



International Swaps and Derivatives Association, Inc.

TREASURY AFFILIATE REPRESENTATION LETTER

published on July 8, 2013

by the International Swaps and Derivatives Association, Inc.

Instructions: In a letter dated June 4, 2013, the Division of Clearing and Risk of the U.S. Commodity Futures Trading Commission (“**CFTC**”) provided no-action relief, from the clearing requirement under Section 2(h)(1) of the Commodity Exchange Act (“**CEA**”) and Part 50 of the CFTC Regulations, for swaps entered into by entities that might otherwise be “financial entities,” as defined in Section 2(h)(7)(C)(i)(VIII) of the CEA when such entities are acting on behalf of non-financial affiliates within a corporate group.¹

The relief provided in the Treasury Affiliate Letter is subject to a number of conditions regarding, *inter alia*, the party electing to use the relief, the purpose of the swap being entered into pursuant to the relief, and the reporting of the swap to a swap data repository or the CFTC. This representation letter is intended to provide parties relying on the Treasury Affiliate Letter with a means for making relevant elections and representations to a counterparty in order to establish that the electing party satisfies the conditions in the Treasury Affiliate Letter and to provide information required for purposes of reporting..

I. Status Representation.

We hereby represent that we are an “**eligible treasury affiliate**,” as such term is defined in the Treasury Affiliate Letter,² which representation shall be deemed repeated each time we enter into a swap that is subject to a mandatory clearing determination under Section 2(h) of the CEA (a “**Clearing Requirement**”) that we have elected not to clear with a derivatives clearing organization registered with the CFTC or exempt from such registration in reliance on the Treasury Affiliate Letter.

¹ CFTC Letter No. 13-22 (“**Treasury Affiliate Letter**”), available at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/13-22>.

² *Id.* at 4.

II. Election to Use Treasury Affiliate Relief.

(check one box only)

- Standing Election. We hereby notify you that we are electing to use the relief provided in the Treasury Affiliate Letter each time we enter into a swap that is subject to a Clearing Requirement with you on an uncleared basis, unless we have notified you to the contrary in writing prior to the execution of such swap. We represent, which representation shall be deemed repeated each time we enter into a swap subject to a Clearing Requirement with you on an uncleared basis pursuant to this election, that the “General Conditions to the Swap Activity” set forth in the Treasury Affiliate Letter (the “**General Conditions**”) are satisfied with respect to such swap.³
- Trade-by-Trade Election. In the event that we elect not to clear a swap that is subject to a Clearing Requirement in reliance on the Treasury Affiliate Letter, we will notify you of such fact in writing at a reasonable time prior to entering into such swap. We agree that each time we elect to enter into a swap subject to a Clearing Requirement on an uncleared basis in reliance on the Treasury Affiliate Letter, such an election shall constitute our representation that the General Conditions are satisfied with respect to such swap, unless we have notified you to the contrary in writing at a reasonable time prior to such election.

III. Manner of Fulfilling Reporting Requirements.

(check one box only)

- Annual Filing. We hereby represent, which representation shall be deemed repeated each time we enter into a swap that is subject to a Clearing Requirement with you on an uncleared basis in reliance on the Treasury Affiliate Letter, that, unless we have notified you to the contrary at a reasonable time prior to entering into such swap, we have reported the information listed in paragraphs (ii) and (iii) of the “Reporting Conditions” in the Treasury Affiliate Letter (“**Reporting Conditions**”) in an annual filing made in accordance with paragraph (v) of the Reporting Conditions no more than 365 days prior to entering into such swap, such information has been amended as necessary to reflect any material changes thereto, such filing covers the particular swap being entered into at the time of the representation, and such information in such filing is true, accurate, and complete in all material respects.⁴
- Trade Filing. We hereby represent, which representations shall be deemed repeated each time we enter into a swap subject to a Clearing Requirement with you on an uncleared

³ *Id.* at 6-7.

⁴ *Id.* at 7-8.

basis in reliance on the Treasury Affiliate Letter that, unless we have notified you to the contrary in writing at a reasonable time prior to entering into such swap:

- we have not made an annual filing described in paragraph (v) of the Reporting Conditions; and
- we have provided to you all information required under the Reporting Conditions and such information is true, accurate, and complete in every material respect and covers the particular swap entered into in reliance on the Treasury Affiliate Letter.

IV. Reporting Data.

In connection with our election for “Trade Filing” in Section III, we hereby provide the following reporting data to you, which we represent to be accurate and complete. In the event of any material change to the data below, we further agree to notify you of such change prior to entering into additional swaps subject to a Clearing Requirement with you in reliance on the Treasury Affiliate Letter.

A. We generally meet our financial obligations associated with entering into uncleared swaps as follows: (*check all that apply*)

- (1) a written credit support agreement;
- (2) pledged or segregated assets (including posting or receiving margin pursuant to a credit support agreement or otherwise);
- (3) a written guarantee from another party;
- (4) our available financial resources; or
- (5) means other than those described in (1)-(4).

B. (*Check one box only*)

- We are an issuer of securities registered under Section 12 of, or are required to file reports under Section 15(d) of, the Securities Exchange Act of 1934.⁵ An appropriate committee of our board of directors (or

⁵ Consistent with prior Securities and Exchange Commission (“SEC”) interpretations, the CFTC has interpreted the meaning of this language to include persons who are “controlled” by persons that are issuers of securities registered under Section 12 of, or required to file reports pursuant to Section 15(d) of, the Securities Exchange Act of 1934. See 77 Fed. Reg. 42560, 42570 (July 19, 2012) (citing 75 Fed. Reg. 79992, 79996 & n. 34 (Dec. 21, 2010)) (“[A] counterparty invoking the end-user clearing exception is considered by the [SEC] to be an issuer of securities registered under Exchange Act Section 12 or required to file reports pursuant to Exchange Act Section 15(d) **if it is controlled by a person that is an issuer** of securities registered under Exchange Act Section 12 or required to file reports pursuant to Exchange Act Section 15(d).”) (emphasis added).

equivalent body) has reviewed and approved the decision to enter into swaps that are exempt from the requirements of Section 2(h)(1), and if applicable, Section 2(h)(8) of the CEA. The relevant SEC Central Index Key number for related SEC filings is as follows:

- We are not an issuer of securities registered under Section 12 the Securities Exchange Act of 1934 and are not required to file reports under Section 15(d) of such Act.

Executed and delivered with effect from the date first written above:

[Name of eligible treasury affiliate]

[LEI/CICI: _____]

By: _____

Name: _____

Title: _____