

MEMORANDUM

**To: ISDA Equity Steering Committee, ISDA Equity Market Infrastructure Group
and MDE Notification WG**

Date: March 28, 2017

Below is a summary of the discussion that took place on Thursday, March 23rd (the “NYSE Arca MDE Call”) among market participants to discuss whether the system issue experienced by the NYSE Arca Equities trading platform that occurred on March 20, 2017, which resulted in a subset of ETF symbols failing to conduct a closing auction and subsequent suspension of trading (the “NYSE Arca Event”), constitutes a Market Disruption Event.

This summary provides certain market consensus reached among the participants on the NYSE Arca MDE Call and is not meant to be binding in any way. As with all market information and guidance that ISDA disseminates, parties are free to choose alternate means of addressing the event. Each member remains responsible for considering its own documentation and the specific terms of its own trades and forming its own conclusion on the proper interpretation of events.

NYSE Arca MDE Call participants discussed whether the NYSE Arca Event constitutes a Market Disruption Event for:

1. Share Transactions documented pursuant to the 2007 Americas Master Variance Swap Confirmation Agreement (“ISDA Americas Share Variance Swap Transactions”); and
2. Share Transactions documented pursuant to the 2002 ISDA Equity Derivatives Definitions (the “2002 Definitions”).

For the purposes of these discussions it was assumed that participants are treating ETF symbols traded on the NYSE Arca Equities trading platform as “Shares” pursuant to the 2002 Definitions.

It was agreed by NYSE Arca MDE Call participants that any transactions confirmed under Equity Matrices implemented to date by the market under the 2011 ISDA Equity Derivatives Definitions (the “2011 Definitions”) were unlikely to be affected by the NYSE Arca Event; therefore, the 2011 Definitions were not discussed.

Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the 2002 Definitions.

Whether the NYSE Arca Event constitutes a Market Disruption Event for ISDA Americas Share Variance Swap Transactions?

The group noted that the Market Disruption Event definition for ISDA Americas Share Variance Swap Transactions allows for a determination of an Exchange Disruption or Trading

Disruption by reference to the last 5 minutes prior to the close, without reference to a materiality determination by the Calculation Agent.

The group also noted that not all symbols on the NYSE Arca Equities trading platform were affected by the NYSE Arca Event.

The consensus of discussion participants was that a Trading Disruption and/or Exchange Disruption had occurred in the last 5 minutes prior to the close and therefore the NYSE Arca Event constitutes a Market Disruption Event for ISDA Americas Share Variance Swap Transactions that reference Shares affected by the NYSE Arca Event.

Whether the NYSE Arca Event constitutes a Market Disruption Event for Share Transactions documented pursuant to the 2002 Definitions (with no modification to the definitions of Market Disruption Event, Trading Disruption or Exchange Disruption)?

The group noted that under Section 6.3 of the 2002 Definitions, a “materiality” standard is imposed in determining whether a Market Disruption Event, that is attributable to an Exchange Disruption and/or a Trading Disruption, has occurred at any time during the one hour period prior to the Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out valuation Time, as the case may be.

The consensus of discussion participants was that the determination of whether a Market Disruption Event has occurred needs to be determined on a transaction by transaction basis by the relevant Calculation Agent. The group noted that factors that a Calculation Agent should take into account when determining if a Trading Disruption and/or Exchange Disruption was material for a particular Share Transaction include, but are not limited to: the degree by which the relevant Share was affected by the NYSE Arca Event; the Valuation Time; and whether the parties’ ability to hedge the transaction was materially affected by the Trading Disruption and/or Exchange Disruption.

For any Transactions that do not fit into the above categories, including Basket Transactions and Transactions which determine price on the basis of a volume-weighted price for such day, the Calculation Agent should refer to the terms of the relevant Confirmation to determine whether or not the NYSE Arca Event constitutes a Market Disruption Event thereunder and, if applicable, the related consequences.