify compliance with this Assurance, and TFS-ICAP LLC and TFS-ICAP LIMITED shall take any and all necessary steps required to comply with such demand by the OAG, so far as permitted by the UK Data Protection Laws.

Effects of Assurance

34. The Assurance is not intended for use by any third party in any other proceeding.

35. In the event that the OAG believes that TFS-ICAP LLC and/or TFS-ICAP LIMITED have defaulted in the performance of any obligation set forth herein, the OAG will provide written notice of such default to the designated representatives of TFS-ICAP LLC and/or TFS-ICAP LIMITED. TFS-ICAP LLC and/or TFS-ICAP LIMITED shall then have fourteen (14) days in which to respond and an additional thirty (30) days to certify that any default has been cured.

36. TFS-ICAP LLC and TFS-ICAP LIMITED expressly agree and acknowledge that any willful and material default in the performance of any obligation under Paragraphs 20-33, *supra*, during the period of the Independent Monitorship as set forth in Paragraph 28, and which has been subject to the notice, response, and certification procedures set forth in Paragraph 35, *supra*, is a violation of this Assurance, and that if the OAG reasonably determines that such

default has not been cured within the proscribed period set forth in this Agreement or a period otherwise agreed, the OAG thereafter may commence any civil action or proceeding contemplated in this Agreement for the violations alleged by the OAG in Paragraphs 14-17, *supra*, in addition to any other appropriate civil action or proceeding related to such violations. TFS-ICAP LLC and TFS-ICAP LIMITED understand that evidence of a violation of Paragraph 20 of this Assurance shall constitute prima facie proof of the violations alleged by the OAG in Paragraphs 14-17, *supra*, in any such civil action or proceeding, pursuant to Executive Law § 63(15).

37. In the event that TFS-ICAP LLC or TFS-ICAP LIMITED reasonably believes that the performance of its obligations under any provision of this Assurance would conflict with any United States, United Kingdom, or New York law or regulation that may be enacted or adopted after the effective date of this Assurance, such that compliance with both this Assurance and such provision of law or regulation is not possible, TFS-ICAP LLC and TFS-ICAP LIMITED shall notify the OAG promptly, and the Parties shall meet and confer at their earliest convenience to attempt to resolve such conflict, and TFS-ICAP LLC and TFS-ICAP LIMITED shall take any and all necessary steps required to facilitate performance of its obligations in order to resolve such conflict, so far as permitted by those relevant laws and regulations.

38. Acceptance of this Assurance by the OAG is not an approval or endorsement by the OAG of the practices, policies, or procedures of TFS-ICAP LLC and TFS-ICAP LIMITED, and TFS-ICAP LLC and TFS-ICAP LIMITED shall make no representation to the contrary.

39. Consent to jurisdiction. TFS-ICAP LLC and TFS-ICAP LIMITED consent to the sole jurisdiction of New York State courts, and the Parties exclusively choose New York State law to govern any and all disputes arising out of this Assurance or the enforcement thereof. TFS-ICAP LLC and TFS-ICAP LIMITED acknowledge that the value of this Assurance exceeds One Million United States Dollars (USD \$1,000,000.00). See General Obligation Law §§ 5-1401, 5-1402.

40. Notices. All notices, reports, requests, documents, pleadings and other communications to any party pursuant to this Assurance shall be in writing and shall be directed by regular mail or e-mail as follows:

a. Notice to OAG:

State of New York Office of the Attorney General
Criminal Enforcement & Financial Crimes Bureau
28 Liberty Street
New York, New York 10005
ATTN.: Stephanie Swenton, Bureau Chief
E-mail: stephanie.swenton@ag.ny.gov

b. Notice to TFS-ICAP LLC:

Winston & Strawn, LLP
Attn: Ross Kramer
200 Park Avenue
New York, New York 10166
E-mail: rkramer@winston.com

and

Winston & Strawn, LLP
Attn: Suzanne Jaffe Bloom
200 Park Avenue
New York, New York 10166
E-mail: sbloom@winston.com

c. Notice to TFS-ICAP LIMITED:

Winston & Strawn, LLP
Attn: Ross Kramer
200 Park Avenue
New York, New York 10166
E-mail: rkramer@winston.com

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RESOLUTION OF POTENTIAL CRIMINAL CHARGES AGAINST
TFS-ICAP LLC AND TFS-ICAP LIMITED
UNDER THE MARTIN ACT AND PENAL LAW

41. The Parties further agree upon a resolution of potential criminal charges that could be brought against TFS-ICAP LLC and TFS-ICAP LIMITED for conduct described in this Agreement, as set forth below.

42. On a date determined by the OAG, counsel for TFS-ICAP LLC and TFS-ICAP LIMITED, Winston & Strawn, LLP, shall appear on behalf of TFS-ICAP LLC and TFS-ICAP LIMITED for arraignment upon a misdemeanor complaint charging TFS-ICAP LLC and TFS-ICAP LIMITED with one (1) count of Scheme to Defraud in the Second Degree under Penal Law § 190.60 (a Class "A" Misdemeanor) and ten (10) counts of violations of the Martin Act under General Business Law § 352-c(1) (an unclassified misdemeanor) in the Criminal Court of the City of New York, New York County (the "Court").

43. On the same date of arraignment on the misdemeanor complaint, or as directed by the Court on the next adjourn date, Winston & Strawn, LLP, after affirming that they have been duly authorized by TFS-ICAP LLC and TFS-ICAP LIMITED to do so, shall agree to waive prosecution of TFS-ICAP LLC and TFS-ICAP LIMITED by information, shall waive applicable statutes of limitations and shall enter a plea of guilty on behalf of TFS-ICAP LLC and TFS-ICAP LIMITED to one count each of General Business Law § 352-c(1) (an unclassified misdemeanor). In consideration of these pleas, the OAG agrees that it shall not bring any further criminal action against TFS-ICAP LLC and TFS-ICAP LIMITED under the Martin Act or the New York State Penal Law or any other criminal law, based on the acts and practices of TFS-ICAP LLC and TFS-ICAP LIMITED in connection with the use and employment of any deceptive or fraudulent practices to solicit and accept orders to buy and sell FX options to and from New York-Based Traders between January 1, 2007 and the date of this Agreement,

including but not limited to any of the following practices: any practice of showing and announcing fake trades in FX Options to New York-Based Traders via instant message chats and voice transmission, in order to create a false appearance of liquidity and to induce New York-Based Traders to buy and sell FX Options via TFS-ICAP LLC and TFS-ICAP LIMITED and any practice of showing bids or offers not specifically authorized by a financial institution as immediately tradeable, also known as "flying" or "ghosting," "spoofing" or "printing" (the "Covered Conduct"). The OAG further agrees, as specified in this Agreement and subject to the terms of the agreed upon Assurance herein, that the OAG shall not bring any further civil or criminal or administrative action against TFS-ICAP LLC and TFS-ICAP LIMITED under the Martin Act or any other New York State law or regulation based on the Covered Conduct.

44. This Agreement, which the Parties shall request the Court to approve, will become effective only upon the Court's approval. Upon the Court's approval, TFS-ICAP LLC and TFS-ICAP LIMITED shall each plead guilty as set forth in paragraph 43 and shall each allocute as set forth in paragraph 53.

45. TFS-ICAP LLC and TFS-ICAP LIMITED are represented by their counsel, Winston & Strawn, LLP. TFS-ICAP LLC and TFS-ICAP LIMITED agree that they have been advised of, and understand, the nature of the charges that will be filed against them, the elements of the offenses with which they will be charged, and the range of permissible sentences, including a fine of double the amount of their gain from the commission of the crime, a conditional discharge, restitution, a surcharge payable to the Court and a crime victim's assistance fee.

46. TFS-ICAP LLC and TFS-ICAP LIMITED acknowledge that they are simultaneously being represented by the same counsel, Winston & Strawn, LLP. TFS-ICAP LLC and TFS-ICAP LIMITED further acknowledge that they have been informed that their respective constitutional rights to the assistance of counsel may be substantially impaired by being jointly represented by the same counsel. TFS-ICAP LLC and TFS-ICAP LIMITED acknowledge that they have been informed by counsel that there is a possible conflict of interest in such joint representation; for example, TFS-ICAP LLC and TFS-ICAP LIMITED may have individual defenses to the crimes charged and covered by this Agreement that contradict or are

inconsistent. In addition, TFS-ICAP LLC and TFS-ICAP LIMITED understand that they are entering into criminal pleas that are conditioned upon TFS-ICAP LLC and TFS-ICAP LIMITED entering into such pleas simultaneously, and that because they may have different levels of guilt, joint pleas in such circumstances may give rise to a potential conflict of interest. TFS-ICAP LLC and TFS-ICAP LIMITED acknowledge that their decision to proceed with the same counsel is an informed exercise of their right to retain counsel of their own choice. TFS-ICAP LLC and TFS-ICAP LIMITED further acknowledge that they have chosen not to retain separate counsel, and that their consent to continued representation by Winston & Strawn, LLP is being made voluntarily and intelligently.

47. TFS-ICAP LLC and TFS-ICAP LIMITED are fully satisfied with the representation provided by their attorneys, Winston & Strawn, LLP.

48. By pleading guilty, TFS-ICAP LLC and TFS-ICAP LIMITED are giving up the following rights, which they have discussed with their attorneys:

a. TFS-ICAP LLC and TFS-ICAP LIMITED understand that by pleading guilty, they are giving up their respective rights to a trial;

b. TFS-ICAP LLC and TFS-ICAP LIMITED understand that by pleading guilty, they are giving up their respective rights to have the People produce witnesses to testify against them;

c. TFS-ICAP LLC and TFS-ICAP LIMITED understand that by pleading guilty, they are giving up their respective rights to have their attorney cross-examine any witnesses who may testify against them;

d. TFS-ICAP LLC and TFS-ICAP LIMITED understand that by pleading guilty, they are giving up their respective rights to have their attorney produce witnesses to testify for them;

e. TFS-ICAP LLC and TFS-ICAP LIMITED understand that by pleading guilty, they are giving up their respective rights to remain silent and the right to either

have representatives for TFS-ICAP LLC and TFS-ICAP LIMITED, respectively, testify or not testify at trial;

f. TFS-ICAP LLC and TFS-ICAP LIMITED understand that by pleading guilty, they are giving up their respective rights to have the People prove their guilt beyond a reasonable doubt;

g. TFS-ICAP LLC and TFS-ICAP LIMITED understand that by pleading guilty, their respective pleas will operate just like a conviction of guilty after a trial;

h. TFS-ICAP LLC and TFS-ICAP LIMITED understand that by pleading guilty, if they have a defense to the charges, they are giving up their respective rights to present that defense at trial; and

i. TFS-ICAP LLC and TFS-ICAP LIMITED understand that by pleading guilty, they are giving up their respective rights to claim that representatives of OAG did anything illegal in regard to obtaining evidence or filing charges, including but not limited to obtaining evidence via the FCA and CTFC, and their respective rights to a hearing to determine if representatives from OAG did engage in conduct which was, in fact, unlawful.

49. Further, in consideration for and as part of their criminal pleas in this matter, TFS-ICAP LLC and TFS-ICAP LIMITED hereby waive and relinquish their respective rights to appeal from any judgment of conviction. TFS-ICAP LLC and TFS-ICAP LIMITED have been advised of their respective rights to appeal, and their respective rights to be represented by an attorney on appeal. It is the understanding and intention of TFS-ICAP LLC and TFS-ICAP LIMITED that their pleas will be a complete and final disposition of the criminal matter. TFS-ICAP LLC and TFS-ICAP LIMITED agree to waive and relinquish their respective rights to appeal knowingly and voluntarily after having been fully advised of their rights by their attorney and having had a full and fair opportunity to discuss these matters with their attorney. At the time of their pleas, Winston & Strawn, LLP shall execute a written waiver of appeal on behalf of TFS-ICAP LLC and TFS-ICAP LIMITED, respectively, relinquishing these rights.

50. TFS-ICAP LLC and TFS-ICAP LIMITED each waive any and all rights to any claim of defective jurisdiction under Article 20 of the Criminal Procedure Law, any claim of a violation of speedy trial provisions under Criminal Procedure Law §§ 30.20 and 30.30, and any claim under the period of limitations under Criminal Procedure Law § 30.10, and in particular, TFS-ICAP LLC and TFS-ICAP LIMITED waive any and all rights to any claims pursuant to Criminal Procedure Law Articles 20 and 30 related to the charges in the complaint, as set forth in Paragraph 43, *supra*.

51. TFS-ICAP LLC and TFS-ICAP LIMITED understand and have discussed with their attorneys the potential disciplinary consequences of their respective guilty pleas pertaining to any registration, license and permissions they may have, including but not limited to registrations with the CFTC, the FCA and the National Futures Association. TFS-ICAP LLC and TFS-ICAP LIMITED have been advised that their guilty pleas may subject them to revocation or suspension of their respective registrations, licenses, and permissions, and other possible collateral consequences from agencies other than the OAG. TFS-ICAP LLC and TFS-ICAP LIMITED understand that the above-referenced disciplinary consequences of their respective pleas, if any, will be imposed in separate proceedings brought by entities other than the OAG. TFS-ICAP LLC and TFS-ICAP LIMITED wish to plead guilty to a misdemeanor violation of General Business Law Section 352-c(1) regardless of any disciplinary consequences of their respective guilty pleas, even if their respective guilty pleas will cause any consequences to their ability to perform business in New York State, the United States, the United Kingdom or elsewhere. TFS-ICAP LLC and TFS-ICAP LIMITED understand that they are bound by their respective guilty pleas regardless of any disciplinary consequences of their pleas. Accordingly, TFS-ICAP LLC and TFS-ICAP LIMITED waive any and all challenges to their respective guilty pleas, convictions, and sentences based on any disciplinary consequences, and agree not to seek to withdraw their respective guilty pleas, or to file a direct appeal or any kind of collateral attack challenging their respective guilty pleas, convictions, or sentences, based on any registration, licensure, permissions or other professional consequences of their respective guilty pleas.

52. TFS-ICAP LLC and TFS-ICAP LIMITED hereby agree to enter pleas of guilty in accordance with the terms set forth in this Agreement, having consulted with their attorneys and having been advised of all of the rights listed above.

53. Upon the entry of guilty pleas on behalf of TFS-ICAP LLC and TFS-ICAP LIMITED, respectively, counsel for TFS-ICAP LLC and TFS-ICAP LIMITED shall allocate on behalf of each client, respectively, concerning the following facts:

As to TFS-ICAP LLC:

TFS-ICAP LLC used or employed an act of fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale where engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation or purchase within or from this state of any securities or commodities, as defined in section three hundred fifty-two of General Business Law Article 23-A, regardless of whether issuance, distribution, exchange, sale, negotiation or purchase resulted, to wit: on or about April 6, 2015 at approximately 3:09 PM, Broker 3, a broker employed by TFS-ICAP LLC whose identity is known to the OAG and TFS-ICAP LLC, while acting within the scope of his employment, announced to New York-Based Trader 3, whose identity is known to the OAG, a foreign exchange currency option trade involving Mexican pesos that did not represent an actual trade, and such conduct was recklessly tolerated by a high managerial agent of TFS-ICAP LLC.

As to TFS-ICAP LIMITED:

TFS-ICAP LIMITED used or employed an act of fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale where engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation or purchase within or from this state of any securities or commodities, as defined in section three hundred fifty-two of General Business Law Article 23-A, regardless of whether issuance, distribution, exchange, sale, negotiation or purchase resulted, to wit: on or about April 6, 2015 at approximately 3:09 PM, Broker 3, a broker employed by TFS-ICAP LLC, whose identity is known to the OAG and TFS-ICAP LIMITED, while acting within the scope of his employment, announced to New York-Based Trader 3, whose identity is known to the OAG, a foreign exchange currency option trade involving Mexican pesos that did not

represent an actual trade, and such conduct was recklessly tolerated by a high managerial agent of TFS-ICAP LIMITED.

54. The OAG will recommend that the Court sentence TFS-ICAP LLC and TFS-ICAP LIMITED upon their guilty pleas to a sentence of an unconditional discharge. The Court may impose court costs and fees such as a mandatory surcharge and the crime victims' assistance fee.

55. Winston & Strawn, LLP, counsel for TFS-ICAP LLC and TFS-ICAP LIMITED, understand that they, or counsel subsequently substituted by the companies, must physically appear as counsel for the companies at all subsequent Court dates, including the date of sentencing as specified by the Court. TFS-ICAP LLC and TFS-ICAP LIMITED understand that if Winston & Strawn or substitute counsel fail to appear, the case will proceed without them and TFS-ICAP LLC and TFS-ICAP LIMITED will be sentenced in their absence, in accordance with the terms of this Agreement. See Criminal Procedure Law § 600.20. TFS-ICAP LLC and TFS-ICAP LIMITED acknowledge and consent to the requirement of personal appearance by their respective counsel.

56. It is further understood that acceptance of the plea and sentence specified in this Agreement is subject to approval of the Court. In the event the Court does not approve the plea or sentence as set forth in this Agreement, the Parties may agree to revise the terms in writing, such that it is acceptable to the Court, or either Party, in writing, may terminate this Agreement.

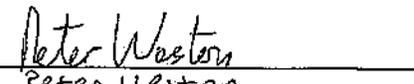
57. This Agreement is limited to the OAG and cannot bind other governmental agencies or other prosecuting offices. However, the OAG agrees to bring the performance of TFS-ICAP LLC and TFS-ICAP LIMITED under this Agreement to the attention of any other governmental agency or prosecuting office, should either entity so request.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto.

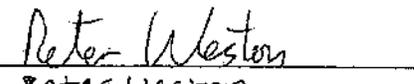
BARBARA D. UNDERWOOD
Attorney General of the State of New York

By: 
Stephanie Swenton
TFS-ICAP LLC

Date: September 25, 2018

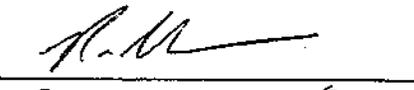
By: 
Peter Weston
TFS-ICAP LIMITED

Date: September 25, 2018

By: 
Peter Weston

Date: September 25, 2018

WINSTON & STRAWN, LLP,
Counsel for TFS-ICAP LLC and TFS-ICAP LIMITED

By: 
Ross M. Kramer

Date: September 25, 2018