



International Swaps and Derivatives Association, Inc.

**ADDENDUM I¹
TO
ISDA AUGUST 2012 DF PROTOCOL QUESTIONNAIRE**

**published on October [], 2012
by the International Swaps and Derivatives Association, Inc.**

Instructions: *This Addendum I provides information needed by Swap Dealers to satisfy additional regulatory provisions under the Commodity Exchange Act and CFTC Regulations that are expected to require compliance beginning December 31, 2012. As further described below, this Addendum I is intended to be used to supplement information and representations provided in respect of a PCA Principal in the ISDA August 2012 DF Protocol Questionnaire (the “Questionnaire”).*

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

“**Commodity Pool Operator**” means a “commodity pool operator” as defined in Section 1a(11) of the Commodity Exchange Act.

“**ECP Modification Effective Date**” means December 31, 2012 or such later date as the CFTC provides for the effectiveness of CFTC Regulation 1.3(m)(5) or (6), as applicable, or any successor regulation.

“**Excluded ECP Categories**” means the criteria for qualifying as an “eligible contract participant” under (1) Part III, Sections 2(b)(viii), (ix), and (x) of the Questionnaire and (2) Section 2(c) of this Addendum I.

¹ This Addendum is intended to address certain provisions of the following final rule:

CFTC, Final Rule, *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,”* 77 Fed. Reg. 30596 (May 23, 2012).

“*Specified FX Transactions*” means transactions described in Section 2(c)(2)(B)(vi) or 2(c)(2)(C)(vii) of the Commodity Exchange Act.

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

Section 2. Eligible Contract Participant Status For Large Entity or Hedging Entity ECPs.

Effective as of the ECP Modification Effective Date, CFTC Regulation 1.3(m)(6) provides that for purposes of the statutory definition of “eligible contract participant” under Section 1a(18) of the Commodity Exchange Act, a “commodity pool” that does not satisfy the criteria of clause (A)(iv) of that definition is not an “eligible contract participant” under clause (A)(v) of that definition.

Accordingly, to remain eligible to transact in Swaps after the ECP Modification Effective Date, a PCA Principal should take one of the following steps, as appropriate:

a. A PCA Principal that is not a Commodity Pool may make a representation to this effect in Part III, Question 1 of the Questionnaire.² A PCA Principal that uses the Questionnaire to represent that it is not a Commodity Pool does not need to make further representations in this Addendum I. This representation may be based, without limitation, upon CFTC exemptive relief from the definition of Commodity Pool.

b. A PCA Principal that is a Commodity Pool may represent in the Questionnaire that it falls within one of the categories of Eligible Contract Participant other than a Large Entity and/or Hedging Entity ECP (as such terms are defined in Part III, Question 2(b)(ix) and (x), respectively).³ A PCA Principal that uses the Questionnaire to represent that it falls within one of the other categories of Eligible Contract Participant does not need to make further representations in this Addendum I.

c. A PCA Principal that cannot (or does not) take either step (a) or (b) above, should make the representation provided below, if appropriate.⁴

Insert a “Yes” in column 26 of the relevant row of the PCA Principal Answer Sheet to indicate that PCA Principal makes the following representation:

PCA Principal represents that, effective on (i) the later of (A) the ECP Modification Effective Date and (B) the date of this Addendum I and (ii) on the date of each Swap Transaction Event following such date, unless PCA Principal

² A PCA Principal who has already delivered a completed Questionnaire may update its answer to Part III, Question 1, if appropriate, to represent that it is not a Commodity Pool.

³ A PCA Principal who has already delivered a completed Questionnaire in which it represented that its Eligible Contract Participant status was either “Large Entity” and/or “Hedging Entity ECP” (and no other category) may update its answer to Part III, Question 2(b), if appropriate, to represent that it falls within one of the other categories of Eligible Contract Participant.

⁴ A PCA Principal who has already delivered a completed Questionnaire may update the representations it made therein by making the following additional representation.

has notified its counterparty under the relevant Protocol Covered Agreement to the contrary pursuant to the Notice Procedures prior to such date, PCA Principal has total assets exceeding \$5,000,000 and is operated by (and, if PCA Principal was formed on or after December 31, 2012 or such later date as the CFTC may specify under applicable regulations, is formed by) (1) a person registered as a Commodity Pool Operator with the CFTC, (2) a person excluded from the Commodity Pool Operator definition under CFTC Regulation 4.5 or otherwise, (3) a person properly exempt from registration as a Commodity Pool Operator under CFTC Regulation 4.13(a)(3) or otherwise, or (4) a foreign person performing a similar role or function, subject as such to foreign regulation.⁵

Section 3. Eligible Contract Participant Status for Specified FX Transactions.

Effective as of the ECP Modification Effective Date, an entity that is a “commodity pool” as defined in the Commodity Exchange Act that has one or more direct participants that are not themselves “eligible contract participants” under the Commodity Exchange Act may not qualify as an “eligible contract participant” solely under either clause (A)(iv)one or (A)(v)more of the ~~statutory definition~~ Excluded ECP Categories for purposes of entering into Specified FX Transactions.⁶ However, certain commodity pools will be deemed to be eligible contract participants with respect to Specified FX Transactions under CFTC Regulation 1.3(m)(8) if they meet the conditions set forth therein.

While status as an Eligible Contract Participant is not required in all cases in order to enter into Specified FX Transactions, additional limitations and regulations apply for parties that are not Eligible Contract Participants. Accordingly, a PCA Principal may take one of the steps below, as appropriate, in order to establish that it is an Eligible Contract Participant with respect to Specified FX Transactions as of the ECP Modification Effective Date. If a PCA Principal does not take any of the steps below, a Swap Dealer counterparty may not be able to execute Specified FX Transactions with the PCA Principal.

a. A PCA Principal that is not a Commodity Pool may make a representation to this effect in Part III, Question 1 of the Questionnaire.⁷ A PCA Principal that uses the Questionnaire to represent that it is not a Commodity Pool does not need to make further representations in this Addendum I. This representation may be based, without limitation, upon CFTC exemptive relief from the definition of Commodity Pool.

b. A PCA Principal that is a Commodity Pool may represent in the Questionnaire that it falls within one of the categories of Eligible Contract Participant ~~other than a Large Entity and/or Hedging Entity ECP (as such terms are defined in Part III, Question 2(b)(ix) and (x), respectively)~~ the Excluded ECP Categories.⁸ A PCA Principal that uses the Questionnaire to

⁵ CFTC Regulation 1.3(m)(6).

⁶ CFTC Regulation 1.3(m)(5).

⁷ A PCA Principal who has already delivered a completed Questionnaire may update its answer to Part III, Question 1, if appropriate, to represent that it is not a Commodity Pool.

⁸ A PCA Principal who has already delivered a completed Questionnaire in which it represented that itsit qualified as an Eligible Contract Participant ~~status was either “Large Entity” and/or “Hedging Entity ECP”~~

represent that it falls within one of the other categories of Eligible Contract Participant does not need to make further representations in this Addendum I.

c. A PCA Principal that cannot (or does not) take either step (a) or (b) above, should make one or more of the following representations, as appropriate.⁹

Insert a "Yes" in column 27 of the relevant row of the PCA Principal Answer Sheet to indicate that PCA Principal makes the following representation:

- (a) PCA Principal represents with respect to Specified FX Transactions that, effective on (i) the later of (A) the ECP Modification Effective Date and (B) the date of this Addendum I, and (ii) the date of each Swap Transaction Event following such date, unless PCA Principal has notified its counterparty under the relevant Protocol Covered Agreement to the contrary pursuant to the Notice Procedures, PCA Principal (1) has total assets exceeding \$10,000,000, (2) was not formed for the purpose of evading regulation under Section 2(c)(2)(B) or 2(c)(2)(C) of the Commodity Exchange Act or related CFTC rules, regulations or orders and (3) is operated by (and, if PCA Principal was formed on or after December 31, 2012 or such later date as the CFTC may specify under applicable regulations, is formed by) (A) a person registered as a Commodity Pool Operator with the CFTC or (B) a person properly exempt from registration as a Commodity Pool Operator under CFTC Regulation 4.13(a)(3) or any other regulation specified in CFTC Regulation 1.3(m)(8) or any successor regulation.¹⁰

Insert a "Yes" in column 28 of the relevant row of the PCA Principal Answer Sheet to indicate that PCA Principal makes the following representation:

- (b) PCA Principal represents with respect to Specified FX Transactions that, effective on (i) the later of (A) the ECP Modification Effective Date and (B) the date of this Addendum I and (ii) the date of each Swap Transaction Event following such date, unless PCA Principal has notified its counterparty under the relevant Protocol Covered Agreement to the contrary pursuant to the Notice Procedures, (1) PCA Principal has total assets exceeding \$5,000,000, (2) PCA Principal is operated by (and, if PCA Principal was formed on or after December 31, 2012 or such other date as the CFTC may specify under applicable regulations, is formed by) (A) a person registered as a Commodity Pool Operator with the CFTC, (B) a person excluded from the Commodity Pool Operator definition under CFTC Regulation 4.5 or otherwise, (C) a person properly exempt from registration as a Commodity Pool Operator

through one or more of the Excluded ECP Categories (and no other category) may update its answer to Part III, Question 2(b), if appropriate, to represent that ~~it~~ it falls within one of the other categories of Eligible Contract Participant.

⁹ A PCA Principal who has already delivered a completed Questionnaire may update the representations it made therein by making one or more of the following additional representations, as appropriate.

¹⁰ CFTC Regulation 1.3(m)(8).

under CFTC Regulation 4.13(a)(3) or otherwise, or (D) a foreign person performing a similar role or function subject as such to foreign regulation, (3) all “direct participants” in PCA Principal are Eligible Contract Participants, except as specifically permitted by applicable CFTC interpretative guidance with respect to Section 1(a)(18)(A)(iv) of the Commodity Exchange Act and CFTC Regulation 1.3(m)(5), and (4) PCA Principal otherwise satisfies the requirements of Section 1a(18)(A)(iv) of the Commodity Exchange Act, CFTC Regulation 1.3(m)(5) and related CFTC interpretations as such requirements, rules and interpretations relate to Specified FX Transactions.¹¹

Insert a “Yes” in column 29 of the relevant row of the PCA Principal Answer Sheet to indicate that PCA Principal makes the following representation:

- (c) PCA Principal represents with respect to Specified FX Transactions that, effective on (i) the later of (A) the ECP Modification Effective Date and (B) the date of this Addendum I, and (ii) on the date of each Swap Transaction Event following such date, unless PCA Principal has notified its counterparty under the relevant Protocol Covered Agreement to the contrary pursuant to the Notice Procedures, (1) PCA Principal is not operated by a Commodity Pool Operator located within the United States, its territories or possessions (2) each of its participants is a “Non-United States person” as defined in CFTC Regulation 4.7(a)(1)(iv) and (3) all units of participation in each of its participants that is an entity organized principally for passive investment are held by “Non-United States persons” as defined in CFTC Regulation 4.7(a)(1)(iv).¹²

By executing this Addendum I, the signatory represents as PCA Principal or PCA Agent for specified PCA Principals that all information provided by it in this Addendum I is true, accurate and complete in every material respect as of each date set forth above, and may be relied upon by each counterparty to whom this Questionnaire is delivered and agrees that the information and representations provided herein shall be “DF Supplement Information” relating to PCA Principal.

[INSERT FULL LEGAL NAME OF PCA PRINCIPAL OR PCA AGENT]¹³

¹¹ CFTC Regulation 1.3(m)(5) ~~and 1.3(m)(8)~~.

¹² 77 Fed. Reg. 30596, 30653-54 (May 23, 2012).

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 the column 1 of the PCA Principal Answer Sheet.”

By: _____
Name:
Title:
Date:

Document comparison by Workshare Professional on Friday, October 12, 2012
10:14:19 AM

Input:	
Document 1 ID	file://C:\Users\mpatel\Desktop\26820601_(7)_Addendum I to August Questionnaire.docx
Description	(26820601)_ (7)_ Addendum I to August Questionnaire
Document 2 ID	interwovenSite://USDMS/USActive/26820601/10
Description	#26820601v10<USActive> - Addendum I to August Questionnaire
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	13
Deletions	10
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	23