

**FIA-ISDA CLEARED DERIVATIVES EXECUTION AGREEMENT**

**CAUTION: THIS FIA-ISDA CLEARED DERIVATIVES EXECUTION AGREEMENT IS DESIGNED AS AN OPTIONAL BASIC DOCUMENT FOR MARKET PARTICIPANTS SEEKING TO ADDRESS THE ITEMS SET FORTH HEREIN. IT IS NEITHER REQUIRED TO BE ENTERED INTO BY, NOR INTENDED TO SERVE AS AN ALL ENCOMPASSING DOCUMENT FOR, PARTIES UNDER THE CIRCUMSTANCES SET FORTH HEREIN. IT IS EXPECTED THAT THE EXECUTION OF THIS AGREEMENT (OR THE ANNEXES HERETO) 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 HERETO) BE EXECUTED AS A CONDITION TO ENTERING INTO TRANSACTIONS INTENDED TO BE CLEARED. PARTIES SHOULD CAREFULLY CONSIDER THE FULL SCOPE OF REGULATORY (INCLUDING SWAP EXECUTION FACILITY AND CLEARING ORGANIZATION) REQUIREMENTS AND COMMERCIAL TERMS THAT MAY BE APPLICABLE TO THEIR PARTICULAR CIRCUMSTANCES AND MAY ELECT NOT TO ENTER INTO THIS OR ANY OTHER AGREEMENT OR TO ENTER INTO MORE DETAILED AGREEMENTS AT THE OUTSET OR DURING THE COURSE OF THEIR RELATIONSHIP. PLEASE SEE EXPLANATORY MEMO PUBLISHED BY FIA AND ISDA CONCURRENTLY WITH THE PUBLICATION OF THIS DOCUMENT FOR A MORE DETAILED EXPLANATION OF THE PURPOSE AND CONTENTS OF THIS FIA-ISDA CLEARED DERIVATIVES EXECUTION AGREEMENT.**

**IT IS FURTHER AT THE OPTION OF PARTIES ELECTING TO USE THIS FIA-ISDA CLEARED DERIVATIVES EXECUTION AGREEMENT WHETHER TO INCLUDE ONE OR MORE CLEARING MEMBERS AS PARTIES BY ELECTING THE APPLICABILITY OF ANNEX A AND/OR ANNEX B HERETO AS NEEDED. PLEASE NOTE THAT AS THE MARKET WITH RESPECT TO CLEARED DERIVATIVES EVOLVES THE FORM OF THIS AGREEMENT (INCLUDING THE ANNEXES HERETO) MAY BE SUBJECT TO FURTHER MODIFICATION.**

Agreement made this \_\_\_ day of \_\_\_\_\_, 20 \_\_ by and among

\_\_\_\_\_

(“Party A”)<sup>1</sup>,

\_\_\_\_\_

[ (“Party A’s Clearing Member”) ] *[Include only if Annex A is applicable.]*

\_\_\_\_\_

[ (“Party B’s Clearing Member”) ] *[Include only if Annex B is applicable.],* and

\_\_\_\_\_

(“Party B”).

**1. Applicable Law; Standard of Care.** This FIA-ISDA Cleared Derivatives Execution Agreement (this “**Agreement**”) shall apply to all transactions (“**Derivatives Transactions**”) executed or traded between Party A and Party B (over-the-counter or on a Swap Execution Facility) that are, at the time of execution thereof, agreed by Party A and Party B to be cleared on a Clearing Organization, other than futures and options on futures contracts, or other derivatives transactions, executed on or subject to the rules of a designated contract market subject to the jurisdiction of the Commodity Futures Trading Commission (including derivatives transactions entered into over-the counter and cleared as futures or options on

<sup>1</sup> \_\_\_\_\_  
If one of the parties to this Agreement is a swap dealer, the swap dealer shall be Party A.

futures contracts) or a foreign board of trade subject to regulation in its home jurisdiction or any other listed options.<sup>2</sup> This Agreement and each Derivatives Transaction, and disputes relating thereto, shall, unless otherwise specified herein, be subject to 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 (“**Applicable Law**”). The parties to this Agreement shall perform their respective obligations and exercise their respective rights under this Agreement in good faith, in a commercially reasonable manner under the circumstances, and consistent with Applicable Law.

**2. Party A Submission; Party B Affirmation/Rejection.**<sup>3</sup> Party A and Party B may, from time to time, enter into Derivatives Transactions, the terms and conditions of which shall be governed by (i) Applicable Law and (ii) such documentation between Party A and Party B to which they may have agreed, including but not limited to an ISDA Master Agreement (“**Derivatives Documentation**”). As soon as practicable after entering into such Derivatives Transaction with Party B, but in no event later than the Party A Cut-off, Party A will submit an electronic message, through an applicable trade submission system, including notice to Party B, specifying the trade details for such Derivatives Transaction as required by Applicable Law (the “**Party A Submission**”).

As soon as practicable after receiving such Party A Submission, but in no event later than the Party B Cut-off, Party B will (x) affirm such Party A Submission (such affirmation by Party B, the “**Party B Affirmation Submission**”), or (y) reject such Party A Submission, or deny knowledge, of such Derivatives Transaction, in each case in accordance with the procedures established by the applicable trade submission system, including notice to Party A, and if Party B has affirmed the Party A Submission, to Party B’s Clearing Member.

If Party B rejects such Party A Submission, Party A and Party B will consult in an effort to resolve any issues related to the Party A Submission for such Derivatives Transaction and effect such submissions within such timeframes as they have agreed to in such consultation, failing which this Agreement shall no longer govern such dispute and the disputed transaction shall no longer constitute a Derivatives Transaction for purposes of this Agreement.

**3. Transactions Accepted for Clearing.** Upon acceptance of such Derivatives Transaction for clearing by the Clearing Organization in accordance with the applicable Clearing Organization rules, each of Party A and Party B shall be deemed to have entered into separate cleared Derivatives Transactions (“**Cleared Transactions**”) governed by the applicable agreement that each has with its respective Clearing Member, including all annexes, schedules and other supplements thereto (or, to the extent that Party A or Party B is a Clearing Member, other applicable arrangements, if any), and Party A and Party B shall have no further rights against or obligations to each other with respect to such Derivatives Transaction.

**4. Transactions Not Accepted for Clearing.** Each of Party A and Party B represents to the other, as at the time of execution of a Derivatives Transaction, that it has a clearing agreement with a Clearing Member (or is, or its affiliate is, a Clearing Member). Each of Party A and Party B agrees that a breach of the foregoing representation by a party shall not constitute an event of default (howsoever described) for the purposes of this or any other agreement, and that the sole remedy in respect of such a breach shall be the fallbacks as set out in this Section 4 to the extent that the Derivatives Transaction is not cleared. If a party’s Clearing Member has not accepted the Derivatives Transaction on or before the Clearing Member Cut-off, then the fallbacks set forth below would apply. If a Clearing Organization rejects a Derivatives Transaction for clearing or has not accepted a Derivatives Transaction for clearing prior to the commencement of the Party A Election Period, then the fallbacks set forth below would also apply. *[If Annex A or Annex B is applicable, Party A and Party B may wish to include these provisions in a side letter.]*

Unless otherwise agreed by Party A and Party B, Party A will consider the following fallbacks in the order set out below and elect, in its sole discretion, the application of one of the following fallbacks and will provide notice of its election to Party B, in each case through an applicable trade submission system (if available, or otherwise in writing), as soon as practicable after it has made its election, and in any event, on or prior to the expiry of the Party A Election Period:

<sup>2</sup> The extent to which this Agreement will apply to certain security-based swaps, including CDS on narrow-based indices and single names, will depend on the scope of the regulations to be adopted by the Commodity Futures Trading Commission and the Securities and Exchange Commission. This Agreement may have to be revised to reflect those or other regulatory requirements, including but not limited to cut-off times for the submission and acceptance of cleared Derivatives Transactions and breakage in the event a Derivatives Transaction is not accepted for clearing.

<sup>3</sup> Parties may also elect to include in this Agreement the allocation of swap data reporting obligations as between the parties.

- (a) Party A, if a Clearing Member, may elect to accept the Derivatives Transaction as a cleared Derivatives Transaction (*i.e.*, Party A acts as Clearing Member for the Derivatives Transaction) or may, if it has an affiliate which is a Clearing Member, elect to have such affiliate accept the Derivatives Transaction as a cleared Derivatives Transaction (assuming, in each case, the appropriate documentation between the parties exists at the time or the parties can agree on appropriate documentation at the time), in which case Party A shall submit the Derivatives Transaction to such alternative Clearing Member for acceptance and clearing.
- (b) Party A, to the extent permitted by Applicable Law, may elect to accept the Derivatives Transaction as a bilateral Derivatives Transaction (assuming the appropriate documentation between the parties exists at the time or the parties can agree on appropriate documentation at the time), in which case such Derivatives Transaction shall no longer be subject to this Agreement.
- (c) If Party A does not elect either (a) or (b), Party A may elect (or be deemed, pursuant to Paragraph 4(f) below, to elect) to terminate such Derivatives Transaction and either Party A or Party B will pay an “**Early Termination Amount**” to the other as determined pursuant to the terms of Section 6(e) of a deemed 2002 ISDA Master Agreement (hereinafter, “Section 6(e)”) between Party A and Party B on the following basis: (i) the date of such election (or deemed election) shall be the “Early Termination Date”; (ii) such “Early Termination Date” shall be deemed to have arisen from an “Additional Termination Event” in respect of which such Derivatives Transaction is the sole “Affected Transaction”; (iii) the “material terms” (for the purposes of clause (a) of the definition of “Close-out Amount” in such deemed 2002 ISDA Master Agreement) of such Derivatives Transaction shall, for the avoidance of doubt, include the fact that such Derivatives Transaction was to be cleared by the relevant Clearing Organization; (iv) the “Termination Currency” shall be U.S. dollars; (v) the “Governing Law” shall be New York law; and (vi):
  - (x) if a Derivatives Transaction fails to clear because (A) Party A fails to submit the Party A Submission relating to such Derivatives Transaction or otherwise breaches its obligations to Party B with respect to such Derivatives Transaction, (B) Party A’s Clearing Member rejects such Derivatives Transaction for clearing, including, without limitation, because Party A has violated a position or credit limit imposed by Party A’s Clearing Member, or (C) the Clearing Organization rejects such Derivatives Transaction because Party A’s Clearing Member has violated a position or credit limit imposed by the Clearing Organization, Party A shall be the sole “Affected Party” solely for purposes of Section 6(e) and Party [ ] shall determine the Early Termination Amount;
  - (y) if a Derivatives Transaction fails to clear because (A) Party B fails to affirm the relevant Party A Submission (other than because it has rejected it in accordance with Paragraph 2(y)) or otherwise breaches its obligations to Party A with respect to such Derivatives Transaction, (B) Party B’s Clearing Member rejects such Derivatives Transaction for clearing, including, without limitation, because Party B has violated a position or credit limit imposed by Party B’s Clearing Member, or (C) the Clearing Organization rejects such Derivatives Transaction because Party B’s Clearing Member has violated a position or credit limit imposed by the Clearing Organization, Party B shall be the sole “Affected Party” solely for purposes of Section 6(e) and Party A shall determine the Early Termination Amount; and
  - (z) if a Derivatives Transaction fails to clear because a Clearing Organization rejects a Derivatives Transaction for clearing for any other reason, Party A shall determine the Early Termination Amount at mid-market pursuant to clause (ii)(3)(A) and (B) of Section 6(e). For purposes of clause (ii)(3)(A) and (B), Party A is the Determining Party.

Notwithstanding the foregoing, if the party determining the Early Termination Amount pursuant to (x), (y) or (z) above fails to do so in a timely manner (and in any event by the end of the [fifth] Local Business Day after the Early Termination Date) then the Early Termination Amount shall be determined by the other party. In determining the Early Termination Amount in accordance with (x) or (y) above, references to the “Determining Party” in the first paragraph of the definition of “Close-out Amount” in the deemed 2002 ISDA Master Agreement shall be deemed to be references to the “Non-affected Party”. The Early Termination Amount shall be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

- (d) Upon, or as soon as reasonably practicable following the determination of the Early Termination Amount, the party making such determination shall provide the other party with written notice of the Early Termination Amount (setting forth the details of the calculation in reasonable detail). Such notice shall be effective (i) upon receipt, if receipt occurs at or prior to 3:00 p.m. Local Settlement Time, or (ii) the next Local Business Day following receipt, if receipt occurs after 3:00 p.m. Local Settlement Time, which receipt in each case may be evidenced by the notifying party's receipt of a successful transmission or delivery record (where such notice is delivered by fax, e-mail, registered mail or hand delivery). The Early Termination Amount will be due and payable on the Local Business Day following the day that notice of such amount is effective. If a party fails to pay such Early Termination Amount when due, it will, to the extent permitted by Applicable Law, pay interest on the overdue amount to the other party on demand, for the period from and including the original due date for payment to (but excluding) the date of actual payment, at the Default Rate.
- (e) For the avoidance of doubt, the reference in Paragraph 4(c) to Section 6(e) is included solely for the purpose of incorporating the methodology and defined terms applicable under such Section 6(e) in order to determine the Early Termination Amount, and no other provision of such deemed 2002 ISDA Master Agreement shall be applicable to, or otherwise incorporated into, this Agreement.
- (f) If Party A has not elected any of (a), (b) or (c) prior to the expiration of the Party A Election Period, Party A shall be deemed to have elected 4(c) immediately prior to the expiration of the Party A Election Period.
- (g) In respect only of this Paragraph 4, the provisions of this Paragraph 4 shall prevail over any Applicable Law (unless otherwise specifically provided for in this Paragraph 4), unless any performance of Paragraph 4 would be illegal, in which event the relevant Applicable Law shall prevail. For the avoidance of doubt, except with respect to those Swap Execution Facilities listed on Schedule 1 hereto, the provisions of this Paragraph 4 shall supersede the rules of any Swap Execution Facility on or through which the Derivatives Transaction is executed.

**5. Delegation of Responsibilities.** Unless otherwise agreed in writing, each of the parties authorizes the other party (or parties) to delegate to one or more other persons or entities certain responsibilities in connection with their obligations under this Agreement; *provided, however*, that any party using such services shall remain responsible to the other party (or parties) for the performance (or failure of performance) of their respective obligations and responsibilities under this Agreement.

**6. Limitation of Liability.** Unless otherwise provided by Applicable Law or herein, none of the parties shall be responsible or liable for losses or damages resulting from: (i) error, negligence or misconduct of the other party (or parties), the Swap Execution Facility or Clearing Organization, or any service provider selected in good faith; (ii) failure of transmission, communication or electronic order facilities; or (iii) any other cause or causes beyond their control. In no event shall any party be liable to the other for consequential, incidental, indirect, punitive or special damages.

**7. Termination.** Subject as otherwise provided herein, this Agreement may be terminated by either of Party A or Party B upon prior written notice to the other parties. Any such termination shall have no effect upon any party's rights and obligations arising prior to such termination, and this Agreement will remain in effect and govern any Derivatives Transactions executed prior to such written notice and which have not been accepted for clearing by a Clearing Organization or otherwise terminated or addressed pursuant to Paragraph 4 hereof.

**8. Governing Law.** This Agreement shall be exclusively governed by, and construed in accordance with, the laws of the State of New York without regard to principles of choice of law (other than as set forth in Sections 5-1401 and 5-1402 of the New York General Obligations Law).

**9. Recordings.** Each party consents to the electronic recording, without the use of an automatic warning tone, of all telephone conversations between or among the parties and their representatives.

**10. Counterparts.** This Agreement may be executed and delivered in counterparts (including by facsimile or other electronic transmission), each of which will be deemed an original.

11. [Any party that has manually executed this Agreement represents, covenants and agrees that the version electronically executed by the other parties and stored on EGUS is the final version and sets forth the complete terms and conditions as agreed to by all the parties.

12. Conformed signatures were executed electronically in accordance with the [FIA Electronic Give-Up Agreement System User Agreement].] *[Consider whether EGUS system would be used for this type of agreement; if not, these clauses should be deleted.]*

13. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

14. **Amendments.** Except as otherwise provided herein, an amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile, email or other electronic transmission) and executed by each of the parties or confirmed by an exchange of emails.

15. **Survival of Obligations.** The obligations of the parties under this Agreement will survive the termination of any Derivatives Transaction.

16. **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

17. **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

18. **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

19. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their successors and permitted assigns. The parties may not assign this Agreement without the consent of the other party (or parties) hereto, *provided, however*, that a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement).

20. **Severability.** Subject to Paragraph 4(g), if any provision of this Agreement is, or at any time becomes, inconsistent with any present or future provision of Applicable Law, the inconsistent provision shall be deemed superseded or modified to conform with the relevant law, rule or regulation, and Applicable Law shall govern for the purpose of this Agreement, but in all other respects this Agreement shall remain in full force and effect.

21. **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by Applicable Law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, or order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction, and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any proceedings.

22. **Consent to Jurisdiction.** Except as provided in Paragraph 1 of this Agreement, any legal action, suit or proceeding between the parties relating to this Agreement or transactions hereunder shall take place in the Courts of the State of New York located in the Borough of Manhattan or in the United States District Court for the Southern District of New York. Each party consents to the service of process by the mailing to such party of copies of such court filing by certified mail to the

address of such party as it appears in Exhibit 1 to this Agreement (for Notices), such service to be effective ten days after mailing. Each party agrees that any legal action, suit or proceeding arising out of, or relating to, this Agreement may be brought in such courts; and waives, and agrees not to assert, as a defense in any such action, suit or proceeding (a) that it is not personally subject to the jurisdiction of such courts, (b) that such action, suit or proceeding may not be brought or is not maintainable in such courts, (c) that this Agreement may not be enforced in or by such courts, or (d) that the venue of any such action, suit or proceeding is inconvenient or improper. Final judgment against party in any action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of indebtedness arising from such judgment. Each party hereby waives irrevocably any immunity to which it might otherwise be entitled in any action at law, suit in equity or any other proceeding arising out of or based on this agreement or any transaction in connection herewith

**23. Applicable Annexes.** If checked, the parties hereby agree that the following annexes apply:

- (a)  **Clearing Member Acceptance (Party A's Clearing Member).** If checked, Annex A to the FIA-ISDA Cleared Derivatives Execution Agreement is applicable (if not checked, Annex A to the FIA-ISDA Cleared Derivatives Execution Agreement will be inapplicable).
- (b)  **Clearing Member Acceptance (Party B's Clearing Member).** If checked, Annex B to the FIA-ISDA Cleared Derivatives Execution Agreement is applicable (if not checked, Annex B to the FIA-ISDA Cleared Derivatives Execution Agreement will be inapplicable).

**24. Additional Defined Terms.**

- (a) **"Clearing Member"** means a party that is eligible to perform a clearing function with respect to a Derivatives Transaction at the relevant Clearing Organization on which the Derivatives Transaction is to be cleared on behalf of Party A or Party B (as applicable), which may include Party A or Party B if such entity is eligible to perform such clearing function.
- (b) **"Clearing Member Cut-off"** means, in respect of a Derivatives Transaction executed (i) prior to the Late-day Cut-off, 90 minutes after the Party B Affirmation Submission; and (ii) on or after the Late-day Cut-off, the later of 90 minutes after the Party B Affirmation Submission and 10:30 a.m. Local Time on the Local Business Day immediately following the day such Derivatives Transaction was executed.
- (c) **"Clearing Organization"** means a clearing organization on which Derivatives Transactions may be cleared.
- (d) **"Clearing Organization Cut-off"** means, with respect to a Clearing Organization and a given day, the earlier of (i) 7:00 p.m. Local Time; and (ii) the latest time at which a Derivatives Transaction may be submitted to such Clearing Organization and accepted for clearing on the same day.
- (e) **"Default Rate"** means .
- (f) **"Late-day Cut-off"** means, in respect of a Derivatives Transaction to be cleared on a Clearing Organization, the time falling three hours prior to the Clearing Organization Cut-off.
- (g) **"Local Business Day"** means a day other than Saturday or Sunday on which banks are generally open for business in New York City (where the relevant Clearing Organization is in the U.S.), London (where the relevant Clearing Organization is in Europe), and otherwise in the city where such Clearing Organization is located and, in each such case, the relevant Clearing Organization is open for business on such day.
- (h) **"Local Time"** means the time in New York City (when the relevant Clearing Organization is in the U.S.), London (when the relevant Clearing Organization is in Europe), and otherwise in the city where such Clearing Organization is located. Where a Clearing Organization offers more than one clearing platform or makes clearing available through a single platform in multiple jurisdictions having different Local Times, the time zone stated as applicable in the relevant Clearing Organization's rules for a particular platform and jurisdiction shall be the relevant Local Time for that Clearing Organization with respect to that platform for purposes of this Agreement.

- (i) “**Local Settlement Time**” means the time in [ ].
- (j) “**Party A Election Period**” means, in respect of a Derivatives Transaction executed: (i) prior to the Late-day Cut-off, the period starting one hour before the Clearing Organization Cut-off on the date of execution of the Derivatives Transaction and ending on the Clearing Organization Cut-off on the immediately following Local Business Day; and (ii) on or after the Late-day Cut-off, the period starting 12:00 p.m. Local Time on the Local Business Day immediately following the day such Derivatives Transaction was executed and ending on the Clearing Organization Cut-off on the immediately following Local Business Day; *provided* in each case that if a Derivatives Transaction was rejected for clearing by the relevant Clearing Organization before the time at which the Party A Election Period would otherwise have started in accordance with the preceding clauses (i) and (ii), the Party A Election Period shall start immediately upon any such rejection.
- (k) “**Party A Cut-off**” means, in respect of a Derivatives Transaction, 30 minutes from the time that Party A and Party B executed such Derivatives Transaction.
- (l) “**Party B Cut-off**” means, in respect of a Derivatives Transaction executed (i) prior to the Late-day Cut-off, two hours after the Party A Submission; and (ii) on or after the Late-day Cut-off, 9:00 a.m. Local Time on the Local Business Day immediately following the day such Derivatives Transaction was executed.
- (m) “**Swap Execution Facility**” means any multilateral or other trading facility, system or platform, including any communication network or auction facility, permitted under Applicable Law.

***[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]***

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the date set forth above.

\_\_\_\_\_  
[Name of Party A]

\_\_\_\_\_  
[Name of Party B]

By:

By:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[Print Name and Title]

\_\_\_\_\_  
[Print Name and Title]

\_\_\_\_\_  
[Name of Party A's Clearing Member]

\_\_\_\_\_  
[Name of Party B's Clearing Member]

*[Include only if Annex A is applicable]*

*[Include only if Annex B is applicable]*

By:

By:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Print Name and Title]

\_\_\_\_\_  
[Print Name and Title]



**Schedule 1**  
**List of Swap Execution Facilities**  
**Excluded for Purposes of Paragraph 4**

[ ]

**Exhibit 1 to the  
FIA-ISDA Cleared Derivatives Execution Agreement**

**Contact Details**

**CONTACT PERSONS**

*All instructions, notices or other communications regarding this Agreement should be given electronically to the contact persons of the relevant party hereto, whose names, addresses, and numbers are set forth below. Each party may change its contact persons by notice to the other parties.*

**Party A**

**For Trading**

Name of Person:

Address:

Telephone No.:

Fax No.:

Email

**For Documentation**

Name of Person:

Address:

Telephone No.:

Fax No.:

Email:

**For Notices**

Name of Person:

Address:

Telephone No.:

Fax No.:

Email:

**Party B**

**For Trading**

Name of Person:

Address:

Telephone No.:

Fax No.:

Email:

**For Documentation**

Name of Person:

Address:

Telephone No.:

Fax No.:

Email:

**For Notices**

Name of Person:

Address:

Telephone No.:

Fax No.:

Email:

*[Include only if Annex A is applicable]*

***Party A's Clearing Member***

***For Trading***

Name of Person:

Address:

Telephone No.:

Fax No.:

Email:

***For Documentation***

Name of Person:

Address:

Telephone No.:

Fax No.:

Email:

***For Notices***

Name of Person:

Address:

Telephone No.:

Fax No.:

Email:

***Party A's account name and/or number  
with Party A's Clearing Member***

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***Party B's account name and/or number  
with Party B's Clearing Member***

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*[Include only if Annex B is applicable]*

***Party B's Clearing Member***

***For Trading***

Name of Person:

Address:

Telephone No.:

Fax No.:

Email:

***For Documentation***

Name of Person:

Address:

Telephone No.:

Fax No.:

Email:

***For Notices***

Name of Person:

Address:

Telephone No.:

Fax No.:

Email:

**Annex A**  
**FIA-ISDA Cleared Derivatives Execution Agreement**  
**Clearing Member Acceptance (Party A's Clearing Member)**

1. **Conforming Derivatives Transactions.** Party A may enter into certain Derivatives Transactions and Party A's Clearing Member hereby agrees that it will accept, and act as Party A's Clearing Member in respect of, those Derivatives Transactions that fall within the conforming derivatives transactions types, position/credit limits, and other additional provisions set out in the Limits Notice ("**Conforming Derivatives Transactions**"). Party A's Clearing Member may revise or terminate a Limits Notice by providing written notice to Party B, with a copy to Party A, which notice will be effective [*insert agreed-upon duration*] following receipt, as may be evidenced by Party A's Clearing Member's receipt of a successful transmission or delivery record (where such notice is delivered by fax, e-mail, registered mail or hand delivery); *provided* that any revision or termination of a Limits Notice will not affect Derivatives Transactions entered into between Party A and Party B prior to the effectiveness of such notice. Each Limits Notice shall supplement, be governed by, and form a part of this Agreement. For the purposes hereof, and in respect of a Derivatives Transaction, a "**Limits Notice**" means the most recent effective notice in, or substantially in the form, of Exhibit 2 hereto; *provided* that, for the avoidance of doubt, any revision of the limits, parameters and/or requirements set out in a Limits Notice or termination of a Limits Notice shall not be construed as an amendment or modification of the FIA-ISDA Cleared Derivatives Execution Agreement for the purposes of Paragraph 14 thereof.

2. **Clearing Member Submission.** If Party A's Clearing Member (i) receives a Party B Affirmation Submission affirming a Party A Submission in accordance with Paragraph 2 of the FIA-ISDA Cleared Derivatives Execution Agreement and (ii) the Derivatives Transaction specified in such Party B Affirmation Submission qualifies as a Conforming Derivatives Transaction, Party A's Clearing Member will, as soon as practicable following receipt of such Party B Affirmation Submission and no later than the Clearing Member Cut-off, accept such Derivatives Transaction and submit such Derivatives Transaction to the Clearing Organization for clearing by submitting an electronic message through the applicable trade submission system.

3. **Remedies.**

(a) If (i) Party A's Clearing Member fails to accept for clearing (A) a Conforming Derivatives Transaction in accordance with the terms of this Annex A or (B) a Derivatives Transaction that Party A's Clearing Member has otherwise agreed to accept, or (ii) the Clearing Organization rejects a Derivatives Transaction for clearing because Party A's Clearing Member has violated a position or credit limit (such Derivatives Transactions, "**Annex A Failed Derivatives Transactions**"), then, in the event Party A elects (or is deemed to elect) to terminate any Annex A Failed Derivatives Transaction with Party B, Party [ ] will determine an Early Termination Amount pursuant to Paragraph 4(c) of the FIA-ISDA Cleared Derivatives Execution Agreement, except that Party A will be the sole "Affected Party" solely for purposes of Section 6(e). Notwithstanding the foregoing, if the party determining the Early Termination Amount fails to do so in a timely manner (and in any event by the end of the [fifth] Local Business Day after the Early Termination Date) then the Early Termination Amount shall be determined by the other party. In determining the Early Termination Amount, references to the "Determining Party" in the first paragraph of the definition of "Close-out Amount" in the deemed 2002 ISDA Master Agreement shall be deemed to be references to the "Non-affected Party". The Early Termination Amount shall be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

(b) On or as soon as reasonably practicable following the determination of the Early Termination Amount, the party making such determination shall provide the other parties (other than Party B's Clearing Member) with written notice of the Early Termination Amount. Such notice shall be effective (i) upon receipt, if receipt occurs at or prior to 3:00 p.m. Local Settlement Time, or (ii) the next Local Business Day following receipt, if receipt occurs after 3:00 p.m. Local Settlement Time, which receipt in each case may be evidenced by the notifying party's receipt of a successful transmission or delivery record (where such notice is delivered by fax, e-mail, registered mail or hand delivery). The Early Termination Amount will be due and payable on the Local Business Day following the day that notice of such amount is effective.

If the Early Termination Amount is payable by Party A in respect of Annex A Failed Derivatives Transactions, then Party A and Party A's Clearing Member shall have joint and several liability for such payment and Party A shall make such payment to Party B on such due date (or, in the event that Party A does not make such payment within three Local Business Days of such due date, Party A's Clearing Member shall make such payment within one Local Business Day following demand

thereof by Party B, *provided* that where Party A makes such payment, Party A's Clearing Member shall, unless otherwise agreed, reimburse Party A for such payment within one Local Business Day following demand thereof by Party A).<sup>4</sup> Upon payment by Party A or Party A's Clearing Member, Party A and Party A's Clearing Member shall be released from all payments and obligations to Party B with respect to such Derivatives Transaction. Party A shall not be liable to Party A's Clearing Member with respect to any payment made by Party A's Clearing Member to Party A or to Party B, in each case pursuant to this Paragraph 3, unless otherwise agreed.

If the Early Termination Amount is payable by Party B, then, unless otherwise agreed, Party B shall have sole liability for such payment and shall make such payment on such due date.

(c) If a party fails to pay such Early Termination Amount when due, it will, to the extent permitted by Applicable Law, pay interest on the overdue amount to the other party on demand, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate.

(d) Notwithstanding anything to the contrary in Paragraph 4(c) of the FIA-ISDA Cleared Derivatives Execution Agreement, if (i) Party A's Clearing Member fails to accept for clearing (A) a Conforming Derivatives Transaction in accordance with the terms of this Annex A or (B) a Derivatives Transaction that Party A's Clearing Member has otherwise agreed to accept for clearing; or (ii) the Clearing Organization rejects a Derivatives Transaction for clearing because Party A's Clearing Member has violated a position or credit limit, then the remedy for Annex A Failed Derivatives Transactions will be addressed solely in this Annex A, and the remedies specified in Paragraph 4(c) of the FIA-ISDA Cleared Derivatives Execution Agreement will not apply.

4. **Conflicting Provisions.** If any provision of the FIA-ISDA Cleared Derivatives Execution Agreement conflicts with a provision of this Annex A, the provision of this Annex shall govern.

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<sup>4</sup> The parties may choose to separately address the final allocation of costs as between them and their respective Clearing Members.

**Annex B**  
**FIA-ISDA Cleared Derivatives Execution Agreement**  
**Clearing Member Acceptance (Party B's Clearing Member)**

1. **Conforming Derivatives Transactions.** Party B may enter into certain Derivatives Transactions and Party B's Clearing Member hereby agrees that it will accept, and act as Party B's Clearing Member in respect of, those Derivatives Transactions that fall within the conforming derivatives transactions types, position/credit limits, and other additional provisions set out in the Limits Notice ("**Conforming Derivatives Transactions**"). Party B's Clearing Member may revise or terminate a Limits Notice by providing written notice to Party A, with a copy to Party B, which notice will be effective [*insert agreed-upon duration*] following receipt, as may be evidenced by Party B's Clearing Member's receipt of a successful transmission or delivery record (where such notice is delivered by fax, e-mail, registered mail or hand delivery); *provided* that any revision or termination of a Limits Notice will not affect Derivatives Transactions entered into between Party A and Party B prior to the effectiveness of such notice. Each Limits Notice shall supplement, be governed by, and form a part of this Agreement. For the purposes hereof, and in respect of a Derivatives Transaction, a "**Limits Notice**" means the most recent effective notice in, or substantially in the form, of Exhibit 2 hereto; *provided* that, for the avoidance of doubt, any revision of the limits, parameters and/or requirements set out in a Limits Notice or termination of a Limits Notice shall not be construed as an amendment or modification of the FIA-ISDA Cleared Derivatives Execution Agreement for the purposes of Paragraph 14 thereof.

2. **Clearing Member Submission.** If Party B's Clearing Member (i) receives a Party B Affirmation Submission affirming a Party A Submission in accordance with Paragraph 2 of the FIA-ISDA Cleared Derivatives Execution Agreement and (ii) the Derivatives Transaction specified in such Party B Affirmation Submission qualifies as a Conforming Derivatives Transaction, Party B's Clearing Member will, as soon as practicable following receipt of such Party B Affirmation Submission and no later than the Clearing Member Cut-off, accept such Derivatives Transaction and submit such Derivatives Transaction to the Clearing Organization for clearing by submitting an electronic message through the applicable trade submission system.

3. **Remedies.**

(a) If (i) Party B's Clearing Member fails to accept for clearing (A) a Conforming Derivatives Transaction in accordance with the terms of this Annex B or (B) a Derivatives Transaction that Party B's Clearing Member has otherwise agreed to accept, or (ii) the Clearing Organization rejects a Derivatives Transaction for clearing because Party B's Clearing Member has violated a position or credit limit (such Derivatives Transactions, "**Annex B Failed Derivatives Transactions**"), then, in the event Party A elects (or is deemed to elect) to terminate any Annex B Failed Derivatives Transaction with Party B, Party A will determine an Early Termination Amount pursuant to Paragraph 4(c) of the FIA-ISDA Cleared Derivatives Execution Agreement, except that Party B will be the sole "Affected Party" solely for purposes of Section 6(e). Notwithstanding the foregoing, if the party determining the Early Termination Amount fails to do so in a timely manner (and in any event by the end of the [fifth] Local Business Day after the Early Termination Date) then the Early Termination Amount shall be determined by the other party. In determining the Early Termination Amount, references to the "Determining Party" in the first paragraph of the definition of "Close-out Amount" in the deemed 2002 ISDA Master Agreement shall be deemed to be references to the "Non-affected Party". The Early Termination Amount shall be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

(b) On or as soon as reasonably practicable following the determination of the Early Termination Amount, the party making such determination shall provide the other parties (other than Party A's Clearing Member) with written notice of the Early Termination Amount. Such notice shall be effective (i) upon receipt, if receipt occurs at or prior to 3:00 p.m. Local Settlement Time, or (ii) the next Local Business Day following receipt, if receipt occurs after 3:00 p.m. Local Settlement Time, which receipt in each case may be evidenced by the notifying party's receipt of a successful transmission or delivery record (where such notice is delivered by fax, e-mail, registered mail or hand delivery). The Early Termination Amount will be due and payable on the Local Business Day following the day that notice of such amount is effective.

If the Early Termination Amount is payable by Party B in respect of Annex B Failed Derivatives Transactions, then Party B and Party B's Clearing Member shall have joint and several liability for such payment and Party B shall make such payment on such due date (or, in the event that Party B does not make such payment within three Local Business Days of such due date, Party B's Clearing Member shall make such payment within one Local Business Day following demand thereof by

Party A, *provided* that where Party B makes such payment Party B's Clearing Member shall, unless otherwise agreed, reimburse Party B for such payment within one Local Business Day following demand thereof by Party B).<sup>5</sup> Upon payment by Party B or Party B's Clearing Member, Party B and Party B's Clearing Member shall be released from all payments and obligations to Party A with respect to such Derivatives Transaction. Party B shall not be liable to Party B's Clearing Member with respect to any payment made by Party B's Clearing Member to Party A or to Party B, in each case pursuant to this Paragraph 3, unless otherwise agreed.

If the Early Termination Amount is payable by Party A, then, unless otherwise agreed, Party A shall have sole liability for such payment and shall make such payment to Party B on such due date.

(c) If a party fails to pay such Early Termination Amount when due, it will, to the extent permitted by Applicable Law, pay interest on the overdue amount to the other party on demand, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate.

(d) Notwithstanding anything to the contrary in Paragraph 4(c) of the FIA-ISDA Cleared Derivatives Execution Agreement, if (i) Party B's Clearing Member fails to accept for clearing (A) a Conforming Derivatives Transaction in accordance with the terms of this Annex B or (B) a Derivatives Transaction that Party B's Clearing Member has otherwise agreed to accept for clearing; or (ii) the Clearing Organization rejects a Derivatives Transaction for clearing because Party B's Clearing Member has violated a position or credit limit, then the remedy for Annex B Failed Derivatives Transactions will be addressed solely in this Annex B, and the remedies specified in Paragraph 4(c) of the FIA-ISDA Cleared Derivatives Execution Agreement will not apply.

4. **Conflicting Provisions.** If any provision of the FIA-ISDA Cleared Derivatives Execution Agreement conflicts with a provision of this Annex B, the provision of this Annex shall govern.

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<sup>5</sup> The parties may choose to separately address the final allocation of costs as between them and their respective Clearing Members.

**Exhibit 2**  
**FIA-ISDA Cleared Derivatives Execution Agreement**  
**Form of Limits Notice**

Date:

To: [PARTY A] and [PARTY B]

From: [CLEARING MEMBER] ([“Party A’s Clearing Member”] [“Party B’s Clearing Member”])

Re: Limits Notice under FIA-ISDA Cleared Derivatives Execution Agreement (“Agreement”)

Ladies and Gentlemen:

For purposes of the FIA-ISDA Cleared Derivatives Execution Agreement, “Conforming Derivatives Transactions” shall be those entered into between yourselves that fall within and comply with the following parameters, limits and requirements:

1. Conforming Derivatives Transaction Types: [ ]
2. Position/Credit Limits: [ ]
3. Additional Provisions: [ ]

Capitalized terms used but not defined herein shall have the meanings specified in the Agreement.

Very truly yours,

[CLEARING MEMBER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_