To address the effects of the Foreign Account Tax Compliance provisions of the Hiring Incentives to Restore Employment Act ("FATCA")[1] on derivatives transactions, market participants may wish to consider incorporating the below ISDA FATCA Provision, developed by the ISDA North American Tax Committee, into their existing or future ISDA Master Agreements. The impact of the proposed language is to place the FATCA withholding tax burden on the recipient of the payment by eliminating this tax from the definition of "Indemnifiable Tax" in the ISDA Master Agreement. The rationale is that the recipient is the sole party that has the ability to avoid the withholding tax by complying with the FATCA rules; therefore, the recipient should be the party burdened with the FATCA withholding tax if it chooses to not comply.

ISDA FATCA Provision:

Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. (a) For purposes of any Payer Tax Representation, the words "any Tax from any payment" shall not include any tax imposed under Sections 1471 and 1472 of the Internal Revenue Code of 1986, as amended (or the United States Treasury regulations or other guidance issued or any agreements entered into thereunder) ("FATCA Withholding Tax"); (b) for the avoidance of doubt the parties agree that for purposes of Section 2(d) of this Agreement the deduction or withholding of FATCA Withholding Tax is required by applicable law; and (c) the definition of "Indemnifiable Tax" shall not include any FATCA Withholding Tax.

[1] For more information on FATCA, please visit www.isda.org.

IRS Circular 230 Disclosure: ISDA does not provide tax advice. Any discussion of US tax matters in this attachment cannot be used for the purpose of avoiding tax penalties.