

# Cash Equities Execution and Clearing Module: TDGF

July 2024

## 1. Application

1.1 This Cash Equities Execution and Clearing Module: TDGF (**Module**) applies where the relevant customer client, or counterparty (howsoever described) (**Counterparty**) receives, or has received, services from TD Global Finance unlimited company (**TDGF**), which may include, without limitation, dealing and/or execution services in relation to transactions for the purchase and sale of securities (including orders for such) (**Transactions**) where TDGF uses the services of its Affiliates, CESL and Cowen and Co, in the performance of such Transactions.

1.2 This Module amends, supplements, forms part of, and is subject to the relevant contractual documentation governing the Transactions (including, without limitation, any brokerage agreement, settlement agreement, terms of business, or similar) (**Documentation**). In the event of any inconsistency between the Documentation and this Module, this Module prevails with respect to the subject matter hereof.

1.3 For the purposes of the Terms of Business as applied by, amongst others, TDGF (as listed on the Website), except as specifically agreed or notified otherwise, this Module applies in relation to any party which becomes or became a Counterparty on or after 1 August 2024 only. Accordingly, this Module does not, except as detailed herein, amend such Terms of Business as it may form, in whole or part, the Documentation in relation to any party which is or was a Counterparty prior to 1 August 2024.

1.4 TDGF may amend, restate, supplement, or otherwise update this Module without notice by posting an updated version on the Website.

## 2. Definitions

2.1 In this Module, the following definitions apply:

**“Accounts”** means the accounts of the Counterparty that TDGF has opened on the Counterparty’s behalf or which the Counterparty can access for trading purposes.

**“Action”** means any and all proceedings, demands, claims, complaints, litigations, arbitrations, actions, suits and investigations.

**“Affiliate”** means any entity directly or indirectly controlling or controlled by, or under direct or indirect common control with the relevant party.

**“Applicable Law”** means the laws and rules applicable to a party, including but not limited to, acts, regulations, or other

regulatory rules or handbooks; governmental, regulatory and self-regulatory organisation rules; rules of execution venues and clearing houses; and customs (except as modified herein), that are in effect from time to time.

**“Business Day”** means:

- a. in relation to services and similar performed by TDGF and/or any Affiliate which is organised in otherwise incorporated under the laws of Ireland, a day on which banks are open for business in Dublin;
- b. in relation to services and similar performed by CESL and/or any Affiliate which is organised in otherwise incorporated under the laws of the UK, a day on which banks are open for business in London;
- c. in relation to services and similar performed by Cowen and Co and/or any Affiliate which is organised in otherwise incorporated under the laws of the United States of America, a day on which banks are open in New York;
- d. in relation to services and similar performed by any other party not covered by a. or d. above, a day on which banks are open for business in the country of incorporation or organisation of such entity;

in each case, excluding Saturdays, Sundays and bank holidays.

**“CESL”** means Cowen Execution Services Limited, an Affiliate with its principal place of business at 11th Floor, 1 Snowden Street, London, England, EC2A 2DQ, United Kingdom. CESL is authorised and regulated by the Financial Conduct Authority in the UK.

**“Counterparty”** has the meaning given in Section 1.

**“Cowen and Co”** means Cowen and Company, LLC, an Affiliate with its principal place of business at 599 Lexington Avenue, New York, NY 10022, United States. Cowen and Co is a member of FINRA and registered with the Securities Exchange Commission in the United States.

**“Documentation”** has the meaning given in Section 1.

**“Electronic Systems”** means communications over the internet, computer-to-computer interface, electronic mail, Bloomberg message, instant message or FIX connection, or that utilises any additional services, such as algorithmic trading solutions (whether provided by TDGF, an Affiliate Company or a Third-Party Provider), other communication by similar means, and

any other services offered from time to time by TDGF, including the Electronic Trading Services.

**“Electronic Trading Services”** means access to execution venues, proprietary algorithmic systems, automated executions systems, alternative trade systems, analytic and portfolio tools and any such other electronic trading services that TDGF or an Affiliate Company may choose to provide the Counterparty with.

**“FINRA”** means the Financial Industry Regulatory Authority in the United States.

**“Losses”** means all losses, liabilities, penalties, taxes, judgments, awards, fines, fees, costs, damages, and expenses, including without limitation, legal fees and costs of counsel whether or not the dispute or proceeding involves TDGF, an Affiliate, and/or a Third-Party Provider.

**“Module”** has the meaning given in Section 1.

**“OFAC”** means U.S. Department of the Treasury’s Office of Foreign Assets Control.

**“PEPs”** means, as per the Financial Action Task Force definitions, individuals who are or have been entrusted with prominent public functions by a foreign country, for example only, heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations important political party officials.

**“Primary Clearing Agreement”** means the agreement between CESL and Cowen and Co, or an Affiliate successor, where Cowen and Co or an Affiliate successor has agreed to provide clearing, settlement and other services to CESL and its clients.

**“Secondary Clearing Agreement”** means the agreement, which is supplemental and subject to the Primary Clearing Agreement, between TDGF, CESL and Cowen and Co, or an Affiliate successor, where Cowen and Co or an Affiliate successor has agreed to provide clearing, settlement and other services to CESL in relation to Transactions introduced to CESL by TDGF.

**“TDGF”** has the meaning given in Section 1.

**“Third-Party Provider”** means third parties owning, licensing, providing or otherwise setting rights, conditions or limitations on parts of the Electronic Systems or other products and services provided by CESL, including without limitation, data and technology.

**“Transactions”** has the meaning given in Section 1.

**“Website”** means <https://www.tdsecurities.com/ca/en/legal>

2.2 In this Module:

- a. any reference to any entity or person includes, where appropriate, a reference to its or their successors in title, permitted assignees, permitted transferees or duly authorised agents or delegates;
- b. any references to a document, contract, agreement, hyperlink, location or similar are to such as amended,

repeated, supplemented and similar from time to time;

- c. any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof, or any statutory instrument, order or regulation made thereunder or under such modification or re-enactment;
- d. references to costs, charges, remuneration or expenses include any value added tax, sales tax, tax on turnover or similar tax charged in respect thereof;
- e. any references to “include” or “including” are without limitation; and
- f. references to the singular shall include the plural and vice versa.

### 3. Entry into and Performance of Transactions

3.1 As detailed in the Documentation, TDGF may provide services related to the entry into, settlement, and similar of Transactions.

3.2 TDGF may introduce the Counterparty to CESL for the purposes of the execution of a Transaction, and CESL may further introduce the Counterparty to Cowen and Co for the settlement of such Transaction (in each case, under the terms of the Secondary Clearing Agreement). CESL and Cowen and Co may utilise third parties, including their Affiliates to execute, clear, and settle Transactions.

3.3 Cowen and Co advertises executed trade volumes from across all of its businesses via third-party systems such as Bloomberg and Autex, each of which disseminates this information to the marketplace. Cowen and Co will only advertise the symbol and size for Transactions and only after the trade(s) have been reported to an applicable self-regulatory organisation trade reporting facility, as required by Applicable Law. The Counterparty can opt-out of having its volume(s) advertised in this manner by providing notice to TDGF or Cowen and Co.

3.4 Notwithstanding any other provision of the Documentation, the Counterparty shall reimburse, compensate, indemnify and hold harmless any and all Affiliates, including without limitation Cowen and Co, from and against all Actions and for all Losses suffered by an Affiliate in connection with any service they provide to TDGF in respect of Counterparty pursuant to agreements an Affiliate has with TDGF, including in relation to any clearing agreements such Affiliate has with TDGF and any Accounts such Affiliate holds for Counterparty, and any Transaction that an Affiliate executes or clear in relation to the Counterparty, including any failure by the Counterparty to meet a margin call.

3.5 Where TDGF and any Affiliate executes Transactions through local brokers, those local brokers are paid by TDGF and its Affiliate for those executions, but they could also earn additional compensation through payment for order flow arrangements with the local exchanges in the same way that Cowen and Co may receive payment for order flow in the United States. Please be advised that TDGF is not involved in payment for order flow.

## 4. Disclosures and Related Provisions - Services to be Provided by Affiliates and Allocation of Responsibilities Between Parties

4.1 In this Section, all references to actions being taken by TDGF will include, where applicable, actions taken by or in relation to CESL acting as delegate of TDGF under the terms of this Module.

4.2 Cowen and Co will provide certain clearing, settlement and other services on behalf of TDGF in order to ensure that Counterparty's Transactions are executed and cleared in accordance with this Module and the Documentation.

4.3 This Module serves as notice, pursuant to FINRA Rule 4311(d), of the allocation of responsibilities between TDGF and Cowen and Co, as Cowen and Co is a U.S. registered broker-dealer and FINRA member. The services provided by Cowen and Co and the allocation of responsibilities between TDGF and Cowen and Co, are set out in the Secondary Clearing Agreement, which is summarised below, provided however, that this is intended to be a general disclosure, not a definitive enumeration of the allocation each and every responsibility between Cowen and Co and TDGF.

4.4 The Counterparty has appointed TDGF to act as its agent for the purpose of carrying out its directions with respect to Transactions in accordance with the Documentation. TDGF has informed Cowen and Co that Cowen and Co is authorised to open or close brokerage accounts, place and withdraw orders and take such other steps as are reasonable to carry out the Counterparty's directions in relation to Transactions. Until receipt of the Counterparty's written notice to the contrary, Cowen and Co may accept instructions for the Counterparty's Accounts from TDGF without inquiry or investigation by Cowen and Co including, without limitation, instructions with respect to the disbursement of funds and the transfer of securities. As between the Counterparty and Cowen and Co, the Counterparty shall be responsible for any action taken by Cowen and Co in the Counterparty's Accounts based upon instructions Cowen and Co received from either the Counterparty or TDGF. In the event that the Counterparty maintains a delivery versus payment account, the Counterparty agrees to comply with Applicable Law by furnishing TDGF with instructions for the delivery or receipt of securities promptly upon receipt of confirmation (or the relevant data as to execution), which shall be no later than:

- a. the close of business on the second Business Day after execution for purchases; and
- b. the close of business on the first Business Day after execution for sales.

4.4 Cowen and Co will provide the following services:

- a. Maintaining books and records, including stock records and journals, on TDGF's behalf.
- b. Accepting the Counterparty's orders for Transactions

routed to Cowen and Co by TDGF, if any, and executing the Counterparty's Transactions upon instructions from TDGF subject to Cowen and Co's right to reject orders for Transactions and/or Transactions.

- c. Cowen and Co will use commercially reasonable efforts to communicate corporate action information to Counterparty but shall not be liable for any delays in the communication of corporate action information. Cowen and Co will handle TDGF's requests for instructions relating any corporate actions involving investments or interests held by Counterparty on the books of Cowen and Co. Cowen and Co will provide written advice to TDGF of pending corporate actions at TDGF's designated locations and collect corporate action requests from TDGF and then submit them to the soliciting party in accordance with the instructions received.
- d. Cowen and Co will be responsible for receiving and delivering funds and securities on behalf of TDGF and Counterparty in connection with Transactions. Unless otherwise agreed, all monies and securities for settlement shall be delivered directly to Cowen and Co's agents in the applicable market in which the Transaction is executed. Following settlement, all monies and securities will be delivered to the Counterparty's custodian or other party designated for these purposes. If Cowen and Co agrees to accept delivery of monies or securities on an exceptional basis, Cowen and Co will not be responsible for any monies or securities delivered until such monies or securities are actually received by Cowen and Co or deposited in a bank account maintained by Cowen and Co.
- e. Determining and/or charging a commission and any other charge or expense that TDGF instructs Cowen and Co to charge in respect of each Transaction. Cowen and Co may charge additional fees and charges in accordance with instructions from TDGF.
- f. Cowen and Co will maintain custody of funds and securities on behalf of TDGF and Counterparty. Other than on an exceptional basis, all Transactions will be settled exclusively on a "delivery versus payment" or "receipt versus payment" basis. Cowen and Co will not be responsible for any monies or investments delivered by the Counterparty to TDGF until such monies or investments are actually received by Cowen and Co or deposited in bank accounts maintained by Cowen and Co.
- g. Preparing and transmitting confirmations of Transactions to Counterparty on behalf of TDGF as required to be provided under the Applicable Law and in accordance with any instructions received from TDGF.
- h. Notwithstanding the foregoing, Cowen and Co have, at all times, the right to contact the Counterparty directly regarding its information requirements. Cowen and Co has, at all times, the right exercisable in its sole discretion, or refuse to accept orders for Transactions or execute or clear Transactions for the Counterparty or to refuse to conduct business with the Counterparty, which it may exercise where,

for example and without limitation, it has not received the necessary information from the Counterparty.

4.5 TDGF will be responsible for the following:

- a. Opening, approving, servicing, and monitoring of the Counterparty's Accounts, including obtaining and verifying the Counterparty's new account information.
- b. Obtaining information from the Counterparty and monitoring the conduct of the Counterparty's Accounts to ensure that all Transactions and transfers are in compliance with Applicable Law. Such responsibility includes, without limitation:
  1. knowing all of Counterparty's persons having authority to act with respect to its Accounts and those persons holding power of attorney in relation to the Counterparty's Accounts;
  2. determining suitability and legality of all Transactions in the Counterparty's Accounts; and
  3. determining the appropriateness of the frequency of trading in the Counterparty's Accounts.
- c. Collecting customer information and completing and submitting all customer account opening documentation required by TDGF and Cowen and Co, to the extent requested by Cowen and Co.
- d. Reviewing the Counterparty's Accounts and all orders for Transactions and Transactions received or executed in that Accounts.
- e. Transmitting instructions concerning Counterparty's Accounts, orders for Transactions and Transactions to Cowen and Co.
- f. Ensuring that securities sold by the Counterparty may be transferred without restriction or that Counterparty has complied with transfer restrictions.
- g. The conduct of the Counterparty's Accounts and ensuring that all the orders for Transactions received from the Counterparty and all Transactions executed on behalf of Counterparty are in compliance with Applicable Law. Such responsibility includes, without limitation:
  1. selecting, investigating, training and supervising all personnel who open, approve or authorise Transactions in the Counterparty's Accounts;
  2. establishing written policies and procedures for the conduct of the Counterparty's Accounts and maintaining compliance and supervisory personnel adequate to implement such policies and procedures; and
  3. determining the suitability and legality of all Transactions in the Counterparty's Accounts.
- h. Responding to any inquiries or resolving any complaints the Counterparty may have concerning its Accounts. If any complaint concerns Cowen and Co's performance of its

functions, TDGF will be responsible for promptly notifying Cowen and Co in writing about such complaint.

4.6 TDGF or Cowen and Co will notify the Counterparty in the event the Secondary Clearing Agreement is terminated. Any termination of the Secondary Clearing Agreement will not affect any obligations that the Counterparty may have to TDGF or Cowen and Co. Such obligations may include the obligations to pay for securities purchased for the Counterparty's Accounts, deliver securities disposed of for the Counterparty's Accounts, or to meet a margin call on the Counterparty's Accounts. Since the Counterparty is not a party to the Secondary Clearing Agreement and has not been given any rights to enforce any of its provisions, the Counterparty will not be able to bring an action against Cowen and Co for breach of any of Cowen and Co's obligations to TDGF under the Secondary Clearing Agreement.

## 5. Anti-Money Laundering and Sanctions Attestation

The Counterparty hereby represents and warrants to Cowen and Co, CESL, and their Affiliates, which representations, warranties and covenants will be deemed repeated on each date on which any Transaction entered into with Cowen and Company or CESL remains outstanding that:

- a. The Counterparty is familiar with the requirements and applicable laws and regulations designed to combat money laundering and the financing of terrorist activities. In particular, the Counterparty and to the best of its knowledge, each of its customers is and at all times during the term hereof will be in compliance with all applicable anti-money laundering laws, rules and regulations. To the best of its knowledge, none of the Counterparty's customers, any person controlling or controlled by its customers, any person having a beneficial interest in its customers, or any person for whom it or its customers acts as agent or nominee in connection herewith is:
  1. an individual or entity, country or territory, that is named on a list issued by OFAC, or an individual or entity that resides, is organised or chartered, or has a place of business, in a country or territory subject to OFAC's various sanctions/embargo programs;
  2. a resident in, or organised or chartered under the laws of a jurisdiction that has been designated by the Secretary of the Treasury under the USA PATRIOT Act as warranting special measures and/or as being of primary money laundering concern, or a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles by a multinational or inter-governmental group such as the Financial Action Task Force on Money Laundering of which the United States is a member;
  3. a financial institution that has been designated by the Secretary of the United States Treasury as warranting

- special measures and/or as being of primary money laundering concern;
4. a "senior foreign political figure", or any "immediate family" member or "close associate" of a senior foreign political figure, in each case within the meaning of Section 5318(i) of Title 31 of the United States Code or regulations issued thereunder; or
  5. a prohibited "foreign shell bank" as defined in Section 5318(j) of Title 31 of the United States Code or regulations issued thereunder, or a U.S. financial institution that has established, maintains, administers or manages an account in the U.S. for, or on behalf of, a prohibited "foreign shell bank".
- b. The Counterparty has implemented and will maintain appropriate programs, policies, and internal controls that are reasonably designed based on industry practice to ensure that all of its customers, counterparties, partners, joint venturers, employees, and other applicable third parties with whom it does business (including, without limitation, any government, territory and other political entity) have been screened against and are not identified on any sanctions list or schedule issued or administered by the Office of Financial Sanctions implementation in the UK, the European Union Sanctions List, and/or the United Nations Security Council; or the target of any sanctions, directives, or other actions by the Office of Financial Sanctions Implementation in the UK, the European Union Sanctions List, and/or the United Nation Security Council or by any governmental authority applicable in those jurisdictions where the Counterparty or its customers or counterparties operates.
- c. The Counterparty's anti-money laundering compliance program includes the following processes:
1. A due diligence/"know your customer" process including steps to confirm the true identity of customers/investors, its beneficial owners and control person(s).
  2. Undertaking enhanced due diligence (EDD) for high risk scenarios.
  3. A process to identify PEPs prior to entering into an arrangement with such persons, and the application of enhanced due diligence procedures to customers that are PEPs, controlled by PEPs, immediate family members or close associates of PEPs, or who are otherwise considered high risk customers.
  4. Appointment of a money laundering reporting officer or equivalent.
  5. A customers' transaction monitoring process to detect suspicious activity and file suspicious activity reports or their local equivalents with money laundering regulatory authorities in the jurisdictions where it operates.
  6. A robust anti-money laundering training program
- to ensure that the program is understood and implemented by staff.
7. A process to periodically test the sufficiency of and ensure compliance with the anti-money laundering compliance program.
  8. A process to identify customers' source of funds and wealth ensuring that they are not from corruption, sanctions or other unlawful activity.
  9. Maintaining records to support anti-money laundering and counter terrorist financing compliance for a period of at least five (5) years.
- d. The Counterparty does not open/maintain anonymous accounts.
- e. The Counterparty will promptly notify Cowen and Co or CESL in writing if it becomes aware that it or any of its underlying customers become subject to sanctions at any time during the relationship.
- f. The Counterparty will promptly notify Cowen and Co or CESL if it has any suspicions relating to money laundering or other criminal activities at any time during the relationship.
- g. The Counterparty understands that each of Cowen and Co and CESL reserves the right to request and review policies, procedures and other documents relating to the Counterparty's anti-money laundering program, may request other additional information as part of their due diligence process and the Counterparty agrees to advise Cowen and Co or CESL in writing immediately of any change in facts or circumstances that would affect the representations and warranties provided in this clause.
- h. The Counterparty understands and acknowledges that upon request from any regulatory or law enforcement agency, the Counterparty will provide customer information files on the beneficial owners of funds that have been deposited or transacted through TDGF or its Affiliates for the sole purpose of identifying and reporting to the relevant government both terrorism and money laundering activities.
- i. The Counterparty understands and acknowledges that Cowen and Co, CESL and their Affiliates rely on the representations, warranties and undertakings provided by the Counterparty in this clause, in providing services to the Counterparty.
1. Applicable laws and regulations require TDGF and its Affiliates to obtain, verify, and record information that identifies each person who opens an account. Accordingly, when the Counterparty opens an account, TDGF and/or its Affiliates will ask for some basic information that will allow them to identify the Counterparty. If the Counterparty is opening an account on behalf of a legal entity, documents relating to its formation, existence and authority may also be requested.

2. All information or documentation provided by the Counterparty pursuant to this clause is true and accurate.
3. Any changes to the information provided under or in relation to this clause will be communicated in writing to TDGF.
4. The Counterparty is authorised to provide this information on behalf of itself and any entity on whose behalf it acts, and it affirms that it is authorised to make the representations made herein.