

December 3, 2018 (updated)

George H.W. Bush – national day of mourning on December 5, 2018

The International Swaps and Derivatives Association, Inc. (“**ISDA**”) announces the following guidance for parties to over-the-counter derivative transactions that are affected by the closing of certain U.S. exchanges on Wednesday, December 5, 2018, in observance of a national day of mourning for former U.S. President George H.W. Bush.

As of Sunday, December 2, 2018, the New York Stock Exchange¹, the Nasdaq Stock Exchange² and the CME³ had announced that their respective exchanges⁴ will be closed on December 5, 2018. The Federal Government will also be closed on December 5, 2018.

The Securities Industry and Financial Markets Association (“**SIFMA**”) recommended on Saturday, December 1, 2018 that all fixed-income cash markets close on Wednesday, December 5, 2018 and that all secondary market cash transactions in U.S. government and federal agency securities, executed on Tuesday December 4, 2018 and normally settling on Wednesday December 5, 2018, should instead settle on Thursday, December 6, 2018 where practical⁵.

ISDA is issuing this guidance in the interest of mitigating market risk and the promotion of orderly and efficient valuation and settlement of positions by market participants. This guidance is not legal advice and market participants should consult their legal advisors as appropriate. ISDA does not assume any 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 national day of mourning. In addition, firms should consider contacting their counterparties in advance of December 5.

Guidance

ISDA recommends the following methodology for the operation of derivative transactions affected by the December 5, 2018 closure of U.S. exchanges and the Federal Government.

¹ <https://ir.theice.com/press/press-releases/all-categories/2018/12-01-2018-171457429>

² <https://www.nasdaq.com/press-release/nasdaq-announces-the-closure-of-its-us-markets-in-honor-of-a-national-day-of-mourning-for-president-20181201-00015>

³ https://www.cmegroup.com/media-room/press-releases/2018/12/02/cme_group_u_s_equityinterestmarketstocloseformationaldayofmo.html

⁴ Insofar as the exchanges relate to, for example, U.S. equities, futures and options.

⁵ <https://www.sifma.org/resources/news/sifma-recommends-full-market-close-wednesday-december-5-in-honor-of-former-president-george-h-w-bush/>

1 *Exercise, valuation and expiration of Option Transactions and Observation Days for Variance Swap Transactions under the 2002 ISDA Equity Derivatives Definitions and the 2011 ISDA Equity Derivatives Definitions*

Unless parties otherwise agree, December 5 should not be treated as an Exchange Business Day (under the 2002 ISDA Equity Derivatives Definitions). Consistent with the approach for the national day of mourning for former U.S. President Gerald Ford in January 2007, unless parties otherwise agree, December 5 should not be treated as a Scheduled Trading Day. In these circumstances, if a Valuation Date in respect of an Option Transaction is specified as December 5 and is governed by the 2002 ISDA Equity Derivatives Definitions, such valuation should be moved to the next following Scheduled Trading Day that is not a Disrupted Day (which is expected to be December 6, 2018).

If Futures Price Valuation applies to an Index Transaction, subject to limited exceptions, the Valuation Date under the ISDA 2002 Equity Definitions is the day on which the Official Settlement Price is published irrespective of whether such day is a Disrupted Day.

For Index Variance Swap Transactions and Share Variance Swap Transactions documented under the 2007 Americas Master Variance Swap Confirmation Agreement (the “**Americas Variance MCA**”) (terms used, but not otherwise defined below, shall have the meanings assigned to them in the Americas Variance MCA), given that the default definition of “*N*” is the number of days that, as of the Trade Date, are expected to be Scheduled Trading Days for the relevant period (and by contrast to the position under the 2002 ISDA Equity Derivatives Definitions):

- (i) where December 5, 2018 is not the Valuation Date, such day should be treated as an Observation Day that is a Disrupted Day, with the result that P_t for such Observation Day shall be deemed to equal P_{t-1} ;
- (ii) where December 5, 2018 is the Valuation Date, such Valuation Date should be treated as a Disrupted Day and postponed in accordance with the relevant provisions of the Americas Variance MCA; and
- (iii) for the avoidance of doubt, no change should be made to *N*.

Under the provisions of the Americas Variance MCA, subject to limited exceptions, if Futures Price Valuation applies the Valuation Date shall be postponed until the first succeeding Scheduled Trading Day on which the Official Settlement Price is published (which is expected to be December 6, 2018).

For ED Transactions subject to the Index Volatility Swap Matrix Definitions and Terms Supplement (published on September 15, 2015) under the 2011 ISDA Equity Derivatives Definitions (the “**Volatility Supplement**”) (terms used, but not otherwise defined for these purposes shall have the meanings assigned to them in the Volatility Supplement), whether or not a day is a Scheduled Trading Day is determined as of the Trade Date. December 5,

2018 should therefore be a Scheduled Trading Day. This means that it should be an Observation Date.

A Pricing Disruption Day is a Scheduled Trading Day on which a Pricing Disruption Event has occurred. The Pricing Disruption Events include Failure to Open (which in turn relates to the Securities or Listed Contract Exchange) and so the Pricing Disruption Consequences specified should apply.

In respect of other terms of Transactions that may have been affected by these events, such as averaging and futures price valuation, the parties should consult their confirmations as to what consequences, if any, should apply.

2 *Options, Rate Resets and Swaptions under the 2006 ISDA Definitions*

It is ISDA's understanding that commercial banks and foreign exchange markets in New York should settle payments and be open for general business (including dealings in foreign exchange and foreign currency deposits). The Federal Reserve Bank website⁶ states that on December 5, 2018, the Federal Reserve Bank payment and securities settlement systems will operate normally, and Reserve Bank cash offices will fulfill financial institution orders for currency and coin according to normal operating procedures. Accordingly, December 5 would be a New York Business Day and a New York Banking Day under the 2006 ISDA Definitions. As a result, unless parties agree otherwise, in relation to transactions documented under the 2006 ISDA Definitions, obligations to pay, rights to exercise options and the valuation of cash settlements which would otherwise be due, exercisable, and required to be performed, respectively, on December 5, should be made, may be exercised and should be performed notwithstanding the closure of various exchanges and markets in the U.S.

However, given that the New York Stock Exchange and that SIFMA (formerly known as The Bond Market Association) has recommended that all fixed-income cash markets close, December 5 would not be a NYSE Business Day or a U.S. Government Securities Business Day. U.S. Government Securities Business Day is included in some Rate Options (e.g. USD-ISDA-Swap Rate, USD-SOFR-Compound). This is by contrast to, for example, USD-Federal Funds-H.15⁷ which uses the definition of New York City Banking Day within it. ISDA understands that the Federal Reserve Bank of New York will be open on December 5. On that basis, it will be a New York Fed Business Day.

Resets of specific rates should be determined by whether a rate is being quoted on December 5. If no rate is quoted then the relevant fallback contained in the Rate Option definition would apply.

⁶ <https://www.frbservices.org/app/status/serviceStatus.do>

⁷ ISDA understands that this rate will not be published on December 5. For this Rate Option, the rate for a Reset Date is the rate available on the next following New York City Banking Day, failing which it is the rate available of the first preceding day.

Applying the provisions of the 2006 ISDA Definitions to Swaptions, December 5 should be a day on which Swaptions can be exercised as it should be an Expiration Date and an Exercise Business Day (as this definition generally uses the definition of Banking Day). If Automatic Exercise or Fallback Exercise applies, in order to determine whether the Swaption is in-the-money if no rate is published as the Settlement Rate, it will be the rate determined by Seller on the basis of the par swap rates quoted by Cash Settlement Reference Banks and, if fewer than three quotations are provided, the Settlement Rate will be determined by Seller in good faith and in a commercially reasonable manner.

If Cash Settlement applies to the Swaption, if the parties are unable to agree on the Cash Settlement Amount, it shall be determined in accordance with the applicable Cash Settlement Method. For Cash Price and Collateralized Cash Price⁸ the ultimate fallback is to a determination made by the Calculation Agent.

3 *Commodity Derivative Transactions under the 2005 ISDA Commodity Definitions*

ISDA is awaiting further guidance from NYMEX on the implication of the availability of electronic trading for risk management services through CME Globex®.

4 *Credit Derivative Transactions under the 2014 ISDA Credit Derivatives Definitions or the 2003 ISDA Credit Derivatives Definitions*

As mentioned in item 2 above, it is ISDA's understanding that commercial banks and foreign exchange markets in New York should be generally open to settle payments. As a result, unless parties otherwise agree, in relation to transactions under the 2014 ISDA Credit Derivatives Definitions or the 2003 ISDA Credit Derivatives Definitions, obligations to pay, which would otherwise be due on December 5, should be made notwithstanding the closure of various exchanges.

5 *Payments*

It is ISDA's understanding that the Fedwire Funds, Securities and National Settlement Services and clearing corporations, such as Depository Trust & Clearing Corporation will be open on December 5. Payments or deliveries, including collateral deliveries, should be made.

⁸ See Section 18.3(g)(i) of the 2006 ISDA Definitions.