ADDENDUM II\(^1\)
TO
ISDA AUGUST 2012 DF PROTOCOL QUESTIONNAIRE

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THE ANNOTATIONS AND INSTRUCTIONS IN THIS DOCUMENT DO NOT PURPORT TO BE AND
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THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND
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**Instructions:** This Addendum II provides information needed by Swap Dealers to satisfy
additional regulatory provisions under the Commodity Exchange Act and CFTC Regulations. As
further described below, this Addendum II is intended to be used to supplement information and

\(^1\) This Addendum is intended to address certain provisions of the following final rules:

- CFTC, Final Rule, *Business Conduct Standards for Swap Dealers and Major Swap Participants With


- CFTC, Final Order, *Final Exemptive Order Regarding Compliance with Certain Swaps Regulations*, 78 Fed.

- CFTC, Final Rule, *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap
  30596 (May 23, 2012).

  Section 2(h) of the CEA*, 77 Fed. Reg. 44441 (July 30, 2012).
representations provided in respect of a PCA Principal in the ISDA August 2012 DF Protocol Questionnaire (the “Questionnaire”) and the Amended and Restated Addendum I to the Questionnaire. For the avoidance of doubt, the delivery of, or the failure to deliver, this Addendum II will not affect the status of (i) any two PCA Principals as Matched PCA Parties, or (ii) such parties’ (a) Questionnaires as Matched Questionnaires or (b) Protocol Covered Agreements as Matched PCAs.

Section 1. Definitions: References in this Addendum II to the following terms shall have the following meanings.

“Additional Pre-Trade Mark Transaction” means a transaction (other than a Covered Forex Transaction or Covered Derivative Transaction) for which the CFTC provides no-action or other relief from CFTC Regulation 23.431(a)(3) that is based, in whole or in part, upon the agreement of a party that a Swap Dealer counterparty need not disclose pre-trade mid-market marks.

“BIS 13 Currencies” refer to one of the following currencies: US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone and Mexican peso. 

“Category 2 Entity” means a “Category 2 Entity” as defined in CFTC Regulation 50.25(a).

“CFTC Interim Order U.S. Person” means a person who is any of the following:

(i) A natural person who is a resident of the United States;

(ii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is (A) organized or incorporated under the laws of a state or other jurisdiction in the United States or (B) effective as of April 1, 2013 for all such entities other than funds or collective investment vehicles, having its principal place of business in the United States;

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3 CFTC Regulation 50.25 defines a Category 2 Entity as a Commodity Pool; a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 other than an Active Fund; or 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. See 77 Fed. Reg. 44441, 44445-46 & 44456 (July 30, 2012).
(iii) A pension plan for the employees, officers or principals of a legal entity described in (ii) above, unless the pension plan is primarily for foreign employees of such entity;

(iv) An estate of a decedent who was a resident of the United States at the time of death, or a trust governed by the laws of a state or other jurisdiction in the United States if a court within the United States is able to exercise primary supervision over the administration of the trust; or

(v) An individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in (i) through (iv) above.⁴

“Covered Derivative Transaction” means a transaction for which real-time tradeable bid and offer prices are available electronically, in the marketplace, to PCA Principal (if such transaction is executed prior to the issuance of final CFTC Regulations governing the registration of swap execution facilities, subject to any compliance implementation period contained therein) or for which real-time executable bid and offer prices are available on a designated contract market or swap execution facility (if such transaction is executed subsequent to the issuance of final CFTC Regulations governing the registration of swap execution facilities, subject to any compliance implementation period therein), and that is: (i) an untranched credit default swap referencing the on-the-run and most recent off-the-run series of the following indices: CDX.NA.IG 5Y, CDX.NA.HY 5Y, iTraxx Europe 5Y and iTraxx Europe Crossover 5yr; or (ii) an interest rate swap (A) in the “fixed-for-floating swap class” (as such term is used in CFTC Regulation 50.4(a)) denominated in USD or EUR, (B) for which the remaining term to the scheduled termination date is no more than 30 years, and (C) that has specifications set out in CFTC Regulation 50.4.⁵

“Covered Forex Transaction” means a transaction for which real-time tradeable bid and offer prices are available electronically, in the marketplace, to PCA Principal, and that is: (i) a “foreign exchange forward” or “foreign exchange swap,” as defined in Sections 1a(24) and 1a(25) of the Commodity Exchange Act, respectively, that, by its terms, is physically settled, where each currency is one included among the BIS 13 Currencies, and where the transaction has a stated maturity of one year or less; or (ii) a vanilla foreign exchange option that, by its terms, is physically settled, where each currency is one included among the BIS 13 Currencies, and where the option has a stated maturity of six months or less.⁶

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⁵ CFTC Letter No. 12-58.
⁶ CFTC Letter No. 12-42.
“Covered Swaps” means the certain interest rate and credit default swaps in respect of which the CFTC issued a mandatory clearing determination on December 13, 2012.7

Capitalized terms used but not otherwise defined in this Addendum II shall have the meanings assigned to such terms in the Questionnaire and Addendum I thereto.

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Section 2. Elections Not to Receive Disclosure of Pre-Trade Mid-Market Marks.\(^8\)

CFTC Regulation 23.431(a)(3) requires a Swap Dealer to disclose pre-trade mid-market marks to a counterparty. As of the date of this Addendum II, the CFTC has issued conditional relief from such requirement for Covered Forex Transactions and Covered Derivatives Transactions. The CFTC may issue conditional relief in the future for other types of transactions.

CFTC Letter No. 12-42 and CFTC Letter No. 12-58 provide that Swap Dealers will not be required to disclose pre-trade mid-market marks in connection with any Covered Forex Transactions or Covered Derivatives Transactions, respectively, provided that PCA Principal agrees in advance, in writing, that the Swap Dealer need not disclose a pre-trade mid-market mark. Protocol Participants may elect to satisfy the conditions set forth in these no-action letters for PCA Principals by responding “Yes” to questions (a) and (b) below.

Protocol Participants may answer “Yes” to the question in paragraph (c) of this Section 2 to agree in advance that Swap Dealers will not be required to disclose pre-trade mid-market marks in connection with any Additional Pre-Trade Mark Transaction.

To answer the following question, complete column 31 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:

(a) Does PCA Principal agree that its Swap Dealer counterparty need not disclose pre-trade mid-market marks in respect of any Covered Forex Transaction?

To answer the following question, complete column 32 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:

(b) Does PCA Principal agree that its Swap Dealer counterparty need not disclose pre-trade mid-market marks in respect of any Covered Derivative Transaction?

To answer the following question, complete column 33 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:

(c) Does PCA Principal agree that its Swap Dealer counterparty need not disclose pre-trade mid-market marks in respect of any Additional Pre-Trade Mark Transaction?

Section 3. Additional PCA Principal Status Representations and Elections: U.S. Person.

Protocol Participants are asked to provide the following information to assist Swap Dealers in determining compliance with certain CFTC regulations in light of the CFTC’s Exemptive Order dated December 21, 2012, defining the term “U.S. Person” on an interim basis.\(^9\)

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\(^8\) CFTC Regulation 23.431(a)(3). In certain fast-moving markets, the requirement to provide a pre-trade mid-market mark could limit the ability of the SD to execute a CP’s trade on a timely basis. Agreeing to waive the disclosure requirement in the circumstances covered by the CFTC no-action letters (i.e., where the various conditions regarding pricing availability and other factors are addressed) could alleviate some concerns regarding the timing of trading.
The CFTC’s definition of “U.S. person” set forth in such order is reproduced in this Addendum as the definition of CFTC Interim Order U.S. person. Please note that clause (ii)(B) thereof is effective as of April 1, 2013. Accordingly, in addition to the answers “Yes” or “No” to this question, prior to April 1, 2013 a PCA Principal may wish to choose the answer “No until April 1, 2013 and Yes thereafter” if it expects to qualify as of April 1, 2013 based upon the effective date of clause (ii)(B). (Alternatively, such PCA Principal may change its “No” answer to “Yes” at a later time.)

To answer the following question, complete column 34 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes,” “No,” or “No until April 1, 2013 and Yes thereafter,” as appropriate:

Is PCA Principal a CFTC Interim Order U.S. Person?

Section 4. Additional PCA Principal Status Representations and Elections: Category 2 Entity.

All Protocol Participants are asked to provide the following information to assist Swap Dealers in determining compliance dates for CFTC Regulation 50.4 relating to the requirement to clear certain swaps. Under Regulation 50.4, Category 2 Entities must comply with the clearing requirement by June 10, 2013, for Covered Swaps.10

To answer the following question, complete column 35 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:

Is PCA Principal a Category 2 Entity?11

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9  78 Fed. Reg. 858 (Jan. 7, 2013). This question is intended to address the fact that, under the CFTC’s cross-border guidance, certain obligations of swap dealers (including, but not limited to due diligence obligations with respect to a counterparty) may hinge on whether the counterparty is a “U.S. person.” In the absence of a voluntary representation from a counterparty on this question, a swap dealer may be required to perform additional due diligence on a counterparty in order to determine the counterparty’s status under the law.


11 Section 2(h) of the Commodity Exchange Act makes it unlawful, subject to certain exceptions, for any person to engage in a swap that is subject to a mandatory clearing determination unless such swap is submitted for clearing to a registered or exempt derivatives clearing organization. In December 2012, the CFTC issued its first mandatory clearing determination, for certain interest rate and credit default swaps (“Covered Swaps”). See Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74284 (Dec. 13, 2012).

Pursuant to CFTC Regulation 50.25, mandatory clearing will be implemented on a phased basis. The second phase of implementation is scheduled to begin on June 10, 2013. Once this second phase begins, Covered Swaps between, among others, Swap Dealers and Category 2 Entities must be submitted for clearing, absent an exemption. PCA Principals should note that Swap Dealers may require this information from a PCA Principal prior to June 10, 2013 to be able to continue transacting in Covered Swaps with such PCA Principal without disruption.

Note: Under the ISDA March 2013 DF Supplement, see Part III of Schedule 2 thereto, if a party has not notified a swap dealer whether it is a Category 2 Entity, it may be deemed to make certain representations in connection with a swap that is subject to mandatory clearing if the swap will not be cleared. This would address the fact
that both parties to a Swap are subject to the mandatory clearing requirement of Section 2(h) of the CEA and that the status of a party under the clearing implementation rules may not be easily determined by one party in the absence of a representation from the other.
By executing this Addendum II, the signatory agrees as PCA Principal or PCA Agent for specified PCA Principals that the information and representations provided herein shall be “DF Supplement Information”\(^{12}\) relating to PCA Principal and may be relied upon by each counterparty to whom this Addendum II is delivered.

[INSERT FULL LEGAL NAME OF PCA PRINCIPAL OR PCA AGENT]\(^{13}\)

By: __________________________________________

Name: 
Title: 
Date: 

\(^{12}\) Under Sections 2.1 and 2.3 of the DF Supplement, PCA Principals make certain representations about information that the parties agree is “DF Supplement Information,” and agree to update such representations.

\(^{13}\) If you are a PCA Agent acting on behalf of one or more PCA Principals insert the following in the signature block: “, acting on behalf of the clients, investors, funds, accounts and/or other principals listed in column 1 of the PCA Principal Answer Sheet.”