

All DMIST Sponsor Board Members and Ambassadors agree to abide by the following policies (“Policies”). Policies may be adopted, issued, or published by DMIST from time to time and notified to Sponsor Board Members and Ambassadors. In the event of a conflict between the Terms of Participation and these Policies, the Terms shall govern. Capitalized terms used but not defined herein shall have the meaning provided in the Terms.

## I. CODE OF CONDUCT

DMIST is committed to maintaining high standards of ethical and professional conduct, which is essential to achieving its mission of creating open standards for the exchange-traded and cleared derivatives industry (“Mission”). As a result, Sponsor Board Members, Ambassadors, and their representatives must at all times:

- Act in an ethical and professional manner, in good faith, with diligence, responsiveness, integrity, honesty and fairness;
- Treat all Sponsor Board Members, Ambassadors, and their representatives and other participants in DMIST activities fairly and with dignity and respect;
- Contribute and engage in dialogue constructively and in a manner which respects diversity in viewpoints;
- Embrace compromise and consensus-building in the development of open standards for the exchange-traded and cleared derivatives industry, and respect consensus decisions of DMIST, the Sponsor Board and any committees or working groups thereof;
- Seek, accept, and offer honest criticism of technical work, acknowledge and correct errors, and credit properly the contributions of others;
- Comply with applicable antitrust and competition laws, including, but not limited to any compliance guidelines adopted by DMIST;
- Avoid conduct that could damage the reputation of DMIST or the integrity, validity, or security of its programs;
- Fully disclose all conflicts of interest on a nonproprietary basis for the purposes of productive discussions on standards and seek to minimize conflicts of interest and the appearance of conflicts of interest in order to maintain and convey independence and objectivity;
- Identify and escalate disputes promptly and in accordance with DMIST processes, participate in those processes in good faith, and comply with the resolution of the dispute;
- Respect and protect the intellectual property rights and maintain the confidentiality of sensitive information of DMIST, Sponsor Board Members, Ambassadors, and other participants in DMIST activities, as set forth in the Terms.

For the avoidance of doubt, the decision of each Institute Participant to adopt, implement and/or use a standard is at their own discretion, provided that any such adoption, implementation and/or use of a standard is in accordance with the Terms and these Policies.

## II. MEMBERSHIP APPLICATION

All Sponsors and Ambassadors must complete a membership application, which includes agreeing to the Terms and thereby, these Policies, in order to participate in DMIST. DMIST, via its Executive Director, shall have full and complete authority to approve or disapprove a membership application.

### III. SPONSOR BOARD MEMBERS

Sponsor Board Members serve in a non-fiduciary capacity and are generally responsible for overseeing the process for developing standards. This includes contributing to proposals for developing standards, providing feedback on proposals, and approving standards.

Sponsor Board membership is open to Clearing Brokers, Executing Brokers, Introducing Brokers, Exchanges, CCPs, Clients, and End-Users.

Each Sponsor Board Member shall designate one individual from their firm to serve on the Sponsor Board. It is the Sponsor Board Member's responsibility to inform DMIST when and if it needs to replace such individual, whether because of their departure from the firm, transition in job responsibilities, etc. Sponsor Board Members must attend all Sponsor Board meetings. Substitutes from the same firm are permitted where the originally designated individual is unable to attend. It is the responsibility of the Sponsor Board Member to ensure that all substitutes are sufficiently apprised of the recent developments and work of DMIST in order to adequately participate in the applicable meeting, including, as applicable, voting to: (1) publish a proposed standard for public comment; and/or (2) publish a standard as final.

Sponsor Board Members are required to do the following:

- Designate individuals as Ambassadors – can designate an unlimited number of individuals as Ambassadors (at no additional cost); must designate a minimum of two (2) individuals as Ambassadors; a maximum of five (5) individuals from any one firm can serve on a specific working group or committee.
- Vote on publishing a proposed standard for public comment and on approval of standards as final.<sup>1</sup>

### IV. AMBASSADORS

Ambassadors are generally responsible for investigating, refining, testing, and analyzing the technical, mechanical, logistical, and other details of a proposed standard. This includes reviewing comments received from the public on proposed standards.

Ambassador membership is open to Clearing Brokers, Executing Brokers, Introducing Brokers, Exchanges, CCPs, Clients, End-Users, Technology Vendors, Service Providers, and potentially others at the discretion of DMIST's Executive Director.

Ambassadors who are not otherwise Sponsor Board Members may designate an unlimited number of individuals from their firm to serve as Ambassadors (at no additional cost). However, a maximum of five (5) individuals from any one firm can serve on a specific working group or committee.

Lead Ambassadors for each firm must be identified via the Membership Application Form. Lead Ambassadors are responsible for keeping their firm's Ambassador list up-to-date. This includes: (1) removing from the Ambassador list individuals who have left the firm or otherwise changed job functions such that their participation is no longer relevant; and (2) identifying new individual Ambassadors from their firm who have expertise in the specific area that a proposed standard relates to.

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<sup>1</sup> Exceptions from the requirement to vote may be granted, in the Executive Director of DMIST's discretion, where a DMIST Sponsor Board Member has a conflict of interest. No other exceptions to the requirement to vote apply. The expectation is that Sponsor Board Members will not abstain from voting.

## V. COSTS AND PAYMENT TERMS

Sponsor Board Members must pay the established rate for participation in DMIST annually. The established rate for Sponsor Board Members is currently set at \$10,000 USD. Such rate is subject to change, following consultation with Sponsor Board Members.

Ambassadors must pay the established rate for participation in DMIST annually. The established rate for Ambassadors is currently set at \$5,000 USD. Such rate is subject to change, following consultation with Ambassadors.

Payment of the established rate on an annual basis is due within thirty (30) days of Sponsor Board Member's or Ambassador's receipt of an invoice from DMIST. Invoices will be sent in May of each year, with payment covering from June 1 of that year to May 30 of the following year. If payment is not received within thirty (30) days of receipt of invoice, Sponsor Board Member's and/or Ambassador's participation in DMIST may be terminated.

## VI. STANDARD SUBMISSION, REVIEW, AND APPROVAL PROCESS

The process of a proposal becoming a standard will proceed as outlined below. Sponsor Board Members and Ambassadors agree to follow and take active part in this process.

### Step One: A Proposed Standard is Received

Proposed standards may be received from any member of the public (including, but not limited to, Sponsor Board Members or Ambassadors). DMIST anticipates providing a submission form to be completed by the individual(s) or legal entity(ies) submitting the proposed standards. Moreover, submitters will be required to agree to certain Terms of Submission at the time that they submit. These Terms of Submission will address, for example, intellectual property rights and confidentiality.

### Step Two: Sponsor Board Determines Whether the Initial Proposal Meets the Required Criteria

The Sponsor Board will determine whether a proposed standard meets the required criteria for consideration by DMIST. For example, the Sponsor Board will confirm that: (1) the submission form contains sufficient requisite information; (2) the proposed standard addresses a topic that it considers in scope for DMIST's consideration; and (3) the proposed standard relates to a topic that would significantly benefit the industry to standardize.

### Step Three: DMIST Forms Ambassador Working Group(s)

DMIST will then circulate the proposed standards to all Ambassador representatives for review and consideration. DMIST will also determine, following consultation with Sponsor Board Members and Ambassadors, as needed, how many and which types of Ambassador Working Group(s) are needed to fully consider the proposed standard. DMIST will then notify all Ambassador representatives of the working group structure for consideration of the proposed standard and request volunteers for participation in such groups.

Lead Ambassadors will be responsible for coordinating participation for their firm. If a firm's current Ambassador representatives do not have the requisite expertise to address a proposed standard, or if someone else within the firm would be a helpful addition to such firm's list of Ambassador representatives, the Lead Ambassador will update the firm's Ambassador list accordingly.

Once Ambassador Working Group(s) are established, such groups will meet as frequently and for the duration deemed necessary by DMIST, in consultation with Lead Ambassadors, in order to fully vet the proposed standards and determine: (1) whether to endorse the proposed standards to the Sponsor Board for public comment and

consideration; and (2) whether modifications, clarifications, changes, or amendments to the proposed standard are advisable prior to public comment.

DMIST's Executive Director will use their discretion, after consultation with Lead Ambassadors, to determine when feedback from Ambassador Working Group(s) is ready to be presented to the Sponsor Board. If general agreement on whether to endorse the proposed standards for public comment and consideration and/or whether modifications, clarifications, changes, or amendments are advisable cannot be reached by the Ambassador Working Group(s), individual Ambassador firms will have the opportunity to present their varying viewpoints to the Sponsor Board.

#### **Step Four: Sponsor Board Votes to Publish Proposed Standards for Public Comment**

When Step Three has been fully completed, the Sponsor Board will meet to consider the feedback of the Ambassador Working Group(s). Such feedback may include: (1) endorsement of the proposed standards; (2) rejection of the proposed standards; (3) endorsement of the proposed standards, but with certain modifications, clarifications, changes, or amendments; and/or (4) dissenting or varying viewpoints from certain Ambassador firms.

Based upon the feedback from the Ambassador Working Group(s), the Sponsor Board will vote on whether to release the proposed standards (including any modifications, clarifications, changes, or amendments thereto from the Ambassador Working Group(s) to the general public for comment.

2/3rds of Sponsor Board Members must vote to approve the decision with regards to public comment. Moreover, at least one Sponsor Board Member from each of the following categories must vote to approve the decision:<sup>2</sup>

- Clearing Broker/Executing Broker/Introducing Broker
- Exchange/CCP
- Client/End-User

#### **Step Five: The Public Comments on Proposed Standards**

At the direction of the Sponsor Board, DMIST will issue proposed standards for public comment (including with any modifications, clarifications, changes, or amendments, as applicable). DMIST will determine the relevant comment period for any such proposed standard taking into consideration, amongst other things: (1) the length and degree of detail associated with such proposed standard; (2) the time of year; and (3) other competing industry demands. Absent unforeseen or extenuating circumstances, no comment period shall be less than sixty (60) days. At the time of publication for comment, DMIST will direct commenters on the specifics of how to submit a comment. Comments will be made available to the public once filed with DMIST.

#### **Step Six: Ambassador Working Group(s) Review Comments**

At the end of the comment period, the Ambassador Working Group(s) used to vet the standard as initially proposed will be re-established to review and consider the comments. The Ambassador Working Group(s) will digest the comments and determine whether modifications, clarifications, changes, or amendments are prudent based upon such comments.

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<sup>2</sup> For the avoidance of doubt, a Sponsor Board Member can only vote as part of one of the three listed categories (i.e., Clearing Broker/Executing Broker/Introducing Broker; Exchange/CCP; Client/End-User). In which category a Sponsor Board Member votes will be determined based upon the "industry role" they designate on their membership application. DMIST may conduct reasonable inquiry into the "industry role" designated by a Sponsor Board Member on their membership application where DMIST deems necessary, in its sole discretion.

If necessary, the Ambassador Working Group(s) will modify, clarify, change, or amend the proposed standards prior to endorsing them to the Sponsor Board for final approval.

DMIST's Executive Director will use their discretion, after consultation with Lead Ambassadors, to determine when feedback from Ambassador Working Group(s) is ready to be presented to the Sponsor Board. If general agreement on whether to endorse the standards for final approval, and in what form, cannot be reached by the Ambassador Working Group(s), individual Ambassador firms will have the opportunity to present their varying viewpoints to the Sponsor Board.

### **Step Seven: Sponsor Board Votes to Approve the Standards and They Are Published**

Based upon feedback from the Ambassador Working Group(s), the Sponsor Board will vote on whether to approve the proposed standards, as modified, clarified, changed, or amended by the Ambassador Working Group(s), if applicable. 2/3rds of Sponsor Board Members must vote to approve the standards and one Sponsor Board Member from each of the following categories must vote to approve in order for such standards to be considered final and published:<sup>3</sup>

- Clearing Broker/Executing Broker/Introducing Broker
- Exchange/CCP
- Client/End-User

### **Step Eight: Transparency and Metrics**

The success of DMIST requires commitment to transparency with regards to adoption and implementation of standards. Each final, approved standard must specify transparency expectations for Sponsor Board Members regarding whether or not they have chosen to adopt or implement such standards, taking into account the applicability of that specific standard to various market participants as well as any unique implementation, adoption, and/or usage challenges. Each final approved standard must also specify metrics, to be measured on an ongoing basis, related to implementation, adoption, usage, and/or effectiveness.

For the avoidance of doubt, the decision of each Institute Participant to adopt, implement and/or use a standard is at their own discretion, provided that any such adoption, implementation and/or use of a standard is in accordance with the Terms and these Policies.

## **VII. ANTITRUST AND COMPETITION LAW COMPLIANCE**

This Section VII describes the antitrust laws of the United States,<sup>4</sup> as well as the obligations of DMIST Institute Participants and Institute Participants' employees and agents to comply with those laws. This Section VII applies to all DMIST activities and promotes a general understanding of antitrust compliance. While this Section VII should help DMIST Institute Participants identify potential antitrust law issues associated with their participation in the organization, it is not, and is not intended to, constitute legal advice.

Each Institute Participant is expected to recognize trouble areas relating to its activities and seek legal advice where appropriate. Not only are the penalties for antitrust violations severe, but the cost to defend allegations

<sup>3</sup> For the avoidance of doubt, a Sponsor Board Member can only vote as part of one of the three listed categories (i.e., Clearing Broker/Executing Broker/Introducing Broker; Exchange/CCP; Client/End-User). In which category a Sponsor Board Member votes will be determined based upon the "industry role" they designate on their membership application. DMIST may conduct reasonable inquiry into the "industry role" designated by a Sponsor Board Member on their membership application where DMIST deems necessary, in its sole discretion.

<sup>4</sup> Although the principles of U.S. antitrust law are generally applicable, the laws of other countries and jurisdictions, e.g., the European Union, may vary and are not evaluated specifically here.

alone—even in the absence of wrongdoing—can be expensive and disruptive. As such, DMIST Institute Participants should not only act in compliance with the antitrust laws, but they also should avoid actions and statements that could be misinterpreted as violations.

**It is the responsibility of each Institute Participant to know and understand this Section VII.** DMIST holds each of its Institute Participants and their employees and agents responsible for her or his own compliance with the antitrust laws and for the compliance of all employees under her or his supervision. If questions or concerns arise relating to actual or proposed conduct, this Section VII, or compliance with the law, Institute Participants must report in accordance with the procedures explained in this Section VII.

## A. INTRODUCTION

The laws governing competition (often referred to as the “antitrust laws” in the United States) are designed to preserve and promote a competitive environment so that goods and services are efficiently produced and supplied to consumers. A competitive business environment benefits the whole of our economy and is in the best interests of DMIST, all Institute Participants, and their customers.

Penalties for violations of the antitrust laws are severe for DMIST, Institute Participants, and individuals associated with any illegal conduct. U.S. law imposes the following consequences:

<b>Criminal penalties</b>	<ul style="list-style-type: none"><li>• Individuals can be imprisoned for up to 10 years for each offense</li><li>• Individuals can be fined up to \$1 million per violation, or twice the amount gained, or twice the loss caused</li><li>• Corporations can be fined up to \$100 million per violation, or twice the amount gained, or twice the loss caused</li></ul>
<b>Civil penalties</b>	<ul style="list-style-type: none"><li>• Government may enjoin anticompetitive conduct or seek divestiture of portions of a company’s business</li><li>• Violations of injunctions or orders can result in civil penalties of up to \$43,792 per day<sup>5</sup></li></ul>
<b>Private action</b>	<ul style="list-style-type: none"><li>• Anyone harmed by an antitrust violation can bring a lawsuit and may recover treble damages, plus attorneys’ fees and cost</li><li>• Most private actions are brought as class actions, resulting in millions of dollars of damages</li></ul>

Even where no actual violations occur, investigations and defending allegations alone can be expensive and disruptive, and as such, Institute Participants should act not only in compliance with the antitrust laws, but also in such a way as to avoid words and actions that could be misinterpreted as violations.

## B. THE ANTITRUST LAWS

### i. Relevant Laws to a Standard Setting Trade Organization

<sup>5</sup> The U.S. federal agencies annually update the daily civil penalty maximum. The amount listed here is as of the publication date of this version of the Policies.



Section 1 of the Sherman Act prohibits contracts, combinations, and conspiracies in restraint of trade. Section 1 claims fall into two categories: 1) per se illegal conduct; and 2) other combinations in restraint of trade.

## 1. Per Se Illegal Conduct

Agreements between competitors to: a) fix elements of price; b) allocate customers or geographic areas; or c) rig bidding are the most serious of all antitrust violations.

**What is an “agreement” for antitrust purposes?** An “agreement” does not need to be a written contract. It can be as informal as a casual conversation or a judge or jury could infer it from an exchange of information coupled with parallel conduct.

Due to the serious nature of the violation, no defense or justification can be offered for the illegal agreement, and such violations are frequently enforced by the Department of Justice. Convictions can result in felony charges, fines, and imprisonment.

### Never agree with any Institute Participant on the following:

- Price or price components like discounts, rebates, etc.
- Timing of price changes
- Timing of promotions or discounts
- Marketing strategies
- Refusing to deal with a customer
- Refusing to purchase certain inputs
- Instituting parallel product or service introduction
- Market shares
- Profit margins
- Geographic, customer, or contract allocation
- Employment practices or hiring decisions

This list is not exhaustive and should be broadly construed to eliminate all of the above topics and any similar topics. If you suspect anyone acting on behalf of an Institute Participant in connection with a DMIST function is engaging in this type of behavior, you should report the conduct in accordance with the procedures explained in this Section VII.

## 2. Other Combinations in Restraint of Trade

Other agreements—including certain types of vendor and custom agreements—are only condemned if they unreasonably restrain trade and, on balance, harm competition. **Valid** trade association activities and efforts at industry self-regulation through the promulgation of industry-wide standards are evaluated under this standard.

### ii. Guidance for DMIST Participation

#### 1. Follow Best Practices at DMIST Meetings

Trade associations like DMIST provide a valuable opportunity for Institute Participants to engage in procompetitive discussions that serve a legitimate business mission. However, because trade associations provide a forum that often brings together competitors, Institute Participants should be vigilant in ensuring that DMIST activities do not expose DMIST or any Institute Participants to allegations of participation in anticompetitive conduct.

### Best practices for DMIST meetings:

- Ensure every meeting has a written agenda and review it prior to the meeting
- When appropriate, legal counsel should be present at the meeting
- Ensure the discussion at the meeting conforms to the agenda
- Any competitively sensitive topic raised at the meeting should be promptly ended
- Avoid substantive sidebar discussions with other Institute Participants
- Review Sponsor Board meeting minutes, if any, for accuracy

If a DMIST meeting does not follow the above rules or turns to inappropriate topics, you must cease that discussion immediately. Report any concerns immediately in accordance with the procedures explained in this Section VII.

### *2. Promulgate Standards that Have Procompetitive Benefits*

DMIST aims to institute standards that improve the efficiency, resiliency, competitiveness, and innovativeness of the exchange-traded and cleared derivatives markets. However, Institute Participants do, as their name would suggest, participate in the industry that DMIST's work relates to. While DMIST standards aim to have a procompetitive purpose, efforts at industry self-regulation through the promulgation of industry-wide standards can give rise to Section 1 violations where such standards are being improperly used to benefit some competitors while hurting others.

Antitrust issues arise where:

- Concerned action on standard setting adversely impacts a certain competitor or certain groups of competitors;
- The adverse effect occurred as the result of improper or unfair standard setting practices or procedures;
- And, the standard-setting organization's actions created an actual, adverse effect on competition.

To minimize the antitrust risk, standards promulgated by DMIST will be objectively based, have a legitimate purpose, and be reasonably related to that legitimate purpose. DMIST's standard setting procedures are designed to promote fairness and transparency in their promulgation. Those standard setting procedures must be followed. DMIST standards will enhance competition and aim to improve the efficiency and resilience of the clearing ecosystem and will be technology- and vendor-agnostic. Moreover, the decision of each Institute Participant to adopt, implement and/or use a standard is at their own discretion, provided that any such adoption, implementation and/or use of a standard is in accordance with the Terms and these Policies.



***The bottom line:*** Standards are not the basis of competition; they are the basis of “good practices” in terms of enhancing the industry for everyone.

***Standards should enhance competition rather than be barriers to competition.***

### 3. Follow Guidelines for Collection and Analysis of Survey Data

DMIST benchmarking and data surveys can also serve a procompetitive function. The Department of Justice and the Federal Trade Commission have published *Antitrust Guidelines for Collaboration Among Competitors* that specifically provides that “sharing of information among competitors may be procompetitive and is often reasonably necessary to achieve the procompetitive benefits of certain collaborations.” However, the agencies have also made clear that they may have competitive concerns depending on the facts surrounding the exchange of information. Certain safeguards should be followed to minimize antitrust risk.

#### Guidance to follow for benchmarking and data surveys:

- DMIST or a third party (e.g., not an Institute Participant) will manage the collection and dissemination of the information
- The information collected should be at least three months old
- Any data disseminated as a result of the survey will be sufficiently aggregated to prevent the identification of any one Institute Participant’s data
- No individual Institute Participant’s data may constitute more than 25% of any statistic on a weighted basis
- Legal counsel will be consulted during the survey development and implementation

### 4. Do Not Share Competitively Sensitive Information with Other Institute Participants

Whether during or outside a DMIST meeting, you may *not solicit or discuss* competitively sensitive information directly with any competitor or potential competitor.

#### Do NOT exchange the following competitively sensitive information with Institute Participants:

- Current or future pricing strategies and prices (including promotions, discounts, rebates, etc.) on any individual product/solution basis
- Terms of agreements with customers or vendors, including current contracts in force
- Bids for potential business—whether won, lost, or future plans
- Granular information related to plans for new products or solutions, including pipeline products and product development
- Profit margins by product/solution

Even informal meetings and events surrounding DMIST activities are subject to antitrust scrutiny; problematic behavior or discussions at informal gatherings also necessitates a noisy exit and should be reported in accordance with the procedures explained in this Section VII.

### A Cautionary Note:

The “Girls Night Out” antitrust lawsuit alleged that drug company executives discussed and shared upcoming bids, specific generic drug markets, pricing strategies, and pricing terms during:

- dinners;
- cocktail parties;
- golf outings; and
- other gatherings during multi-day industry and customer conferences.



## C. CONSCIOUS COMMUNICATIONS

If DMIST, or an individual Institute Participant, is the target of an investigation or lawsuit, internal documentation—including emails and text messages—will be examined closely. To the extent you utilize your personal phone, laptop, or other device for work, those devices can also be subject to search.

Institute Participants should avoid any communications or conduct that might be misconstrued as an agreement to limit competition between Institute Participants. Exaggerated emails and text messages are typically “Exhibit A” in government investigations and private litigation. Even casual conversations at DMIST meetings can lead to antitrust liability if they stray too far into sensitive topics. No matter how innocent a statement, legal action can result if the statement leads others to believe a violation occurred.

### When drafting communications, keep in mind the following do’s and don’ts:

- **DO** use precise language
- **DO** remember that anything you put in writing or a text could be provided to the government in the future
- **DO** limit your contact with other Institute Participants to valid DMIST purposes
- **DO** consult legal counsel regarding any concerns
- **DON’T** use careless and inappropriate language
- **DON’T** exaggerate statements of market position, dominance, or market power
- **DON’T** use the words dominant or monopolistic to describe market position in emails, texts or conversations
- **DON’T** make any statement that suggests intent to harm or exclude non-Institute Participants

## D. REPORTING REQUIREMENTS

Every Institute Participant is required to report promptly any misconduct of which it is aware, either inside or outside of formal DMIST meetings, that raises antitrust concerns. The individual should immediately report the situation to FIA legal counsel Allison Lurton at [alurton@fia.org](mailto:alurton@fia.org).

Violation of this Section VII will result in remedial action by DMIST, including, but not limited to, suspension or termination of DMIST membership. The relevant determinations will be made by DMIST, and all decisions will be final and non-appealable.

## VIII. CONCLUSION

Violations of these Policies may result in remedial action by DMIST, including, but not limited to, suspension or termination of DMIST membership. The relevant determinations will be made by DMIST's Executive Director and all decisions will be final and non-appealable.

Unless otherwise indicated herein, please contact DMIST at [staskforce@fia.org](mailto:staskforce@fia.org) with any questions or concerns about the information discussed in these Policies.