

## ISDA Conflicting Instruction Provision

The Securities Intermediary shall be entitled to rely upon any effective<sup>1</sup> Pledgor Access Notice or any effective Notice of Exclusive Control that the Securities Intermediary reasonably believes to have been delivered by an authorized person of the Pledgor or the Secured Party, respectively. In the event that both an effective Notice of Exclusive Control and an effective Pledgor Access Notice have been received by the Securities Intermediary, then the following provisions apply:

*[Select one of the following options:]*

### **[OPTION 1: (First in Time Prevails).**

[Subject to Section [Y] (Secured Party Dispute Right) and Section [Y] (Pledgor Dispute Right),] [T]he Securities Intermediary shall disregard (i) any Pledgor Access Notice that is effective after a Notice of Exclusive Control is effective and (ii) any Notice of Exclusive Control that is effective after a Pledgor Access Notice is effective. [If the Securities Intermediary is unable to determine which of the Pledgor Access Notice or the Notice of Exclusive Control was effective first, then the [Notice of Exclusive Control][Pledgor Access Notice] will be deemed to have been effective first.]<sup>2</sup> [The Pledgor and the Secured Party agree to abide by the Securities Intermediary's good faith determination as to whether the Notice of Exclusive Control or the Pledgor Access Notice was effective first or whether the Securities Intermediary is unable to determine whether the Notice of Exclusive Control or the Pledgor Access Notice was effective first.]<sup>3</sup>

### **[OPTION 2: (Notice of Exclusive Control Prevails).**

The Securities Intermediary shall be entitled to rely upon the effective Notice of Exclusive Control from the Secured Party to the Securities Intermediary and shall disregard any effective Pledgor Access Notice from the Pledgor to the Securities Intermediary.]<sup>4</sup>

### **[ADDITIONAL OPTION X: (Uncertainty of Securities Intermediary).**

Notwithstanding anything else to the contrary in this Section, if at any time the Securities Intermediary determines that its legal obligations to transfer Collateral in the Account to the Secured Party or the Pledgor are uncertain (including, without limitation, due to a determination by the Securities Intermediary that a transfer may be prohibited by applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws

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<sup>1</sup> The terms “effective” or “effectiveness” shall have the meanings ascribed to them by the parties under the Control Agreement.

<sup>2</sup> Parties should select whether the NOEC or PAN should prevail in the event of a “tie”. Parties may also elect to delete this sentence and remain silent on the possibility of a “tie”.

<sup>3</sup> Parties may also elect to delete this sentence.

<sup>4</sup> Option 2 is not intended to be used in conjunction with the Pledgor Dispute Right provision.

affecting creditors' rights generally), then Securities Intermediary shall promptly give the Secured Party and the Pledgor written notice of its determination and shall retain the Collateral in the Account until Securities Intermediary determines that its legal obligations to transfer Collateral in the Account to the Secured Party or the Pledgor have been adequately clarified, which determination may be based upon the receipt of (i) an order from a court (or other forum) of competent jurisdiction that directs the Securities Intermediary to take action in respect of the Collateral in the Account, (ii) a copy of a declaratory or other judgment from a court (or other forum) of competent jurisdiction that clarifies its legal obligations to transfer Collateral in the Account to the Secured Party or the Pledgor, (iii) an opinion of external counsel acceptable in good faith to the Securities Intermediary stating that the Securities Intermediary is permitted by law to transfer Collateral in the Account to the Secured Party or the Pledgor, as applicable or (iv) joint written instructions from the Pledgor and the Secured Party.]<sup>5</sup>

Notwithstanding anything else to the contrary herein, if the Securities Intermediary transfers Collateral in the Account in compliance with any effective Pledgor Access Notice or any effective Notice of Exclusive Control before the effectiveness of both a Pledgor Access Notice and a Notice of Exclusive Control, then such transfer shall be valid and enforceable.

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<sup>5</sup> This provision should be coordinated with other provisions in the Control Agreement addressing similar issues. Additionally, parties may wish to include a separate provision whereby the Securities Intermediary may seek clarification from the sender of a notice if there is any ambiguity in such notice.