

RESOLUTION

**RESPECTING 2004 SWAPTION TRANSACTION AND 2006 SWAPTION TRANSACTION
AND ACTIONS PROPOSED IN RESPONSE TO DODD-FRANK WALL STREET REFORM
AND CONSUMER PROTECTION ACT OF 2010**

WHEREAS, on January 2, 2008, the University of South Alabama (the "University") entered into a series of transactions, sometimes referred to as a "Swaption for a Forward Synthetic Refunding" (the "Swaption Transactions"), with Wells Fargo National Association (formerly known as "Wachovia Bank, National Association") ("Wells Fargo"), to enable the University to realize certain amounts in connection with future redemptions of the University's \$51,080,000 University Tuition Revenue Refunding and Capital Improvement Bonds, Series 2004, dated March 15, 2004 (the "Series 2004 Bonds"), and \$100,000,000 University Tuition Revenue Refunding and Capital Improvement Bonds, Series 2006, dated December 1, 2006 (the "Series 2006 Bonds" and, together with the Series 2004 Bonds, the "Bonds"); and

WHEREAS, in connection with the Swaption Transactions, the University executed an ISDA Master Agreement, a Schedule to the Master Agreement, an ISDA Credit Support Annex, as well as certain other documents and instruments and, further, executed Swaption Transaction Confirmation #1832554 to effectuate a Swaption Transaction referable to the Series 2004 Bonds (the "2004 Swaption Transaction"), and Swaption Transaction Confirmation #1832563 to effectuate a Swaption Transaction referable to the Series 2006 Bonds (the "2006 Swaption Transaction"). Each such agreement or instrument is dated January 2, 2008, and copies of the same were attached as Exhibit I to the Prior Swap Termination Resolution described below; and

WHEREAS, the 2004 Swaption Transaction and the 2006 Swaption Transaction, together with the execution and delivery of all agreements and instruments necessary to effectuate the same (the "Swaption Documents"), were authorized by resolution of the Board of Trustees adopted on December 6, 2007, wherein the Board of Trustees determined, among other things, that the 2004 Swaption Transaction and the 2006 Swaption Transaction would permit the University to achieve present benefit from the future redemption of the Series 2004 Bonds and the Series 2006 Bonds, respectively, and that the 2004 Swaption Transaction and the 2006 Swaption Transaction were being entered into pursuant to the Derivatives Policy of the University dated September 24, 2007 (the "USA Derivatives Policy"); and

WHEREAS, pursuant to the terms of the Swaption Documents, for a certain period of time the University may elect to terminate either or both of the 2004 Swaption Transaction and the 2006 Swaption Transaction, in which case the University could be required to make a payment to Wells Fargo, or the University could be entitled to receive a payment from Wells Fargo, all based upon, among other things, interest rate levels in effect at the time of such termination; and

WHEREAS, given the record of interest rate levels since January 2008, the Board of Trustees previously adopted a resolution on March 11, 2011 (the "Prior Swap Termination Resolution"), wherein the Board of Trustees expressed its belief that it may be possible that during the period commencing on

the date of the Prior Swap Termination Resolution through and including September 11, 2012 (said period, the "Prior Applicable Period"), brief intervals may exist from time to time wherein it may become advantageous for the University to terminate either or both of the 2004 Swaption Transaction and the 2006 Swaption Transaction, and in light of the regular meeting schedule of the Board of Trustees the said board believed it was in the best interest of the University that the President of the University (the "President") be authorized to execute such documents and instruments by and on behalf of the University as may be necessary or desirable to terminate either or both of the 2004 Swaption and the 2006 Swaption should at any time during the Applicable Period the President determine that such termination would be in the best interest of the University and upon certain other conditions as more particularly set forth in the Prior Swap Termination Resolution;

WHEREAS, the Board of Trustees continues to be of the view that brief intervals may exist from time to time wherein it may become advantageous for the University to terminate either or both of the 2004 Swaption Transaction and the 2006 Swaption Transaction, and that it would be in the best interest of the University to authorize the President to execute such instruments, notices, certificates, agreements or other documents by and on behalf of the University as may be necessary or desirable to terminate either or both of the 2004 Swaption and the 2006 Swaption should at any time from the date hereof through and including September 1, 2016 (said period, the "Current Applicable Period") the President shall be advised by a swap advisor to the University that it is in the best interest of the University to terminate such transaction or transactions; and

WHEREAS, the Commodity Futures Trading Commission recently published final rules (the "CFTC Swap Rules") to implement Section 4s(h) of the Commodity Exchange Act pursuant to Section 731 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), which impose heightened duties and standards of conduct on swap dealers when entering new swap transactions or amending or modifying existing swap transactions like the 2004 Swaption Transaction and the 2006 Swaption Transaction; and

WHEREAS, a swap dealer may demonstrate compliance with some of the new CFTC Swap Rules by having counterparties like the University make certain representations and warranties (the "Representations and Warranties") relating to the suitability of the transaction for such counterparty, the ability of the counterparty to properly evaluate the swap transaction, and other matters respecting interest rate exchange agreements; and

WHEREAS, the International Swaps and Derivatives Association, Inc. has prepared the forms of amendments and agreements attached as Exhibit I hereto (the "ISDA Protocol Documents"), which contain the Representations and Warranties required for a swap dealer to comply with the new CFTC Swap Rules; and

WHEREAS, one of the Representations and Warranties of a governmental entity like the University is that it has engaged a qualified independent representative (a "QIR") to assist in financial analysis and price negotiation respecting swap transactions, and that involvement of a QIR in this regard is contained in a written derivatives policy of such entity; and

WHEREAS, George K. Baum & Co. ("GK Baum") has been advising the University on various aspects of the 2004 Swaption Transaction and 2006 Swaption Transaction, and has established the

required policies and procedures, a copy of which is included as Exhibit II hereto, that enable it to serve as a QIR; and

WHEREAS, GK Baum has advised the University that should it become advantageous to terminate or modify the 2004 Swaption Transaction or 2006 Swaption Transaction, Wells Fargo may likely require that the University take certain actions to evidence its satisfaction of the new CFTC Swap Rules, including (1) engaging a QIR, (2) amending the USA Derivatives Policy to incorporate a QIR, and (3) amending the 2004 Swaption Transaction and/or 2006 Swaption Transaction to incorporate the Representations and Warranties; and

WHEREAS, the Board of Trustees deems it advantageous and in the best interest of the University to (1) engage GK Baum as the QIR for the University, (2) amend the USA Derivatives Policy to incorporate the QIR into certain aspects of such policy, and (3) authorize the President to execute and deliver the ISDA Protocol Documents (or such other instruments proposed by Wells Fargo containing some or all of the terms and provisions in, or provisions similar to those contained in, the forms of ISDA Protocol Documents attached hereto) and such other instruments, agreements, certificates, side-letters, notices, or other documents in connection therewith (collectively, the "Amendatory Documents") as the President shall deem necessary or desirable should the President determine it advantageous for the University to execute and deliver the same in connection with, or in anticipation of, any proposed amendments, modifications or termination of either or both of the 2004 Swaption Transaction and 2006 Swaption Transaction.

THEREFORE, BE IT RESOLVED that the President is hereby authorized and directed to execute such instruments, notices, certificates, agreements or other documents by and on behalf of the University as the President may deem necessary or desirable to terminate either or both of the 2004 Swaption and the 2006 Swaption should at any time during the Current Applicable Period the President be advised by a swap advisor to the University that it is in the best interest of the University to terminate such transaction or transactions; and

BE IT FURTHER RESOLVED that the Board of Trustees hereby designates GK Baum as the QIR for the University, and authorizes and directs the President to execute and deliver on behalf of the University such certificates, agreements, directions, instruments or other documents as may be necessary or desirable to engage, designate and establish GK Baum as the QIR for the University; and

BE IT FURTHER RESOLVED, the Board of Trustees hereby approves the amendments and modifications of the USA Derivatives Policy necessary to incorporate the QIR in certain aspects thereof, as set forth and described in the form of First Amendment to Derivatives Policy dated June 7, 2013 attached hereto as Exhibit III hereto; and

BE IT FINALLY RESOLVED that the Board of Trustees hereby authorizes and directs the President, at any time and from time to time, to execute any such amendatory documents as the President shall deem necessary or desirable should the President determine it advantageous for the University to execute and deliver the same in connection with, or in anticipation of, any proposed amendments, modifications or termination of either or both of the 2004 Swaption Transaction and 2006 Swaption Transaction.



MAY 23 2013

CAMPUS MEMORANDUM
UNIVERSITY OF SOUTH ALABAMA

Date: May 23, 2013
To: President John W. Smith
Copy: M. Wayne Davis
From: Ken Davis *Ken Davis*
Subject: Agenda Item for June 7, 2013, Board of Trustees Meeting

Attached is a resolution with attachments for consideration by the Budget and Finance Committee concerning the University's two swaptions. This resolution will accomplish three objectives:

- Allows the University to amend, modify or terminate the swaptions if it is in the best interest of the University
- Amends the University's Derivatives Policy to incorporate rules recently promulgated by the Commodities Futures Trading Commission (the "CFTC")
- Appoints the firm of George K. Baum & Company as Qualified Independent Representative in accordance with the rules of the CFTC.

With your consent, this item will be presented to the Budget and Finance Committee and the Board of Trustees for final approval. Further, I recommend the adoption of the resolution by the Board of Trustees.

Attachment

Exhibit I

Forms of ISDA Protocol Documents

ISDA AUGUST 2012 DF PROTOCOL AGREEMENT

published on August 13, 2012,
by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. (“ISDA”) has published this ISDA August 2012 DF Protocol Agreement (this “**Protocol Agreement**”) to enable parties to enter into a DF Terms Agreement (as defined below) or supplement the terms of existing Protocol Covered Agreements (as defined below) by incorporating therein selected portions of the ISDA August 2012 DF Supplement published on August 13, 2012 by ISDA (the “**DF Supplement**”).

1. Use of Protocol

- (a) A person who adheres to this Protocol Agreement (a “**Protocol Participant**”) in the manner set forth in paragraph 2 may use the terms of this Protocol Agreement to supplement one or more existing Protocol Covered Agreements by exchanging questionnaires substantially in the form of Exhibit 2 to this Protocol Agreement or in the form provided on ISDA Amend (in either form, a “**Questionnaire**”), in respect of such Protocol Covered Agreements in the manner set forth in paragraph 3. This Protocol Agreement may also be used by a Protocol Participant to enter into new Protocol Covered Agreements in the form of a DF Terms Agreement by exchanging Questionnaires with another Protocol Participant in the manner set forth in paragraph 3. As described below, the Protocol Participant may be either a principal or an agent in respect of a Protocol Covered Agreement.
- (b) “**Protocol Covered Agreement**” means a DF Terms Agreement or an existing written agreement between two parties that governs the terms and conditions of one or more transactions in Swaps (as defined in the DF Supplement) that each such party has or may enter into as principal. “**DF Terms Agreement**” means the ISDA August 2012 DF Terms Agreement published by ISDA on August 13, 2012. “**PCA Principal**” means a party who is or may become a principal to one or more Swaps under a Protocol Covered Agreement. “**PCA Agent**” means a party who has executed a Protocol Covered Agreement as agent on behalf of one or more PCA Principals.
- (c) An existing Protocol Covered Agreement may have been executed directly by a PCA Principal or by a PCA Agent. In the case of an existing Protocol Covered Agreement executed by a PCA Principal, only such PCA Principal may supplement such Protocol Covered Agreement pursuant to this Protocol Agreement. In the case of an existing Protocol Covered Agreement executed by a PCA Agent on behalf of a PCA Principal, only such PCA Agent may supplement such Protocol Covered Agreement on behalf of a PCA Principal pursuant to this Protocol Agreement (even if such PCA Principal is also a Protocol Participant in respect of one or more other Protocol Covered Agreements).
- (d) A DF Terms Agreement may be entered into pursuant to this Protocol Agreement by a PCA Principal or a PCA Agent. The capacity in which a Protocol Participant enters into a DF Terms Agreement pursuant to this Protocol Agreement is the same as the capacity in which it completes a Matched Questionnaire (as defined below). Each of such Protocol Participants is an “**Executing Party**” under the DF Terms Agreement and their Matched Questionnaires shall constitute the “**Annex**” to their DF Terms Agreement. Each of the relevant PCA Principals in a Matched Questionnaire is a “**DF Terms Principal**” under the DF Terms Agreement.

2. Adherence Letters

- (a) Adherence to this Protocol Agreement will be evidenced by the execution and online delivery, in accordance with this paragraph 2, by a Protocol Participant to ISDA, as agent, of a letter substantially in the

form of Exhibit 1 (an “**Adherence Letter**”). A person wishing to participate in this Protocol Agreement, whether as PCA Principal or PCA Agent, or both, shall submit, using an online form, a single Adherence Letter to ISDA pursuant to this paragraph 2. ISDA will have the right, in its sole and absolute discretion, upon thirty calendar days’ notice on the “ISDA August 2012 DF Protocol” section of its website at www.isda.org (or by other suitable means) to designate a closing date of the adherence period for this Protocol (such closing date, the “**Adherence Cut-off Date**”). After the Adherence Cut-off Date, ISDA will not accept any further Adherence Letters with respect to this Protocol Agreement.

- (b) Each Protocol Participant executing an Adherence Letter will access the “Protocol Management” section of the ISDA website at www.isda.org to enter information online that is required to generate its form of Adherence Letter and will submit payment of any applicable fee. Either by directly downloading the populated Adherence Letter from the Protocol Management system or upon receipt via e-mail of the populated Adherence Letter, each Protocol Participant will print, sign and upload the signed Adherence Letter as a PDF (portable document format) attachment into the Protocol Management system. Once the signed Adherence Letter has been approved and accepted by ISDA, the Protocol Participant will receive an e-mail confirmation of the Protocol Participant’s adherence to the Protocol.
- (c) ISDA will publish, so that it may be viewed by all Protocol Participants, a conformed copy of each Adherence Letter containing, in place of each signature, the printed or typewritten name of each signatory.
- (d) Each Protocol Participant executing and submitting an Adherence Letter agrees that, for evidentiary purposes, a conformed copy of an Adherence Letter certified by the General Counsel (or other appropriate officer) of ISDA will be deemed to be an original.
- (e) Each Protocol Participant agrees that the determination of the date and time of acceptance of any Adherence Letter will be determined by ISDA in its absolute discretion.

3. Questionnaires

- (a) A Questionnaire in respect of Protocol Covered Agreements may only be executed and submitted by a Protocol Participant who has previously, or simultaneously, executed and submitted an Adherence Letter. A Protocol Participant who wishes to enter into or supplement Protocol Covered Agreements with multiple counterparties may (but is not required to) execute multiple Questionnaires in order to deliver different Questionnaires to different counterparties pursuant to this paragraph 3; provided that a Protocol Participant who is a PCA Principal may not deliver more than one Questionnaire to the same Protocol Participant and a Protocol Participant who is a PCA Agent may not deliver more than one Questionnaire to the same Protocol Participant on behalf a single PCA Principal.
- (b) A Protocol Participant may extend an offer to enter into or supplement Protocol Covered Agreements by executing a completed Questionnaire and delivering such Questionnaire to another Protocol Participant in the manner set forth in this paragraph 3. If and when a Protocol Participant receiving a Questionnaire also delivers a Questionnaire to the offering Protocol Participant, the receiving Protocol Participant will be deemed to have accepted the offer to supplement their existing Protocol Covered Agreements and enter into DF Terms Agreements, in each case if and to the extent set forth in paragraph 4. For purposes of this Protocol Agreement, each such Protocol Covered Agreement is referred to as a “**Matched PCA**,” both PCA Principals thereto are referred to together as “**Matched PCA Parties**,” and the Questionnaires delivered by or on behalf of the Matched PCA Parties in respect of the Matched PCA are referred to together as “**Matched Questionnaires**.” For the avoidance of doubt, if a PCA Agent has not delivered a Questionnaire on behalf of a particular PCA Principal, such PCA Agent will not have entered into or supplemented any Protocol Covered Agreement on behalf of such PCA Principal pursuant to this Protocol Agreement even if the PCA Agent has delivered a Questionnaire in respect of other PCA Principals.
- (c) For purposes of this Protocol Agreement, when a Protocol Participant delivers a Questionnaire to another Protocol Participant, each PCA Principal on whose behalf such Questionnaire is delivered is referred to as a “**Delivering PCA Principal**.” Delivery of a Questionnaire by a PCA Agent in the manner set forth in this paragraph 3 will be deemed to be delivery by each Delivering PCA Principal identified by the PCA Agent in such Questionnaire. Delivery of a Questionnaire to a PCA Agent in the manner set forth in this

paragraph 3 will be deemed to be delivery by a relevant Delivering PCA Principal (i) to each PCA Principal on whose behalf the PCA Agent has entered into an existing Protocol Covered Agreement with such Delivering PCA Principal or (ii) if there is no existing Protocol Covered Agreement with respect to a Delivering PCA Principal, to each PCA Principal identified in the reciprocal Questionnaire delivered by the PCA Agent to such Delivering PCA Principal.

- (d) Delivery of a Questionnaire must be made in the manner described in this paragraph 3(d) not later than the 30th calendar day following the Adherence Cut-off Date (the “**Matching Cut-off Date**”). Delivery of a Questionnaire to a Protocol Participant shall be effective if delivered in a manner specified by such Protocol Participant in its Adherence Letter. In addition, without regard to the election that a Protocol Participant has made in its Adherence Letter, if such Protocol Participant has taken all steps necessary to establish the ability to receive a Questionnaire via ISDA Amend, delivery of a Questionnaire to such Protocol Participant via ISDA Amend shall be effective.
- (e) In using this Protocol Agreement to enter into or supplement Matched PCAs, a Protocol Participant may not specify additional provisions, conditions or limitations in its Questionnaire, except as expressly provided therein.

4. DF Terms Agreements and Matched PCA Supplements

- (a) Every pair of Matched PCA Parties will be deemed to have entered into a DF Terms Agreement if both of such Matched PCA Parties have agreed in the Matched Questionnaires to enter into a DF Terms Agreement, in which case such DF Terms Agreement is a “Matched PCA” for purposes of this Protocol.
- (b) Every pair of Matched PCA Parties will be deemed to have supplemented each Matched PCA by incorporating therein DF Schedules 1 and 2 and, in the case of any other DF Schedule, as follows:
 - (i) with respect to DF Schedule 3, if (i) both of such Matched PCA Parties have agreed in the Matched Questionnaires to incorporate such DF Schedule into such Matched PCA and (ii) with respect to any Matched PCA Party who has represented that it has a Designated Evaluation Agent, each Designated Evaluation Agent has countersigned such Questionnaire to make the representations and agreements applicable to it; and
 - (ii) with respect to any of DF Schedules 4, 5, and 6, if (i) both of such Matched PCA Parties have agreed in the Matched Questionnaires to incorporate such DF Schedule into such Matched PCA and (ii) with respect to any Matched PCA Party who is a Special Entity, each Designated QIR (in the case of DF Schedule 4) or Designated Fiduciary (in the case of DF Schedules 5 and 6) of such Special Entity has countersigned such Questionnaire to make the representations and agreements applicable to it.

5. Effectiveness

- (a) The agreement to enter into or supplement a Matched PCA on the terms and conditions set forth in this Protocol Agreement, the Matched Questionnaires and the DF Supplement, will, as between any Matched PCA Parties, be effective on the date on which the later of two Matched PCA Parties delivers its completed Questionnaire in accordance with paragraph 3 (such date, the “**Implementation Date**”).
- (b) This Protocol Agreement is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Protocol Covered Agreement that the parties may otherwise effect in accordance with the terms of that Protocol Covered Agreement or as otherwise provided by applicable law.
 - (i) In adhering to this Protocol Agreement, a party may not specify additional provisions, conditions or limitations in its Adherence Letter; and
 - (ii) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Protocol Agreement will be void and ISDA will inform the relevant parties of such fact as

soon as reasonably possible after making such determination and will remove the party's Adherence Letter from the ISDA website.

6. Representations and Agreements

- (a) Representations by a PCA Principal. In the case of a Protocol Participant who is a PCA Principal in respect of a Matched Questionnaire and Matched PCA, the PCA Principal represents to the other PCA Principal that is party to such Matched PCA that, as of the Implementation Date:
- (i) **Status.** It is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to a Matched PCA, has such status;
 - (ii) **Powers.** It has the power to execute and deliver the Adherence Letter and the Matched Questionnaire and to perform its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement), and has taken all necessary action to authorize such execution, delivery and performance;
 - (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
 - (iv) **Credit Support.** Such execution, delivery and performance will not, in and of itself, adversely affect any obligations owed, whether by it or by any third party, under any Credit Support Document in respect of its obligations relating to any Matched PCA;
 - (v) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement) have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
 - (vi) **Obligations Binding.** Its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement) constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- (b) Representations by a PCA Agent. In the case of a Protocol Participant who is a PCA Agent acting on behalf of a Delivering PCA Principal in respect of a Matched Questionnaire and Matched PCA, the Agent represents to the other PCA Principal that is party to such Matched PCA that, as of the Implementation Date:
- (i) **Status.** Each of the Delivering PCA Principal and the PCA Agent is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to a Matched PCA, has such status;
 - (ii) **Powers.** The Delivering PCA Principal has the power to execute and deliver each Matched PCA (as supplemented by this Protocol Agreement) and to perform its obligations thereunder, and has taken all necessary action to authorize such execution, delivery and performance. The PCA Agent has the power to execute and deliver the Adherence Letter and the Matched Questionnaire and to perform its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement), and has

taken all necessary action to authorize such execution, delivery and performance. The PCA Agent has all necessary authority to enter into the Adherence Letter, this Protocol Agreement and the Matched Questionnaire on behalf of the Delivering PCA Principal and has in its files a written agreement or power of attorney authorizing it to act on the Delivering PCA Principal's behalf in respect thereof;

- (iii) **No Violation or Conflict.** Such execution, delivery and performance by the Delivering PCA Principal and the PCA Agent, respectively, do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
 - (iv) **Credit Support.** Such execution, delivery and performance will not, in and of itself, adversely affect any obligations owed, whether by the Delivering PCA Principal or by any third party, under any Credit Support Document in respect of its obligations relating to any Matched PCA;
 - (v) **Consents.** All governmental and other consents that are required to have been obtained by the Delivering PCA Principal or the PCA Agent with respect to the Adherence Letter, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement) have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
 - (vi) **Obligations Binding.** The respective obligations of the Delivering PCA Principal and the PCA Agent under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement) constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- (c) Agreements by Matched PCA Parties. Each Matched PCA Party agrees with the other Matched PCA Party that:
- (i) any Credit Support Document between Matched PCA Parties that relates to a Matched PCA will be deemed to be supplemented to the extent necessary such that the operation thereof is not affected by the adherence by such Matched PCA Parties or any supplements contemplated by this Protocol Agreement and the relevant Matched Questionnaires;
 - (ii) the following information shall be "**DF Supplement Information**" for purposes of the DF Supplement: (A) all information and representations provided by it or by its PCA Agent on its behalf in the Matched Questionnaire and (B) all Substitute Part II Information with respect to it;
 - (iii) solely for purposes of delivering notices of the type specified in Section 2.3 of the DF Supplement in respect of information or representations set forth in the Matched Questionnaire of the other Matched PCA Party, the other Matched PCA Party may provide such notices pursuant to Section 2.3 of the DF Supplement to any address to which delivery of a Questionnaire to such Matched PCA Party would be effective under paragraph 3(d) hereof or to any substitute address provided by such Matched PCA Party under Section 2.3 of the DF Supplement; and
 - (iv) solely for purposes of delivering notices and disclosures of the types specified in Section 2.12 of the DF Supplement, the "Notice Procedures" applicable to a Matched PCA Party include written notice by e-mail delivered to an address specified in Part II, Section 10 of such Matched PCA Party's Questionnaire or to any substitute e-mail address provided under Section 2.3 of the DF Supplement. Such written notice shall be deemed delivered when sent to the specified address.

7. **Miscellaneous**

(a) ***Entire Agreement; Survival.***

(i) This Protocol Agreement constitutes the entire agreement and understanding of the Protocol Participants with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each Protocol Participant acknowledges that, in adhering to this Protocol Agreement, it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to elsewhere in this Protocol Agreement or in a Questionnaire) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol Agreement will limit or exclude any liability of a Protocol Participant for fraud.

(ii) Except for any supplement deemed to be made pursuant to this Protocol Agreement in respect of any Protocol Covered Agreement, all terms and conditions of each Protocol Covered Agreement will continue in full force and effect in accordance with its provisions as in effect immediately prior to the Implementation Date. Except as explicitly stated in this Protocol Agreement, nothing herein will constitute a waiver or release of any rights of any party under any Protocol Covered Agreement.

(b) ***Amendments.*** An amendment, modification or waiver in respect of the matters contemplated by this Protocol Agreement will only be effective in respect of a Matched PCA if made in accordance with the terms of such Matched PCA.

(c) ***Headings and Footnotes.*** The headings and footnotes used in this Protocol Agreement, any Questionnaire and any Adherence Letter are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this Protocol Agreement, any Questionnaire or any Adherence Letter.

(d) ***Governing Law.*** This Protocol Agreement and each Adherence Letter will, as between Matched PCA Parties, be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine, provided that supplements to each Matched PCA effected by this Protocol Agreement shall be governed by and construed in accordance with the law governing such Matched PCA.

8. **Definitions**

As used in this Protocol Agreement, the terms “**Designated Evaluation Agent**,” “**Designated Fiduciary**,” “**Designated QIR**,” “**LEI/CICI**,” and “**Special Entity**” shall be given the meanings provided in the form of questionnaire attached hereto as Exhibit 2, and the following terms will have the following meanings:

“**Credit Support Document**” means, with respect to a Matched PCA Party, a document, which by its terms secures, guarantees or otherwise supports the obligations of one or both of the Matched PCA Parties under a Matched PCA, whether or not such document is specified as a “Credit Support Document” in such Matched PCA.

“**ISDA Amend**” means the web-based platform that has been developed by ISDA and Markit Group Limited and is available at <http://www.markit.com/en/products/distribution/document-exchange/registration.page>.

“**Substitute Part II Information**” means the information requested to be provided by a party in Part II, Sections 2 through 5 of the Questionnaire, as applicable, that (a) such party represents it has previously provided in writing to the Matched PCA Party receiving such Questionnaire in lieu of providing such information in the Questionnaire or (b) appears in the publicly available portion of the LEI/CICI database with respect to such Matched PCA Party.

EXHIBIT 1
to ISDA August 2012 DF Protocol Agreement

Form of Adherence Letter

[Letterhead of Protocol Participant]

[Date]

Dear Sirs:

Re: ISDA August 2012 DF Protocol – Adherence

The purpose of this letter is to confirm our adherence as a “**Protocol Participant**” to the ISDA August 2012 DF Protocol Agreement as published by the International Swaps and Derivatives Association, Inc. on August 13, 2012 (the “**Protocol Agreement**”). This letter constitutes an Adherence Letter as referred to in the Protocol Agreement. The definitions and provisions contained in the Protocol Agreement are incorporated into this Adherence Letter.

We agree to pay a one-time fee of \$500 to ISDA at or before the submission of this Adherence Letter.

1. Specific Terms

We hereby represent that this is the only Adherence Letter submitted by us to ISDA in respect of the Protocol Agreement.

2. Appointment as Agent and Release

We hereby appoint ISDA as our agent for the limited purposes of the Protocol Agreement and accordingly we waive, and hereby release ISDA from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or our adherence to the Protocol Agreement or any actions contemplated as being required by ISDA.

3. Contact Details

Our contact information, solely for purposes of this Adherence Letter (and unrelated to the Questionnaire delivery options in the subsequent section) is:

Name:
Address:
Telephone:
Fax:
E-mail:

4. Delivery of Questionnaire

Delivery of a Questionnaire by another Protocol Participant may be made to us pursuant to Section 3 of the Protocol Agreement as follows, where the relevant box has been checked:

- ☐ if submitted via ISDA Amend in accordance with the terms thereof.
- ☐ if in writing and delivered in person or by courier, or by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested) to:

[Address]
[Address]
[Address]
[Attention]

- ☐ if sent by facsimile transmission, to:

[Fax Number]
[Attention]

- ☐ if sent by e-mail or other electronic messaging system, to:

[Address]

- ☐ 5. We understand that the Protocol is designed to allow “matching” of Questionnaires between a swap dealer and other counterparties (including other swap dealers). Accordingly, to assist in the administration of the Protocol, we have checked this box to indicate that for purposes of receiving Questionnaires (a) we are, or expect to be, a swap dealer or (b) we are submitting this letter to act under the Protocol Agreement on behalf of a PCA Principal that is, or expects to be, a swap dealer and whose legal name is:

We consent to the publication of a conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[PROTOCOL PARTICIPANT]

Signature: _____
Name: _____
Title: _____

EXHIBIT 2
to August 2012 ISDA DF Protocol Agreement

Form of Questionnaire



ISDA AUGUST 2012 DF SUPPLEMENT¹

published on August 13, 2012,
by the International Swaps and Derivatives Association, Inc.

¹ This DF Supplement is intended to address requirements of the following final rules:

- (1) CFTC, Final Rule, *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012);
- (2) CFTC, Final Rule, *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011);
- (3) CFTC, Final Rule, *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011);
- (4) CFTC, Final Rule, *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012);
- (5) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012);
- (6) CFTC, Final Rule, *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20128 (Apr. 3, 2012); and
- (7) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012).

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Any of the following schedules of this ISDA August 2012 DF Supplement (as published by the International Swaps and Derivatives Association, Inc. (“ISDA”)) (this “**DF Supplement**”) may be incorporated into an agreement (such agreement, a “**Covered Agreement**”) by written agreement of the relevant parties indicating which schedules of this DF Supplement (each such schedule, a “**DF Schedule**”) shall be incorporated into such Covered Agreement. All DF Schedules so incorporated in a Covered Agreement will be applicable to such Covered Agreement unless otherwise provided in such Covered Agreement, and any term defined in this DF Supplement and used in any DF Schedule that is incorporated by reference in a Covered Agreement will have the meaning set forth in this DF Supplement unless otherwise provided in such Covered Agreement. Any term used in a Covered Agreement will, when combined with the name of a party, have meaning with respect to the named party only. The headings and footnotes used in this DF Supplement are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this DF Supplement.

Schedule 1 Defined Terms

The following terms shall have the following meanings when used in this DF Supplement:

“Agreement,” as used in a provision of this DF Supplement that is incorporated into a Covered Agreement or any defined term used in such provision, means such Covered Agreement, as amended or supplemented from time to time.

“Agricultural Commodity” means any “agricultural commodity,” as defined in CFTC Regulation 1.3(zz).

“Associated Person” means, with respect to a Swap Dealer, any person acting for or on behalf of such Swap Dealer, including an associated person as defined in Section 1a(4) of the Commodity Exchange Act.

“Applicable U.S. Law” means all applicable laws of the United States and rules, regulations, orders and written interpretations of U.S. federal authorities, self-regulatory organizations, markets, exchanges, and clearing facilities.

“Business Day” means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

“CFTC” means the U.S. Commodity Futures Trading Commission.

“CFTC Regulations” means the rules, regulations, orders and interpretations published or issued by the CFTC.

“Commodity Exchange Act” means the Commodity Exchange Act, as amended.

“Commodity Trade Option” means a commodity option entered into pursuant to CFTC Regulation 32.3(a).

“Counterparty” or **“CP”** means a party that is the counterparty to a Swap Dealer in respect of the Agreement. For the avoidance of doubt, if two Swap Dealers are parties to the Agreement, each Swap Dealer is a Counterparty or CP for purposes of this DF Supplement.

“DCM” means a “designated contract market,” as such term is used in the CFTC Regulations.

“DCO” means a “derivatives clearing organization,” as such term is defined in Section 1a(15) of the Commodity Exchange Act and the CFTC Regulations.

“Designated Evaluation Agent” means, with respect to a party to the Agreement, a person (if any), other than an employee of such party, that such party has represented in writing to its counterparty is its “Designated Evaluation Agent.”

“Designated Fiduciary” means, with respect to a party to the Agreement, a person (if any) that such party has represented in writing to its counterparty is its “Designated Fiduciary.”

“Designated QIR” means, with respect to a party to the Agreement, a person (if any) that such party has represented in writing to its counterparty is its “Designated QIR.”

“DF Schedule” shall have the meaning given to such term in the introductory paragraph of this DF Supplement.

“DF Supplement Rules” means the CFTC Regulations adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012); (2) *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011); (3) *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011); (4) *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012); (5) *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012); (6) *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20138 (Apr. 3, 2012); (7) *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012); and (8) solely for purposes of Sections 2.4, 2.5, 2.12 and 2.19 of this DF Supplement, any comparable non-U.S. regulation with which SD is permitted by the CFTC to comply in lieu of any of the foregoing CFTC Regulations.

“DF Supplement Information” means (i) any information or representation agreed in writing by the parties to be DF Supplement Information; and (ii) any information provided pursuant to Section 2.4 of this DF Supplement, in each case, as amended or supplemented from time to time in accordance with Section 2.3 of this DF Supplement or in another manner agreed by the parties.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Special Entity” means a party to the Agreement that has represented in writing to its counterparty that it is an employee benefit plan subject to Title I of ERISA.

“Exempt Commodity” means any “exempt commodity” under Section 1a(20) of the Commodity Exchange Act.

“FCM” means a futures commission merchant subject to regulation under the Commodity Exchange Act.

“Hedging Entity ECP” means a party to the Agreement that (i) has represented in writing to its counterparty that it is a corporation, partnership, proprietorship, organization, trust, or other entity that has a net worth exceeding \$1,000,000 and enters into Swaps in connection with the conduct of the party’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the party in the conduct of the party’s business, but (ii) has not represented that it qualifies as an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.

“Hedging Individual ECP” means a party to the Agreement that (i) has represented in writing to its counterparty that it is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$5,000,000 and who enters into Swaps in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the party, but (ii) has not represented that it qualifies as an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.

“Local Business Day” shall have the meaning specified in the Agreement; *provided, however*, in the event the Agreement does not specify the meaning of “Local Business Day,” the term shall mean, with respect to a party, a day on which commercial banks are open for business (including for dealings in foreign exchange and foreign currency deposits) in the city that is specified in the Agreement for receipt of notices by such party.

“Major Security-Based Swap Participant” means a party to the Agreement that has represented in writing to its counterparty that it is registered with the SEC as a “major security-based swap participant” as defined in Section 3a(67) of the Securities Exchange Act and Rule 3a67-1 thereunder.

“Major Swap Participant” means a party to the Agreement that has represented in writing to its counterparty that it is registered (fully or provisionally) with the CFTC as a “major swap participant” as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh) thereunder.

“Material Confidential Information” means “material confidential information” as such term is used in CFTC Regulation 23.410(c).

“Non-Reporting Counterparty” means, in respect of any Swap subject to the CFTC Regulations, the party to such Swap that is not the Reporting Counterparty.

“Notice Effective Date” means the Local Business Day following the date on which a notice would be effective pursuant to the Notice Procedures or such other date as the parties may specify in writing.

“Notice Procedures” means (1) the procedure specified in the Agreement regarding delivery of notices or information to a party and (2) such other means as may be agreed in writing between the parties from time to time.

“Notifications” means the notifications set forth in Part VII of DF Schedule 2.

“Regulated Swap Entity” means a Swap Dealer, Security-Based Swap Dealer, Major Swap Participant or Major Security-Based Swap Participant.

“Reporting Counterparty” means, in respect of any Swap subject to the CFTC Regulations, the party to such Swap that is determined to be the “reporting counterparty” in accordance with CFTC Regulation 45.8; *provided that*, in the event that CFTC Regulation 45.8 requires the parties to agree which party shall be the reporting Counterparty, the Reporting Counterparty in respect of a Swap shall be the party agreed by the parties.

“SDR” means a “swap data repository” as defined in Section 1a(48) of the Commodity Exchange Act and the CFTC Regulations.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Security-Based Swap Dealer” means a party to the Agreement that has represented in writing to its counterparty that it is registered with the SEC as a “security-based swap dealer” as defined in Section 3(a)(71) of the Securities Exchange Act and Rule 3a71-1 thereunder.

“SEF” means a “swap execution facility” as defined in Section 1a(50) of the Commodity Exchange Act and the CFTC Regulations.

“Special Entity” means a “special entity” as defined in Section 4s(h)(2)(C) of the Commodity Exchange Act and CFTC Regulation 23.401(c) thereunder.

“Swap” means a “swap” as defined in the Section 1a(47) of the Commodity Exchange Act and CFTC Regulation 1.3(xxx) that is governed by or proposed to be governed by the Agreement. The term “Swap” also includes any foreign exchange swaps and foreign exchange forwards that may be 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.

“Swap Communication Event” means each (1) Swap Transaction Event, (2) offer to enter into a Swap under the Agreement or a Swap Transaction Event and (3) Swap Recommendation.

“Swap Dealer” or **“SD”** means a party to the Agreement that has represented in writing to a counterparty that it is registered (fully or provisionally) with the CFTC as a “swap dealer” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg) thereunder, *provided that* the term “Swap Dealer” also includes, as appropriate, any Associated Person of such Swap Dealer.

“Swap Recommendation” means a “recommendation” (as such term is used in CFTC Regulations 23.434 and 23.440) with respect to a Swap or trading strategy involving a Swap that is governed by or proposed to be governed by the Agreement.

“Swap Transaction Event” means, with respect to any two parties, the execution of a new Swap between such parties under the Agreement or any material amendment, mutual unwind or novation of an existing Swap between such parties under the Agreement.¹

¹ See 77 Fed. Reg. 9734, 9741 (Feb. 17, 2012).

Schedule 2
Agreements Between a Swap Dealer and Any Other Party

This DF Schedule 2 may be incorporated into an agreement between a Swap Dealer and any other party, including another Swap Dealer. For the avoidance of doubt, if this DF Schedule 2 is incorporated into an agreement between two Swap Dealers, each such Swap Dealer will be both "SD" and "CP" for purposes of this DF Schedule 2.

If the parties to an agreement have specified that this DF Schedule 2 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 2 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 2 were restated therein in its entirety.

Part I. Representations and Agreements.

- 2.1. Each party represents to the other party (which representation is deemed repeated as of the time of each Swap Transaction Event) that, as of the date of each Swap Transaction Event, (i) all DF Supplement Information (excluding financial information and representations) furnished by or on behalf of it to the other party is true, accurate and complete in every material respect, (ii) no representation provided in the DF Supplement Information or in this DF Supplement is incorrect or misleading in any material respect, and (iii) all DF Supplement Information that is financial information furnished by or on behalf of it to the other party has been prepared in accordance with applicable accounting standards, consistently applied.²
- 2.2. Each party acknowledges that the other party has agreed to incorporate one or more DF Schedules into the Agreement, and if the parties enter into any Swaps on or after the date of such incorporation the other party will do so, in reliance upon the DF Supplement Information and the representations provided by such party or its agent in the DF Supplement Information and this DF Supplement. Notwithstanding the foregoing, each party agrees that an event of default, termination event, or other similar event shall not occur under the Agreement or any other contract between the parties solely on the basis of (i) a representation provided solely in DF Supplement Information or in this DF Supplement being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in this DF Supplement; *provided, however*, that nothing in this Section 2.2 shall prejudice any other right or remedy of a party at law or under the Agreement or any other contract in respect of any misrepresentation or breach hereunder or thereunder. For the avoidance of doubt, this Section 2.2 shall not alter a party's termination rights or remedies, if any, applicable to a breach of any representation, warranty, covenant, or agreement that is not provided or set forth solely in DF Supplement Information or in this DF Supplement, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.

² CFTC Regulation 23.402(d).

- 2.3. Each party agrees to promptly notify the other party in writing in accordance with the Notice Procedures (i) of any material change to DF Supplement Information (other than representations) previously provided by such party or on behalf of such party and (ii) if any representations made in DF Supplement Information or this DF Supplement by or on behalf of such party become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the notifying party shall timely amend such representation by giving notice of such amendment to the other party in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 2.3 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.³
- 2.4. Each party agrees to promptly provide the other party, in accordance with the Notice Procedures, any information reasonably requested by such other party to enable such other party to comply with Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the DF Supplement Rules in connection with any Swap outstanding between the parties under the Agreement.⁴
- 2.5. Notwithstanding anything to the contrary in the Agreement or in any non-disclosure, confidentiality or similar agreement between the parties, each party hereby consents to the disclosure of information to the extent required by the DF Supplement Rules which mandate reporting of transaction and similar information.⁵ Each party acknowledges that disclosures made pursuant to this Section 2.5 may include, without limitation, the disclosure of trade information including a party's identity (by name, identifier or otherwise) to an SDR and relevant regulators and that such disclosures could result in certain anonymous Swap transaction and pricing data becoming available to the public. Each party further acknowledges that, for purposes of complying with regulatory reporting obligations, an SDR may engage the services of a global trade repository regulated by one or more governmental regulators, provided that such regulated global trade repository is subject to comparable confidentiality provisions as is an SDR registered with the CFTC. For the avoidance of doubt, to the extent that applicable non-disclosure, confidentiality, bank secrecy or other law imposes non-disclosure requirements on transaction and similar information required to be disclosed pursuant to the DF Supplement Rules but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for purposes of such other applicable law.

³ CFTC Regulation 23.402(d).

⁴ See, e.g., CFTC Regulations 20.5(a); 43.3-43.4; 45.2-45.4; 46.3.

⁵ CFTC Regulations 20.4, 20.5, 23.204, 23.205, 43.3, 43.4, 45.3, 45.4, and 46.3. Please note that the consents and acknowledgements in this Section 2.5 may not be sufficient to meet all disclosure requirements for the disclosure of information as required under the laws of certain jurisdictions.

- 2.6. To the fullest extent permitted by applicable law, each party consents to the recording of conversations of its trading, marketing, operations and other relevant personnel by the other party and its affiliates, with or without the use of a warning tone or similar warning, in connection with any Swap or proposed Swap. Each party further agrees to obtain the individual consents of its personnel should such consent be required by applicable law.⁶
- 2.7. As of each Swap Transaction Event with respect to a Commodity Trade Option to which CP is the offeree, CP represents to its counterparty that it is: (i) a producer, processor, commercial user of, or a merchant handling, the commodity that is the subject of the Commodity Trade Option, or the products or byproducts thereof, and (ii) entering into the Commodity Trade Option solely for purposes related to its business as such.⁷
- 2.8. As of each Swap Transaction Event with respect to a Commodity Trade Option, each party represents to the other party that the Commodity Trade Option, if exercised, contains a binding obligation that results in the sale of an Exempt Commodity or an Agricultural Commodity for immediate or deferred shipment or delivery.⁸

Part II. Agreements of a Non-Reporting Counterparty.

- 2.9. Each party agrees that if it is the Non-Reporting Counterparty with respect to a Swap under the Agreement that is an “international swap” (as that term is defined in CFTC Regulation 45.1), it shall notify the Reporting Counterparty to such international swap, as soon as practicable and in accordance with the Notice Procedures, of the (i) identity of each non-U.S. trade repository not registered with the CFTC to which the Non-Reporting Counterparty or its agent has reported the Swap, and (ii) swap identifier used by such non-U.S. trade repository to identify the swap.⁹
- 2.10. Each party agrees that if it is the Non-Reporting Counterparty with respect to a Swap under the Agreement, upon the occurrence of any “life cycle event” (as that term is defined in CFTC Regulation 45.1) relating to a corporate event in respect of such Non-Reporting Counterparty and such Swap, it will, as soon as practicable, but in no event later than 10 a.m. on the second “business day” (as that term is defined in CFTC Regulation 45.1) following the day on which such life cycle event occurs, notify the Reporting Counterparty to the Swap of the occurrence of such life cycle event, with sufficient detail regarding such life cycle

⁶ CFTC Regulation 23.202.

⁷ CFTC Regulation 32.3(a)(2).

⁸ CFTC Regulation 32.3(a)(3).

⁹ CFTC Regulation 45.3(h).

event to allow such other party to comply with any reporting requirements imposed by the DF Supplement Rules.¹⁰

Part III. Representations and Agreements of a Counterparty that is not a Swap Dealer.

If CP is not a Swap Dealer, it represents and agrees as follows:

- 2.11. CP has received, reviewed, and understood the Notifications in Part VII of DF Schedule 2 that are applicable to CP.¹¹
- 2.12. CP agrees that SD may effect delivery to CP of any notifications and informational disclosures required by the DF Supplement Rules, including standardized notifications and disclosures applicable to multiple Swaps, through any of the following means, each of which CP agrees is reliable: (i) means specified for the delivery of notices in the Notice Procedures or (ii) by posting on a web page at, or accessible through, a URL designated in a written notice given to CP pursuant to the Notice Procedures and notifying CP of such posting in a written notice given pursuant to the Notice Procedures, *provided that* SD need not provide written notice of posting on such web page with respect to the provision of daily marks pursuant to CFTC Regulation 23.431(d). CP further agrees that, if it has so specified in writing to SD, SD may provide oral disclosures of any (i) pre-trade mid-market marks required pursuant to CFTC Regulation 23.431(a)(3)(i) and (ii) basic material economic terms, including price, notional amount and termination date, pursuant to CFTC Regulation 23.431(a)(2), *provided* such disclosures are confirmed by SD in a written notice (which confirmation may be provided post-trade) by a means specified in the preceding sentence.
- 2.13. Subject to any conditions on the disclosure of Material Confidential Information to governmental authorities, regulatory authorities or self-regulatory organizations previously agreed by the parties, CP agrees that SD is authorized to disclose Material Confidential Information provided to SD by (or on behalf of) CP to comply with a request of any regulatory authority or self-regulatory organization with jurisdiction over SD or of which SD is a member or as otherwise required by applicable law (whether by statute, law, rule, regulation, court order, subpoena, deposition, civil investigative demand or otherwise).¹²
- 2.14. If, on or prior to the date on which this DF Schedule 2 is incorporated into the Agreement, CP and SD have entered into a written agreement relating to the non-disclosure of information regarding CP or its activities, CP and SD agree that all information that is subject to that agreement that constitutes Material Confidential

¹⁰ CFTC Regulation 45.4(c).

¹¹ CFTC Regulations 23.402(f) and 23.431(d)(3)(ii).

¹² CFTC Regulation 23.410(c)(2).

Information and is provided by (or on behalf of) CP to SD may be used or disclosed by SD in any manner that is not prohibited by the terms of such agreement, irrespective of any limitations set forth in CFTC Regulation 23.410(c)(1).

- 2.15. If any Material Confidential Information provided by (or on behalf of) CP to SD is not subject to an agreement of the type described in Section 2.14 above, CP agrees that SD is authorized to use or disclose such Material Confidential Information to (i) any of its affiliates, third-party service providers (*provided* such affiliates and third-party service providers are subject to limitations on use or disclosure that are no less restrictive than the limitations applicable to SD under the DF Supplement Rules, as agreed by the parties in this DF Supplement) and (ii) Associated Persons, solely for purposes of complying with the internal legal risk, compliance, accounting, operational risk, market risk, liquidity risk or credit risk policies of SD or its affiliates (in each case, consistently applied) or as otherwise permitted by the DF Supplement Rules. Notwithstanding the foregoing, no such Material Confidential Information will be disclosed to any person acting in a structuring, sales or trading capacity for SD or any affiliate of SD except as permitted by CFTC Regulation 23.410(c)(2); *provided that* for purposes of the foregoing, CP and SD agree that:
- a. “the effective execution of any swap for or with counterparty,” as such language is used in CFTC Regulation 23.410(c)(2)(i), may require, without limitation, the delivery of Material Confidential Information to persons acting in a structuring, sales or trading capacity for SD or any affiliate of SD for the purpose of structuring a Swap or for the purpose of, but solely to the extent necessary for, establishing the price of a Swap or proposed Swap or adjusting the terms of an existing Swap; and
 - b. the disclosure or use of Material Confidential Information to “hedge or mitigate any exposure,” as such language is used in CFTC Rule 23.410(c)(2)(ii), includes, without limitation, its disclosure or use, for the purpose of, but solely to the extent necessary for, establishing or adjusting one or more anticipatory hedges or other positions intended to hedge against the market risk, liquidity risk or counterparty credit exposure to CP that is generated by a Swap or proposed Swap.
- 2.16. CP agrees that the following information is not Material Confidential Information: information that, at or prior to the time of its use or disclosure by SD, is generally available publicly other than as a result of (i) a breach by SD of its obligations to CP under Applicable U.S. Law or a written agreement relating to the non-disclosure of information regarding CP or its activities or (ii) a breach by (a) any of SD’s affiliates or third-party service providers that receive such information from SD or (b) any of SD’s affiliates that receive such information in connection

with the trading relationship between SD and CP, in either case, of corresponding restrictions on the use or disclosure of such information that are applicable to it.¹³

Part IV. Agreements and Acknowledgements of a Counterparty that is not a Regulated Swap Entity.

If CP is not a Regulated Swap Entity, it agrees and acknowledges as follows:

- 2.17. CP agrees that, with respect to each cleared Swap originally executed between CP and SD, CP will obtain any daily marks it wishes to receive for such cleared Swap from the FCM through which CP clears such cleared Swap or the relevant DCO or another third party.¹⁴
- 2.18. CP agrees that, unless otherwise agreed with SD in writing, with respect to each uncleared Swap between CP and SD, any daily marks required to be provided by SD to CP pursuant to CFTC Regulation 23.431(d) will be calculated by SD as of the close of business on the prior Business Day in the locality specified by SD in its notice of such daily mark to CP, such locality to be consistently specified with regard to a class or type of Swaps.¹⁵
- 2.19. CP acknowledges that, with respect to each Swap between CP and SD that is not “available for trading” (as that phrase is used in the CFTC Regulations), unless CP makes a request of SD prior to a Swap Transaction Event for a specific scenario analysis to which it is entitled pursuant to DF Supplement Rules or other Applicable U.S. Law (which request, if made orally, will be confirmed in writing), CP shall not be entitled to any scenario analysis unless SD otherwise agrees.¹⁶

Part V. Representation of a Hedging Entity ECP.

- 2.20. If CP is a Hedging Entity ECP, CP represents to SD (which representation is deemed repeated as of the time of each Swap Transaction Event) that for so long as CP remains a Hedging Entity ECP, each Swap entered into by it under the Agreement will be entered into in connection with the conduct of CP's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by CP in the conduct of CP's business.¹⁷

¹³ CFTC Regulation 23.410(c).

¹⁴ CFTC Regulation 23.431(d).

¹⁵ CFTC Regulation 23.431(d).

¹⁶ CFTC Regulation 23.431(b).

¹⁷ See Commodity Exchange Act Section 1a(18)(A)(v)(III) and related CFTC Regulations.

Part VI. Representation of a Hedging Individual ECP.

- 2.21. If CP is a Hedging Individual ECP, CP represents to SD (which representation is deemed repeated as of the time of each Swap Transaction Event) that for so long as CP remains a Hedging Individual ECP, each Swap entered into by it under the Agreement, will be entered into in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by CP.¹⁸

Part VII. Notifications by a Swap Dealer.

If applicable, SD hereby notifies CP that:

2.22. Scenario Analysis¹⁹

- a. If CP is not a Regulated Swap Entity, prior to any Swap Transaction Event with respect to any Swap that is not “available for trading” (as such term is defined in the CFTC Regulations) on a DCM or SEF, CP can request, and consult on the design of, a scenario analysis to allow CP to assess its potential exposure in connection with such Swap.

2.23. Daily Mark

- a. If CP is not a Regulated Swap Entity, CP has the right to receive the daily mark for cleared Swaps originally executed by CP with SD from the relevant DCO.²⁰
- b. If CP is not a Regulated Swap Entity, SD hereby discloses to CP, in respect of a daily mark for any uncleared Swap provided to CP by SD pursuant to CFTC Regulation 23.431(d)(3)(ii), that:
1. the daily mark may not necessarily be a price at which either CP or SD would agree to replace or terminate the Swap;
 2. unless otherwise expressly agreed by the parties, calls for margin may be based on considerations other than the daily mark provided to CP; and²¹
 3. the daily mark may not necessarily be the value of the Swap that is marked on the books of SD.²²

¹⁸ See Commodity Exchange Act Section 1a(18)(A)(vi)(II) and related CFTC Regulations.

¹⁹ CFTC Regulation 23.431(b).

²⁰ CFTC Regulation 23.431(d)(1).

²¹ CFTC Regulation 23.431(d)(3).

²² CFTC Regulation 23.431(d)(3).

2.24. Clearing

- a. If CP is a not a Regulated Swap Entity, with respect to any Swap entered into between CP and SD under the Agreement that is subject to the mandatory clearing requirements under Section 2(h) of the Commodity Exchange Act, CP has the sole right to select the DCO at which the Swap will be cleared.²³
- b. If CP is not a Regulated Swap Entity, with respect to any Swap entered into between CP and SD under the Agreement that is not subject to the mandatory clearing requirements under Section 2(h) of the Commodity Exchange Act, CP may elect to clear such Swap and has the sole right to select the DCO at which the Swap will be cleared.²⁴

2.25. Special Entities

- a. If CP is an employee benefit plan defined in Section 3 of ERISA that is not subject to Title I of ERISA, SD hereby notifies CP of its right to elect to be treated as a special entity pursuant to CFTC Regulation 23.430(c).²⁵

²³ CFTC Regulation 23.432(a).

²⁴ CFTC Regulation 23.432(b).

²⁵ CFTC Regulation 23.430(c)

Schedule 3
Institutional Suitability Safe Harbors for Non-Special Entities

This DF Schedule 3 may be incorporated into an agreement between a Swap Dealer and any other party that is not a Regulated Swap Entity or a Special Entity.

If the parties to an agreement have specified that this DF Schedule 3 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 3 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 3 were restated therein in its entirety. If the party that is not a Regulated Swap Entity or Special Entity has one or more Designated Evaluation Agents, this DF Schedule 3 will only be incorporated into an agreement if such party and each such Designated Evaluation Agent have agreed to make the representations and agreements in this DF Schedule 3 that are applicable to it.

Part I. Representations and Agreements Applicable if Counterparty Has One or More Designated Evaluation Agents.

- 3.1. If (i) CP has designated one or more agents as Designated Evaluation Agents and (ii) each such Designated Evaluation Agent has agreed in writing to make the representations and agreements in Sections 3.1(b) and 3.1(c):
- a. CP represents to SD (which representation is deemed repeated by CP as of the occurrence of each Swap Communication Event) that CP has complied in good faith with written policies and procedures that are reasonably designed to ensure that each of its Designated Evaluation Agents is capable of evaluating Swap Recommendations (if any) of SD and making trading decisions on behalf of CP;²⁶
 - b. Each Designated Evaluation Agent represents to SD (which representation is deemed repeated by such Designated Evaluation Agent as of the occurrence of each Swap Communication Event involving such Designated Evaluation Agent) that such Designated Evaluation Agent is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD that are presented to it;²⁷ and
 - c. Each Designated Evaluation Agent agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated Evaluation Agent in this DF Supplement become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Evaluation Agent shall timely amend such representation by giving notice of such amendment to

²⁶ CFTC Regulation 23.434(c)(1).

²⁷ CFTC Regulation 23.434(b)(2).

SD in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 3.1(c) shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.²⁸

- d. CP represents (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that it will exercise independent judgment in consultation with a Designated Evaluation Agent, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.

Part II. Representations Applicable if Counterparty Does Not Have a Designated Evaluation Agent.

- 3.2. If CP has not designated a Designated Evaluation Agent, CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:
 - a. CP has complied in good faith with written policies and procedures that are reasonably designed to ensure that the persons responsible for evaluating all Swap Recommendations (if any) regarding a Swap and making trading decisions on behalf of CP are capable of doing so; and²⁹
 - b. CP is exercising independent judgment in evaluating all Swap Recommendations (if any).³⁰

Part III. Disclosures of a Swap Dealer.

- 3.3. SD hereby discloses to CP (which disclosure is deemed repeated by SD as of the occurrence of each Swap Communication Event) that SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP.³¹

²⁸ CFTC Regulation 23.402(d).

²⁹ CFTC Regulation 23.434(c)(1).

³⁰ CFTC Regulation 23.434(b)(2).

³¹ CFTC Regulation 23.434(b)(3).

Schedule 4
Safe Harbors for Non-ERISA Special Entities

This DF Schedule 4 may be incorporated into an agreement between a Swap Dealer and any Special Entity that is not an ERISA Special Entity; provided that the Special Entity has one or more Designated QIRs, each of whom agrees to the provisions of Part III of this DF Schedule 4 that are applicable to it.

If the parties to an agreement have specified that this DF Schedule 4 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 4 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 4 were restated therein in its entirety. This DF Schedule 4 will only be incorporated into an agreement if the Special Entity and each Designated QIR have agreed to make the representations and agreements in this DF Schedule 4 that are applicable to it.

Part I. Representations of a Counterparty.

- 4.1. CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:
- a. CP will not rely on Swap Recommendations (if any) provided by SD;³²
 - b. CP will rely on advice from a Designated QIR;³³
 - c. CP has complied in good faith with written policies and procedures reasonably designed to ensure that each Designated QIR selected by CP satisfies the applicable requirements of CFTC Regulation 23.450(b)(1), and that such policies and procedures provide for ongoing monitoring of the performance of such representative consistent with the requirements of CFTC Regulation 23.450(b)(1);³⁴ and
 - d. CP will exercise independent judgment in consultation with a Designated QIR, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.

³² CFTC Regulation 23.440(b)(2)(ii)(A).

³³ CFTC Regulation 23.440(b)(2)(ii)(B).

³⁴ CFTC Regulation 23.450(d)(1)(i); 23.434(c)(ii).

Part II. Disclosures of a Swap Dealer.

- 4.2. SD discloses to CP (which disclosures are deemed repeated by SD as of the occurrence of each Swap Communication Event) that:
- a. SD is not undertaking to act in the best interests of CP;³⁵ and
 - b. SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP.³⁶

Part III. Representations and Agreements of a Designated QIR.

- 4.3. Each Designated QIR represents to SD and CP (which representations are deemed repeated by such Designated QIR as of the occurrence of each Swap Communication Event involving such Designated QIR) that:
- a. Such Designated QIR has written policies and procedures reasonably designed to ensure that the Designated QIR satisfies the applicable requirements of CFTC Regulation 23.450(b)(1);³⁷
 - b. Such Designated QIR is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD that are presented to it;³⁸
 - c. Unless such Designated QIR otherwise notifies SD in writing in accordance with the Notice Procedures, which notification shall become effective on the Notice Effective Date:
 - 1. Such Designated QIR is not and, within one year of representing CP in connection with the Swap has not been, an “associated person,” as such term is defined in Section 1a(4) of the Commodity Exchange Act, of SD;³⁹
 - 2. There is no “principal relationship” (as that term is defined in CFTC Regulation 23.450(a)(1)) between the Designated QIR and SD;⁴⁰

³⁵ CFTC Regulation 23.440(b)(2)(iii).

³⁶ CFTC Regulation 23.434(b)(3).

³⁷ CFTC Regulation 23.450(d)(1)(ii)(A).

³⁸ CFTC Regulation 23.434(b)(2).

³⁹ CFTC Regulation 23.450(c)(1).

⁴⁰ CFTC Regulation 23.450(c)(2).

3. Such Designated QIR (i) provides timely and effective disclosures to CP of all material conflicts of interest that could reasonably affect the judgment or decision making of such Designated QIR with respect to its obligations to CP and (ii) complies with policies and procedures reasonably designed to manage and mitigate such material conflicts of interest;⁴¹
 4. Such Designated QIR is not directly or indirectly, through one or more persons, controlled by, in control of, or under common control with SD;⁴² and
 5. To the best of such Designated QIR's knowledge, SD did not refer, recommend, or introduce such Designated QIR to CP within one year of such Designated QIR's representation of CP in connection with the Swap; and⁴³
- d. Such Designated QIR is legally obligated to comply with the applicable requirements of CFTC Regulation 23.450(b)(1) by agreement, condition of employment, law, rule, regulation, or other enforceable duty.⁴⁴
- 4.4. Each Designated QIR agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated QIR in this DF Supplement become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated QIR shall timely amend such representation by giving notice of such amendment to SD in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 4.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.⁴⁵

⁴¹ CFTC Regulation 23.450(c)(3).

⁴² CFTC Regulation 23.450(c)(4).

⁴³ CFTC Regulation 23.450(c)(5).

⁴⁴ CFTC Regulation 23.450(d)(1)(ii)(C).

⁴⁵ CFTC Regulation 23.402(d).

Schedule 5
Safe Harbors for ERISA Special Entities (Option 1)

This DF Schedule 5 may be incorporated into an agreement between a Swap Dealer and an ERISA Special Entity; provided that the ERISA Special Entity has one or more Designated Fiduciaries, each of whom agrees to the provisions of Part III of this DF Schedule 5 that are applicable to it. If the relevant Swap Dealer and ERISA Special Entity so agree, both DF Schedule 5 and DF Schedule 6 may be incorporated into an agreement.

If the parties to an agreement have specified that this DF Schedule 5 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 5 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 5 were restated therein in its entirety. This DF Schedule 5 will only be incorporated into an agreement if the ERISA Special Entity and each Designated Fiduciary have agreed to make the representations and agreements in this DF Schedule 5 that are applicable to it.

Part I. Representations of a Counterparty.

- 5.1. CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:
- a. Each of its Designated Fiduciaries is a “fiduciary” as defined in Section 3 of ERISA and a Designated Fiduciary is responsible for representing CP in connection with each Swap or trading strategy involving a Swap;⁴⁶
 - b. Either:
 - 1. CP will comply in good faith with written policies and procedures reasonably designed to ensure that any recommendation CP receives from SD materially affecting a Swap transaction is evaluated by a Designated Fiduciary before the transaction occurs; or⁴⁷
 - 2. Any recommendation CP receives from SD materially affecting a Swap transaction will be evaluated by a Designated Fiduciary before the transaction occurs;⁴⁸ and
 - c. CP will exercise independent judgment in consultation with a Designated Fiduciary, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.

⁴⁶ CFTC Regulations 23.440(b)(1)(i) and 23.450(d)(2).

⁴⁷ CFTC Regulation 23.440(b)(1)(iii)(A).

⁴⁸ CFTC Regulation 23.440(b)(1)(iii)(B).

Part II. Disclosures of a Swap Dealer.

- 5.2. SD discloses to CP (which disclosures are deemed repeated by SD as of the occurrence of each Swap Communication Event) that:
- a. SD is not undertaking to act in the best interests of CP;⁴⁹ and
 - b. SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP.⁵⁰

Part III. Representations and Agreements of a Designated Fiduciary.

- 5.3. Each Designated Fiduciary represents to SD and CP (which representations are deemed repeated by such Designated Fiduciary as of the occurrence of each Swap Communication Event involving such Designated Fiduciary) that:
- a. Such Designated Fiduciary is not relying on Swap Recommendations (if any) provided by SD; and⁵¹
 - b. Such Designated Fiduciary is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD that are presented to it.⁵²
- 5.4. Each Designated Fiduciary agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated Fiduciary in this DF Supplement become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Fiduciary shall timely amend such representation by giving notice of such amendment to SD in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 5.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.⁵³

⁴⁹ CFTC Regulation 23.440(b)(2)(iii).

⁵⁰ CFTC Regulation 23.434(b)(3).

⁵¹ CFTC Regulation 23.440(b)(1)(ii).

⁵² CFTC Regulation 23.434(b)(2).

⁵³ CFTC Regulation 23.402(d).

Schedule 6
Safe Harbors for ERISA Special Entities (Option 2)

This DF Schedule 6 may be incorporated into an agreement between a Swap Dealer and an ERISA Special Entity; provided that the ERISA Special Entity has one or more Designated Fiduciaries, each of whom agrees to the provisions of Part III of this DF Schedule 6 that are applicable to it. If the relevant Swap Dealer and ERISA Special Entity so agree, both DF Schedule 5 and DF Schedule 6 may be incorporated into an agreement.

If the parties to an agreement have specified that this DF Schedule 6 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 6 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 6 were restated therein in its entirety. This DF Schedule 6 will only be incorporated into an agreement if the ERISA Special Entity and each Designated Fiduciary have agreed to make the representations and agreements in this DF Schedule 6 that are applicable to it.

Part I. Representations of a Counterparty.

- 6.1. CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:
- a. Each of its Designated Fiduciaries is a “fiduciary” as defined in Section 3 of ERISA;⁵⁴
 - b. CP will not rely on recommendations (if any) provided by SD;⁵⁵
 - c. CP will rely on advice from a Designated Fiduciary;⁵⁶ and
 - d. CP will exercise independent judgment in consultation with a Designated Fiduciary, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.

Part II. Disclosures of a Swap Dealer.

- 6.2. SD discloses to CP (which disclosures are deemed repeated by SD as of the occurrence of each Swap Communication Event) that:
- a. SD is not undertaking to act in the best interests of CP;⁵⁷ and

⁵⁴ CFTC Regulation 23.450(d)(2).

⁵⁵ CFTC Regulation 23.440(b)(2)(ii)(A).

⁵⁶ CFTC Regulation 23.440(b)(2)(ii)(B).

⁵⁷ CFTC Regulation 23.440(b)(2)(iii).

- b. SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP.⁵⁸

Part III. Representations and Agreements of a Designated Fiduciary.

- 6.3. Each Designated Fiduciary represents to SD and CP (which representations are deemed repeated by such Designated Fiduciary as of the occurrence of each Swap Communication Event involving such Designated Fiduciary) that such Designated Fiduciary is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD presented to it.⁵⁹
- 6.4. Each Designated Fiduciary agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated Fiduciary in this DF Supplement have become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Fiduciary shall timely amend such representation by giving notice of such amendment to SD in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 6.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.⁶⁰

⁵⁸ CFTC Regulation 23.434(b)(3).

⁵⁹ CFTC Regulation 23.434(b)(2).

⁶⁰ CFTC Regulation 23.402(d).



International Swaps and Derivatives Association, Inc.

ISDA AUGUST 2012 DF PROTOCOL QUESTIONNAIRE¹

published on August 13, 2012,
by the International Swaps and Derivatives Association, Inc.

¹ This Questionnaire is intended to address requirements of the following final rules:

- (1) CFTC, Final Rule, *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012);
- (2) CFTC, Final Rule, *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011);
- (3) CFTC, Final Rule, *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011);
- (4) CFTC, Final Rule, *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012);
- (5) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012);
- (6) CFTC, Final Rule, *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20128 (Apr. 3, 2012); and
- (7) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012).



International Swaps and Derivatives Association, Inc.

ISDA August 2012 DF Protocol Questionnaire

dated as of August 13, 2012

Instructions: *A PCA Principal or PCA Agent that has adhered to the Protocol Agreement in the manner specified therein may complete and execute this Questionnaire and deliver it by a means specified in the Protocol Agreement in order to supplement existing Protocol Covered Agreements and/or enter into new Protocol Covered Agreements in the form of the DF Terms Agreement.*

This Questionnaire may be executed and delivered by a PCA Principal on its own behalf or by a PCA Agent on behalf of one or more PCA Principals. By delivering this Questionnaire to another PCA Principal or PCA Agent in a manner specified in the Protocol Agreement, the deliverer may agree to enter into and/or supplement Protocol Covered Agreements with such other PCA Principal or PCA Agent. Where an existing Protocol Covered Agreement was originally executed by a PCA Agent on behalf of one or more PCA Principals, only the relevant PCA Agent (and not a PCA Principal) may use this Questionnaire and the Protocol Agreement to supplement such Protocol Covered Agreement.

In the case of a PCA Principal executing and delivering this Questionnaire on its own behalf, (i) such party must identify itself as the PCA Principal in column 1 of the PCA Principal Answer Sheet, and (ii) this Questionnaire will only be effective to supplement existing Protocol Covered Agreements executed by such party on its own behalf and/or to enter into DF Terms Agreements on its own behalf. In the case of a PCA Agent executing and delivering this Questionnaire on behalf of one or more PCA Principals, (i) the PCA Agent must list the names of each such PCA Principal in column 1 of the PCA Principal Answer Sheet, and (ii) this Questionnaire will only be effective to enter into DF Terms Agreements on behalf of listed PCA Principals and/or supplement Protocol Covered Agreements executed by the PCA Agent on behalf of the listed PCA Principals. For the avoidance of doubt, if this Questionnaire is being completed by a PCA Agent on behalf of multiple PCA Principals, this Questionnaire shall be treated as if it were a separate Questionnaire with respect to each separate PCA Principal listed in column 1 of the PCA Principal Answer Sheet.

In addition, if one or more Designated Evaluation Agents, Designated QIRs or Designated Fiduciaries is identified in this Questionnaire, each such Designated Evaluation Agent, Designated QIR or Designated Fiduciary, as the case may be, must countersign this Questionnaire where indicated.

The responses to Part II (except as otherwise indicated below) and Part III, Sections 2(b)(xxii) and 10(b) of this Questionnaire may be set forth directly on this Questionnaire, or if there is insufficient space, on a separate schedule. The responses to the other sections of Part II and Part III of this Questionnaire must be set forth on the PCA Principal Answer Sheet.

Part I: Definitions

References in this Questionnaire to the following terms shall have the following meanings:

“Commodity Exchange Act” means the Commodity Exchange Act, as amended.

“CFTC” means the U.S. Commodity Futures Trading Commission.

“DF Schedule” means a schedule to the DF Supplement.

“DF Supplement” means the ISDA August 2012 DF Supplement published on August 13, 2012 by the International Swaps and Derivatives Association, Inc.

“DF Supplement Rules” means the CFTC Regulations adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012); (2) *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011); (3) *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011); (4) *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012); (5) *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012); (6) *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20138 (Apr. 3, 2012); (7) *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012); and (8) any comparable non-U.S. regulations with which SD is permitted by the CFTC to comply in lieu of any of the foregoing CFTC Regulations.

“DF Terms Agreement” means the ISDA August 2012 DF Terms Agreement published by ISDA on August 13, 2012.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Special Entity” means an employee benefit plan subject to Title I of ERISA.

“LEI/CICI” means a “legal entity identifier” satisfying the requirements of CFTC Regulation 45.6 or such other entity identifier as shall be provided by the CFTC pending the availability of such legal entity identifiers.

“Major Security-Based Swap Participant” means a person registered with the SEC as a “major security-based swap participant” as defined in Section 3a(67) of the Securities Exchange Act and Rule 3a67-1 thereunder.

“Major Swap Participant” means a person registered (fully or provisionally) with the CFTC as a “major swap participant” as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh) thereunder.

“PCA Agent” means a party who has executed a Protocol Covered Agreement on behalf of one or more PCA Principals.

“PCA Principal” means a person who is or may become a principal to one or more Swaps under a Protocol Covered Agreement and who is identified as such in column 1 of the PCA Principal Answer Sheet.

“PCA Principal Answer Sheet” means a spreadsheet substantially in the form of Annex A to this Questionnaire.

“Protocol Agreement” means the ISDA August 2012 DF Protocol Agreement published on August 13, 2012 by the International Swaps and Derivatives Association, Inc.

“Protocol Covered Agreement” means a DF Terms Agreement or an existing written agreement between two parties that governs the terms and conditions of one or more transactions in Swaps that each such party has or may enter into as principal.

“Regulated Swap Entity” means a person that is a Swap Dealer, Security-Based Swap Dealer, Major Swap Participant or Major Security-Based Swap Participant.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Security-Based Swap Dealer” means a person registered with the SEC as a “security-based swap dealer” as defined in Section 3(a)(71) of the Securities Exchange Act and Rule 3a71-1 thereunder.

“Special Entity” means a “special entity” as defined in Section 4s(h)(2)(C) of the Commodity Exchange Act and CFTC Regulation 23.401(c) thereunder.

“Swap” means a “swap” as defined in the Section 1a(47) of the Commodity Exchange Act and CFTC Regulation 1.3(xxx). The term “Swap” also includes any foreign exchange swaps and foreign exchange forwards that may be 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.

“Swap Dealer” means a person registered (fully or provisionally) with the CFTC as a “swap dealer” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg).

“Swap Recommendation” means a “recommendation” (as such term is used in CFTC Regulations 23.434 and 23.440) with respect to a Swap or a trading strategy involving a Swap that is governed by or proposed to be governed by a Matched PCA.

Capitalized terms used but not otherwise defined in this Questionnaire shall have the meanings assigned to such terms in the Protocol Agreement.

Part II: PCA Principal Information

Part II of this Questionnaire specifies information regarding a PCA Principal that may be provided by or on behalf of such PCA Principal. Provision of the information requested in Sections 2 through 5 of this Part II is not required if the specified information has already been provided to each counterparty receiving this Questionnaire. With respect to the information requested in any question in Sections 2 through 5 of this Part II, this Questionnaire provides that unless such information appears in the publicly available portion of an LEI/CICI database or is provided herein, the relevant PCA Principal represents to each counterparty receiving this Questionnaire that the specified information has already been provided to such counterparty in writing, and that it is true, correct and complete as of the date of delivery of this Questionnaire to such counterparty.

If you require additional space to answer any of the questions below (e.g., to provide information for multiple PCA Principals), you may attach a separate schedule to provide the PCA Principal information specified in this Part II.

1. LEI/CICI²

To answer this question, complete column 2 of the relevant row of the PCA Principal Answer Sheet by inserting the PCA Principal’s LEI/CICI; provided that, if LEI/CICIs are not generally available or if PCA Principal is not eligible to receive an LEI/CICI from available providers, PCA Principal may answer this question by completing column 2 of the relevant row of the PCA Principal Answer Sheet by inserting “None.”

What is PCA Principal’s LEI/CICI?

² CFTC Regulation 45.6.

2. True Name and Address³

The true name and address of PCA Principal is as follows:

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

3. Principal Occupation or Business⁴

The principal occupation or business of PCA Principal is as follows:

4. Guarantor Information⁵

- (a) *To answer this question, complete column 3 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is any person guarantying the performance of PCA Principal?

³ CFTC Regulation 23.402(c).

⁴ CFTC Regulation 23.402(c).

⁵ CFTC Regulation 23.402(c).

- (b) If any person is guarantying the performance of PCA Principal, the true name and address of each person providing such guaranty is as follows:

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

5. Third Party Control Person Information

- (a) *To answer this question, complete column 4 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is any person (other than an employee of PCA Principal) exercising any control with respect to the Swap positions under Protocol Covered Agreements in respect of which this Questionnaire is being executed and delivered (such person, a **"Third Party Control Person"**)?

- (b) If PCA Principal has one or more Third Party Control Person(s), the true name(s) and address(es) of such person(s) is/are as follows *(PCA Agents filling out this Questionnaire for PCA Principals should enter their own name and address if they will act as a Third Party Control Person for their PCA Principals with respect to trades under the Protocol Covered Agreements):*⁶

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

⁶ CFTC Regulation 23.402(c).

6. Designated Evaluation Agent Information

The following information must be provided for PCA Principals that are not Regulated Swap Entities or Special Entities and that wish to incorporate DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities) into Matched PCAs.

- (a) *To answer this question, complete column 5 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

For purposes of DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities), does PCA Principal have one or more agents (other than an employee of PCA Principal) that it wishes to designate as "**Designated Evaluation Agents**" and that are responsible for (i) evaluating investment risks with regard to Swaps and trading strategies involving Swaps as well as any Swap Recommendations provided to PCA Principal and (ii) making trading decisions with respect to Swaps on behalf of PCA Principal? *(Please note that it is permissible for a PCA Principal to enter into DF Schedule 3 without designating an agent as its Designated Evaluation Agent provided that the PCA Principal can make the representations provided in Part II of DF Schedule 3.)*

- (b) Please provide the true name and address of each agent that PCA Principal wishes to designate as a "Designated Evaluation Agent" for purposes of DF Schedule 3 *(if the PCA Principal has only a single Designated Evaluation Agent that is the same as its single Third Party Control Person, you may write "Same as Third Party Control Person")*.⁷

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

⁷ CFTC Regulation 23.434(b)(1).

7. **Designated QIR Information**

The following information must be provided for PCA Principals that are Special Entities other than ERISA Special Entities, and that wish to incorporate DF Schedule 4 (Safe Harbors for Non-ERISA Special Entities) into Matched PCAs.

Please provide the true name and address of each of PCA Principal's representatives selected as a "**Designated QIR**" for purposes of the DF Supplement (if the PCA Principal has only a single Designated QIR that is the same as its single Third Party Control Person, you may write "Same as Third Party Control Person").⁸

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

8. Designated Fiduciary Information

The following information must be provided for PCA Principals that are ERISA Special Entities, and that wish to incorporate DF Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1)) and/or DF Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2)) into Matched PCAs.

Please provide the true name and address of each of PCA Principal's "fiduciaries," as that term is defined in Section 3 of ERISA, selected as a "**Designated Fiduciary**" for purposes of the DF Supplement (*if the PCA Principal has only a single Designated Fiduciary that is the same as its single Third Party Control Person, you may write "Same as Third Party Control Person"*):⁹

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

9. Address for Complaints

If PCA Principal is a Swap Dealer or Major Swap Participant, it may, but is not required to, set forth here the physical address, email or other widely available electronic address, and telephone number of the department to which any complaints may be directed:¹⁰

Address: _____

Phone: _____

Fax: _____

E-mail: _____

⁹ CFTC Regulation 23.450(d)(2).

¹⁰ CFTC Regulation 23.201(b)(3)(ii).

10. E-mail Address for Delivery of Required Notifications and Disclosures

The following information may be provided by, or on behalf of, PCA Principals that are not Swap Dealers.

PCA Principal may provide an e-mail address that may be used for the delivery of notifications and any informational disclosures given pursuant to the DF Supplement Rules:

E-mail: _____

11. Election to Receive Oral Disclosure of Pre-Trade Mid-Market Marks and Basic Material Economic Terms

To answer this question, complete column 6 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. If PCA Principal answers this question "Yes," then it may receive oral disclosures of any pre-trade mid-market marks and basic material economic terms pursuant to CFTC Regulation 23.431(a)(2) and (3)(i).

Does PCA Principal agree to receive oral disclosure (with written confirmation to follow post-trade) of any (i) pre-trade mid-market marks pursuant to CFTC Regulation 23.431(a)(3)(i) and (ii) basic material economic terms, including price, notional amount and termination date, pursuant to CFTC Regulation 23.431(a)(2)?

Part III: PCA Principal Status Representations and Elections

Part III of this Questionnaire consists of questions that must be answered by, or on behalf of, each PCA Principal except as otherwise indicated. Answers to the questions should be provided in the PCA Principal Answer Sheet except as otherwise indicated.

1. Commodity Pool

The purpose of this question is to permit a PCA Principal who is able to specify whether it is a "commodity pool" (as further defined below) to inform its counterparty of such status. The answer to this question will assist in identifying PCA Principals who may need to make additional representations regarding their status as an "eligible contract participant" when additional CFTC regulations regarding this status go into effect on December 31, 2012.

If PCA Principal does not wish to make any representation at this time as to whether it is a "commodity pool" it may insert "No Answer." If a PCA Principal inserts "No Answer," a Swap Dealer receiving this Questionnaire may be required to inquire further and obtain additional representations prior to December 31, 2012.

To answer this question, complete column 7 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes," "No," or "No Answer," as appropriate:

Is PCA Principal a "commodity pool," as that term is defined in Section 1(a)(10) of the Commodity Exchange Act and applicable regulations thereunder (a "Commodity Pool")?

2. Eligible Contract Participant¹¹

- (a) *To answer this question, complete column 8 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Other than for purposes of any agreement, contract or transaction described in Sections 2(c)(2)(B)(vi) or 2(c)(2)(C)(vii) of the Commodity Exchange Act, is PCA Principal an "eligible contract participant," as that term is defined in Section 1a(18) of the Commodity Exchange Act and applicable regulations thereunder (an "Eligible Contract Participant")?

- (b) *To respond to this instruction, complete column 9 of the relevant row of the PCA Principal Answer Sheet by inserting at least one of the subsection numbers below in column 9:*

¹¹ CFTC Regulation 23.430(a).

If PCA Principal has identified itself as an Eligible Contract Participant, please indicate at least one of the following subsections that is applicable to PCA Principal (respondents may, but are not required to, indicate more than one subsection if applicable).¹²

- (i) PCA Principal is a “swap dealer,” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg).¹³
- (ii) PCA Principal is a “security-based swap dealer,” as defined in Section 3(a)(71) of the Securities Exchange Act and Rule 3a71-1 thereunder.¹⁴
- (iii) PCA Principal is a “major swap participant,” as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh).¹⁵
- (iv) PCA Principal is a “major security-based swap participant,” as defined in Section 3(a)(67) of the Securities Exchange Act and Rule 3a67-1 thereunder.¹⁶
- (v) PCA Principal is a “financial institution” as defined in Section 1a(21) of the Commodity Exchange Act (a “**Financial Institution**”).¹⁷
- (vi) PCA Principal is an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the CFTC, including a regulated subsidiary or affiliate of such an insurance company (an “**Eligible Insurance Company**”).¹⁸
- (vii) PCA Principal is an investment company subject to regulation under the Investment Company Act of 1940, as amended, or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an Eligible Contract Participant) (an “**Eligible Investment Company**”).¹⁹

¹² CFTC Regulation 23.430(a). *See* 77 Fed. Reg. 9734, 9757 (Feb. 17, 2012).

¹³ CFTC Regulation 1.3(m)(2).

¹⁴ CFTC Regulation 1.3(m)(4).

¹⁵ CFTC Regulation 1.3(m)(1).

¹⁶ CFTC Regulation 1.3(m)(3).

¹⁷ Commodity Exchange Act § 1a(18)(A)(i).

¹⁸ Commodity Exchange Act § 1a(18)(A)(ii).

¹⁹ Commodity Exchange Act § 1a(18)(A)(iii).

- (viii) PCA Principal is a Commodity Pool that (1) has total assets exceeding \$5,000,000 and (2) was formed and is operated by a person subject to regulation under the Commodity Exchange Act or a foreign person performing a similar role or function subject as such to foreign regulation (an “**Eligible Commodity Pool**”).²⁰
- (ix) PCA Principal is a corporation, partnership, proprietorship, organization, trust, or other entity (1) that has total assets exceeding \$10,000,000 or (2) the obligations of which under each Protocol Covered Agreement to which it is a party are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by a corporation, partnership, proprietorship, organization, trust, or other entity that has total assets exceeding \$10,000,000, a Financial Institution, an Eligible Insurance Company, an Eligible Investment Company, an Eligible Commodity Pool, an Eligible Government Entity, or an Other Eligible Person (as defined in paragraph (xxii) below) (a “**Large Entity**”).²¹
- (x) PCA Principal is a corporation, partnership, proprietorship, organization, trust, or other entity that has a net worth exceeding \$1,000,000 and enters into Swaps in connection with the conduct of the entity’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity’s business (a “**Hedging Entity ECP**”).²²
- (xi) PCA Principal is an employee benefit plan subject to ERISA, a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation (1) that has total assets exceeding \$5,000,000; or (2) the investment decisions of which are made by (A) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940, as amended, or the Commodity Exchange Act; (B) a foreign person performing a similar role or function subject as such to foreign regulation; (C) a Financial Institution; or (D) an Eligible Insurance Company, or a regulated subsidiary or affiliate of such Eligible Insurance Company.²³

²⁰ Commodity Exchange Act § 1a(18)(A)(iv). The CFTC has interpreted the language “subject to regulation under the Commodity Exchange Act,” for purposes of CFTC Regulation 1.3(m)(6) (effective Dec. 31, 2012) and Commodity Exchange Act § 1a(18)(A)(iv) as requiring lawful operation of the Commodity Pool by a person excluded from the definition of “commodity pool operator,” a registered commodity pool operator or a person properly exempt from registration as a commodity pool operator. *See* 77 Fed. Reg. 30596, 30654-55 (May 23, 2012).

²¹ Commodity Exchange Act § 1a(18)(A)(v)(I)-(II).

²² Commodity Exchange Act § 1a(18)(A)(v)(III).

²³ Commodity Exchange Act § 1a(18)(A)(vi).

- (xii) PCA Principal is (1) a governmental entity (including the United States, a State, or a foreign government), or political subdivision of a governmental entity, (2) a multinational or supranational government entity, or (3) an instrumentality, agency, or department of an entity described in clause (1) or (2), and if PCA Principal is an entity described in clause (1) or (3), PCA Principal owns and invests on a discretionary basis \$50,000,000 or more in investments, or otherwise satisfies the requirements of Section 1a(18)(A)(vii)(III)(aa) or (cc) of the Commodity Exchange Act (an “**Eligible Government Entity**”).²⁴
- (xiii) PCA Principal is a broker or dealer (other than a natural person or proprietorship) subject to regulation under the Securities Exchange Act, or a foreign person (other than a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation.²⁵
- (xiv) PCA Principal is (1) a broker or dealer (and is a natural person or proprietorship) subject to regulation under the Securities Exchange Act or a foreign person (that is a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation and (2) qualifies as a Large Entity or Eligible Individual.²⁶
- (xv) PCA Principal is an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered broker or dealer makes and keeps records under Section 15C(b) or 17(h) of the Securities Exchange Act.²⁷
- (xvi) PCA Principal is an investment bank holding company (as defined in Section 17(i) of the Securities Exchange Act).²⁸
- (xvii) PCA Principal is a futures commission merchant subject to regulation under the Commodity Exchange Act (other than a natural person or proprietorship) or a foreign person (other than a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation.²⁹
- (xviii) PCA Principal (1) is a futures commission merchant subject to regulation under the Commodity Exchange Act (and is a natural

²⁴ Commodity Exchange Act § 1a(18)(A)(vii).

²⁵ Commodity Exchange Act § 1a(18)(A)(viii).

²⁶ *Id.*

²⁷ Commodity Exchange Act § 1a(18)(A)(viii)(II).

²⁸ Commodity Exchange Act § 1a(18)(A)(viii)(III).

²⁹ Commodity Exchange Act § 1a(18)(A)(ix).

person or proprietorship) or a foreign person (that is a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation and (2) qualifies as a Large Entity or Eligible Individual.³⁰

- (xix) PCA Principal is a floor broker or floor trader subject to regulation under the Commodity Exchange Act in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades.³¹
- (xx) PCA Principal is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$10,000,000 (an “**Eligible Individual**”).³²
- (xxi) PCA Principal is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$5,000,000 and who enters into Swaps in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual (a “**Hedging Individual ECP**”).³³
- (xxii) PCA Principal is a person that the CFTC has determined to be eligible in light of the financial or other qualifications of the person (an “**Other Eligible Person**”).³⁴ *If PCA Principal inserts subsection (xxii) in column 9 of the PCA Principal Answer Sheet, PCA Principal must provide an explanation in the space below and include additional pages as necessary:*

³⁰ *Id.*

³¹ Commodity Exchange Act § 1a(18)(A)(x).

³² Commodity Exchange Act § 1a(18)(A)(xi)(I).

³³ Commodity Exchange Act § 1a(18)(A)(xi)(II).

³⁴ Commodity Exchange Act § 1a(18)(C).

3. Swap Dealers³⁵

- (a) *To answer this question, complete column 10 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is PCA Principal a Swap Dealer?

- (b) If PCA Principal is a Swap Dealer:

- (i) *To answer this question, complete column 11 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal's counterparty to such Matched PCA is a party other than a Regulated Swap Entity or a Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities)?

- (ii) *To answer this question, complete column 12 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal's counterparty to such Matched PCA is a Special Entity that is not an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein DF Schedule 4 (Safe Harbors for Non-ERISA Special Entities)?

- (iii) *To answer this question, complete column 13 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal's counterparty to such Matched PCA is an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein DF Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1))?

³⁵ CFTC Regulation 23.401(d).

- (iv) *To answer this question, complete column 14 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal's counterparty to such Matched PCA is an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein DF Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2))?

- (c) *To answer this question, complete column 15 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is PCA Principal a Security-Based Swap Dealer?

4. Major Swap Participants³⁶

This Part III, Section 4 must be completed by, or on behalf of, all PCA Principals other than (i) for Section 4(a), Swap Dealers and (ii) for Section 4(b), Security-Based Swap Dealers.

- (a) *To answer this question, complete column 16 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is PCA Principal a Major Swap Participant?

- (b) *To answer this question, complete column 17 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is PCA Principal a Major Security-Based Swap Participant?

5. Financial Entity³⁷

This Part III, Section 5 must be completed by, or on behalf of, any PCA Principal that is not a Regulated Swap Entity. The purpose of this question is to permit a PCA Principal who is able to specify whether or not it is a "financial entity," as such term is defined by statute, to inform its counterparty of such status.

If PCA Principal does not wish to make any representation at this time as to whether it is a "financial entity," it may insert "No Answer." If PCA Principal responds with "No Answer," a Swap Dealer receiving this Questionnaire may be required to (i) inquire further prior to entering into Swaps with PCA Principal in order to satisfy trade reporting requirements and/or (ii) assume, for the purposes of relevant statutory and

³⁶ CFTC Regulation 23.401(d).

³⁷ Commodity Exchange Act § 2(h)(7)(C).

regulatory exclusions and safe harbors, that PCA Principal may be a "financial entity," until PCA Principal provides sufficient evidence demonstrating that it is not a "financial entity."

To answer this question, complete column 18 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes," "No" or "No Answer," as appropriate. Is PCA Principal a "financial entity," as such term is defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act and the CFTC Regulations?

6. Special Entity

This Part III, Section 6 must be completed by, or on behalf of, all PCA Principals other than Swap Dealers and Security-Based Swap Dealers.

- (a) *To answer this question, complete column 19 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. If PCA Principal fails to answer this question, it will be deemed to represent that it is not a Special Entity for the purposes of relevant statutory and regulatory requirements, until PCA Principal affirmatively represents to the contrary in writing.*

Is PCA Principal a Special Entity?

- (b) *To answer this question, complete column 20 of the relevant row of the PCA Principal Answer Sheet by inserting the applicable subsection number below:*

If PCA Principal has identified itself as a Special Entity, which one of the following subsections is applicable to PCA Principal?³⁸

- (i) PCA Principal is a Federal agency.³⁹
- (ii) PCA Principal is a State, State agency, city, county, municipality, other political subdivision of a State, or any instrumentality, department, or corporation of or established by a State or political subdivision of a State.⁴⁰
- (iii) PCA Principal is an ERISA Special Entity.⁴¹

³⁸ CFTC Regulation 23.430(a); see 77 Fed. Reg. 9734, 9757 (Feb. 17, 2012).

³⁹ CFTC Regulation 23.401(c)(1).

⁴⁰ CFTC Regulation 23.401(c)(2).

⁴¹ CFTC Regulation 23.401(c)(3).

- (iv) PCA Principal is a governmental plan, as defined in Section 3 of ERISA.⁴²
- (v) PCA Principal is an endowment. (For purposes of this question, an “endowment” includes an endowment that is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 501(c)(3).)⁴³
- (vi) PCA Principal is an employee benefit plan defined in Section 3 of ERISA, not otherwise defined as a Special Entity (an “**Exempt Plan**”) that elects to be a Special Entity pursuant to CFTC Regulation 23.401(c)(6).⁴⁴

7. Non-ERISA Special Entity Elections

This Part III, Section 7 must be completed by, or on behalf of, all Special Entities other than ERISA Special Entities.

To answer this question, complete column 21 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal answers this question “Yes,” then each of its Designated QIRs must countersign this Questionnaire in the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in DF Schedule 4.

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein DF Schedule 4 (Safe Harbors for Non-ERISA Special Entities)?⁴⁵

8. ERISA Special Entity Elections

This Part III, Section 8 must be completed by, or on behalf of, all ERISA Special Entities.

- (a) *To answer this question, complete column 22 of the relevant row of the PCA Principal Answer Sheet by inserting a “Yes” or a “No,” as appropriate. If PCA Principal answers this question “Yes,” then each of its Designated Fiduciaries must countersign this Questionnaire in the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in DF Schedule 5.*

⁴² CFTC Regulation 23.401(c)(4).

⁴³ CFTC Regulation 23.401(c)(5).

⁴⁴ CFTC Regulation 23.401(c)(6).

⁴⁵ CFTC Regulation 23.430(d).

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein DF Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1))?⁴⁶

- (b) *To answer this question, complete column 23 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. If PCA Principal answers this question "Yes," then each of its Designated Fiduciaries must countersign this Questionnaire on the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in DF Schedule 6.*

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein DF Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2))?⁴⁷

9. Institutional Suitability Elections

This Part III, Section 9 must be completed by, or on behalf of, all PCA Principals other than Regulated Swap Entities and Special Entities.

To answer this question, complete column 24 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. If PCA Principal answers this question "Yes," then each of its Designated Evaluation Agents (if any) must countersign this Questionnaire in the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in DF Schedule 3.

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities)?

10. DF Terms Agreement Elections and Information

- (a) *To answer this question, complete column 25 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate.*

Does PCA Principal agree to enter into a DF Terms Agreement with each counterparty to whom this Questionnaire has been delivered?

- (b) If PCA Principal has agreed to enter into a DF Terms Agreement with each counterparty to whom this Questionnaire has been delivered, the notice

⁴⁶ CFTC Regulation 23.430(d).

⁴⁷ CFTC Regulation 23.430(d).

information of such PCA Principal for the purposes of each such DF Terms Agreement is as follows:

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

Electronic Messaging System Details: _____

Specific Instructions: _____

By executing this Questionnaire, the signatory represents as PCA Principal or PCA Agent for specified PCA Principals that (a) all information provided by it in this Questionnaire is true, accurate and complete in every material respect as of the date hereof, and may be relied upon by each counterparty to whom this Questionnaire is delivered, (b) any information that is requested and not provided in Part II, Sections 2 through 5 of this Questionnaire, and that does not appear in the publicly available portion of an LEI/CICI database, has previously been provided in writing by the relevant PCA Principals, and all such previously provided information is true, accurate and complete in every material respect as of the date hereof, and may be relied upon by each counterparty to whom this Questionnaire is delivered, (c) if Part III, Section 6(a) has not been filled out with respect to a specified PCA Principal, such PCA Principal is not a Special Entity, and (d) it has agreed to enter into the DF Schedules indicated in the Questionnaire. For purposes of the foregoing, information appearing in the publicly available portion of the LEI/CICI database with respect to a specified PCA Principal is deemed provided to the counterparty.

[INSERT FULL LEGAL NAME OF PCA PRINCIPAL OR PCA AGENT]⁴⁸

By: _____

Name:

Title:

Date:

By executing this Questionnaire on the relevant signature block below, the signatory agrees to make the representations and agreements applicable to it in the relevant DF Schedule of the DF Supplement.

[INSERT FULL LEGAL NAME OF DESIGNATED EVALUATION AGENT],⁴⁹ solely as PCA Principal's Designated Evaluation Agent and solely to make the representations and agreements applicable to it as Designated Evaluation Agent in DF Schedule 3.

⁴⁸ 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.”

⁴⁹ Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated Evaluation Agents.

By: _____
Name:
Title:
Date:

[INSERT FULL LEGAL NAME OF DESIGNATED QIR],⁵⁰
solely as PCA Principal's Designated QIR and solely to make the representations and agreements applicable to
it as Designated QIR in DF Schedule 4.

By: _____
Name:
Title:
Date:

[INSERT FULL LEGAL NAME OF DESIGNATED FIDUCIARY/FIDUCIARIES],⁵¹ solely as
PCA Principal's Designated Fiduciary and solely to make the representations and agreements applicable to it in
DF Schedule 5 and/or 6, as applicable.

By: _____
Name:
Title:
Date:

⁵⁰ Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated QIRs.

⁵¹ Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated Fiduciaries.

Exhibit II

George K. Baum & Co. Policies and Procedures

Standard Operating Procedures for GKB Interest Rate Swap Transaction Services

1. Definitions

The following terms shall have the following meanings when used in these Standard Operating Procedures for GKB Interest Rate Swap Transaction Services:

"Associated Person" means, with respect to a Swap Dealer, an person acting for or on behalf of such Swap Dealer, including an associated person as defined in Section 1a(4) of the Commodity Exchange Act.

"CFTC" means the U.S. Commodity Futures Trading Commission.

"CFTC Regulations" means the rules, regulations, orders and interpretations published or issued by the CFTC.

"Client" means a client of GKB (including any "Special Entity" defined below) receiving certain interest rate swap transaction services from GKB pursuant to a written engagement agreement and these Standard Operating Procedures for GKB Interest Rate Swap Transaction Services.

"Commodity Exchange Act" means the Commodity Exchange Act, as amended.

"Designated QIR" means a qualified independent representative designated by a Special Entity Client and meeting the applicable requirements of CFTC Regulation 23.450(b)(1), that it:

- a) Has sufficient knowledge to evaluate interest rate swap transactions and risks;
- b) Is not subject to Statutory Disqualification;
- c) Is independent of a Swap Dealer or Major Swap Participant;
- d) Undertakes a duty to act in the best interests of the Special Entity it represents;
- e) Makes appropriate and timely disclosures to the Special Entity;
- f) Evaluates, consistent with any guidelines provided by the Special Entity, fair pricing and the appropriateness of an interest rate swap transaction; and
- g) In the case of a Special Entity as defined in §23.401(c)(2) (set forth in the definition of "Special Entity" below), is subject to restrictions on certain political contributions imposed by the CFTC, the SEC, or a self-regulatory organization subject to the jurisdiction of the CFTC or the SEC; provided, however, that this paragraph (g) shall not apply if the representative is an employee of the Special Entity.

GKB is independent of swap dealers or major swap participants with whom GKB's clients may engage in interest rate swap transactions

"GKB" means George K. Baum & Company.

"GKB Swap Committee" means the committee described in Sections 2 and 5 below.

"Major Swap Participant" means a counterparty to an interest rate swap transaction with a Client and that represents to the Client in writing that it is registered with the SEC as a "major swap participant" as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh) thereunder.

"SEC" means the U.S. Securities and Exchange Commission.

"Short Term Desk" means the GKB Short Term Note and Derivatives Desk.

"Special Entity" means a "special entity" as defined in Section 4s(h)92)(C) of the Commodity Exchange Act and CFTC Regulation 23.401(c) thereunder, which expressly includes "A State, State agency, city, county, municipality, other political subdivision of a State, or any instrumentality, department, or a corporation of or established by a State of political subdivision of a State," as set forth in CFTC Regulation 23.401(c)(2).

"Statutory Disqualification" means a person subject to a "statutory disqualification" as defined Section 3(a)(39) of the Securities Exchange Act of 1934, as amended.

"Swap Dealer" means a counterparty to an interest rate swap transaction with a Client and that represents to the Client in writing that it is registered (fully or provisionally with the CFTC as a "swap dealer" as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg) thereunder.

2. Qualified Short Term Desk and GKB Swap Committee Personnel

GKB offers and provides certain interest rate swap transaction services to its clients, in the capacity as either swap advisor to a Client (including, but not limited to, acting as the Designated QIR for a Special Entity Client) or as a Client's swap bidding agent. In furtherance of providing those services to any Client, GKB has and will maintain its Short Term Desk and its GKB Swap Committee with personnel collectively possessing sufficient background, knowledge and experience for GKB to perform its duties relating to interest rate swap transaction services; and specifically for any Client that is a Special Entity, to satisfy the applicable legal and regulatory requirements to serve as a Special Entity Client's Designated QIR.

3. Structure Development

The Short Term Desk interfaces with the banker on developing the structure of a proposed interest rate swap for a Client. Short Term Desk personnel will provide price indications and assist the banker and the banker's support team with other quantitative analysis requested in order to refine the interest rate swap transaction structure. The manager of the Short Term Desk will coordinate with the banker on the role that GKB will play and the related interest rate swap services it will provide to a Client – whether GKB will be the Client's swap advisor (including, but not limited to, acting as the Designated QIR for a Special Entity Client) or bidding agent.

4. Client Education

Swap education materials are provided to each Client, including disclosure of risks, a swap sensitivity analysis, and a recommendation to discuss the legal, regulatory and accounting treatment considerations with the Client's counsel and auditors. The risk disclosure materials are either provided directly to the Client by the Short Term Desk, or are provided to the Client by the banker in a form that has been previously approved by the Short Term Desk. The banker is responsible for meeting with both Client staff and board members for swap education sessions.

5. GKB Swap Committee

A GKB Swap Committee meeting is required prior to the execution of any proposed interest rate swap, whether GKB is acting as a Client's swap advisor (including, but not limited to, acting as the Designated QIR for a Special Entity Client) or swap bidding agent. Members of the GKB Swap Committee include Bob Dalton, Bill Coughlin, Clark Shaw, Ed Steinauer, Guy Yandel, and Elizabeth Barber. The banker meets with the GKB Swap Committee and provides information about the Client, including but not limited to, the credit profile of the Client, key board members and staff who will be making the decisions regarding the swap and managing the swap going forward, and the financing with which the interest rate swap will be associated. A quorum of the GKB Swap Committee is four members. The purpose of the GKB Swap Committee is to have management vet the proposed interest rate swap transaction and approve and authorize a recommendation to the Client that it move forward with execution of the proposed interest rate swap transaction. For any such interest rate swap transaction services for a Special Entity Client, the GKB Swap Committee also will verify that GKB continues to qualify to act as a Designated QIR for the Special Entity Client and thus can make the written representations to the Special Entity Client and its Swap Dealer or Major Swap Participant counterparty that are set forth in Section 6B below.

6. GKB's Role as Fiduciary

- A. As swap advisor to a Client (including when acting as a Designated QIR for a Special Entity Client) —GKB has fiduciary obligation and must consider the suitability of the transaction based on the Client's expertise, experience, sophistication, existing liabilities and financial capability. In particular, GKB should

identify and evaluate the risks to which the Client is exposed (e.g., basis risk, termination risk including the effect on the economics of a refunding transaction, tax law change, counterparty default). GKB must make it clear to the Client that the Client and not GKB is making the final decision whether or not to proceed with a swap transaction.

- B. When acting as the Designated QIR for a Client that is a Special Entity, GKB, in addition to the provisions set forth in subparagraph A above, also shall represent in writing to its Special Entity Client and its Swap Dealer or Major Swap Participant counterparty that:
1. GKB has written policies and procedures reasonably designed to ensure that it satisfies the applicable requirements of CFTC Regulation 23.450(b)(1) to act as the Designated QIR of the Special Entity Client;
 2. As the Designated QIR, GKB is exercising independent judgment in evaluating all swap recommendations of the Special Entity Client that are presented to GKB;
 3. Unless GKB notifies its Special Entity Client in writing consistent with notice procedures agreed upon with the Special Entity Client:
 - a) GKB is not, and within one year of representing its Special Entity Client in connection with the interest rate swap has not been, an Associated Person of the applicable Swap Dealer;
 - b) There is no "principal relationship" (as that term is defined in CFTC Regulation 23.450(a)(1)) between GKB and the applicable Swap Dealer;
 - c) GKB (i) provides timely and effective disclosures to its Special Entity Client of all material conflicts of interest that could reasonably affect GKB's judgment or decision making with respect to its obligations to the Special Entity Client, and (ii) complies with policies and procedures reasonably designed to manage and mitigate such material conflicts of interest;
 - d) GKB is not directly or indirectly, through one or more persons, controlled by, in control of, or under common control with the applicable Swap Dealer;
 - e) To the best of GKB's knowledge, the applicable Swap Dealer did not refer, recommend, or introduce GKB to its Special Entity Client within one year of GKB's representation of its Special Entity Client in connection with the interest rate swap.
 4. GKB is legally obligated to comply with the applicable requirements of CFTC Regulation 23.450(b)(1) by agreement, condition of employment, law, rule, regulation or other enforceable duty.
- C. Bidding agent—GKB may or may not also be acting in a fiduciary capacity. If GKB is not advising the Client or acting as the Designated QIR of a Client that is a Special Entity, the Client should be informed in advance and in writing.
- D. As bond underwriter—GKB may act as underwriter as well as one of the roles identified above, but must make clear to the Client that these are separate responsibilities for separate transactions, may be handled by different GKB personnel, and that any duties and responsibilities as underwriter do not carry over in its providing interest rate swap transaction services.

7. Disclosure of Fees

- A. Fees should be disclosed in writing to the Client.
- B. Fees include:
1. All amounts paid, by or to GKB, to or from any third parties with respect to the transaction.

2. Any fees that GKB may be sharing with a third party and the identity of that party.
 3. Whether any fees are contingent or deferred, and whether they may be in cash or in kind (e.g., options, participations in secondary market trusts)
 4. Any fees or “imbedded loans” being paid through the swap or by the swap provider. Note that any such arrangement must be disclosed to bond/tax counsel as it has tax implications.
- C. If GKB is acting in more than one capacity, its fees or other compensation for the respective roles should be separately stated (e.g., cannot deflect underwriting compensation into the swap rate where it is reflected as a yield adjustment.)

8. Contemporaneous Written Record

- A. Meaningful conversations with the Client and third parties to the transaction regarding the structure, the bidding process, the fees and pricing should be reduced to writing and retained.
- B. Meaningful conversations are those which have legal or financial significance. Any discussion with bond/tax counsel is presumed to be significant.

9. Representations of GKB Made for Tax Purposes

- A. Whether as advisor, Designated QIR or agent, GKB may be called upon by bond/tax counsel to make certain representations on which counsel will rely in opining on the tax exemption of the bond issue or the enforceability of the swap.
- B. In general, such representations should be limited, to the extent possible, to factual statements. In particular, with respect to conclusions that a particular swap is expected to match the Client’s payment obligation, a disclaimer to the effect that such conclusion is based on a statistical analysis of identified historical data and no assurance can be given that a particular result will be obtained in the future. Further, representations made for tax purposes should be limited so that the Client or other parties cannot rely on them for other than their intended purpose. Representations being made for the first time should be reviewed by GKB’s own legal counsel.
- C. If GKB’s representations are based on information or representations of others, such reliance should be clearly stated.
- D. Representation letters or certificates can only be executed by, or on the written approval of, a member of the GKB Swap Committee.

10. Interest Rate Swap Transaction Execution

- A. GKB acting as Swap Bidding Agent
 1. Create term sheet with all material terms of the swap transaction for which GKB is soliciting bids. Circulate draft term sheet and list of bidders to the interested parties in the transaction including the Client, Client’s counsel, bond counsel and tax counsel (the “swap working group”). Receive and incorporate comments to both the term sheet and list of bidders. Circulate final term sheet and list of bidders to the swap working group.
 2. The fee that GKB will receive for Swap Bidding Agent services is disclosed in the term sheet.
 3. Send term sheet to the list of bidders simultaneously via email at least two business days’ prior to the bid date and time. Request any conditions to the term sheet by close of business the day before the bid date and time. Review these conditions and address any concerns with the swap working group

prior to the bid date and time. Report feedback from the swap working group to the bidders and accept revised conditions, if applicable.

4. Receive bids by phone at time indicated in bid specs. A single bid is taken from each potential swap counterparty and no provider is provided a last look. A faxed bid form follows to confirm each bid taken by phone. In order to prevent computational or clerical errors, in the event any best bid is significantly different than the next best bid and a reasonable person would suspect that an error has been made, GKB will call the provider of such high bid and ask the provider to review the level provided in their bid. Bid forms are accompanied by any conditions to the bid specs given by an individual provider. Bid forms and conditions from each provider are scanned and e-mailed to the working group. Call is held with the Client, Client's counsel, bond counsel, and any other necessary person or entity to review the bids and conditions. Bids and conditions are approved by the Client, Client's counsel and bond counsel. Agreement is awarded to the best bona fide bid that is not constrained by conditions deemed to be unacceptable by the Client or bond counsel. With respect to non-conforming bids either rejected or accepted, a contemporaneous "brief statement" should be created explaining the deviation, its purpose and how it was dealt with.
 5. The Short Term Desk coordinates all necessary documentation with the winning provider, the winning provider's counsel, and the swap working group. Documentation can include certificates required for integrating the swap transaction with the associated financing (if applicable), the ISDA documents and swap confirmation, authorizing resolutions, and legal opinions (if required).
- B. GKB acting as Swap Advisor (including acting as Designated QIR for a Special Entity Client)
1. Create term sheet with all material terms of the swap transaction for which GKB is swap advisor/Designated QIR. Circulate draft term sheet to the interested parties in the transaction including the Client, Client's counsel, bond counsel, tax counsel, the swap counterparty and swap counterparty's counsel (the "swap working group"). Receive and incorporate comments to the term sheet.
 2. The fee that GKB will receive for Swap Advisor/Designated QIR services is disclosed in the term sheet.
 3. Coordinate with swap counterparty and swap counterparty's counsel circulating a draft of the ISDA documents to the swap working group, based on the term sheet. Facilitate the timing of executing the ISDA documents and pricing the swap, based on the requirements of the swap counterparty.
 4. Determine independently and agree with the swap counterparty on the theoretical mid-market rate for the swap. Negotiate the spread-to-mid included in the swap transaction on behalf of the Client (see discussion below "Mid-market and spread-to-mid determination").
 5. After pricing the swap with swap counterparty and the Client, coordinate executing all necessary documentation with the swap counterparty, the swap counterparty's counsel, and the swap working group.

Mid-Market and Spread-to-Mid-Market Determinations

Mid-Market Description and Determination

Interest rate swaps are over-the-counter contracts whose prices are driven by actively traded interest rate markets. Municipal market participants have developed the convention of quoting the cost of an interest rate swap as a spread to the theoretical mid-market rate. The theoretical mid-market rate is the average of the bid- and offer- sides of the market. The bid- and offer- sides of a swap transaction are more transparent and more liquid for some types of swaps (e.g. floating-to-fixed LIBOR swaps) than others (e.g. SIFMA swaps or swaps with

forward start dates and/or embedded optionality)). Generally, GKB will model the interest rate swap contract using a pricing model generally accepted in the industry and with access to reasonably current market rates from a market-information platform such as Bloomberg, Reuters or Telerate. GKB will then confirm the level in the model with the swap counterparty, when GKB acts as swap advisor/Designated QIR. Differences in the level shown by our pricing model and the level determined by the swap counterparty and its traders will likely occur, and are acceptable as long as variances are within reason based on market conventions in calculation of the mid-market rate. If GKB's pricing model does not have the analytical capacity to determine the price of the contract, GKB will solicit indications from at least two other swap market participants in order to confirm the level calculated by the swap counterparty.

Spread-to-Mid-Market Description and Determination

GKB will negotiate with the swap counterparty the spread (in basis points) that will be added to or subtracted from the mid-market rate to determine the rate or price quoted to the Client (the "spread-to-mid"). The spread-to-mid is comprised of costs associated with hedging the various risks of the contract, credit reserves, and profit. Factors that influence the spread-to-mid include, but are not limited to, the size of the contract, credit quality of the Client, security and source of payments of the Client's obligations under the contract, type of swap contract, and duration of the contract. GKB will negotiate the spread-to-mid with the swap counterparty based on GKB's experience with comparable deals where it has acted as swap advisor/Designated QIR.

Exhibit III

Form of First Amendment to Derivatives Policy

FIRST AMENDMENT TO DERIVATIVES POLICY

The Derivatives Policy dated September 24, 2007 of the University of South Alabama is hereby amended from the date hereof to include the following:

Section 1.3 Qualified Independent Representative. The University shall use a derivative advisory firm to assist with financial analysis and price negotiation. Such derivative advisory firm shall act as the "qualified independent representative" ("QIR") of the University for purposes of CFTC Rule 23.450 (b)(1) to advise the University on swaps and derivatives. Such derivative advisory firm shall provide information to the University consistent with the rules and regulations in effect at the time, including the Business Conduct Standards for Swap Dealers and Major Swap Participants as published and enacted by the Commodity Futures Trade Commission. Whenever this policy makes reference to the use of independent advisers, analysts, or advisers, the same shall be interpreted to include the QIR.

This First Amendment to Derivatives Policy is adopted and shall be in effect the 7th day of June, 2013.