

September 29, 2023

**Guidance –2008 ISDA Inflation Derivatives Definitions**

**Delayed Publication of  
the September 2023 level of “USA – Non-revised Consumer  
Price Index – Urban (CPI-U)”**

The International Swaps and Derivatives Association, Inc. (“ISDA”) announces the following guidance for parties to inflation derivative transactions that are affected by any suspended or delayed publication of the September 2023 level for the USA – Non-revised index of Consumer Prices for All Urban Consumers (CPI-U) before seasonal adjustment (“CPI-U”).

*On September 25, 2023, [Reuters reported](#)<sup>1</sup> concerns that publication of the September 2023 level of CPI-U could be suspended or delayed in the event of a government shutdown resulting from failure by Congress to agree funding programs for federal agencies. This guidance considers the impact any such suspension or delay of publication would have on inflation derivative transactions incorporating the [2008 ISDA Inflation Derivatives Definitions](#).*

*ISDA understands that no formal announcement has been made by the Index Sponsor relating to the possible suspension or delay of the publication of the September 2023 level for CPI-U. It is therefore important to note that this guidance has been prepared solely on the basis of the information contained in the Reuters report.*

ISDA is issuing this guidance in the interest of mitigating market risk and the promotion of orderly valuation and settlement of positions by market participants. This guidance illustrates the consequences of the above possible suspension based on the provisions in the [2008 ISDA Inflation Derivatives Definitions](#) (regardless of whether Supplements Number 1, 2 or 3, published on November 20, 2009, June 20, 2012 and August 4, 2022 respectively apply) (the “**Inflation Definitions**”). This guidance does not provide views on conventions or consequences, which parties may have bilaterally agreed, that deviate from such provisions, nor does it cover transactions which are not subject to the Inflation Definitions and for which no bilateral agreement has been reached regarding the subject matter of this guidance. This guidance includes a description of provisions contained in the Inflation Definitions. **This guidance is not legal advice and market participants should consult their legal advisors as appropriate.** Market participants should not rely on this guidance for any purpose but should review the contractual terms of each affected transaction in order to understand the effects of the possible suspension or delay described above. ISDA does not assume any

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<sup>1</sup> <https://www.reuters.com/markets/us/us-government-shutdown-would-delay-release-key-economic-data-official-says-2023-09-25/>

responsibility for this guidance and it is not intended to set a precedent. Parties are not obliged to follow this guidance and may choose alternate means of addressing the aforementioned event. In addition, firms should consider contacting their counterparties to discuss the consequences for their transactions.

For cleared transactions and transactions executed on electronic confirmation platforms, market participants should refer to the contractual terms of the applicable clearing house or confirmation platform, as applicable.

Capitalized terms used in this guidance and not otherwise defined have the meanings given to them in the Inflation Definitions. References in this guidance to the ‘Calculation Agent’ are to the Calculation Agent under the terms of the relevant inflation derivative transaction.

Please note that this guidance may be updated from time to time.

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## *Guidance*

### **1 Delay of Publication**

ISDA understands that the September 2023 level for CPI-U may be suspended, which is to say delayed, rather than not published at all.

Section 2.1 (*Delay of Publication*) of the Inflation Definitions broadly provides that if any level of an Index for a Reference Month which is relevant to the calculation of a payment under an Index Transaction has not been published or announced by the day that is five Business Days prior to the next Payment Date, the Calculation Agent must determine a Substitute Index Level in accordance with the methodologies described in Section 2.1(a)(i) or 2.1(a)(ii) of the Inflation Definitions.

‘Business Day’ and ‘Payment Date’ are not defined in the Inflation Definitions. Unless otherwise specified in a Confirmation, they have the meanings given to them in the 2006 ISDA Definitions<sup>2</sup>.

Consequently and by way of example, if the Payment Date for an Index Transaction falls on Thursday, November 2, 2023 in relation to an amount due to be determined by reference to the September 2023 level of CPI-U, assuming no non-Business Days (other than weekends) in the period preceding the Payment Date, the Calculation Agent would be required to determine a Substitute Index Level if that level had not been published or announced by Thursday, October 26, 2023.

### **2 Related Bond**

In order to apply the methodologies to determine a Substitute Index Level, it is first necessary to assess whether or not the Transaction has a Related Bond.

A Related Bond is the bond specified as such in the Confirmation. If no bond is specified or the bond specified redeems or matures during the Term of the Transaction, the Related Bond is the Fallback Bond unless ‘Fallback Bond: Not applicable’ is specified, in which case there will be no Related Bond.

The Fallback Bond is a bond selected by the Calculation Agent which:

- (1) is issued by the government of the country to whose level of inflation the Index relates, i.e. in the present case the United States of America,

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<sup>2</sup> Note that ISDA has published wording for use in Confirmations that upgrades to the 2021 ISDA Interest Rate Derivatives Definitions and makes conforming changes to other cross-references and terms that are used in the 2008 ISDA Inflation Derivatives Definitions but defined in the 2021 Interest Rate Derivatives Definitions.

- (2) satisfies the criteria set out in Section 1.3 (*Fallback Bond*) of the Inflation Definitions, i.e. which pays a coupon or redemption amount which is calculated by reference to CPI-U, and
- (3) has a maturity date which falls on:
- (a) the same day as the Termination Date of the Transaction, or
  - (b) if there is no such bond maturing on the Termination Date, the next longest maturity after the Termination Date of the Transaction, or
  - (c) if no bond contemplated in (a) or (b) is selected by the Calculation Agent, the next shortest maturity before the Termination Date of the Transaction.

The Calculation Agent is required to select the Fallback Bond from those inflation-linked bonds issued on or before the Effective Date of the Transaction and, if there is more than one inflation-linked bond maturing on the same date, to select the Fallback Bond from those bonds. If the Fallback Bond redeems, the Calculation Agent must select a new Fallback Bond on the same basis from all eligible bonds in issue at the time the original Fallback Bond redeems (including any bond for which the redeemed bond is exchanged).

### 3 Determination of a Substitute Index Level

Section 2.1(a)(i) of the Inflation Definitions broadly provides that the Calculation Agent must, in the first instance, take the same action as that taken pursuant to the terms and conditions of the Related Bond.

If, however, that does not result in a Substitute Index Level (including, for example, because no Related Bond has been specified and “Fallback Bond: Not Applicable” has been specified in the Confirmation), then the Calculation Agent must determine the Substitute Index Level in accordance with Section 2.1(a)(ii) as follows:

$$\text{Substitute Index Level} = \text{Base Level} \times (\text{Latest Level/Reference Level})$$

where:

“Base Level” means the level of CPI-U (excluding any “flash” estimates) published or announced by the Index Sponsor in respect of the month which is 12 calendar months prior to the month for which the Substitute Index Level is being determined.

“Latest Level” means the latest level of the Index (excluding any “flash” estimates) published or announced by the Index Sponsor prior to the month in respect of which the Substitute Index Level is being calculated.

“Reference Level” means the level of the Index (excluding any "flash" estimates) published or announced by the Index Sponsor in respect of the month that is 12 calendar months prior to the month referred to in "Latest Level" above.

ISDA has consulted with market participants and received feedback that it would be useful to set out the calculation of the Substitute Index Level that would be determined under Section 2.1(a)(ii) of the Inflation Definitions if publication of the September 2023 level of CPI-U were delayed beyond the day that is 5 Business Days prior to the next Payment Date under that Index Transaction.

In that circumstance<sup>3</sup>:

“Base Level” would be the level of CPI-U for September 2022, which was 296.808.

“Latest Level” would be the level of CPI-U for August 2023, which was 307.026.

“Reference Level” would be the level of CPI-U for August 2022, which was 296.171.

On that basis, the Substitute Index Level under Section 2.1(a)(ii) would be:

$$296.808 \times (307.026/296.171) = 307.686347$$

(subject to rounding in accordance with Section 1.13 (*Rounding*)<sup>4</sup>).

<sup>3</sup> All levels of CPI-U used in this calculation have been sourced from <https://www.bls.gov/cpi/>

<sup>4</sup> **Section 1.13. “Rounding”.** For purposes of any calculations in connection with:

- (a) zero coupon swaps and year-on-year trades,
  - (i) calculations in connection with the Rebasing of an *Index* pursuant to the provisions of Section 2.3 hereof, such *Rebased Index* shall be rounded, if necessary, to the nearest one ten-billionth (e.g., 100.8765432111 being rounded down to 100.8765432111 and 100.87654545455 being rounded up to 100.8765454546),
  - (ii) calculations in connection with daily reference indices or interpolated indices, such indices shall be rounded, if necessary, to the nearest one hundred-thousandth (e.g., 100.876541 being rounded down to 100.87654 and 100.876545 being rounded up to 100.87655), and
  - (iii) for each calculation period the quotient of the relevant indices for the relevant *Reference Months* shall be rounded, if necessary, to the nearest one hundred-millionth of a percentage point (e.g., 9.876543211% (or .09876543211) being rounded down to 9.87654321% (or .0987654321) and 9.876545455% (or .09876545455) being rounded up to 9.87654546% (or .0987654546)),
- (b) inflation linked asset swaps, such calculations shall match the rounding conventions of the documentation governing the *Related Bond*, and
- (c) any other calculation, unless otherwise specified in the related Confirmation, as specified in Article 8 of the 2006 ISDA Definitions.

#### **4 No Adjustment for Subsequent Publication**

Pursuant to Section 2.1(b) of the Inflation Definitions, if the September 2023 level for CPI-U is published or announced at any time after the day that is five Business Days prior to the next Payment Date, it will not be used in any calculations. Instead, the Substitute Index Level as determined pursuant to Section 2.1(a) will be the definitive level for that Reference Month.

Consequently, and using the example in paragraph 1 (*Delay of Publication*) above, if the Payment Date for an Index Transaction falls on Thursday, November 2, 2023 in relation to an amount due to be determined by reference to the September 2023 level of CPI-U, assuming no non-Business Days (other than weekends) in the period preceding the Payment Date, then, as noted above, the Calculation Agent would be required to determine a Substitute Index Level if that level had not been published or announced by Thursday, October 26, 2023. If the September 2023 level of CPI-U is subsequently published on any date after Thursday, October 26, 2023 (for example, on Friday, October 27, 2023) then the Substitute Index Level as determined by the Calculation Agent pursuant to Section 2.1(a) will still be used to determine the amount payable on the Thursday, November 2, 2023 Payment Date. The delayed published September 2023 level of CPI-U will not be used and will not result in any subsequent adjustment.