

MEMORANDUM
FIA-ISDA CLEARED DERIVATIVES EXECUTION AGREEMENT

The Futures Industry Association (“FIA”), together with the International Swap and Derivatives Association (“ISDA”), is re-publishing the attached FIA-ISDA Cleared Derivatives Execution Agreement (“Agreement”) as a new version to assure compliance with the requirements of the CFTC Customer Clearing Documentation, Timing of Acceptance for Clearing and Clearing Member Risk Management rules which were published April 9, 2012 and become effective October 1, 2012.

Version 1.1 of the Agreement is intended as a template for use by cleared swaps market participants in negotiating execution-related agreements with counterparties to swaps that are intended to be cleared. As noted in the cautionary statement that precedes the text of the Agreement, we recognize that this Agreement is not necessary or appropriate under all circumstances. Consequently, any participant using this Agreement should carefully consider the full scope of regulatory and commercial requirements that may apply to their particular circumstances. Participants should also consult with their legal counsel and any other advisors/consultants they deem appropriate before using this template or negotiating revisions to it.

New CFTC Regulations 1.72 and 23.608 prevent a futures commission merchant (“FCM”) and swap dealer (“SD”) or major swap participant (“MSP”), respectively, from entering into any arrangement that: (a) discloses to an FCM, SD, or MSP the identity of a customer’s original executing counterparty; (b) limits the number of counterparties with whom a customer may enter into a trade; (c) restricts the size of the position a customer may take with any individual counterparty (apart from an overall credit limit for all of the customer’s positions); (d) impairs a customer’s access to execution of a trade on terms that have a reasonable relationship to the best terms available; or (e) prevents compliance with specified time frames¹ for acceptance of trades into clearing.

New CFTC Regulation 1.74 requires FCMs to coordinate with each derivatives clearing organization (“DCO”) to allow the FCM or the DCO to accept or reject each trade submitted to the DCO as quickly as would be technologically practicable if automated systems were used. New CFTC Regulation 23.506 imposes a similar requirement on a swap dealer or major swap participant when routing a swap to a DCO to be cleared.

Because certain provisions of the Agreement could conflict with the new regulations, the primary changes in Version 1.1 are as follows:

1. Deletion of the Optional Tri-Party Annexes and Any References to the Annexes or Multiple Parties. The annexes originally permitted the clearing member (FCM) to set credit limits by which it would accept a customer’s trade for clearing. This would have disclosed to the

¹ The time frames are set forth in C.F.R. § 1.74(b) (2012); 17 C.F.R. § 23.610(b) (2012) and 17 C.F.R. § 39.12(b)(7).

FCM the identity of the customer's counterparty and set a limit with that counterparty and thus is inconsistent with the regulations referenced above. Conforming changes to the term "parties" have also been made.

2. **Insertion of Timing Language in Sections 1 and 2.** Section 1 of the Agreement sets forth a standard of care for the parties. Section 2 of the Agreement was drafted to set forth time frames in which the parties must take action to accept or reject the trade. In light of the requirements set forth in Regulations 1.74 and 23.506 and as discussed above in (e), the SD, FCM and MSP may not cause the customer to enter into any arrangement that prevents compliance with the acceptance of trades "as soon as technologically possible". As such, additional language has been added to make clear that the parties will follow the same time frames as mandated by the regulations.

3. **Objective Cut-Off Times in Section 4.** Given that all trades must be accepted as soon as technologically practicable, Section 4 has been revised to clarify that that objective cut-off times in the Agreement apply for purposes of determining which party is responsible for breakage costs. The times suggested in this Agreement are not mandated by law and their inclusion is merely to attempt to conform to CCP practices.

There are additional clarifying changes made throughout the document with respect to definitions. FIA and ISDA fully expect that as straight through processing and anonymous trading become a reality, the need for breakage agreements will lessen over time. The working group will continue to consider any necessary market-place or regulatory changes to the Agreement.

September 19, 2012