ISDA MARCH 2013 DF SUPPLEMENT

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SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES
IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA MARCH 2013 DF PROTOCOL OR
THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND
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THE PROTOCOL PRIOR TO ADHERING TO THE PROTOCOL. ISDA ASSUMES NO
RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER
DOCUMENTATION MAY BE PUT.

1 This March 2013 DF Supplement is intended to address requirements of the following final rules:

(1) CFTC, Final Rule, Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading
Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 Fed. Reg. 55904
(Sept. 11, 2012);

(2) CFTC, Final Rule, End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42559 (July 19,
2012); and

(3) CFTC, Final Rule, Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74284
# Table of Contents

**MARCH 2013 DF SCHEDULE 1**  
**DEFINED TERMS** ..............................................................................................................2

**MARCH 2013 DF SCHEDULE 2**  
**GENERAL TERMS** ...........................................................................................................9  
Part I. General Representations and Agreements .................................................................9  
Part II. Confirmations ..........................................................................................................10  
Part III. Clearing ..................................................................................................................10  
Part IV. End-User Exception ...............................................................................................11  
Part V. Orderly Liquidation Authority .............................................................................13

**MARCH 2013 DF SCHEDULE 3**  
**CALCULATION OF RISK VALUATIONS AND DISPUTE RESOLUTION** ..............14  
Part I. Calculation of Risk Valuations for Purposes of Section 4s(j) of the CEA ..........14  
Part II. Dispute Resolution for Risk Valuations for Purposes of Section 4s(j) of the CEA ..............................................................................................................15  
Part III. Relationship to Other Valuations ......................................................................16

**MARCH 2013 DF SCHEDULE 4**  
**PORTFOLIO RECONCILIATION** ...................................................................................17  
Part I. Required Reconciliation Dates ..............................................................................17  
Part II. One-way Delivery of Portfolio Data ....................................................................17  
Part III. Exchange of Portfolio Data ................................................................................18  
Part IV. Valuation Differences Below the Discrepancy Threshold Amount .................19  
Part V. Reconciliation Against SDR Data .......................................................................19  
Part VI. Other Portfolio Reconciliation Procedures .......................................................20
Any of the following schedules of this ISDA March 2013 DF Supplement (as published by the International Swaps and Derivatives Association, Inc. (“ISDA”)) (this “March 2013 DF Supplement”) may be incorporated into an agreement (such agreement, a “Covered Agreement”) by written agreement of the relevant parties indicating which schedules of this March 2013 DF Supplement (each such schedule, a “March 2013 DF Schedule”) shall be incorporated into such Covered Agreement. Each March 2013 DF Schedule so incorporated in a Covered Agreement will be applicable to such Covered Agreement unless otherwise provided in such Covered Agreement. The headings and footnotes used in this March 2013 DF Supplement are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this March 2013 DF Supplement.

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The “written agreement of the relevant parties” may include any written agreement by which the parties agree to incorporate the provisions of this March 2013 DF Supplement. Such an agreement will be established if both parties have adhered to the March 2013 DF Protocol and exchanged Questionnaires in accordance with the terms of the ISDA March 2013 DF Protocol Agreement. Parties may also incorporate such provisions through any other bilateral agreement. In either case, the relevant provisions of this Supplement would be incorporated into “Covered Agreements.”
March 2013 DF Schedule 1
Defined Terms

The following terms shall have the following meanings when used in this March 2013 DF Supplement. In the event of any inconsistency between a definition provided in this March 2013 DF Supplement and a definition provided in a Covered Agreement, the definitions provided in this March 2013 DF Supplement shall govern for purposes of interpreting terms provided in any March 2013 DF Schedule that is incorporated by reference into such Covered Agreement and the definitions provided in the Covered Agreement shall govern for purposes of interpreting other terms in the Covered Agreement unless such Covered Agreement specifically provides otherwise.

“Active Fund” means a “private fund,” as defined in Section 202(a) of the Investment Advisers Act of 1940, that (i) is not a Third-Party Subaccount and (ii) has executed 200 or more swaps per month on average over the 12 months preceding November 1, 2012. For purposes of clause (ii) of this definition, “swaps” shall mean swaps as defined by the CFTC for purposes of implementation schedules under parts 23 and 50 of CFTC regulations and shall exclude, without limitation, foreign exchange swaps and foreign exchange forwards exempted from regulation as “swaps” by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the CEA.3

“Agreement,” as used in a provision of this March 2013 DF Supplement that is incorporated into a Covered Agreement or any defined term used in such provision, means such Covered Agreement, as amended or supplemented from time to time.4

“Annually” means once each calendar year.

“Applicable Portfolio Reconciliation Compliance Date” means the date on which CFTC Swap Entity compliance is required with respect to Counterparty under CFTC Regulation 23.502 and applicable law regarding the scope of application of CFTC Regulation 23.502, including applicable CFTC interpretations and other CFTC Regulations. For the avoidance of doubt, if both Parties are CFTC Swap Entities, the Applicable Portfolio Reconciliation Compliance Date shall occur on the first date on which compliance is required by either CFTC Swap Entity with respect to the other Party.5

“Applicable STRD Compliance Date” means the date on which CFTC Swap Entity compliance is required with respect to Counterparty under CFTC Regulation 23.504 and applicable law

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3 See the definitions of “Category 1 Entity” and “Category 2 Entity.”
4 Because “Covered Agreement” means any agreement that the parties may amend or supplement with the terms provided in this DF Supplement, the term “Agreement” is used to identify the specific agreement that is supplemented when these terms are incorporated into that agreement. An “Agreement” can be a master agreement governing the terms and conditions of swaps or any other agreement between the relevant parties.
5 See Section 4.1. Note that this date is defined in respect of the date on which compliance is required under applicable law with respect to swaps that are between the two specific parties, rather than the general compliance date for CFTC Regulation 23.502. This is to carve-out situations where the general compliance date for the regulation has occurred but it does not apply to the parties, e.g. for jurisdictional reasons.
regarding the scope of application of CFTC Regulation 23.504, including applicable CFTC interpretations and other CFTC Regulations. For the avoidance of doubt, if both Parties are CFTC Swap Entities, the Applicable STRD Compliance Date shall occur on the first date on which compliance is required by either CFTC Swap Entity in respect of the other Party.6

“Category 1 Entity” means (i) a Swap Dealer, (ii) a Major Swap Participant, (iii) a Security-Based Swap Dealer, (iv) a Major Security-Based Swap Participant, or (v) an Active Fund.7

“Category 2 Entity” means (i) a commodity pool as defined in Section 1a(10) of the CEA and CFTC Regulations thereunder, (ii) a “private fund,” as defined in Section 202(a) of the Investment Advisers Act of 1940, other than an Active Fund, or (iii) a person predominantly engaged in activities that are in the business of banking, or in activities that are “financial in nature,” as defined in Section 4(k) of the Bank Holding Company Act of 1956, provided that, in each case, the entity is not a Third-Party Subaccount.8

“CEA” means the Commodity Exchange Act, as amended.

“CFTC” means the U.S. Commodity Futures Trading Commission.

“CFTC Regulations” means the rules, regulations, orders and interpretations published or issued by the CFTC, as amended.

“CFTC Swap Entity” means a Party that (i) the Parties have agreed in writing will be a “CFTC Swap Entity” for purposes of the March 2013 DF Supplement, regardless of whether that Party is registered (fully or provisionally) as a “swap dealer” or “major swap participant” with the CFTC at the time of such agreement, or (ii) is or becomes registered (fully or provisionally) as a “swap dealer” or “major swap participant” with the CFTC and has notified the other Party of such registration in accordance with the Notice Procedures.9

See Sections 2.12 and 3.1. Note that this date is defined in respect of the date on which compliance is required under applicable law with respect to swaps that are between the two specific parties, rather than the general compliance date for CFTC Regulation 23.504. This is to carve-out situations where the general compliance date for the regulation has occurred but it does not apply to the parties, e.g. for jurisdictional reasons.

See Sections 2.6-2.8 for the use of the terms “Category 1 Entity” and “Category 2 Entity.”

See Sections 2.6-2.8 for the use of the terms “Category 1 Entity” and “Category 2 Entity.”

The function of this term is to identify the party or parties who will receive and provide representations, warranties and covenants appropriate to a swap dealer or major swap participant. This DF Supplement provides parties with flexibility in incorporating its provisions into their agreements by allowing them to choose whether one or both parties will be a “CFTC Swap Entity” without such party having to represent that it is a swap dealer or a major swap participant. Thus, a party that anticipates being a swap dealer or major swap participant can enter into this agreement as a CFTC Swap Entity in anticipation of registration. Additionally, a party can participate as a non-CFTC Swap Entity and then become a CFTC Swap Entity at a later time by registering as a swap dealer or major swap participant and notifying its counterparty of its registration as such. The relevant provisions of this DF Supplement do not take effect until two conditions have been satisfied: (1) the relevant compliance date has occurred under applicable law and (2) at least one party has become registered as a swap dealer or major swap participant. See Section 5(c) of the Protocol Agreement.
“Close-Out Provision” means (i) in respect of a Swap for which the Parties have agreed in writing (whether as part of the Agreement or otherwise) to a process for determining the payments to be made upon early termination of such Swap, the provisions specifying such process, and (ii) in respect of a Swap for which the Parties have not agreed in writing (whether as part of the Agreement or otherwise) to a process for determining the payments to be made upon early termination of such Swap, Section 6(e)(ii)(1) of the 2002 ISDA Master Agreement as if such Swap were governed thereby.10

“Commodity Trade Option” means a commodity option entered into pursuant to CFTC Regulation 32.3(a).11

“Counterparty” or “CP” means a Party to the Agreement that is a counterparty to a CFTC Swap Entity. For the avoidance of doubt, if two CFTC Swap Entities are party to the Agreement, each CFTC Swap Entity is also a Counterparty or CP for purposes of this March 2013 DF Supplement.


“Credit Support Agreement” means a written agreement, if any, between the Parties (whether part of the Agreement or otherwise) that governs the posting or transferring of collateral or other credit support related to one or more Swaps.13

“Credit Support Call” means a request or demand for the posting or transferring of collateral or other credit support related to one or more Swaps made pursuant to the terms of a Credit Support Agreement.

“CSA Valuation” means, in respect of a Swap and a Risk Valuation Date and subject to the terms of Part II of Schedule 3 of this March 2013 DF Supplement in the case of a dispute, the value of such Swap determined in accordance with the CSA Valuation Process, if any, expressed as a positive number if such Swap has positive value for the Risk Valuation Agent, and as a negative number if such Swap has negative value for the Risk Valuation Agent.14

“CSA Valuation Process” means the process, if any, agreed by the Parties in writing (whether as part of the Agreement or otherwise) for determining the value of one or more transactions that

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10 See the definitions of “Risk Exposure” and “Risk Valuation.”
11 For purposes of this DF Supplement, Commodity Trade Options are carved out of the definition of “Swap.” See CFTC Regulation 32.3, which exempts Commodity Trade Options from various CFTC Regulations, including the March 2012 DF Supplement Rules.
12 See Section 2.13.
13 See definition of “Risk Valuation Agent” and the annotations thereto. While “Credit Support Agreement” includes an ISDA Credit Support Annex (“CSA”), the definition is not limited to CSAs and would include other agreements that address collateral or other credit support.
14 See definition of “Risk Valuation” and DF Schedule 3.
may include a Swap or portfolio of Swaps for the purpose of posting or transferring collateral or other credit support. For the avoidance of doubt, such writing may be in the form of an ISDA Credit Support Annex or any other written agreement.15

“Daily” means once each Joint Business Day.

“Data Delivery Date” means a date determined pursuant to Section 4.2 or 4.3 of this March 2013 DF Supplement, as applicable, that is a Joint Business Day.

“Data Reconciliation” means a comparison of Portfolio Data and, to the extent applicable, SDR Data received or obtained by a Party against such Party’s own books and records of Swaps between the Parties and, in respect of any Discrepancy, a process for identifying and resolving such Discrepancy. A Data Reconciliation may include (but shall not be required to include or be limited to) a systematic, line-by-line, field-by-field matching process performed using technological means such as a third-party portfolio reconciliation service or a technology engine.16

“DCO” means a “derivatives clearing organization,” as such term is defined in Section 1a(15) of the CEA and CFTC Regulations.

“Discrepancy” means, (i) in respect of the Portfolio Data received with respect to a Swap and any SDR Data obtained for such Swap, a difference between a Material Term in such Portfolio Data or SDR Data and a party’s own records of the corresponding Material Term and (ii) in respect of the Portfolio Data received with respect to a Swap, a difference between a Valuation reported in such Portfolio Data and such party’s own Valuation of such Swap (calculated as of the same Joint Business Day in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result) that is greater than the Discrepancy Threshold Amount.17

“Discrepancy Threshold Amount” means, in respect of a Swap, an amount equal to ten percent (10%) of the higher of the two absolute values of the respective Valuations assigned to such Swap by the Parties.18

“Dodd-Frank Act” means the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended.

“FDIA” means the Federal Deposit Insurance Act of 1950, as amended.

15 See definitions of “CSA Valuation” and “Risk Valuation” and the annotations thereto.
16 See March 2013 DF Schedule 4.
17 See March 2013 DF Schedule 4. This term, along with “Discrepancy Threshold Amount” and “Material Terms,” establishes the scope of the requirement under Schedule 4 to consult in order to reconcile differences in portfolio data.
18 See CFTC Regulation 23.502(a)(5) and (b)(4) and discussion at 77 Fed. Reg. 55904, 55930-31 (Sept. 11, 2012). Under Regulation 23.502, a difference in the parties’ valuations of a swap that is less than 10% need not be deemed a discrepancy that must be reconciled as part of a portfolio reconciliation. This term is used to establish that such valuation differences are not treated as “Discrepancies” that must be reconciled under DF Schedule 4.
“FDIC” means the Federal Deposit Insurance Corporation.


“Initial Mandatory Clearing Determination” means the CFTC determination initially published in the Federal Register on December 12, 2012, pursuant to rulemaking under Section 2(h) of the CEA providing that certain classes of interest rate swaps and credit default swaps shall be subject to mandatory submission for clearing to a DCO eligible to clear such swaps under CFTC Regulation 39.5, as amended. 20

“Insured Depository Institution” means an “insured depository institution,” as defined in 12 U.S.C. § 1813. 21

“Joint Business Day” means a day that is a Local Business Day in respect of each Party.

“Local Business Day” means, as used in a provision of this March 2013 DF Supplement, with respect to a Party, a day on which commercial banks are open for general business (including for dealings in foreign exchange and foreign currency deposits) in the city or cities specified by such Party in the March 2013 DF Supplement Information. 22 If a Party does not specify a city in the March 2013 DF Supplement Information, such Party will be deemed to have specified the city specified by the other Party in the March 2013 DF Supplement Information. If neither Party specifies a city in the March 2013 DF Supplement Information, both Parties will be deemed to have specified the City of New York.

“Major Security-Based Swap Participant” means a “major security-based swap participant,” as defined in Section 3(a)(67) of the SEA and Rule 3a67-1 thereunder.

“Major Swap Participant” means a “major swap participant,” as defined in Section 1a(33) of the CEA and CFTC Regulation 1.3(hhh) thereunder.

“March 2013 DF Schedule” shall have the meaning given to such term in the introductory paragraph of this March 2013 DF Supplement.

“March 2013 DF Supplement Information” means any information or representation agreed in writing by the Parties to be March 2013 DF Supplement Information, as amended or

19 See Questionnaire Part II, Q 4, which requires a party to specify whether it is a Financial Company, and the annotations thereto. Section 2.1 of the March 2013 DF Schedule 2 contains a representation, which is deemed repeated as of each Transaction Event, that such specification is true, accurate and complete in every material respect.


21 See Questionnaire Part II, Q 5, which requires a party to specify whether it is an Insured Depository Institution, and the annotations thereto. Section 2.1 of the March 2013 DF Schedule 2 contains a representation, which is deemed repeated as of each Transaction Event, that such specification is true, accurate and complete in every material respect.

22 See Questionnaire Part III, Q 1 and Protocol Agreement Section 7(c)(iii).
supplemented from time to time in accordance with Section 2.3 of this March 2013 DF Supplement or in another manner agreed by the Parties.  


“Material Terms” has the meaning ascribed by the CFTC to such term for purposes of CFTC Regulation 23.502.  

“Monthly” means once each calendar month.

“Notice Procedures” means (i) the procedures specified in the Agreement regarding delivery of notices or information to a Party, (ii) such other procedures as may be agreed in writing between the Parties from time to time, and (iii) with respect to a Party and a particular category of information or notice, if the other Party has specified other permissible procedures in writing, such procedures.  

“Party” means, in respect of a Covered Agreement, a party thereto.

“Portfolio Data” means, in respect of a Party providing or required to provide such data, information (which, for the avoidance of doubt, is not required to include calculations or methodologies) relating to the terms of all outstanding Swaps between the Parties in a form and standard that is capable of being reconciled, with a scope and level of detail that is reasonably acceptable to each Party and that describes and includes, without limitation, current Valuations attributed by that Party to each such Swap. The information comprising the Portfolio Data to be provided by a Party on a Data Delivery Date shall be prepared (i) as at the time or times that such Party computes its end of day valuations for Swaps (as specified by that Party for this purpose in

23 “March 2013 DF Supplement Information” includes information and representations provided in a counterparty’s Questionnaire or equivalent bilateral documentation, as well as updates of that information and other information provided to the dealer counterparty so that it can satisfy regulatory requirements under the March 2013 DF Supplement Rules. See Protocol Agreement Section 7(c)(iii). Section 2.1 of the March 2013 DF Schedule 2 contains a representation, which is deemed repeated as of each Transaction Event, that March 2013 DF Supplement Information is true, accurate and complete in every material respect.

24 Under CFTC Regulation 23.502, portfolio reconciliations are intended to resolve discrepancies in “material terms” as well as valuations. CFTC Regulation 23.500 defines “material terms” as terms required to be reported to an SDR under Part 45 of the CFTC regulations. However, the term has been defined here more flexibly to have the meaning provided by the CFTC for purposes of Regulation 23.502 in order to accommodate the possibility of further guidance from the CFTC in light of evolving practice.

25 Parties agree to additional Notice Procedures in the Protocol Agreement. See Protocol Agreement Section 7(c)(iv)-(vii), which provides, among other things, that parties may specify email addresses for various notices in their Questionnaires.
writing) on the immediately preceding Joint Business Day, as applicable, and (ii) in the case of Valuations, in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.  

“Quarterly” means once each calendar quarter.

“Recalculation Date” means the Risk Valuation Date on which a Risk Valuation that gives rise to the relevant dispute is calculated; provided, however, that if one or more subsequent Risk Valuation Dates occurs prior to the resolution of such dispute, then the “Recalculation Date” in respect of such dispute means the last such Risk Valuation Date.

“Reference Market-makers” means four leading dealers in the relevant market selected by the Risk Valuation Agent in good faith (i) from among dealers of the highest credit standing which satisfy all the criteria that the Risk Valuation Agent applies generally at the time in deciding whether to offer or to make an extension of credit and (ii) to the extent practicable, from among such dealers having an office in the same city.

“Risk Exposure” means, in respect of a Swap and a Risk Valuation Date and subject to the terms of Part II of Schedule 3 of this March 2013 DF Supplement in the case of a dispute, the amount, if any, that would be payable to the Risk Valuation Agent by CP (expressed as a positive number) or by the Risk Valuation Agent to CP (expressed as a negative number) pursuant to the Close-Out Provision as of the Risk Valuation Time as if such Swap (and not any other Swap) was being terminated as of such Risk Valuation Date; provided that (i) if the Agreement provides for different calculations depending on whether one of the Parties is an affected or defaulting Party, such calculation will be determined using estimates at mid-market of the amounts that would be paid for a replacement transaction; and (ii) such calculation will not include the amount of any legal fees and out-of-pocket expenses.

“Risk Valuation” means, in respect of a Swap and a Risk Valuation Date for which (i) there is a CSA Valuation determined by the Risk Valuation Agent or its agent, such CSA Valuation, and (ii) there is no CSA Valuation determined by the Risk Valuation Agent or its agent, the Risk Exposure determined by the Risk Valuation Agent or its agent for such Swap and Risk Valuation Date, unless, pursuant to Section 3.1 of this March 2013 DF Supplement, the Risk Valuation Agent has elected to use the CSA Valuation provided by CP for such Swap and Risk Valuation Date, in which case, such CSA Valuation provided by CP.

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26 See supra note 24 and March 2013 DF Schedule 4. Portfolio Data is defined to include Valuations, so that valuations for each Swap (including those entered into prior to July 1, 2013) are always delivered under Schedule 4. However, the definition does not specify particular swap terms data that must be included in a reconciliation, and the scope and details of terms data to be reconciled is left to the further agreement of the parties.

27 See Section 3.7(b).

28 See Section 3.7(b).

29 See the definition of “Risk Valuation” and the annotations thereto.

30 Risk Valuation is the core definition for Schedule 3 of this March 2013 DF Supplement, which provides agreements for the daily production of such valuations. Schedule 3 is intended to address the provisions of CFTC Regulation 23.504(b)(4)(i) and (ii), which require swap dealers and major swap participants to have
“Risk Valuation Agent” means, in respect of any Risk Valuation Date and any Swap: (i) if only one Party is a CFTC Swap Entity, such Party, (ii) if both Parties are CFTC Swap Entities and such Parties have not entered into a Credit Support Agreement relating to such Swap, the Party whom both Parties have agreed in writing will be the Risk Valuation Agent for such date (unless such date is only a Local Business Day for one of the Parties, in which case such Party shall be the Risk Valuation Agent for such date), and (iii) if both Parties are CFTC Swap Entities and such Parties have entered into one or more Credit Support Agreements relating to such Swap, the Party entitled to make a Credit Support Call under such Credit Support Agreements on such date; provided that, (a) on any such date on which both CFTC Swap Entities are entitled to make such a Credit Support Call, the Risk Valuation Agent shall be the Party entitled to make a Credit Support Call under such Credit Support Agreement on the most recent Risk Valuation Date on which only one CFTC Swap Entity was entitled to make such a call, and (b) on any such date on which neither CFTC Swap Entity is entitled to make such a Credit Support Call, if such date is only a Local Business Day for one of the Parties, such Party shall be the Risk Valuation Agent and otherwise the Risk Valuation Agent shall be the Party entitled to make a Credit Support Call under such Credit Support Agreement on the most recent preceding Risk Valuation Date on which only one CFTC Swap Entity was entitled to make such a call. 31

written documentation with certain categories of counterparties on a process for determining the value of each swap for purposes of complying with daily internal risk management requirements of swap dealers and major swap participants under Section 4s(j) of the CEA. The compliance date for such requirements is July 1, 2013. These CFTC Regulations also require that the valuations produced through this agreed process be used for purposes of regulatory margin requirements under section 4s(e) of the CEA. However, such margin requirements have not been promulgated by the CFTC or prudential regulators at the time of this March 2013 DF Supplement. Accordingly, Schedule 3 addresses internal risk management valuations only. Indeed, Section 3.10 includes language intended to make clear that Risk Valuations produced under Schedule 3 do not affect any other agreement of the parties regarding the calculation of valuations or any dispute regarding valuations for any other purposes.

In order to avoid unnecessary production of additional valuations, Risk Valuation is defined to conform to existing valuations whenever possible in light of regulatory requirements. Where the parties have previously agreed upon a process for a CFTC Swap Entity to determine the value of a swap for purposes of transferring collateral (referred to in this DF Supplement as the “CSA Valuation”). This definition provides that the “Risk Valuation” is the CSA Valuation on any day on which such a CSA Valuation is produced. Where the parties have not agreed to such a process, the Risk Valuation is generally the CFTC Swap Entity’s good faith estimate of the amount that would be produced according to the close-out valuation provisions to which the parties have agreed (referred to in this DF Supplement as “Risk Exposure”) or if they have not agreed to such close-out valuation provisions, according to Section 6(e)(ii)(1) of the 2002 ISDA Master Agreement (see the definition of “Close-Out Provision”). Schedule 3 provides a further agreement for efficiency: on any day on which the counterparty produces a CSA Valuation, the CFTC Swap Entity may accept such CSA Valuation as the Risk Valuation if it determines in good faith that it may do so in compliance with CFTC Regulation 23.504(b). 31

“Risk Valuation Agent” is defined to provide that (i) when only one party is a CFTC Swap Entity, that party is always the Risk Valuation Agent (since “Risk Valuations” are produced exclusively for purposes of meeting the internal risk management requirements of a swap dealer or major swap participant), and (ii) when both parties are CFTC Swap Entities, the party that is entitled to make a Credit Support Call on any given day is the Risk Valuation Agent on such day (to avoid unnecessary duplication). In this latter situation, this definition also provides rules to determine who will be the Risk Valuation Agent on any day when neither CFTC Swap Entity is entitled to make a Credit Support Call or both CFTC Swap Entities are entitled to make a Credit Support Call.
“Risk Valuation Date” means, with respect to a Swap, each Local Business Day for either Party that is a CFTC Swap Entity.  

“Risk Valuation Time” means, with respect to a Swap and any day, the close of business on the prior Local Business Day in the locality specified by the Risk Valuation Agent in its notice of the Risk Valuation to CP.

“SDR” means a “swap data repository,” as defined in Section 1a(48) of the CEA and the CFTC Regulations.

“SDR Data” means Material Terms data that is available from an SDR.


“SEC” means the U.S. Securities and Exchange Commission.

“Security-Based Swap Dealer” means a “security-based swap dealer,” as defined in Section 3(a)(71) of the SEA and Rule 3a71-1 thereunder.

“Swap” means a “swap” as defined in Section 1a(47) of the CEA and regulations thereunder that is, or is to be, governed by the Agreement; provided that a Commodity Trade Option is not a Swap for purposes of this March 2013 DF Supplement. The term “Swap” also includes any foreign exchange swaps and foreign exchange forwards that are, or are to be, governed by the Agreement and that are exempted from regulation as “swaps” by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the CEA. For the avoidance of doubt, the term “Swap” does not include a swap that has been cleared by a DCO.

“Swap Dealer” means a “swap dealer,” as defined in Section 1a(49) of the CEA and CFTC Regulation 1.3(ggg) thereunder.

“Third-Party Subaccount” means an account that is managed by an investment manager who is (1) independent of and unaffiliated with the account’s beneficial owner or sponsor and (2) responsible for the documentation necessary for the account’s beneficial owner to clear swaps.

“Transaction Event” means any event that results in a new Swap between Parties or in a change to the terms of a Swap between Parties, including execution, termination, assignment, novation, 

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32 Parties specify Local Business Days in their respective Questionnaires. This definition is used to provide that a Risk Valuation is produced on any day that is a Local Business Day for a CFTC Swap Entity.

33 See the definition of “Risk Exposure.”

34 See March 2013 DF Schedule 4, Part V.

35 While the Secretary of the U.S. Treasury Department has the authority to exempt certain types of FX transactions from the definition of “swap” under CEA (which authority has been exercised, see 77 Fed. Reg. 69694 (Nov. 20, 2012)), CFTC staff has informally indicated that the rules addressed by the ISDA March 2013 DF Supplement continue to apply to Treasury-exempted FX transactions. CEA Section 1a(47)(E); 77 Fed. Reg. 69694, 69699 & n. 51 (Nov. 20, 2012).

36 See definitions of “Active Fund” and “Category 2 Entity.”
exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a Swap.\textsuperscript{37}

“Valuation” has the meaning ascribed to such term in CFTC Regulation 23.500.

“Weekly” means once each calendar week.

\textsuperscript{37} This term is used to establish the timing of certain representations. It is also used to establish the scope of Schedule 3, which applies to new swaps and other swaps for which a Transaction Event occurs after the compliance date for CFTC Regulation 23.504. See Sections 2.1 and 3.1.
March 2013 DF Schedule 2
General Terms

This March 2013 DF Schedule 2 may be incorporated into an agreement between a CFTC Swap Entity and any other Party, including another CFTC Swap Entity.\(^{38}\)

If the Parties to an agreement have specified that this March 2013 DF Schedule 2 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this March 2013 DF Schedule 2 shall be deemed to be a part of such agreement to the same extent as if this March 2013 DF Schedule 2 were restated therein in its entirety.

Part I. General Representations and Agreements

2.1. Each Party represents to the other Party (which representation is deemed repeated as of the time of each Transaction Event) that, as of the date of each Transaction Event, (i) all March 2013 DF Supplement Information (excluding representations) furnished by or on behalf of it to the other Party is true, accurate and complete in every material respect, and (ii) no representation provided in the March 2013 DF Supplement Information or in this March 2013 DF Supplement is incorrect or misleading in any material respect. The March 2013 DF Supplement Information is incorporated herein by reference.\(^{39}\)

2.2. Each Party acknowledges that the other Party has agreed to incorporate one or more March 2013 DF Schedules into the Agreement, and, if the Parties enter into any Swaps on or after the date of such incorporation, the other Party will do so in reliance upon the March 2013 DF Supplement Information and the representations provided by such Party or its agent in the March 2013 DF Supplement Information and this March 2013 DF Supplement. Notwithstanding the foregoing, each Party agrees that an event of default, termination event, or other similar event that gives a Party grounds to cancel or otherwise terminate a Swap shall not occur under the Agreement or any other contract between the Parties solely on the basis of (i) a representation provided solely in the March 2013 DF Supplement Information or in this March 2013 DF Supplement being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in this March 2013 DF Supplement; provided, however, that nothing in this Section 2.2 shall prejudice any other right or remedy of a Party at law or under the Agreement or any other contract in respect of any

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\(^{38}\) If the parties have adhered to the Protocol and exchanged Questionnaires in accordance with its terms, this Schedule 2 will be automatically incorporated into the agreements between the parties that are covered by the March 2013 DF Protocol. The use of the word “may” here recognizes the fact that parties can also bilaterally agree to incorporate this Schedule 2 into an agreement outside of the Protocol.

\(^{39}\) CFTC Regulations 23.402(d) and 23.504(b)(5). This provision is identical to Section 2.1 of the ISDA August 2012 DF Supplement, except that it does not refer to “financial information.” The purpose of this Section 2.1 is to provide representations from the counterparty in support of the information and representations it has provided. See also Section 2.3 below regarding the updating of such representations and information.
misrepresentation or breach hereunder or thereunder. For the avoidance of doubt, this Section 2.2 shall not alter a Party’s rights or remedies, if any, applicable to a breach of any representation, warranty, covenant, or agreement that is not provided or set forth solely in March 2013 DF Supplement Information or in this March 2013 DF Supplement, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above. 40

2.3. Each Party agrees to promptly notify the other Party in writing in accordance with the Notice Procedures (i) of any material change to March 2013 DF Supplement Information (other than representations) previously provided by such Party or on behalf of such Party and (ii) if any representations made in March 2013 DF Supplement Information or this March 2013 DF Supplement by or on behalf of such Party become incorrect or misleading in any material respect. For any representation made in one or more of the March 2013 DF Schedules that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the notifying Party shall timely amend such representation by giving notice of such amendment to the other Party in accordance with the Notice Procedures. 41

Part II. Confirmations

2.4. Unless the Parties have agreed otherwise in writing, each Party agrees that a confirmation of a Swap or another type of transaction under this Agreement may be created by delivery of written terms by each party; provided that (i) the terms delivered by each party match the terms delivered by the other party and (ii) the terms are either delivered by each party to the other party in a manner that permits each Party to review such terms or delivered by each party to a third-party agent or service provider that confirms the matching of such terms to the Parties (in each case by telex, electronic messaging system, email or otherwise). In each case, such a confirmation will be sufficient for all purposes to evidence a binding supplement to this Agreement. The foregoing shall not limit other agreed methods of creating binding confirmations and shall not be construed as an

40 This provision is, subject to conforming changes, the same as Section 2.2 of the ISDA August 2012 DF Supplement. Parties may use the March 2013 DF Protocol as an efficient means of incorporating the Supplement into existing agreements. Because the March 2013 DF Protocol does not afford parties the opportunity to modify the terms of the Supplement, Section 2.2 provides that an event of default or similar event will not occur due to a misrepresentation or breach arising solely from the provisions of the Supplement incorporated into their agreement and will not be a cross-default under other agreements between the parties. On the other hand, if (for example) a CP provides a representation in both the Questionnaire and in an underlying ISDA agreement, Section 2.2 does not alter any remedies the dealer counterparty may have under that ISDA agreement as a result of the inaccuracy of the representation in the ISDA agreement, even though a breach of that representation would also likely be a breach of a representation made in the Questionnaire and incorporated into that same ISDA agreement.

41 CFTC Regulations 23.402(d) and 23.504(b)(5). This provision is substantially similar to Section 2.3 of the ISDA August 2012 DF Supplement. This Section works in conjunction with Section 2.1 (which updates CP representations as of each trade date).
agreement to use a method provided in this paragraph to confirm any Transaction.42

Part III. Clearing

2.5. Each Party is hereby notified that, upon acceptance of a Swap by a DCO:

a. the original Swap between CFTC Swap Entity and CP is extinguished;

b. the original Swap between CFTC Swap Entity and CP is replaced by equal and opposite Swaps with the DCO; and

c. all terms of the Swap shall conform to the product specifications of the cleared Swap established under the DCO’s rules.43

2.6. Subject to Section 2.8, in the event that (i) the Parties have entered into a Swap that is of a type that the CFTC has included within the Initial Mandatory Clearing Determination and (ii) the execution of such Swap has occurred during the period where clearing is mandatory for such type of Swap between two Category 1 Entities, but not for such type of Swap between a Category 1 Entity and a counterparty that is not a Category 1 Entity, then, upon execution of such Swap, CP shall be deemed to have represented that CP is not a Category 1 Entity.44

2.7. Subject to Section 2.8, in the event that (i) the Parties have entered into a Swap that is of a type that the CFTC has included within the Initial Mandatory Clearing Determination and (ii) the execution of such Swap has occurred during a period where clearing is mandatory for such type of Swap between two Category 1 Entities, or between a Category 1 Entity and a Category 2 Entity, but not between a Category 1 Entity and a counterparty that is neither a Category 1 Entity nor a Category 2 Entity, then, upon execution of such Swap, CP shall be deemed to have represented that CP is not a Category 1 Entity or a Category 2 Entity. 45

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42 CFTC Regulation 23.501. This provision is intended to clarify that the exchange of matching terms through an electronic messaging platform or otherwise may serve as one means for effecting confirmations within the time periods required under CFTC Regulation 23.501. The requirements of CFTC Regulation 23.501 are not otherwise addressed in this March 2013 DF Supplement.

43 CFTC Regulation 23.504(b)(6). The notifications in Section 2.5 are required under CFTC Regulation 23.504(b)(6).

44 Sections 2.6 through 2.8 are intended to address the clearing implementation schedule of CFTC Regulation 50.25 (and related CFTC interpretations and regulations). These sections provide that where a party enters into a swap subject to mandatory clearing on an uncleared basis, it will be deemed to make representations that it is permitted to do so either because clearing is not yet mandatory for such counterparty (based on the implementation phase at the time of the transaction) or because an exemption or exclusion is available. Note that these representations are limited to swaps that were made subject to mandatory clearing under the CFTC’s initial mandatory clearing determination in December 2012. See 77 Fed. Reg. 74284.

45 Id.
2.8. CP will not be deemed to have made a representation pursuant to Sections 2.6 or 2.7 hereof as to its status as a Category 1 Entity or a Category 2 Entity, in connection with the execution of a Swap, if (i) it is a CFTC Swap Entity, (ii) prior to execution of such Swap (a) CP has notified CFTC Swap Entity in writing in accordance with the Notice Procedures that it is a Category 1 Entity or (in the case of Section 2.7 only) a Category 2 Entity or (b) CP has instructed CFTC Swap Entity to clear such Swap with a DCO, or (iii) at the time of such execution, the Swap would not be subject to mandatory clearing pursuant to an exemption provided under Section 2(h) of the CEA and CFTC Regulation 50.50 or in accordance with written CFTC guidance (by rulemaking or otherwise) that applies notwithstanding that CP may be a Category 1 Entity or (in the case of Section 2.7 only) a Category 2 Entity.

Part IV. End-User Exception

2.9. If CP elects not to clear any Swap that is subject to a mandatory clearing determination under Section 2(h) of the CEA pursuant to an exception from mandatory clearing provided under Section 2(h)(7) of the CEA and CFTC Regulation 50.50, CP shall notify CFTC Swap Entity of such election in writing prior to execution of such Swap, which notice may be provided as a standing notice for multiple swaps (in March 2013 DF Supplement Information or otherwise) or on a trade-by-trade basis. By providing such notice and executing any such Swap, CP shall be deemed to represent that (i) it is eligible for an exception from mandatory clearing with respect to such Swap under Section 2(h)(7) of the CEA and CFTC Regulation 50.50 and (ii) either:

a. it has reported the information listed in CFTC Regulation 50.50(b)(1)(iii) in an annual filing made pursuant to CFTC Regulation 50.50(b)(2) no more than 365 days prior to entering into such Swap, such information has been amended as necessary to reflect any material changes thereto; such annual filing covers the particular Swap for which such exception is being claimed; and such information in such filing is true, accurate, and complete in all material respects; or

b. it:

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46 Id.

47 This Part provides representations that are made by an end-user at the time that it enters into a swap that is generally subject to mandatory clearing if it elects to use the end-user clearing exception. The Questionnaire provides an end-user with an opportunity to notify a CFTC Swap Entity that it is making a one-time election to use the end-user clearing exception for all mandatory clearing swaps, and also to provide the CFTC Swap Entity with information that is required to be reported in connection with such an election (or to notify the CFTC Swap Entity that it will provide such information to the CFTC itself through an annual filing). For the elections and instructions on the use of the end-user exception, see Questionnaire Part III, Q 4.

48 CFTC Regulation 23.505(a)(2). A standing notice may be provided in in Part III, Q 4(a) of the Questionnaire.
(1) has notified CFTC Swap Entity in writing in accordance with the Notice Procedures prior to entering into such Swap that it has not reported the information listed in CFTC Regulation 50.50(b)(1)(iii) in an annual filing described in clause 2.9(a) above;\(^{49}\)

(2) has provided to CFTC Swap Entity all information listed in CFTC Regulation 50.50(b)(1)(iii) and such information is true, accurate and complete in every material respect and covers the particular Swap for which such exception is being claimed;\(^{50}\)

(3) (A) is not a “financial entity,” as defined in Section 2(h)(7)(C)(i) of the CEA, without regard to any exemptions or exclusions provided under Sections 2(h)(7)(C)(ii), 2(h)(7)(C)(iii), or 2(h)(7)(D) or related CFTC regulations, (B) qualifies for the small bank exclusion from the definition of “financial entity” in Section 2(h)(7)(C)(ii) of the CEA and CFTC Regulation 50.50(d), (C) is excluded from the definition of “financial entity” in accordance with Section 2(h)(7)(C)(iii) of the CEA, or (D) qualifies for an exception from mandatory clearing in accordance with Section 2(h)(7)(D) of the CEA;

(4) is using such Swap to hedge or mitigate commercial risk as provided in CFTC Regulation 50.50(c); and

(5) generally meets its financial obligations associated with entering into non-cleared Swaps.\(^{51}\)

2.10. If (i) CFTC Swap Entity and CP enter into a Swap subject to a mandatory clearing determination under Section 2(h) of the CEA that CP has elected not to clear pursuant to an exception from mandatory clearing provided under Section 2(h)(7) of the CEA and CFTC Regulation 50.50 and (ii) CP has satisfied the conditions specified in Sections 2.9(b)(1) and (2) above, then, if the Swap is subject to mandatory reporting to the CFTC or an SDR and CFTC Swap Entity is the “reporting counterparty,” as defined in CFTC Regulation 45.8, CFTC Swap Entity shall report the information listed in CFTC Regulation 50.50(b)(1)(iii) to the relevant SDR.\(^{52}\)

2.11. Notwithstanding anything to the contrary in the Agreement or in any non-disclosure, confidentiality or similar agreement between the Parties, if CP elects the exception from the Swap clearing requirement under Section (2)(h)(7)(A) of the CEA and CFTC Regulation 50.50 with respect to a particular Swap, each Party hereby consents to the disclosure of information related to such election to

\(^{49}\) Such notification may be made in Part III, Q 4(b) of the Questionnaire.

\(^{50}\) Such information may be provided in Part III, Q 4(c) of the Questionnaire.

\(^{51}\) CFTC Regulations 50.50 and 23.505(a).

\(^{52}\) CFTC Regulation 50.50.
the extent required by the March 2013 DF Supplement Rules. Each Party acknowledges that disclosures made pursuant to this Section 2.11 may include, without limitation, the disclosure of trade information, including a Party’s identity (by name, identifier or otherwise) to an SDR and relevant regulators. Each Party further acknowledges that, for purposes of complying with regulatory reporting obligations, an SDR may engage the services of a global trade repository regulated by one or more governmental regulators, provided that such regulated global trade repository is subject to comparable confidentiality provisions as is an SDR registered with the CFTC. For the avoidance of doubt, to the extent that applicable non-disclosure, confidentiality, bank secrecy or other law imposes non-disclosure requirements on the Swap and similar information required to be disclosed pursuant to the March 2013 DF Supplement Rules but permits a Party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each Party for purposes of such other applicable law.53

Part V. Orderly Liquidation Authority54

2.12. Effective on and after the Applicable STRD Compliance Date, each Party agrees to provide notice to the other Party, in accordance with the Notice Procedures, if it becomes, or ceases to be, an Insured Depository Institution or a Financial Company.55

2.13. Each Party is hereby notified that in the event that a Party is (i) a Covered Financial Company or (ii) an Insured Depository Institution for which the FDIC has been appointed as a receiver (the “covered party”):

   a. certain limitations under Title II of the Dodd-Frank Act or the FDIA may apply to the rights of the non-covered party to terminate, liquidate, or net any Swap by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the Parties; and

53 Because a counterparty may previously have negotiated a confidentiality or non-disclosure agreement with a CFTC Swap Entity that would not otherwise permit the CFTC Swap Entity to make the reporting described in Part IV of this DF Schedule 2, Section 2.11 provides a consent intended to override any such agreement. While this agreement overrides previous agreements, its scope is limited to information required to be reported under the March 2013 DF Supplement Rules. The last sentence of this Section is merely to clarify that the consent given is a consent for purposes of all applicable law. The Section also contains an acknowledgment that an SDR may use the services of a “global trade repository” which is not regulated by the CFTC (such as DTCC) to facilitate reporting.

54 This Part provides standardized statements about Orderly Liquidation Authority required under CFTC Regulation 23.504(b)(5). In addition, CFTC Regulation 23.504(b)(5) requires a statement as to whether either party is a “financial company” or “insured depository institution.” See Questionnaire Part II, Q 4 and Q 5 (requiring a party to specify whether it is a Financial Company or an Insured Depository Institution).

55 CFTC Regulation 23.504(b)(5)(iv).
b. the FDIC may have certain rights to transfer Swaps of the covered party under Section 210(c)(9)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(9)(A), or 12 U.S.C. § 1821(e)(9)(A).^{56}

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^{56} CFTC Regulation 23.504(b)(5)(iii).
March 2013 DF Schedule 3  
Calculation of Risk Valuations and Dispute Resolution

This March 2013 DF Schedule 3 may be incorporated into an agreement between a CFTC Swap Entity and any other Party, including another CFTC Swap Entity.57

If the Parties to an agreement have specified that this March 2013 DF Schedule 3 will be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this March 2013 DF Schedule 3 will be deemed to be a part of such agreement to the same extent as if this March 2013 DF Schedule 3 were restated therein in its entirety.

Part I. Calculation of Risk Valuations for Purposes of Section 4s(j) of the CEA58

Each Party agrees that:

3.1. On each Risk Valuation Date, the Risk Valuation Agent in respect of each Swap for which a Transaction Event has occurred after the Applicable STRD Compliance Date (or its agent) will calculate the Risk Valuation of such Swap, provided that if CP has provided the Risk Valuation Agent with a CSA Valuation for such Swap and such Risk Valuation Date pursuant to a CSA Valuation Process that the Risk Valuation Agent has determined in good faith will allow the Risk Valuation Agent to satisfy the requirements of CFTC Regulation 23.504(b) as they relate to Section 4s(j) of the CEA, the Risk Valuation Agent may elect to treat such CSA Valuation as the Risk Valuation for such Swap.59

3.2. Upon written request by CP delivered to the Risk Valuation Agent in accordance with the Notice Procedures on or prior to the Joint Business Day following a Risk Valuation Date, the Risk Valuation Agent (or its agent) will notify the CP of the Risk Valuations determined by it for such Risk Valuation Date pursuant to Section 3.1 of this March 2013 DF Schedule 3. Unless otherwise agreed by the

57 If the parties have adhered to the Protocol and exchanged Questionnaires in accordance with its terms and each of the parties is either a CFTC Swap Entity or a Financial Entity (or both), this Schedule 3 will be automatically incorporated into the agreements between the parties that are covered by the March 2013 DF Protocol Agreement. If one of the parties is not a CFTC Swap Entity or a Financial Entity, this Schedule 3 will only be incorporated into the agreements between the parties that are covered by the March 2013 DF Protocol Agreement if the non-CFTC Swap Entity/Financial Entity elects to incorporate this Schedule 3 in Part III, Q 2 of its Questionnaire. See Protocol Agreement Section 5(a)(i). The use of the term “may” here also recognizes the fact that parties can also bilaterally agree to incorporate this Schedule 3 into an agreement outside of the Protocol.

58 CFTC Regulations 23.504(b)(4)(i) and (ii). See the definition of “Risk Valuation” and related annotations.

59 As noted in the annotation to the definition of “Risk Valuation,” this Schedule provides for the daily production of Risk Valuations for purposes of CFTC Regulation 23.504(b)(4). This paragraph specifies that such valuations are produced for all swaps for which a “Transaction Event” has occurred after the compliance date for the rule. This paragraph allows the Risk Valuation Agent to use a valuation that was provided by the counterparty for purposes of the parties’ collateral obligations as the Risk Valuation if the Risk Valuation Agent determines that it may do so in compliance with CFTC Regulations.
Parties, the Risk Valuation Agent shall not be obligated to disclose to CP any confidential, proprietary information about any model the Risk Valuation Agent may use to value a Swap.60

3.3. Notification of a Risk Valuation may be provided through any of the following means, each of which is agreed by the parties to be reliable: (i) written notice delivered by the Risk Valuation Agent to the CP in accordance with the Notice Procedures, (ii) any means agreed by the Parties for the delivery of CSA Valuations or (iii) posting on a secure web page at, or accessible through, a URL designated in a written notice given to CP pursuant to the Notice Procedures.61

3.4. Each Risk Valuation will be determined by the Risk Valuation Agent (or its agent) acting in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.

Part II. Dispute Resolution for Risk Valuations for Purposes of Section 4s(j) of the CEA62

Each Party agrees that:

3.5. If CP wishes to dispute the Risk Valuation Agent’s calculation of a Risk Valuation, CP shall notify the Risk Valuation Agent in writing in accordance with the Notice Procedures on or prior to the close of business on the Joint Business Day following the date on which CP was notified of such Risk Valuation. Such notice shall include CP’s calculation of the Risk Valuations for all Swaps as of the relevant date for which the Risk Valuation Agent has provided Risk Valuations to CP, which must be calculated by CP acting in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.

3.6. If CP disputes the Risk Valuation Agent’s calculation of a Risk Valuation and the Parties have agreed in writing (whether as part of the Agreement or otherwise) to a valuation dispute resolution process by which CSA Valuations are to be determined, then such process will be applied to resolve the dispute of such Risk Valuation (as if such dispute of a Risk Valuation were a dispute of a CSA Valuation).

60 This paragraph provides for disclosure of individualized swap valuations on request, and is responsive to the requirement in CFTC Regulation 23.504(b)(4) for an agreed process for determining the value of “each swap” between the parties.

61 Section 3.3 provides that the CFTC Swap Entity may provide notification of Risk Valuations by placing the relevant information on the CFTC Swap Entity’s website but must notify the counterparty by another means (such as email) that it has done so. The Questionnaire provides an opportunity for the counterparty to provide an email address to which Risk Valuations may be delivered. See Questionnaire Part II, Q 7 and Protocol Agreement Section 7(c)(vi).

62 CFTC Regulation 23.504(b)(4)(ii). Regulation 23.504(b)(4)(ii) requires swap trading relationship documentation relating to an agreed valuation process to include either (i) “alternative methods for determining the value of a swap for the purposes of complying with this paragraph in the event of the unavailability or failure of any input required to value the swap for such purposes” or (ii) a valuation dispute resolution process. The March 2013 DF Supplement takes the second approach.
Valuation, each Swap that is the subject of the dispute were the only Swap for which a CSA Valuation was being disputed, and CP was the disputing party).

3.7. If CP disputes the Risk Valuation Agent’s calculation of a Risk Valuation and the Parties have not agreed in writing (whether as part of the Agreement or otherwise) to a valuation dispute resolution process by which CSA Valuations are to be determined, then the following process will apply in respect of the dispute of such Risk Valuation:

a. the Parties will consult with each other in an attempt to resolve the dispute; and

b. if they fail to resolve the dispute in a timely fashion, then the Risk Valuation Agent will recalculate the Risk Valuation as of the Recalculation Date by seeking four actual quotations at mid-market from Reference Market-makers and taking the arithmetic average of those obtained; provided that if four quotations are not available, then fewer than four quotations may be used; and, if no quotations are available, then the Risk Valuation Agent’s original Risk Valuation calculation will be used.

3.8. Following a recalculation pursuant to Section 3.7 of this March 2013 DF Schedule 3, the Risk Valuation Agent will notify CP not later than the close of business on the Local Business Day of the Risk Valuation Agent following the date of such recalculation, and such recalculation shall be the Risk Valuation for the applicable Risk Valuation Date.

Part III. **Relationship to Other Valuations**

3.9. The Parties agree and acknowledge that the process provided herein for the production and dispute of Risk Valuations is exclusively for determining the value of each relevant Swap for the purpose of compliance by CFTC Swap Entity (or if each Party is a CFTC Swap Entity, compliance by each Party) with risk management requirements under Section 4s(j) of the CEA. Failure by CP to dispute a Risk Valuation calculated by the Risk Valuation Agent does not constitute acceptance by CP of the accuracy of the Risk Valuation for any other purpose.

3.10. Resolution of any disputed Risk Valuation using a procedure specified in Part II of this March 2013 DF Schedule 3 is not binding on either Party for any purpose other than the CFTC Swap Entity’s compliance with risk management requirements under Section 4s(j) of the CEA. Each Party agrees that nothing in this March 2013 DF Supplement providing for the calculation of Risk Valuations or for any right to dispute valuations in connection with such Risk Valuations shall affect any agreement of the Parties regarding the calculation of CSA

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63 See annotation to the definition of “Risk Valuation.”
Valuations or disputes regarding CSA Valuations or constitute a waiver of any right to dispute a CSA Valuation. Any resolutions of disputes regarding CSA Valuations may be different from the resolutions of disputes regarding Risk Valuations. The Parties acknowledge that the adoption of margin regulations under Section 4s(e) of the CEA may require additional agreements between the Parties regarding the calculation of Swap valuations for purposes of such regulations and CFTC Swap Entity’s compliance with risk management requirements under Section 4s(j) of the CEA, and the Parties’ agreement to incorporate this March 2013 DF Schedule 3 in no way constitutes agreement to adopt the procedures provided herein with respect to the calculation of, or resolution of disputes regarding, margin valuations.

3.11. Notwithstanding anything to the contrary in this March 2013 DF Supplement, the Parties may in good faith agree to any other procedure for (i) the calculation of Risk Valuations and/or (ii) the resolution of any dispute between them, in either case, whether in addition to or in substitution of the procedures set out in this March 2013 DF Supplement.\(^64\)

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\(^64\) Section 3.11 makes explicit that the parties may further agree to terms governing the production of Risk Valuations.
March 2013 DF Schedule 4
Portfolio Reconciliation

This March 2013 DF Schedule 4 may be incorporated into an agreement between a CFTC Swap Entity and any other Party, including another CFTC Swap Entity. If the Parties to an agreement have specified that this March 2013 DF Schedule 4 will be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this March 2013 DF Schedule 4 will be deemed to be a part of such agreement to the same extent as if this March 2013 DF Schedule 4 were restated therein in its entirety.

Part I. Required Reconciliation Dates

4.1. From time to time after the Applicable Portfolio Reconciliation Compliance Date, a CFTC Swap Entity may give to CP a notice (a “Required Reconciliation Date Notice”) in which such CFTC Swap Entity represents that it is (in such CFTC Swap Entity’s good faith belief) necessary for the Parties to perform a Data Reconciliation in order for such CFTC Swap Entity to comply with the March 2013 DF Supplement Rules regarding the frequency with which portfolio reconciliations are to be performed. A Required Reconciliation Date Notice will specify (i) the frequency with which such portfolio reconciliations are believed by the CFTC Swap Entity to be required, which may be “Daily,” “Weekly,” “Quarterly,” “Annually” or another frequency required by the March 2013 DF Supplement Rules and (ii) if Section 4.2 is applicable, one or more Data Delivery Dates. 

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65 CFTC Regulation 23.502(b).

66 If the Parties have adhered to the Protocol and exchanged Questionnaires in accordance with its terms and both parties have been designated as CFTC Swap Entities, this Schedule 4 will be automatically incorporated into the agreements between the parties that are covered by the March 2013 DF Protocol Agreement. If one of the parties has not been designated as a CFTC Swap Entity, this Schedule 4 will only be incorporated into the agreements between the parties that are covered by the March 2013 DF Protocol Agreement if the non-CFTC Swap Entity elects to incorporate this Schedule 4 in Part III, Q 3 of its Questionnaire. See Protocol Agreement Section 5(a)(ii). The use of the term “may” here also recognizes the fact that parties can also bilaterally agree to incorporate this Schedule 4 into an agreement outside of the Protocol.

67 CFTC Regulations 23.502(a)(3) and (b)(3) provide rules with respect to the frequency of portfolio reconciliations based on the total number of swaps that are outstanding between the parties at any time. For trading relationships between a swap dealer or major swap participant and a counterparty that is not a swap dealer or major swap participant, the required frequencies are quarterly for portfolios in excess of 100 swaps and otherwise annually. More frequent reconciliations are required between swap dealers and major swap participants. Section 4.1 allows a CFTC Swap Entity to specify the frequency for portfolio reconciliations based on the CFTC requirements, but leaves flexibility for the parties to specify the precise dates on which data will be delivered in order to perform reconciliations. Where a CFTC Swap Entity delivers data to be reviewed by the CP (without reciprocal delivery by the CP) pursuant to Part II of this Schedule, Sections 4.1 and 4.2 provide that the CFTC Swap Entity will propose one or more dates (i.e., a single date for the first reconciliation or a schedule of dates for reconciliations during successive reconciliation periods). The CP can accept these
Part II.  **One-way Delivery of Portfolio Data**\(^{68}\)

4.2.  Subject to Section 4.5, if (i) one of the Parties is not a CFTC Swap Entity and (ii) the Parties have agreed in writing that on each Data Delivery Date CFTC Swap Entity will deliver Portfolio Data to CP and CP will review such data, then the following shall apply:

a.  The Required Reconciliation Date Notice will specify one or more Data Delivery Dates, *provided* that the first such date will be a day no earlier than the second Joint Business Day following the date on which such notice is given to CP, and *provided further*, that if, prior to the first such date, CP requests one or more different Data Delivery Dates, the relevant Data Delivery Dates will be as agreed by the Parties.\(^{69}\)

b.  On each Data Delivery Date, CFTC Swap Entity (or its agent) will provide Portfolio Data to CP (or its agent) for verification by CP. For purposes of this Section 4.2, Portfolio Data will be considered to have been provided to CP (and CP will be considered to have received such Portfolio Data) if it has been provided (i) in accordance with the Notice Procedures, or (ii) to a third-party service provider agreed to between the CFTC Swap Entity and CP for this purpose.\(^{70}\)

\(^{68}\) Parts II and III of Schedule 4 provide alternative methods for conducting portfolio reconciliations. When parties “match” Questionnaires through the Protocol and agree to Schedule 4, they agree to the terms of either Part II or Part III (but not both). Part II applies when (i) one of the parties has not been designated as a CFTC Swap Entity in its Questionnaire and (ii) the non-CFTC Swap Entity has elected to “Review” Portfolio Data in Part III, Q 3(b) of its Questionnaire.

Under Part II, the CFTC Swap Entity is obligated to deliver Portfolio Data on each Data Delivery Date and the non-CFTC Swap Entity is required to review the data. This option may be preferable for parties that are not swap dealers or major swap participants and that wish to avoid the burden of transmitting portfolio data to their counterparties or a third-party service provider. Note, however, that a non-CFTC Swap Entity that enters into Part II agrees to review the Portfolio Data that it receives from a CFTC Swap Entity, and to notify the sender in all cases as to whether it affirms the data or has identified a Discrepancy in all cases. This is consistent with guidance provided by the CFTC that one way delivery is acceptable provided that the receiving party either affirms or objects to the data received. See 77 Fed. Reg. 55928. If the non-CFTC Swap Entity intends to employ a third-party service provider to perform reconciliations, Part III may be more appropriate.

\(^{69}\) See annotation to Section 4.1.

\(^{70}\) In many cases, the parties may wish to employ a third-party service provider that provides tools for management and reconciliation of Portfolio Data. While bilateral delivery of data under Part III may be more appropriate for such situations, Section 4.2(b) also accommodates the agreement of the parties that the CFTC Swap Entity will deliver data to a third-party service provider assisting the non-CFTC Swap Entity. Note that in the event that the parties do not agree to have data delivered in this fashion, the non-CFTC Swap Entity may still use a third-party service provider to assist the non-CFTC Swap Entity in performing its obligations under Part II.

Since Covered Agreements are unlikely to include agreements related to the delivery of this type of data, the parties may wish to further agree to the terms for delivery of Portfolio Data. Parties are afforded the opportunity to provide an email address to which Portfolio Data may be delivered in their Questionnaire. See
c. On or as soon as reasonably practicable after each Data Delivery Date, and in any event not later than the close of business on the second Local Business Day of CP following the Data Delivery Date, CP will review the Portfolio Data delivered by CFTC Swap Entity with respect to each relevant Swap against its own books and records and Valuation for such Swap and notify CFTC Swap Entity whether it affirms the relevant Portfolio Data or has identified any Discrepancy. CP shall notify CFTC Swap Entity of all Discrepancies identified with respect to the Portfolio Data provided. 71

d. If CP has notified CFTC Swap Entity of any Discrepancies in Portfolio Data in respect of any Material Terms or Valuations, then each Party agrees to consult with the other in an attempt to resolve all such Discrepancies in a timely fashion. 72

Part III. Exchange of Portfolio Data 73

4.3. Subject to Section 4.5, if (i) both Parties are CFTC Swap Entities or (ii) the Parties have agreed in writing that on each Data Delivery Date CFTC Swap Entity and CP will deliver Portfolio Data to each other, then, in either case, the following shall apply:

a. The Parties will negotiate in good faith to agree on one or more Data Delivery Dates that will comply with the Portfolio Reconciliation frequency specified in the Required Reconciliation Date Notice, provided that if the Required Reconciliation Date Notice specified that Questionnaire Part II, Q 8 and Protocol Agreement Section 7(c)(vii). In the absence of alternative agreements, Section 4.2(b) provides that Portfolio Data can be delivered to a notice address provided by the non-CFTC Swap Entity in the relevant agreement. Further, as defined in the Supplement, “Notice Procedures” include any procedures for the delivery of a specified category of information or notices that a receiving party has authorized in writing to the sending party.

71 The timing of Section 4.2(c) is designed to comply with CFTC Regulation 23.502(b)(4), which requires that swap dealers and major swap participants have policies and procedures for the resolution of any discrepancies “in a timely fashion.” It is also intended to provide adequate time for consultation before reporting of valuation disputes to the CFTC is required under CFTC Regulation 23.502(c). Note that all valuation “Discrepancies” (i.e., swap valuation differences above or equal to 10%) must be identified to the CFTC Swap Entity, but differences below 10% are not required to be reported or resolved under Schedule 4. At the same time, Schedule 4 does not limit other contractual rights that the parties may have with regard to discrepancies below the Discrepancy Threshold. See also Part IV of Schedule 4.

72 Good faith consultation is the sole process required under Schedule 4 with respect to Discrepancies. Schedule 4 does not provide for mandatory use of a third-party poll or a similar mechanism to resolve differences. It is left to the discretion of the Parties whether to employ such a mechanism.

73 Part III applies to parties that have agreed to Schedule 4 when (i) both parties have been designed as CFTC Swap Entities or (ii) the party that has not been designated as a CFTC Swap Entity elects to “Exchange” Portfolio Data in Part III, Q 3(b) of its Questionnaire. Under Part III, each party is obligated to deliver Portfolio Data to the other party or to an agreed third-party service provider. Either party (or a third-party service provider mutually agreed between the parties) may then conduct a reconciliation and provide notice of any Discrepancies that it discovers.
reconciliations are required Daily, each Joint Business Day shall be a Data Delivery Date.

b. On each Data Delivery Date, each Party (or its agent) will provide Portfolio Data to the other Party. For the purposes of this Section 4.3, Portfolio Data will be considered to have been provided to the other Party (and the other Party will be considered to have received such Portfolio Data) if it has been provided (i) in accordance with the Notice Procedures, or (ii) to a third-party service provider agreed to between CFTC Swap Entity and CP for this purpose.\(^\text{74}\)

c. On or as soon as reasonably practicable after each Data Delivery Date on which Portfolio Data is provided by each Party, either Party may perform a Data Reconciliation in respect of such Portfolio Data.\(^\text{75}\)

d. If (i) one of the Parties is not a CFTC Swap Entity and (ii) either Party notifies the other Party of a Discrepancy in Portfolio Data in respect of either the Material Terms of a Swap or its Valuation, then each Party agrees to consult with the other in an attempt to resolve the Discrepancy in a timely fashion.\(^\text{76}\)

e. If (i) both Parties are CFTC Swap Entities and (ii) either Party notifies the other Party of a Discrepancy in Portfolio Data in respect of the Material Terms of a Swap, then each Party agrees to consult with the other in an attempt to resolve such Discrepancy immediately.\(^\text{77}\)

f. If (i) both Parties are CFTC Swap Entities and (ii) either Party notifies the other Party of a Discrepancy in Portfolio Data in respect of Valuations, then each Party agrees to consult with the other in an attempt to resolve

\(^{74}\) In many cases, where the parties have agreed that each will deliver Portfolio Data, one or both of the parties may wish to use a third-party service provider to assist it in performing reconciliations, or the parties may agree to reconciliations performed by such a service provider. Section 4.3(b) accommodates the agreement of the parties to use such a third-party service provider.

Since Covered Agreements are unlikely to include agreements related to the delivery of this type of data, the parties may wish to further agree to the terms for delivery of Portfolio Data. Parties are afforded the opportunity to provide an email address to which Portfolio Data may be delivered in their Questionnaire. See Questionnaire Part II, Q 8 and Protocol Agreement Section 7(c)(vii). In the absence of alternative agreements, Section 4.3(b) provides that Portfolio Data can be delivered to a notice address provided by the non-CFTC Swap Entity in the relevant agreement. Further, as defined in the Supplement, “Notice Procedures” include any procedures for the delivery of a specified category of information or notices that a receiving party has authorized in writing to the sending party.

\(^{75}\) Because both parties receive Portfolio Data under Part III and have the opportunity to reconcile that data against their own data in order to comply with regulatory requirements, neither party is required to perform a reconciliation.

\(^{76}\) The timing of this Section is designed to comply with CFTC Regulation 23.502(b)(4). See annotation to Section 4.2(c).

\(^{77}\) The timing standard in Section 4.3(e) conforms to the requirements in CFTC Regulation 23.502(a)(4).
such Valuation Discrepancy as soon as possible, but in any event within five Joint Business Days.\textsuperscript{78}

Part IV. \textbf{Valuation Differences Below the Discrepancy Threshold Amount}

4.4. The Parties hereby agree that a difference in Valuations in respect of a Swap that is less than the Discrepancy Threshold Amount shall not be deemed a “discrepancy” for purposes of CFTC Regulation 23.502 and neither Party shall be required under this March 2013 DF Schedule 4 to notify the other Party of such a difference or consult with the other Party in an attempt to resolve such a difference.\textsuperscript{79}

Part V. \textbf{Reconciliation Against SDR Data}\textsuperscript{80}

4.5. If the Parties have agreed in writing to reconcile their books and records of Swaps between the Parties against SDR Data in order to facilitate satisfaction of the requirements of CFTC Regulation 23.502 then the following shall apply:

a. On or as soon as practicable following a Data Delivery Date,\textsuperscript{81} each Party shall perform a Data Reconciliation against SDR Data to the extent that such SDR Data relates to Material Terms that would otherwise be delivered by the other Party as Portfolio Data. To the extent that either party does not have access to such SDR Data or determines that it is not technologically or operationally practical for such Party to obtain such data from the relevant SDR in a manner that permits the conduct of a timely Data Reconciliation in accordance with the applicable time periods specified in Section 4.2 or 4.3, such Party shall notify the other Party by or as soon as practicable after the relevant Data Delivery Date.\textsuperscript{82}

\textsuperscript{78} The timing standard in Section 4.3(f) conforms to the requirements in CFTC Regulation 23.502(a)(5).

\textsuperscript{79} Part IV applies to all reconciliations and follows the standard for valuation reconciliations provided in CFTC Regulations 23.502(a)(5) and (b)(4). Section 4.4 provides that valuation discrepancies below the Discrepancy Threshold are not required to be reconciled under the terms of this Schedule 4. Section 4.4 is not intended to override other contractual dispute rights that parties may have with respect to such discrepancies.

\textsuperscript{80} Part V includes agreements by each party to perform reconciliations against SDR data in lieu of reconciliations of data provided directly by a counterparty (to the extent that an SDR can provide “Material Terms” data with respect to Swaps between the parties that are within scope of the CFTC Regulation 23.502 portfolio reconciliation requirements and the relevant party can access such data). Part V applies to parties who have agreed to Schedule 4 only if both parties have agreed to reconcile against SDR Data. See Protocol Agreement Section 5(b)(iv); Questionnaire Part III, Q 3(c). SDR Data does not include Valuations included within Portfolio Data for purposes of Schedule 4. Therefore, direct reconciliation of Valuations data would still be required.

\textsuperscript{81} The version of this Supplement published on March 22, 2013 used the incorrect term “Data Exchange Date.”

\textsuperscript{82} At the time of publication of this DF Supplement, the operational systems that may be available for reconciliation against SDR data (either by accessing data directly from an SDR or by delivery of SDR data to an agreed third-party service provider) were uncertain. Consequently, Part V has been drafted flexibly to provide an undertaking to reconcile against SDR data to the extent technologically or operationally practical. If such a
b. Notwithstanding Sections 4.2 and 4.3, neither Party shall be obligated to deliver Portfolio Data to the other Party on a Data Delivery Date to the extent that such Portfolio Data consists of Material Terms data reported to an SDR, provided, however, that if a Party has notified the other Party that it is not able to conduct a timely Data Reconciliation against corresponding SDR Data as provided in Section 4.5(a), the Parties shall provide for the delivery of the relevant Portfolio Data as provided in Section 4.2(b) or 4.3(b), as applicable, as soon as reasonably practicable.  

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c. If either Party identifies a Discrepancy in SDR Data, such Party shall immediately notify the other Party of such Discrepancy. Each Party agrees to consult with the other in an attempt to resolve any such Discrepancy immediately (if both Parties are CFTC Swap Entities) or in a timely fashion (if one Party is not a CFTC Swap Entity).  

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d. Each Party agrees to notify the other Party, upon reasonable request, of (i) the SDRs to which such Party has reported Material Terms data with respect to Swaps between the Parties and (ii) any changes as to the particular SDRs at which data may be accessed.  

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e. A Party may terminate this Section 4.5 with the effect that this Section 4.5 shall have no further force and effect and the Parties will each be released and discharged from all further obligations under this Section 4.5 by delivering written notice in accordance with the Notice Procedures to the other Party that it is terminating this Section 4.5 as of the effective date of such notice. The Parties agree that the effective date of any such notice is the second Joint Business Day following the date on which such notice is delivered in accordance with the Notice Procedures.  

86

Part VI. Other Portfolio Reconciliation Procedures

4.6. In the event that the Parties have agreed to multiple Data Delivery Dates with a frequency specified in a Required Reconciliation Date Notice, the CFTC Swap Entity that delivered such notice shall notify Counterparty if, at any time during the period that such Data Delivery Dates are in effect, it is no longer required by reconciliation is not practical for either party, such party must notify the counterparty of such fact, in which case the agreements fall back to the reconciliation procedures provided in Part II or III as relevant. See also id.

83 See id.

84 The timing standard in Section 4.5(c) conforms to the requirements in CFTC Regulation 23.502(a)(4) and (b)(4).

85 While the parties should generally know which SDRs have received data reports when swaps are initially executed, this agreement has been included to facilitate reconciliation against SDR data when there is uncertainty on the part of the non-reporting party.

86 Optional termination of Part V was included given uncertainty regarding the practicality of reconciliation against SDR data at the time of publication. If a party terminates Part V, reconciliation procedures would fall back to Part II or III, as relevant.
the March 2013 DF Supplement Rules to conduct portfolio reconciliations with
the specified frequency. Such notice shall specify (i) the new frequency with
which portfolio reconciliations are believed by the CFTC Swap Entity to be
required, which may be “Daily,” “Weekly,” “Quarterly,” “Annually” or another
frequency required by the March 2013 DF Supplement Rules and (ii) if Section
4.2 is applicable, one or more new Data Delivery Dates. Upon delivery of such a
notice, the Parties’ obligations to deliver Portfolio Data on the previously agreed
Data Delivery Dates shall terminate, and such notice shall be a new Required
Reconciliation Date Notice for purposes of Sections 4.2 and 4.3.87

4.7. Notwithstanding anything to the contrary in this March 2013 DF Supplement, the
Parties may in good faith agree to any other procedure for (i) the exchange,
delivery and/or reconciliation of Portfolio Data, and/or (ii) the resolution of any
discrepancy between them, in either case, whether in addition to or in substitution
of the procedures set out in this March 2013 DF Supplement. Nothing in this
March 2013 DF Schedule 4 shall prejudice any right of dispute or right to require
reconciliation that either Party may have under Applicable Law, any term of the
Agreement other than in this March 2013 DF Schedule 4, or any other
agreement.88

87 Section 4.6 provides for the amendment of an agreed schedule of recurring reconciliations when the required
frequency for such reconciliations changes under CFTC Regulation 23.502 due to a change in the number of
swap outstanding between the parties.

88 Section 4.7 simply makes explicit that the parties may further agree to terms governing portfolio reconciliations.