

MEMORANDUM

FIA-ISDA CLEARED DERIVATIVES EXECUTION AGREEMENT

The Futures Industry Association (“FIA”), together with the International Swap and Derivatives Association (“ISDA”), is publishing the attached FIA-ISDA Cleared Derivatives Execution Agreement (“Agreement”) as a template for use by cleared swaps market participants in negotiating execution-related agreements with counterparties to swaps that are intended to be cleared. The Agreement was developed with the assistance of a committee comprised of representatives of certain FIA and ISDA member firms which include both swap dealers and buy-side firms, but should not be taken as representing the views of any one firm or group of firms, or the whole or any segment of the cleared swaps market.

FIA/ISDA are publishing this template for participants to use as they see fit. FIA/ISDA are not providing legal advice. Moreover, as noted in the cautionary statement that precedes the text of the Agreement, we recognize that this Agreement is not necessary or appropriate under all circumstances. Consequently, any participant using this Agreement should carefully consider the full scope of regulatory and commercial requirements that may apply to their particular circumstances. Participants should also consult with their legal counsel and any other advisors/consultants they deem appropriate before using this template or negotiating revisions to it.

In particular, it is important to note that the Agreement includes *optional* annexes that make the clearing member to one or both of the executing parties a party to the Agreement (the Trilateral Annexes). The Trilateral Annexes are optional and therefore are not required to be made part of the Agreement unless the parties mutually agree to do so. It is expected that the execution of this Agreement (or the Annexes thereto) should not be considered by clearing members to be a condition to the clearing of transactions, although execution parties may request that a form of this Agreement (or the annexes thereto) be executed as a condition to entering into transactions intended to be cleared. FIA/ISDA recognize that the market with respect to cleared derivatives is still evolving and therefore may result in further modification of the Agreement, including the Trilateral Annexes, as the market deems appropriate and/or necessary. Cleared swap market participants should note that execution of cleared swaps pursuant to an arrangement utilizing the Trilateral Annexes can be differentiated from the bilateral version of the Agreement, the existing trilateral futures “give-up” structure and agreements, as well as the existing over-the-counter “swaps prime brokerage” structure and agreements, as more specifically illustrated in Annex A to this Memorandum.

The Agreement attempts to provide some initial structure in what all agree is an uncertain legal and regulatory environment pending full implementation of the reforms mandated by the Dodd-Frank Act. FIA/ISDA recognize that, in time, many of the provisions in the Agreement will almost certainly be superseded by the rules of the Commodity Futures Trading Commission and the varied Swap Execution Facilities and registered derivatives clearing organizations on which swaps will be executed and cleared. For this reason, the Agreement provides that its terms are

subject to such “Applicable Law”. Until cleared swap market rules and regulations have been adopted and implemented, however, this template Agreement sets out certain terms and conditions that cleared swap market participants who enter into execution agreements may consider addressing, such as the parties’ respective rights and obligations in the event a swap that is intended to be cleared fails to clear.

Set forth below is a brief description of the intention of each section of the agreement which is unique to the execution of a cleared swap transaction. Other provisions are standard legal terms.

Section 1. Applicable Law; Standard of Care: This section provides that the Agreement is intended to govern only transactions that the parties intend to be cleared and are executed or traded (i) over-the-counter, or (ii) on or subject to the rules Swap Execution Facility, which is broadly defined to mean, any multilateral or other trading facility, system or platform, including any communication network or auction facility, permitted under Applicable Law. Applicable Law is similarly broadly defined to mean all applicable governmental laws and regulations, and the rules, regulations, interpretations, protocols, customs and usages of any applicable self-regulatory organization, Swap Execution Facility, or Clearing Organization, as amended from time to time. The Agreement does not govern transactions in futures and options on futures, or other derivatives products, that are executed on or subject to the rules of a designated contract markets or regulated foreign board of trade.

Section 2. Party A Submission; Part B Affirmation/Rejection: Sets forth the timing of the submission for clearing and any rejection of the transaction by each of the parties.

Section 3. Transactions Accepted for Clearing: Clarifies that once a transaction is accepted for clearing, the party’s agreement with its clearing member will govern and neither party to this Agreement has any further obligation to the other.

Section 4. Transactions Not Accepted for Clearing: The parties represent to each other that each has a clearing agreement with a clearing member. This provision also sets forth the steps the parties will take if the trade does not clear (which could include, if permissible under Applicable Law, continuing the transaction as a bilateral transaction), and if the transaction is terminated how breakage payments, if any, will be calculated and paid (the Breakage Waterfall). Pursuant to this provision the Breakage Waterfall is specified to supersede any conflicting provision of Applicable Law unless the application of the Breakage Waterfall would violate Applicable Law. The parties may override this presumption with respect to any Swap Execution Facility by designating such Swap Execution Facility in “Schedule 1 – List of Swap Execution Facilities Excluded for Purposes of Section 4”, in which event the Breakage Waterfall will not apply to such Swap Execution Facility.

Sections 11 and 12. These provisions are intended as placeholders for use of standard agreements document platforms such as FIA’s EGUS system. EGUS (the Electronic Give-Up Agreement System) is a system which collects executed standard agreements between parties. In the event EGUS is ultimately used for this agreement, Section 11 covers situations where there are both electronic and manual signatures on the agreement and provides a representation by the manual signer that it agrees that the copy electronically signed by the other parties and stored on

EGUS is the correct and binding agreement. Section 12 states that the conformed signatures were executed electronically in accordance with the FIA Electronic Give-Up Agreement System User Agreement, which is the agreement each party/user of the system signs in order to participate in EGUS. More information on EGUS can be found here: <http://www.futuresindustry.org/egus-fast-facts.asp>.

Section 23. Applicable Annexes. There are two optional annexes to this agreement. If elected, each annex would commit a party's clearing member to clear such party's transactions within applicable limits set by such clearing member and disclosed to the other party. If the clearing member failed to accept a transaction within the set limits, each annex sets forth the payment obligations of the parties to the transaction and the clearing member that failed to accept the transaction.

ANNEX A