

ISDA 2016 VARIATION MARGIN PROTOCOL: MARGIN RULES COMPLIANCE GUIDE – UNITED STATES

On August 16, 2016, the International Swaps and Derivatives Association, Inc. (ISDA) published the **ISDA 2016 Variation Margin Protocol** (the “**VM Protocol**”). The VM Protocol aims to facilitate compliance with the margin rules of various jurisdictions, including the United States.

The following is intended as a guide to facilitate a determination by parties that are or will become subject to margin rules in the United States as to whether they will adhere to the VM Protocol, and if so, what elections to make. In addition, for purposes of determining whether the various VM Protocol methods result in functional compliance, over-compliance, under-compliance, or ambiguous compliance with the margin rules in effect in the United States as of the date of this Guide, set forth below is a chart summarizing the various requirements, their treatment under each method, and a color-coded statement of compliance status. Finally, for purposes of assessing both the New CSA Method (as defined in the VM Protocol) and the form of ISDA 2016 Credit Support Annex for Variation Margin (VM) (the “**2016 CSA Form**”), set forth beneath the chart is a summary of the terms that would apply upon application of the New CSA Method and that differ in a material respect from the 1994 CSA Form (as defined below).

Under the VM Protocol, adherents will need to complete the ISDA 2016 Variation Margin Protocol Questionnaire (the “**Questionnaire**”) and, among other things, elect one or more of following three methods to match with counterparties. If the parties to a swap

match under the “**Amend Method**” and are parties to an existing ISDA Credit Support Annex (a “**CSA**”) (1994 Bilateral Form; ISDA Agreements Subject to New York Law Only) (the “**1994 CSA Form**”), then such 1994 CSA Form, as modified by Paragraph I3, will be amended by the terms set forth in the form of an amendment to the 1994 CSA Form that appears as an exhibit to the VM Protocol (the “**VM Amendment**”). The Amend Method would be used if the parties desire to use the terms of their existing CSA, as amended by the VM Amendment, for all swaps, including swaps entered into before the applicable compliance date, with effect on the earliest applicable compliance date.

If the parties match under the “**Replicate-and-Amend Method**,” and are parties to an existing CSA using the 1994 CSA Form, then such CSA will be replicated to produce a separate CSA with the same terms as the existing CSA, plus the terms set forth in the VM Amendment. That is, if the parties match under the Replicate-and-Amend Method, the existing CSA, without any amendments, would apply to pre-compliance swaps and a new CSA, in the form of the existing CSA plus the terms set forth in the VM Amendment, would apply to post-compliance swaps.



If the parties match under the “**New CSA Method**,” and the governing law of the underlying ISDA Master Agreement is the laws of the State of New York, then the parties are deemed to have entered into a new CSA with Paragraphs I through I2 being in the form of the VM CSA and Paragraph I3 being in the form of the “**Exhibit NY-NEW**” to the VM Protocol, which contains a completed Paragraph I3 to the VM CSA.

CHART: MARGIN RULES COMPLIANCE

● = Functional compliance ● = Over-compliance ● = Under-compliance ● = Compliance status is ambiguous

Capitalized terms have the meanings assigned to them in the applicable preprinted form ISDA Master Agreement or CSA.

Dodd-Frank Requirement	Amend Method	Replicate-and-Amend Method	New CSA Method	Compliance Status
Variation margin must be calculated on each business day by a covered swap entity using procedures that rely on recently executed transactions, valuations provided by third parties, or other objective criteria. ¹ Valuations may be determined at mid-market. ²	No amendment to CSA definition of “ Exposure .” Valuation Date is amended to be each Local Business Day.	Same as Amend Method.	1994 CSA definition of Exposure is largely retained, with modified language from the ISDA 2002 Master Agreement Protocol such that the Valuation Agent will determine the Close-out Amount at mid-market where that is the settlement method under the Master Agreement. Valuation Date is each day on which commercial banks are open for general business in at least one Valuation Date Location for each party. Valuation Date Locations are specified in the Questionnaire.	All methods appear to be functionally compliant. However, where the CFTC Rule applies, the covered swap entity must be the Valuation Agent. The CFTC Rule technically requires both parties to be Valuation Agent where both are covered swap entities.
Deliverable FX forwards and currency swaps covered by the 2012 Treasury Determination (“ Excluded FX ”) are not required to be margined. ³	Excluded FX is included to the extent covered under the existing CSA. Spot FX transactions are excluded.	Excluded FX is included. Spot FX transactions are excluded.	Excluded FX is included. Spot FX transactions are excluded.	All CSAs result in over-compliance to the extent they cover Excluded FX.
Eligible Collateral ⁴	No changes to existing CSA unless the existing CSA lists ineligible collateral as set forth in a table listing eligible collateral under the applicable rules.	Same as Amend Method.	Limited to Cash and, under certain conditions, sovereign debt, based on the elections of both parties in their Questionnaires.	All methods appear to be functionally compliant. New CSA Method may result in over-compliance by not including potentially permissible collateral types.
To the extent collateral is no longer eligible, the covered swap entity shall promptly post or collect sufficient eligible replacement collateral. ⁵	A secured party may remove legally ineligible credit support by notice.	Same as Amend Method.	A secured party may remove legally ineligible credit support by notice.	All methods appear to be functionally compliant.

1. Margin Requirements for Uncleared Swaps; Final Rule (81 Fed. Reg. 636 (January 6, 2016)) (the “CFTC Rule”) §23.155(a).

2. See discussion at 80 Fed. Reg. 74687 (Margin and Capital Requirements for Swap Entities; Final Rule (80 Fed. Reg. 74840 (November 30, 2015)) (the “PR Rule”) and 81 Fed. Reg. 864 (CFTC Rule).

3. On November 16, 2012, the Secretary of the Treasury issued a final determination that exempted foreign exchange swaps and deliverable foreign exchange forwards from the definition of “swap” for certain purposes (including margining) under the Dodd-Frank Act.

4. CFTC Rule 23.156(c); PR Rule ____6.

5. CFTC Rule 23.156(c); PR Rule ____6(e).

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Dodd-Frank Requirement	Amend Method	Replicate-and-Amend Method	New CSA Method	Compliance Status
For each uncleared swap, each covered swap entity must post and collect variation margin on each business day during which such swap has not expired or terminated. ⁶ An exception (the “Exception”) applies if the counterparty has (A) failed to post or accept the required variation margin and (B)(i) the covered swap entity has made the necessary efforts to collect or post, including initiating a formal dispute resolution mechanism, or otherwise demonstrates efforts to collect or post satisfactory to the applicable regulator or (ii) commenced termination following applicable notice and grace periods.	Existing CSA terms apply, including (i) CSA Paragraph 4(a) rights to suspend collateral transfers as long as no Event of Default, Potential Event of Default, or Specified Condition is continuing, and no Early Termination Date has been designated for which any unsatisfied payment obligation exists, and (ii) CSA Paragraph 8(a)(1) rights to exercise pre-termination secured party rights and remedies if an Event of Default or Specified Condition is continuing.	Same as Amend Method.	CSA Paragraph 13 provides the option to make paragraph 4(a) inapplicable, which election must be made in the Questionnaire. Paragraph 4(a) will not apply only if both parties elect to make it inapplicable. No Specified Conditions apply. The 1994 CSA Form two Local Business Day grace period remains for failure to Transfer under CSA Paragraph 7(j).	Application of CSA Paragraph 4(a) is not permitted unless the Exception applies. Application of CSA Paragraph 8(a)(1) is not permitted to the extent that the exercise of these rights restricts posting and collection of variation margin under the margin rules, subject to the Exception.
Haircuts must be applied pursuant to a standardized haircut schedule set forth in the margin rules. An 8% cross-currency haircut applies to collateral not denominated in the “currency of settlement,” except for cash in USD or another “major currency.” The “currency of settlement” is a currency in which a party has agreed to discharge payment obligations subject to a master netting agreement at the regularly occurring dates on which such payments are due in the ordinary course. ⁷ Major currencies include 11 specified currencies and others that are subsequently approved.	Valuation Percentages are amended to reflect the haircut schedule in the rules. Non-cash Eligible Collateral posted in a non-Eligible Currency receives an FX Haircut Percentage of 8%. All currencies are defined as Eligible Currencies.	Same as Amend Method.	If CFTC and/or PR Rules apply, (i) Valuation Percentages are amended to reflect the haircut schedule in the rules, and (ii) non-cash Eligible Collateral posted in a non-Eligible Currency receives an FX Haircut Percentage of 8%. Eligible Currencies are elected in the Questionnaires.	The Valuation Percentages are generally compliant. However, application of the 8% FX Haircut Percentage is unclear, as the final margin rules conflate payment netting, which would occur in the “ordinary course,” and close-out netting, which is not “regularly occurring” and would occur only following an Event of Default or Termination Event. Accordingly, it is unclear whether the Termination Currency elected in the ISDA Schedule is relevant.

6. CFTC Rule 23.153; PR Rule ____4.

7. See definition in CFTC Rule 23.156(b)(2)(A) and the accompanying discussion. In adopting this definition, the CFTC appears to have conflated payment and close-out netting (“the final rule expressly carves out of the cross-currency haircut assets denominated in a single termination currency designated as payable to the non-posting counterparty as part of the eligible master netting agreement”). 81 Fed. Reg. 668.

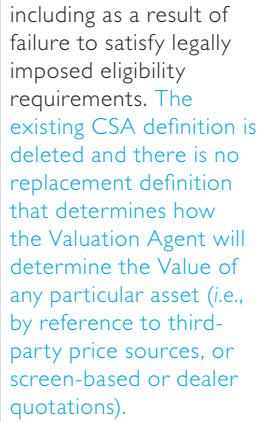
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Dodd-Frank Requirement	Amend Method	Replicate-and-Amend Method	New CSA Method	Compliance Status
The combined minimum transfer amount for initial margin and variation margin may not exceed \$500,000. ⁸	As specified in the existing CSA, subject to an "MTA Cap." Assuming the Base Currency is USD, the MTA is a USD amount, and only US margin rules apply, the MTA Cap is \$500,000.	Same as Amend Method.	As specified in the "Default MTA" table for each of the 11 potential Base Currencies; a zero MTA applies for other currencies. Where USD is the Base Currency, the Default MTA is \$250,000. If both parties make the same "Alternative MTA" election, in the Questionnaire then the matched election (for USD, either 0, \$100,000, or \$400,000) will apply.	The Amend and Replicate-and-Amend Methods are generally compliant where USD is the Base Currency and the MTA is in USD. Under the New CSA Method, the Default MTA is \$250,000 less than, and the maximum Alternative MTA is \$100,000 less than, the compliance requirement.
The value of variation margin shall be computed as the product of the cash or market value of the collateral asset times one minus the applicable haircut. ⁹	The definition of "Value" is revised to reflect the addition of Base Currencies, gold and FX Haircut Percentages, and assigns a zero valuation to ineligible collateral, including as a result of failure to satisfy legally imposed eligibility requirements.  The existing CSA definition is deleted and there is no replacement definition that determines how the Valuation Agent will determine the Value of any particular asset (i.e., by reference to third-party price sources, or screen-based or dealer quotations).	Same as Amend Method.	The definition of "Value" in the New CSA is revised to reflect the addition of Base Currencies and FX Haircut Percentages and assigns a zero valuation to ineligible collateral, including as a result of failure to satisfy legally imposed eligibility requirements. The Valuation Agent will calculate the Value of Sovereign Debt in accordance with standard market practice using third-party price sources where available. There is no reference to specific third-party price sources and no requirement to obtain screen-based or dealer quotations.	All methods appear to be functionally compliant.

8. CFTC Rule 23.153(c); PR Rule _____.5(b)

9. CFTC Rule 23.156(b)(2)(ii); PR Rule _____.6(c)(ii)

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Dodd-Frank Requirement	Amend Method	Replicate-and-Amend Method	New CSA Method	Compliance Status
Covered swap entities must post and collect variation as calculated each business day (i.e., T+1 transfer timing). ¹⁰	Assuming only US margin rules apply, transfer timing is close of business on the same Local Business Day for demands made by the Notification Time and close of business on the next Local Business Day for demands made after the Notification Time. The Notification Time is 10:00 a.m. New York time unless both parties elect the same alternate time under "Change Notification Time?" in the Questionnaire. The alternate times that may be elected are (i) 1:00 p.m., New York time; (ii) 12:00 noon, London time; (iii) 1:00 p.m., Sydney time; and (iv) 1:00 p.m., Hong Kong time.	Same as Amend Method.	Assuming only US margin rules apply, transfer timing is close of business on the same Local Business Day for demands made by the Notification Time and close of business on the next Local Business Day for demands made after the Notification Time. The Notification Time is 10:00 a.m. New York time unless both parties elect the same alternate time under "Change Notification Time?" in the Questionnaire.	All methods appear to be functionally compliant. Posting at T+0 is over-compliant.
Margin documentation must contain dispute resolution procedures. ¹¹	There is no modification to the existing CSA. To the extent the timing for dispute resolution is not already amended in the existing CSA as part of an amendment of standard transfer timing to T+0, there will be a discrepancy between the transfer timing and the timing of dispute resolution as a result of the amendment to of standard transfer timing to T+0 under the Amend Method.	Same as Amend Method.	The timing for dispute resolution is reduced to reflect T+0 transfer timing. If a dispute is not resolved by the Resolution Time, disputes over Exposure are resolved by the Valuation Agent seeking four mid-market quotations, (i) for purposes of calculating Market Quotation, if the Master Agreement is a 1992 ISDA Master Agreement using Market Quotation or Loss and (ii) for purposes of calculating the Close-out Amount, if the Master Agreement is an ISDA 2002 Master Agreement or a 1992 ISDA Master Agreement that has been modified to elect Close-out Amount as the settlement method. The Resolution Time is 1:00 p.m. on the Local Business Day following the date on which notice is given that gives right to the Paragraph 5 dispute.	All methods appear to be functionally compliant. However, under the Amend and Replicate-and-Amend Methods, there is a discrepancy between the transfer timing and the timing of dispute resolution.

10. CFTC Rule 23.153(b); 23.155(a); PR Rule ____4(b). The CFTC and the prudential regulators have interpreted these provisions to mean variation margin must be "posted or collected on a T+1 timeframe." 81 Fed. Reg. 665 (CFTC Rule); 80 Fed. Reg. 74687 (PR Rule).

11. CFTC Rule 23.158(b)(3); PR Rule ____10(b)(2).

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Dodd-Frank Requirement	Amend Method	Replicate-and-Amend Method	New CSA Method	Compliance Status
Multiple transaction netting is only permitted if the ISDA Master Agreement between the parties is an “eligible master netting agreement.” ¹²	Not addressed; all Transactions governed by the existing CSA are netted for purposes of determining Exposure.	Not addressed; all Covered Transactions are netted for purposes of determining Exposure. If “Broad Product Set?” is elected in the Questionnaire, all Transactions (excluding FX spot) are Covered Transactions. Otherwise, Covered Transactions are all Swaps for purposes of the CFTC Rules and all Swaps and Security-Based Swaps for purposes of the PR Rule.	Not addressed.	The CSAs are non-compliant to the extent that the ISDA Master Agreement between the parties is not an “eligible master netting agreement.”
No collateral threshold is permitted.	The Threshold is amended to be “zero” for each party. ¹³	Same as Amend Method.	The New CSA does not have a concept of a “Threshold.”	All methods appear to be functionally compliant.

¹² CFTC Rule 23.153(d); PR Rule ___.5.

¹³ CFTC Rule 23.153(a); PR Rule ___.4.

NEW CSA SUMMARY

The following is a summary of the terms of the 2016 CSA Form, with Paragraph 13 in the form set forth in Exhibit NY-NEW as a result of the election by both parties of the “**New CSA Method**” under the ISDA 2016 Variation Margin Protocol (the 2016 CSA Form, as so modified, the “**New CSA**”) that differ in a material respect from the terms of the 1994 CSA Form.

1. **Base Currency.** Each party to a New CSA needs to elect USD, EUR, GBP, or JPY as the Base Currency in its Questionnaire. The Base Currency is the currency in which Cash collateral may be transferred and is USD unless the parties match Questionnaires on another currency. If the parties wish to exchange collateral in additional currencies, those currencies will apply if the parties have matched additional Eligible Currencies in their Questionnaires.
2. **Covered Transactions.** Each party needs to elect which Transactions are “**Covered Transactions**” under the New CSA. The New CSA will become effective based on the parties’ elections in the Questionnaire.
 - a. Each party needs to elect at least one “**Covered Margin Regime**” in the Questionnaire. The Covered Margin Regimes are the regimes that the party wants to comply with for purposes of its New CSA. These elections then determine a Designated Regime Combination, which is the combination of regimes selected by either party. The parties also may elect a Regime Agnostic CSA in the Questionnaire. The effective date of the New CSA will be determined based on the earliest compliance date in the Designated Regime Combination. Under a Regime Agnostic CSA, the New CSA would become effective on the later of (i) March 1, 2017 and (ii) the first date on which either party is required to post or collect variation margin.
 - b. If both parties have elected “**Broad Product Set?**” and “**Import Legacy Transactions?**” in their Questionnaires, then, from and after the earliest Relevant Compliance Date (which is March 1, 2017 for the US variation margin rules), the New CSA governs all outstanding Transactions between the parties, other than FX spot Transactions that settle (i) within two Local Business Days following the trade date or (ii) otherwise within the customary settlement timeline and are not subject to applicable margin requirements. However, if both parties elect “**Early Importation under New CSA Method?**” in their Questionnaires, then the New CSA applies from and after the fifth New York Business Day following the Implementation Date (i.e., the date the parties effectively match Questionnaires) or such earlier date agreed by the parties.
- c. If both parties have elected “**Broad Product Set?**” but either party has not elected “**Import Legacy Transactions?**” in their Questionnaires, then the New CSA governs all transactions between the parties entered into on or after the earliest compliance date in the Designated Regime Combination, other than the aforementioned FX spot Transactions.
3. **Eligible Collateral.** Each party to a New CSA needs to elect in the Questionnaire the types, if any, of “**Eligible Sovereign Debt Collateral**” that it wishes to include as “**Eligible Collateral**.” The choices are US Treasuries, European Central Bank debt, and debt of the UK, France, Germany, Canada, Japan, or Australia. These collateral types will apply to a New CSA only if (i) both parties have elected them their Questionnaires as Eligible Sovereign Debt Collateral and (ii) the Collateral Expansion Condition is satisfied. If the Collateral Expansion Condition is not satisfied, then only cash in the Base Currency is added to the New CSA. The Collateral Expansion Condition is satisfied only if either (x) neither party has elected “Yes,” or (y) both parties have elected “Yes,” under “**Consent to Substitution Required?**” in the Questionnaire. If a party elects “Yes,” then a party wants to add the elected collateral types only if the New CSA permits consent to substitution under CSA Paragraph 4(d). Under the New CSA, if both parties elect “Yes,” under “**Consent to Substitution Required?**” then consent to such substitution applies. Otherwise, consent to substitution does not apply.
4. **Valuation Percentages.** The New CSA sets the Valuation Percentage for each item of Eligible Collateral as the lowest percentage applicable to that item under the regime combination covered under the CSA. Non-cash collateral denominated in a non-Eligible Currency receives an FX Haircut Percentage of 8%.
5. **No Thresholds or Independent Amounts.** The New CSA does not include a “**Threshold**” or “**Independent Amount**.”
6. **Minimum Transfer Amount.** The New CSA provides a “**Default MTA**” table for each of the 11 potential Base Currencies, and a zero MTA for other currencies. Where USD is the Base Currency, the Default MTA is \$250,000. The Questionnaires require the parties to make an MTA election. If both parties make the same “**Alternative MTA**”

election, then the matched election will apply. Otherwise, the Default MTA will apply. The Alternative MTA elections are “**Zero MTA**,” in which case no MTA will apply; “**50 MTA**,” in which case a \$50,000 MTA will apply; “**100 MTA**,” in which case a \$100,000 MTA will apply; and “**400 MTA**,” in which case a \$400,000 MTA will apply. However, if the parties match under 400 MTA, and any Covered Margin Regimes in the Designated Regime Combination require a lower MTA (when combined with applicable initial margin requirements), then the MTA is the maximum amount permitted under all Covered Margin Regimes. *If both parties select any of Zero MTA, 50 MTA or 100 MTA, but do not make the same election, then the Default MTA of \$250,000 applies, notwithstanding that both parties have selected lower MTAs.*

7. **Rounding.** The New CSA provides a rounding amount for each of the 11 potential Base Currencies. The rounding amount for USD is \$10,000.
8. **Transfer Timing.** Under the New CSA, where only US margin rules apply, transfer timing is close of business on the same Local Business Day for demands made by the Notification Time and close of business on the next Local Business Day for demands made after the Notification Time. The Notification Time is 10:00 a.m. New York time unless both parties elect the same alternate time under “**Change Notification Time?**” in the Questionnaire. The alternate times that may be elected are (i) 1:00 p.m., New York time; (ii) 12:00 noon, London time; (iii) 1:00 p.m., Sydney time; and (iv) 1:00 p.m., Hong Kong time.
9. **Valuation Agent.** Unless one party elects “**Offer to be Sole VA**” and the other party elects “**Request Other Party Be Sole VA**” in its respective Questionnaire, the party making the demand under Paragraphs 3 and 5, and the Secured Party for purposes of Paragraph 6(d), is the Valuation Agent. *There is no mention of the Valuation Agent for purposes of substitutions under Paragraph 4(d). If the parties each make the Questionnaire election specified above, the party that elects “Offer to be Sole VA” is the sole Valuation Agent, with no fallback even if the Valuation Agent is defaulting or not performing its obligations as Valuation Agent. Failure of a Valuation Agent to perform its obligations as such could result in non-compliance with the US margin rules and failure to margin on the required daily timetable.*
10. **Valuation Date.** The Valuation Date is each day on which commercial banks are open for general business in at least one “**Valuation Date Location**” for each party. Each party must specify in its Questionnaire one or more cities, regions, and/or countries as its Valuation Date Locations.
11. **Conditions Precedent.** Under the 2016 CSA Form, unless otherwise specified in CSA Paragraph 13, the CSA Paragraph 4(a) rights to suspend collateral transfers as long as no Event of Default, Potential Event of Default or Specified Condition is continuing, and no Early Termination Date has been designated for which any unsatisfied payment obligation exists. CSA Paragraph 4(a) is substantially unchanged from the 1994 CSA Form. Under the New CSA, CSA Paragraph 4(a) rights apply unless each party has elected “**Inapplicable**” under “**Make Paragraph 4(a) Inapplicable?**” in its Questionnaire. Under the 2016 CSA Form, the parties elect Specified Conditions in Paragraph 13. Under the New CSA, no Specified Conditions are elected.
12. **Substitution.** The Pledgor need not obtain the Secured Party’s consent to substitution of Posted Credit Support unless each party has elected “**Yes**” to “**Consent to Substitution Required?**” in its Questionnaire.
13. **Dispute Resolution.** The timing for dispute resolution is reduced to reflect T+0 transfer timing. If a dispute is not resolved by the Resolution Time, then disputes over Exposure are resolved by the Valuation Agent seeking four mid-market quotations, (i) for purposes of calculating Market Quotation, if the Master Agreement is a 1992 ISDA Master Agreement using Market Quotation or Loss and (ii) for purposes of calculating the Close-out Amount, if the Master Agreement is an ISDA 2002 Master Agreement or a 1992 ISDA Master Agreement that has been modified to elect Close-out Amount as the settlement method. The Resolution Time is 1:00 p.m. on the Local Business Day following the date on which notice is given that gives right to the Paragraph 5 dispute.
14. **Value.** The definition of “**Value**” in the New CSA is revised to reflect the addition of Base Currencies and FX Haircut Percentages and assigns a zero valuation to ineligible collateral, including as a result of failure to satisfy legally imposed eligibility requirements. The Valuation Agent will calculate the Value of Sovereign Debt in accordance with standard market practice using third party price sources where available. There is no reference to specific third-party price sources or requirement to obtain screen-based quotations.

15. **Eligibility to Hold Posted Collateral.** Each party and its Custodian may hold Posted Collateral if such party is not a Defaulting Party. *The inclusion of the words “and its Custodian” rather than “or” makes it unclear who may hold Posted Collateral if a party is a Defaulting Party. We would expect that a party should be required to use a Custodian if it is a Defaulting Party, which is contrary to the language in the New CSA.* Each party must specify its Custodian in its Questionnaire. *However, there is no express language in the New CSA that addresses the scenario in which the parties elect to hold Posted Collateral pursuant to a tri-party account control agreement.*

16. **Rehypothecation.** The provisions of Paragraph 6(c) will apply to the parties. Paragraph 6(c) is unchanged from the 1994 CSA Form. *There is no option to disapply the provisions of Paragraph 6(c) in the Questionnaire. Accordingly, to the extent certain entities, such as certain types of investment funds, face legal restrictions or prohibitions on permitting reuse or rehypothecation of collateral, the New CSA may not be a viable alternative.*

17. **Interest Rate.** The Interest Rate is specified for each of the 11 potential Base Currencies. For USD, the Interest Rate is Fed Funds flat, as determined by reference to the effective rate published in N.Y. Federal Reserve Statistical Release H.15(519) or such other source used for the purpose of displaying such rate.

18. **Interest Period/Interest Transfers/Negative Interest.** Both the New CSA and the 2016 CSA Form contain material changes from the 1994 CSA Form with respect to the transfer of interest. *None of these changes relate to requirements under the Dodd-Frank Act and the margin rules promulgated thereunder.*

a. Under the 1994 CSA Form, the Secured Party will Transfer to the Pledgor the Interest Amount (VM) at the times specified in Paragraph 13 to the extent a Delivery Amount would not be created or increased by that Transfer. The Interest Amount or portion thereof not Transferred constitutes Posted Collateral in the form of Cash.

b. Under the 2016 CSA Form, if “**Interest Transfer**” applies under Paragraph 13, then the Interest Payer (VM) will Transfer the relevant Interest Payment (VM) at the times specified in Paragraph 13. However, if “**Interest Payment Netting**” is specified as applicable in Paragraph 13,

whenever the Interest Payer (VM) is entitled to demand a Delivery Amount or a Return Amount, that amount is reduced by the amount of the Interest Payment (VM). However, returns are limited to the amount of Cash which is Posted Collateral (VM), and the payee must Transfer the remaining amount. If Interest Payment Netting results in a reduction of the Delivery Amount, then the Secured Party is deemed to have received Cash equal to the netted amount.

c. Under the 2016 CSA Form, if “**Interest Adjustment**” applies under Paragraph 13, then the Secured Party will adjust the Posted Collateral (VM) at the times specified in Paragraph 13. If the Interest Amount (VM) is positive (i.e., there is a positive Interest Rate), then, rather than paying the Interest Amount (VM), the Secured Party will hold that amount as additional Posted Collateral (VM) in the form of Cash, and the Pledgor can request that amount to the extent it is entitled to a Return Amount. If the Interest Amount (VM) is negative (i.e., there is a negative Interest Rate and the parties have elected the application of “**Negative Interest**”), then, rather than the Pledgor paying the Interest Amount (VM), the amount of Posted Collateral (VM) in the form of Cash will be reduced by the negative Interest Amount (VM), and the Secured Party can request that amount to the extent it is entitled to a Delivery Amount.

d. Under the New CSA, Negative Interest applies only if (i) the parties have each adhered to the ISDA 2014 Collateral Negative Interest Protocol in accordance with its terms, (ii) the parties have agreed to apply negative interest in another CSA, or (iii) each party has specified Negative Interest under the “**Negative Interest Election**” in its Questionnaire.

e. Under the New CSA, the Interest Period is the period from and including the first day of each month to and including the last day of each month. Each party must specify in its Questionnaire whether it wishes to elect Interest Adjustment. Unless each party elects Interest Adjustment in its Questionnaire, “**Interest Transfer**” applies, in which case the party that owes an Interest Amount (VM) must pay accrued interest from the previous calendar month on or before the fifth Local Business Day of each month. The option to net interest payments by electing Interest Payment Netting is disappledied under the New CSA. If each party elects

¹⁴ The New CSA actually reads “on or before the fifth Local Business Day of each month each day”. We have assumed that “each day” is stray language and is not intended, since with this language the meaning is unclear.

Interest Adjustment in its Questionnaire, then no interest is transferred, and instead the Secured Party will adjust the Posted Collateral in arrears on or before the fifth Local Business Day of each month.¹⁴

- f. Under the New CSA, interest is compounded daily if both parties elect "Yes" under "**Daily Interest Compounding**." Otherwise, there is no specified compounding. Under the 2016 CSA Form, if Daily Interest Compounding applies under Paragraph 13, then interest is compounded daily. Otherwise, there is no specified compounding.
19. **Credit Support Offsets.** Under the 2016 CSA Form, the parties may elect the application of "**Credit Support Offsets**" in Paragraph 13.
 - a. Upon such an election, if (i) (A) a Transfer of Eligible Credit Support (whether a delivery or return) is due, and (B) a transfer of credit support is also due under any "**Other CSA**" listed as a Credit Support Document in the Schedule; (ii) the parties have notified each other of the credit support they intend to transfer under each CSA;¹⁵ and (iii) each party intends to transfer one or more types of credit support that is fully fungible¹⁶ with one or more types of credit support the other party intends to transfer;¹⁷ then the obligations of the parties are discharged and replaced by an obligation under either the 2016 CSA Form or the Other CSA, as applicable, to transfer the excess of the larger over the smaller amount, and the other party will be deemed to have received credit support under the 2016 CSA Form or the Other CSA, as applicable.¹⁸
 - b. Under the New CSA, Credit Support Offsets will not apply unless each party has elected "Yes" under both "Broad Product Set?" and "Import Legacy Transactions?" in their Questionnaires.
 - c. Under the 2016 CSA Form, the Secured Party's Paragraph 8(a) Set-off rights and remedies extend to Cash amounts and the Cash equivalent of non-Cash items posted by the Secured Party to the Pledgor under an Other CSA. This means that, if an Event of Default or Specified Condition is continuing with respect to the Pledgor, the Secured Party can offset amounts the Secured Party posted under an Other CSA against Posted Collateral or its cash equivalent held by the Secured Party under the 2016 CSA Form. The Paragraph 8(a) Set-off rights and remedies further extend the Secured Party's right to apply liquidation proceeds of Posted Collateral to Cash amounts and the Cash equivalent of non-Cash items posted by the Secured Party to the Pledgor under an Other CSA.
 - d. Under the 2016 CSA Form, the Pledgor's Paragraph 8(b) Set-off rights and remedies extend to Cash amounts and the Cash equivalent of non-Cash items held by the Secured Party under an Other CSA. This means that, if an Early Termination Date has been designated as a result of an Event of Default or Specified Condition is continuing with respect to the Secured Party, the Pledgor may apply collateral received under an Other CSA against Posted Collateral or its cash equivalent held by the Secured Party under the 2016 CSA Form.
 20. **Default Interest.** Under the 2016 CSA Form, interest at the Default Rate applies to any failure to Transfer an Interest Payment (VM) when due. No default interest is payable on Interest Amounts not Transferred under the 1994 CSA Form.
 21. **Transfer.** Clause (iii) of the 2016 CSA Form is amended from the 1994 CSA Form with respect to an effective transfer of book-entry securities.
 22. **Demands and Notices/Addresses for Transfers.** The Questionnaires contain requests for addresses for (i) demands and notices and (ii) addressed for Transfers. Under the New CSA, such addresses are as specified in the Questionnaires.
 23. **Legally Ineligible Credit Support.** Under the New CSA, upon delivery of a "**Legal Ineligibility Notice**," the items of Eligible Credit Support (VM) set forth in such notice will

15. The 2016 CSA Form does not specify any time by which the parties need to notify each other before Credit Support Offsets applies. In addition, it would appear that each party would need to notify the other separately. This structure could leave little to no time for the parties to determine whether to apply Credit Support Offsets.

16. It is not clear what "fully fungible" means or how the concept of fungibility would apply in this context. If this clause (iii) is retained, a definition of "fully fungible," such as "Cash in the same Eligible Currency, other Eligible Collateral in the same currency and bearing the same the same issuer, series, designation, principal amount and CUSIP number" may provide more clarity.

17. It is not clear what "the other party intends to transfer" means or how a party can ascertain the intent of the other party in order to determine whether this condition to a Credit Support Offset is satisfied. It also is unclear why the ability to effect an offset should be dependent on the intent of the parties. Accordingly, parties using the 2016 CSA Form with a modified Paragraph 13 may consider deleting this clause (iii) in its entirety.

18. There is no mechanism for addressing the case where there is more than one Other CSA. In addition, applicable law should be considered in determining whether the "deemed" collateral transfers would be enforced under applicable laws governing creation, perfection and priority of security interests, and under the applicable laws governing a counterparty bankruptcy, in the manner specified in the 2016 CSA Form. Finally, there is also no cross default under Paragraph 7(i) to a failure to transfer Posted Collateral under an Other CSA. This may prevent a party who fails to receive a from simultaneously enforcing its rights under both CSAs.

cease to be Eligible Credit Support (VM) on the relevant effective date.

- a. A Legal Ineligibility Notice is a written notice in which the Secured Party (i) represents that one or more items of Eligible Credit Support (VM) have, or will as of a specified date, ceased to satisfy collateral eligibility requirements under applicable law, (ii) lists those items, and (iii) describes the reasons behind its determination. The effective dates are, with respect to Transfers to the Secured Party, the "**Transfer Ineligibility Date**," and with respect to the Pledgor for all purposes, the "**Total Ineligibility Date**." The items set forth in the notice will have a Value of zero on and from the Total Ineligibility Date. The Transfer Ineligibility Date for an item is the date on which that item ceases to satisfy the eligibility requirements for Transfers to the Secured Party under applicable law, but may not be earlier than the date on which the Legal Ineligibility Notice is delivered. The Total Ineligibility Date for an item is the date on which that item ceases to satisfy the eligibility requirements for Transfers to the Secured Party for all purposes, but may not be earlier than the date on which the Legal Ineligibility Notice is delivered.
- b. Subject to Paragraph 4(a) and only if the Pledgor has satisfied all of its Transfer obligations under the CSA, the Secured Party must, promptly upon demand (but no later than the time at which a Transfer would be due under the transfer timing provisions of Paragraph 4(b)), return items with a Value of zero.
- c. Upon a reasonable request from the Pledgor, the Secured Party will re-determine whether an item of collateral that was the subject of a prior Legal Ineligibility Notice would currently satisfy applicable legal requirements for eligibility. ***There is no dispute resolution mechanism, and there is no reasonableness or other standard for the Secured Party's determinations.***

ABOUT US

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