



International Swaps and Derivatives Association, Inc.

**AMENDED AND RESTATED**  
**ADDENDUM I<sup>1</sup>**  
**TO**  
**ISDA AUGUST 2012 DF PROTOCOL QUESTIONNAIRE**

published on ~~November 9,~~ December 13, 2012  
by the International Swaps and Derivatives Association, Inc.

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**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~~ 2012 (unless a later date is applicable as described below). 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”). This Addendum I amends and restates the version published on November 9, 2012. For convenience, a blackline of the changes can be found at [www.isda.org](http://www.isda.org).*

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

“**Active Fund**” means a “private fund,” as defined in Section 202(a) of the Investment Advisers Act of 1940, that (i) is not a Third-Party Subaccount and (ii) has executed 200 or more swaps per

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<sup>1</sup> This Addendum is intended to address certain provisions of the following final rules:

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).

CFTC Final Rule, *Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants,* 77 Fed. Reg. 55904 (Sept. 11, 2012).

**Final Rule, Clearing Requirement Determination Under Section 2(h) of the CEA, at 139–40, pre-Fed. Reg. draft available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister112812.pdf>.**

month on average over the 12 months preceding ~~September 11, 2012~~ November 1, 2012. For purposes of clause (ii) of this definition, “swaps” shall mean swaps as defined by the CFTC for purposes of implementation schedules under parts 23 and 50 of CFTC regulations and shall exclude, without limitation, foreign exchange swaps exempted from regulation as “swaps” by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the Commodity Exchange Act.

“*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 3c of this Addendum I.

“*Notice Procedures*” has the meaning ascribed to such term in the DF Supplement.

“*Specified FX Transactions*” means foreign currency transactions described in Section 2(c)(2)(B)(~~vii~~)(I) or Section 2(c)(2)(C)(~~viii~~)(I)(bb) (other than transactions described in Section 2(c)(2)(C)(i)(II)) of the Commodity Exchange Act. For the avoidance of doubt, the determination as to whether a transaction is described in one of the sections specified in the preceding sentence is made without regard to whether a party thereto is an “eligible contract participant” under the Commodity Exchange Act.

“*Swap Transaction Event*” has the meaning ascribed to such term in the DF Supplement.

“*Third-Party Subaccount*” means an account that is managed by an investment ~~adviser~~ that manager who is (1) independent of and unaffiliated with the account’s beneficial owner or sponsor and (2) responsible for the documentation necessary for the account’s beneficial owner to document swaps as required under section 4s(i) of the ~~CEA~~ 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. Additional PCA Principal Information: Active Funds**

*All PCA Principals are asked to provide the following information to assist Swap Dealers in determining compliance dates for (i) CFTC Regulation 23.504 relating to requirements for swap trading relationship documentation, and (ii) CFTC Regulation 50.4 relating to the requirement to clear certain swaps.*

To answer the following question, complete column 26 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate:

Is PCA Principal an Active Fund?<sup>2</sup>

### **Section 3. 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.<sup>3</sup> 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, of the Questionnaire).<sup>4</sup> 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 Section 3.*

*c. A PCA Principal that cannot (or does not) take either step (a) or (b) above, should make the representation provided below, if appropriate.<sup>5</sup>*

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<sup>2</sup> 77 Fed. Reg. 55904, 55940 (Sept. 11, 2012); [Final Rule, Clearing Requirement Determination Under Section 2\(h\) of the CEA, at 139–40, pre-Fed. Reg. draft available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister112812.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister112812.pdf)

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> A PCA Principal who has already delivered a completed Questionnaire may update the representations it made therein by making the following additional representation.

*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:*

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 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.<sup>6</sup>

#### **Section 4. 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 one or more of the Excluded ECP Categories for purposes of entering into Specified FX Transactions.<sup>7</sup> 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.<sup>8</sup> 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.*

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<sup>6</sup> CFTC Regulation 1.3(m)(6).

<sup>7</sup> CFTC Regulation 1.3(m)(5).

<sup>8</sup> 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.

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 the Excluded ECP Categories.<sup>9</sup> 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 one or more of the following representations, as appropriate.<sup>10</sup>

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:

- (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.<sup>11</sup>

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:

- (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,

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<sup>9</sup> A PCA Principal who has already delivered a completed Questionnaire in which it represented that it qualified as an Eligible Contract Participant 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 falls within one of the other categories of Eligible Contract Participant.

<sup>10</sup> 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.

<sup>11</sup> CFTC Regulation 1.3(m)(8).

(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 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.<sup>12</sup>

*Insert a “Yes” in column 30 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).<sup>13</sup>

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By executing this Addendum I, the signatory agrees as PCA Principal or PCA Agent for specified PCA Principals that ~~that~~ the information and representations provided herein shall be “DF Supplement Information” relating to PCA Principal and may be relied upon by each counterparty to whom this Addendum I is delivered .

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<sup>12</sup> CFTC Regulation 1.3(m)(5).

<sup>13</sup> 77 Fed. Reg. 30596, 30653-54 (May 23, 2012).

[INSERT FULL LEGAL NAME OF PCA PRINCIPAL OR PCA AGENT]<sup>14</sup>

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

Name:

Title:

Date:

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<sup>14</sup> 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.”

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