

To:	All Market Participants Engaged in Foreign Exchange Transactions Subject to CFTC Oversight
From:	Foreign Exchange Committee and Financial Markets Lawyers Group <sup>1</sup>
Date:	May 22, 2013
Re:	Swap Trading Relationship Market Practice For Relevant Foreign Exchange Transactions

To ensure that documentation relating to foreign exchange (“FX”) transactions is in compliance with the rules issued by the Commodity Futures Trading Commission (the “CFTC”) related to swap trading relationship documentation under Regulation 23.504 and portfolio reconciliation under Regulation 23.502 (“the Rules”), the Foreign Exchange Committee (the “FXC”) and the Financial Markets Lawyers Group (the “FMLG”) recommend the following market practice (the “Market Practice”):

Market participants that engage in FX transactions without an existing master agreement that meets the requirements of the Rules<sup>2</sup> are encouraged to undertake one of the following actions as soon as practicable, but in no case later than July 1, 2013 (the effective date of the Rules), in order to be in compliance therewith:

1. Adhere to the ISDA March 2013 DF Protocol Agreement (the “ISDA March 2013 Protocol” also commonly referred to as “ISDA Protocol 2”), elect a deemed ISDA Master Agreement to govern the relationship between the relevant parties and exchange the related Questionnaire with each trading counterparty<sup>3</sup>; or
2. Execute a bilateral ISDA Master Agreement or other master agreement meeting the requirements of the Rules (a “Master Agreement”) with each trading counterparty; or
3. Execute a bilateral letter agreement with each trading counterparty in the form attached as Appendix A hereto.

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<sup>1</sup> This Market Practice is being issued by the FXC and FMLG to facilitate compliance with the Rules. While the FXC and FMLG are sponsored by the Federal Reserve Bank of New York, this Market Practice is not endorsed by and does not necessarily reflect the views of the Federal Reserve Bank of New York or the Federal Reserve System. Furthermore, this Market Practice and Appendix A hereto do not purport to be legal advice with respect to a particular transaction or situation, nor do they prevent swap dealers from using other forms of agreement. If legal advice or other expert assistance is required, the services of a qualified professional should be obtained.

<sup>2</sup> Generally, all FX transactions are subject to the Rules other than FX spot transactions which are those transactions which customarily settle within two business days.

<sup>3</sup> Information regarding the ISDA March 2013 Protocol (ISDA Protocol 2) can be found at: <http://www2.isda.org/functional-areas/protocol-management/protocol/12>.

## Appendix A

### [Form of Swap Trading Relationship Letter Agreement]

\_\_\_\_\_, 2013

#### [Dealer Name & Address]

Ladies and Gentlemen:

#### [Insert for Investment Managers; Delete for standalone clients]

**[Insert Name of Investment Manager]** ("Investment Manager") [is an investment advisor [registered under the Investment Advisers Act of 1940, as amended (the "Act"), and maintains the records required by the Act.]] Investment Manager acts as investment advisor for a number of named and disclosed clients listed on the attached Annex I (each entity, a "Client") with full discretionary power to invest on their behalf, including, from time to time, to enter into foreign exchange spot, foreign exchange forwards, foreign exchange swaps, non-deliverable forwards, currency options and other foreign exchange transactions (collectively, "FX Transactions")<sup>4</sup> with **[insert dealer entities]** ("Dealer"). Investment Manager, from time to time, may amend Annex I hereto subject to the prior written approval of Dealer.

#### [Include for standalone clients; Delete for Investment Managers]

From time to time, **[insert name of client]** ("Client") may enter into foreign exchange spot, foreign exchange forwards, foreign exchange swaps, non-deliverable forwards, currency options and other foreign exchange transactions (collectively, "FX Transactions")<sup>5</sup> with **[insert dealer entities]** ("Dealer").

#### [Include for all]

In connection with such FX Transactions, the parties hereby agree as follows:

1. **Master Agreement.** In the absence of an existing master agreement that governs FX Transactions, all FX Transactions shall be subject to, supplement, and form a part of an agreement in the form of the 2002 ISDA Master Agreement<sup>6</sup>, as published by the International Swaps and Derivatives Association, Inc. ("ISDA"), between the relevant Dealer entity that has entered into such FX Transaction and the Client, dated as of the date hereof (the "Agreement") (but without any Schedule, except for the inclusion of the provisions (i) – [(viii)/ (iv)] below)<sup>7</sup>. Terms not otherwise defined in this letter agreement (the "Letter Agreement"), are as defined in the Agreement and the FX Definitions (as defined below).

(i) **Governing Law.** The Agreement will be governed by and construed in accordance with the laws of the State of New York;

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<sup>4</sup> For trading relationships that include Bullion transactions, Dealer should replace "FX Transactions" with "FX and Bullion Transactions" throughout the letter and expand the list to cover all such transactions. See also, "(iv) Definitions" below.

<sup>5</sup> Same as above.

<sup>6</sup> For trading relationships that are based on the 1992 ISDA Master Agreement, Dealer should replace "2002" with "1992" and consider whether other provisions (e.g., Force Majeure) should be added below.

<sup>7</sup> Modify this reference depending on whether Dealer chooses provisions (i) – (viii) or (i) – (iv) and Section 2 as set forth below.

(ii) **Termination Currency.** “Termination Currency” means United States Dollars;

(iii) **Netting of Payments.** Multiple Transaction Payment Netting will apply for the purpose of Section 2(c) of the Agreement to all Transactions under the Agreement , provided, however, that (a) obligations to make payments pursuant to FX Transactions shall only be netted, satisfied and discharged against obligations to make payments arising out of the same or other FX Transactions and obligations to make payments pursuant to Currency Option Transactions shall only be netted, satisfied and discharged against obligations to make payments arising out of the same or other Currency Option Transactions and (b) Premiums in respect of Currency Option Transactions shall be netted, satisfied and discharged only against other Premiums in respect of Currency Option Transactions. The Calculation Agent, which shall be Dealer, shall notify the parties of the amounts of any such netted payments (which notice may be by telephone)<sup>8</sup>;

(iv) **Definitions.** Any Confirmation between the parties relating to an FX Transaction or Currency Option Transaction, whether or not it is expressed to be, shall constitute a “Confirmation” as referred to in the Agreement and shall incorporate the 1998 FX and Currency Option Definitions as published by ISDA, the Emerging Markets Traders Association, and The Foreign Exchange Committee (the “FX Definitions”). In the event of any inconsistency between the provisions of any Confirmation and the Agreement or the FX Definitions, such Confirmation will prevail for the purposes of the relevant FX Transaction<sup>9</sup>.

**[Include either the following clauses (v), (vi), (vii) and (viii) or the following Section 2:]**

[(v) **Portfolio Reconciliation.** Pursuant to CFTC Regulation §23.502(b), Dealer and Client agree to [“One-way Delivery of Portfolio Data”]/[“Exchange of Portfolio Data”] as set forth in Schedule 4 of the ISDA March 2013 Protocol.<sup>10</sup>

(vi) **Valuation Methodology.** Pursuant to CFTC Regulation §23.504(b)(4), Dealer and Client agree to the Calculation of Risk Valuations and Dispute Resolution set forth in Schedule 3 of the ISDA March 2013 Protocol<sup>11</sup>;

(vii) **Orderly Liquidation Declaration.** Pursuant to CFTC Regulation §23.504(b)(5), Dealer [is]/[is not] [an insured depository institution]/[a financial company] and the orderly liquidation provisions of the Dodd-Frank Act and the Federal Deposit Insurance Act may limit the rights of the parties under their trading relationship documentation in the event either party is deemed a “covered financial company” or is otherwise subject to having the FDIC appointed as a receiver.<sup>12</sup> Dealer and Client agree to notify the other party if their status as an insured depository institution or financial company changes after the date hereof;

(viii) **Cleared Swaps Notification.** Pursuant to CFTC Regulation §23.504(b)(6), Dealer provides Client the notice that upon acceptance of a swap by a derivatives clearing organization: (a) the original swap is

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<sup>8</sup> Dealers may modify (iii) Netting of Payments provision in its particular bilateral form of Letter Agreement based on operational limitations including separate booking of FX Transactions between its various branches.

<sup>9</sup> For Bullion trading relationships, addressed in footnote 4, Dealers should also incorporate the ISDA 2005 Commodities Definitions or 1997 Bullion Definitions as applicable.

<sup>10</sup> Schedule 4 of the ISDA March 2013 Protocol can be referenced at page 18:  
<http://assets.isda.org/media/38756a02/dc176cdb.pdf/>

<sup>11</sup> Schedule 3 of the ISDA March 2013 Protocol can be referenced at page 14:  
<http://assets.isda.org/media/38756a02/dc176cdb.pdf/>

<sup>12</sup> Dealers should delete this first sentence if it is not applicable but retain the agreement to notify of a status change.

extinguished; (b) the original swap is replaced by equal and opposite swaps with the derivatives clearing organization; and (c) all terms of the swap shall conform to the product specifications of the cleared swap established under the derivatives clearing organization's rules.<sup>13]</sup>

[2. **Dodd-Frank Protocol.** The parties agree to use the procedures set forth in the ISDA August 2012 and ISDA March 2013 DF Protocol Agreements to implement the terms of the ISDA August 2012 DF Supplement and the ISDA March 2013 DF Supplement by adhering to these Protocol Agreements, exchanging the Questionnaires (as defined below) and entering into this Letter Agreement. These Protocol Agreements, DF Supplements and related Questionnaires, and DF Terms Agreement (if applicable) shall govern all FX Transactions, if any, under the Covered Agreement (as defined below), provided that the DF Supplements and Questionnaires shall govern as amended by this Letter Agreement. The phrase "this DF Supplement" as used in the ISDA August 2012 DF Supplement, means the ISDA August 2012 DF Supplement as amended by this Letter Agreement, the phrase "this March 2013 DF Supplement" as used in the ISDA March 2013 DF Supplement, means the ISDA March 2013 DF Supplement as amended by this Letter Agreement, and the term "Covered Agreement" means the "Agreement" as defined in this Letter Agreement. "DF Supplement Information" is any information set forth in the Questionnaire(s) together with any other information that the parties agree shall be "DF Supplement Information." The information contained in the Questionnaires as well as any other information required to be delivered under the Agreement shall be automatically updated or provided and deemed delivered to Dealer by (a) any filings submitted by [Investment Advisor] [Client], from time to time, to the SEC as and when publicly posted on <http://www.sec.gov/edgar.shtml> (or any successor SEC webpage) and (b) any other written notices provided to Dealer under the Covered Agreement. For these purposes, "Protocol Agreement" means the ISDA August 2012 DF Protocol Agreement and the ISDA March 2013 DF Protocol Agreement, "Questionnaires" means the ISDA August 2012 DF Questionnaire and the ISDA March 2013 DF Questionnaire and any addenda thereto.]

[Insert ERISA Representations as applicable]

[ISDA August 2012 Protocol: For Dealers that do not include Section 2 alternative, consider whether to include reference to adherence to the ISDA August 2012 Protocol to address EBCS compliance.]

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<sup>13</sup> Please note, foreign exchange swaps and forwards are not subject to the CFTC's mandatory clearing rules pursuant to the US Treasury exemption granted November 16, 2012 which can be referenced at: <http://www.treasury.gov/press-center/press-releases/Documents/11-16-2012%20FX%20Swaps%20determination%20pdf.pdf>

This Letter Agreement and the rights, obligations and remedies of the parties shall be governed by and construed in accordance with the laws of the State of New York.

Sincerely,

**[CLIENT NAME]**

[Investment Manager, on behalf of each of the Accounts listed in Annex I]

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

Name:

Title:

Accepted and agreed as of the above date:

**[DEALER]**

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

Name:

Title:

Date:

**Annex I**

**List of Accounts**

[Include if Investment Manager acting on behalf of underlying accounts]