

ISDA[®]

International Swaps and Derivatives Association, Inc.

2010 SHORT FORM HIRE ACT PROTOCOL

published on November 30, 2010
by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. (**ISDA**) has published this 2010 Short Form HIRE Act Protocol (this **Protocol**) to enable parties to Covered Master Agreements to amend the terms of each such Covered Master Agreement primarily to reflect certain amendments to the U.S. tax law, enacted in the Hiring Incentives to Restore Employment Act (**HIRE Act**), affecting payments made in connection with Transactions.

Accordingly, a party that has entered into a Covered Master Agreement may adhere to this Protocol and be bound by its terms by completing and delivering a letter substantially in the form of Exhibit 1 to this Protocol (an **Adherence Letter**) to ISDA, as agent, as described below.

1. Amendments

- (a) By adhering to this Protocol in the manner set forth in paragraph 2 below, a party (an **Adhering Party**) that wishes to amend the terms of a Covered Master Agreement, in each case on the terms and subject to the conditions set forth in this Protocol and the relevant Adherence Letter, agrees that the terms of each Covered Master Agreement, if any, between it and each other Adhering Party will be amended with effect from the Implementation Date in accordance with the terms of the Attachment hereto. For the avoidance of doubt, where an Agent signs an Adherence Letter on behalf of one or more clients, references to the Adhering Party in that instance and for the purposes of this Protocol (including the Attachment) shall be to each such client.
- (b) By adhering to this Protocol in the manner set forth in paragraph 2 below, an Adhering Party that adhered to the 2010 HIRE Act Protocol published by ISDA on August 23, 2010 (the **August HIRE Act Protocol**), agrees that, with respect to any other Adhering Party that also adhered to the August HIRE Act Protocol, this Protocol shall supersede in all respects the August HIRE Act Protocol.

2. Adherence and Effectiveness

- (a) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with paragraph 4(f) below, to ISDA, as agent, of an Adherence Letter. ISDA shall have the right, in its sole and absolute discretion, upon thirty calendar days' notice on the "2010 HIRE Act Protocol" section of its website at www.isda.org (or by other suitable means) to designate a closing date of this Protocol (such closing date, the **Cut-off Date**). After the Cut-off Date, ISDA will not accept any further Adherence Letters to the Protocol.
 - (i) Each Adhering Party will deliver two copies of the Adherence Letter, one a manually signed original and the other a conformed copy containing, in place of each signature, the printed or typewritten name of each signatory.
 - (ii) Each Adhering Party 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.
- (b) The agreement to make the amendments contemplated by this Protocol, on the terms and subject to the conditions set forth in this Protocol, will, as between any two Adhering Parties, be effective on the date of receipt by ISDA, as agent, of an Adherence Letter from the later of the Adhering Parties to adhere. Any such amendments will apply to each Covered Master Agreement between the Adhering Parties and will be effective from the Implementation Date.
- (c) This Protocol is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Covered Master Agreement that the parties may otherwise effect in accordance with the terms of that Covered Master Agreement and:
 - (i) In adhering to this Protocol, an Adhering Party may not specify additional provisions, conditions or limitations in its Adherence Letter or otherwise.
 - (ii) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Protocol will be void and ISDA will inform the relevant party of such fact as soon as reasonably possible after making such determination.

3. Representations

Each Adhering Party represents to each other Adhering Party with which it has or may have entered into a Covered Master Agreement, on the Implementation Date that:

- (a) **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 the Covered Master Agreement, has such status;

- (b) **Powers.** It has the power to execute and deliver the Adherence Letter and to perform its obligations under the Adherence Letter, this Protocol and the Covered Master Agreement, in each case as amended by this Protocol (including the Attachment hereto), and has taken all necessary action to authorize such execution, delivery and performance;
- (c) **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;
- (d) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter and the Covered Master Agreement, in each case as amended by the this Protocol (including the Attachment hereto), have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
- (e) **Obligations Binding.** Its obligations under the Adherence Letter, this Protocol and the Covered Master Agreement, in each case as amended by this Protocol (including the Attachment hereto), constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, 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)); and
- (f) **Credit Support.** Its adherence to this Protocol and any amendment contemplated by this Protocol will not, in and of itself, adversely affect any obligations owed, whether by it or by any third party, under any Credit Support Document or Third Party Credit Support Document in respect of its obligations relating to the Covered Master Agreement.

Each Adhering Party agrees with each other Adhering Party with which it has or may have a Covered Master Agreement that each of the foregoing representations will be deemed to be a representation for purposes of Section 5(a)(iv) of each such Covered Master Agreement.

4. Miscellaneous

- (a) **Entire Agreement; Survival.**
 - (i) This Protocol constitutes the entire agreement and understanding of the Adhering Parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each Adhering Party acknowledges that in adhering

to this Protocol 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 or in the Attachment) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol will limit or exclude any liability of an Adhering Party for fraud.

- (ii) Except for any amendment deemed to be made pursuant to this Protocol in respect of any Covered Master Agreement, all terms and conditions of each Covered Master 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, nothing herein shall constitute a waiver or release of any rights of any Adhering Party under any Covered Master Agreement to which such Adhering Party is a party. This Protocol will, with respect to its subject matter, survive, and any amendments deemed to be made pursuant to it, will form a part of each Covered Master Agreement between the Adhering Parties notwithstanding Section 9(a) of the Covered Master Agreement.
- (b) **Limited Right to Revoke.** Adherence to this Protocol is irrevocable, except that on any Business Day during the Annual Revocation Period, an Adhering Party may deliver to ISDA, as agent, a notice substantially in the form of Exhibit 2 to this Protocol (a **Revocation Notice**) to designate the next Annual Revocation Date as the last date on which any counterparty may adhere to this Protocol in respect of any Covered Master Agreement then or in the future between the counterparty and such Adhering Party.
- (i) Upon the effective designation of the next Annual Revocation Date by an Adhering Party, this Protocol will not amend any Covered Master Agreement between that Adhering Party and a party which adheres to this Protocol after that Annual Revocation Date occurs. The foregoing is without prejudice to (A) any amendment to any Covered Master Agreement between two Adhering Parties effected pursuant to this Protocol on or before the day on which that Annual Revocation Date occurs or is deemed to occur and (B) any amendment effected pursuant to this Protocol to any Covered Master Agreement entered into after the day on which that Annual Revocation Date occurs between two Adhering Parties that each adhered to this Protocol on or before that day, which in each case will be (or continue to be) effective.
 - (ii) Each Revocation Notice must be delivered by the means specified in paragraph 4(f) of this Protocol below.
 - (iii) Each Adhering Party agrees that, for evidentiary purposes, a conformed copy of a Revocation Notice certified by the General Counsel or an appropriate officer of ISDA will be deemed to be an original.

- (iv) Any purported revocation that ISDA, as agent, determines in good faith is not in compliance with this paragraph 4(b) will be void.
- (c) **Amendments.** An amendment, modification or waiver in respect of the matters contemplated by this Protocol will only be effective in respect of a Covered Master Agreement if made in accordance with the terms of the Covered Master Agreement and then only with effect between the parties to that Covered Master Agreement (and will only be effective to amend or override the provisions contained in paragraph 1 of this Protocol and the Attachment to this Protocol if it expressly refers in writing to this paragraph 4(c) of this Protocol and would otherwise be effective in accordance with Section 9(b) of the Covered Master Agreement in effect between the parties).
- (d) **Headings.** The headings used in this Protocol and any Adherence Letter are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Protocol or any Adherence Letter.
- (e) **Governing Law.** This Protocol and each Adherence Letter will, as between two Adhering Parties and in respect of each Covered Master Agreement between them, be governed by and construed in accordance with New York law and the amendments to each Covered Master Agreement shall be governed by and construed in accordance with the law specified to govern that Covered Master Agreement and otherwise in accordance with applicable choice of law doctrine.
- (f) **Notices.** Any Adherence Letter must be in writing and delivered as a locked PDF (portable document format) attachment to an email to ISDA at short form hireactprotocol@isda.org and will be deemed effectively delivered on the date it is delivered unless on the date of that delivery ISDA's New York office is closed or that communication is delivered after 5:00 p.m., New York time, in which case that communication will be deemed effectively delivered on the next day ISDA's New York office is open. Each Adhering Party agrees that the determination of the date and time of delivery of any Adherence Letter shall be determined by ISDA in its absolute discretion.

5. Definitions

As used in this Protocol, **Credit Support Document** and **Transaction** each has the meaning given that term in the related Covered Master Agreement.

References in this Protocol and the Attachment to the following terms shall have the following meanings:

Agent means an entity that enters into a Covered Master Agreement and this Protocol on behalf of and as agent for one or more clients, and client means the client, investor, fund or other principal on whose behalf the Agent is acting.

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Agent Covered Master Agreement means any 1992 ISDA Master Agreement or 2002 ISDA Master Agreement signed as an umbrella agreement by an Agent and an Adhering Party prior to the date of receipt by ISDA of an Adherence Letter from the later of the Adhering Party or the Agent on behalf of its client (the other Adhering Party) even if such other Adhering Party is not added to the umbrella agreement until after adherence to this Protocol by the Agent on that client's behalf (provided that such addition does occur prior to the Cut-off Date (if any)).

Annual Revocation Date means, with respect to each calendar year, 31 December of such calendar year. If 31 December in any calendar year is not a day on which the ISDA's New York office is open, the Annual Revocation Date with respect to such calendar year will be deemed to occur on the next day that the ISDA's New York office is open.

Annual Revocation Period means the period between 1 October and 31 October of any calendar year.

Covered Master Agreement means:

- (i) any 2002 ISDA Master Agreement, as published by ISDA (a **2002 ISDA Master Agreement**), entered into by execution by Adhering Parties of a confirmation pursuant to which an Adhering Party is deemed to have entered into a 2002 ISDA Master Agreement with another Adhering Party until such time as a 2002 ISDA Master Agreement has been executed by such Adhering Parties and that is still outstanding as at the Implementation Date,
- (ii) any 2002 ISDA Master Agreement executed by two Adhering Parties,
- (iii) any 1992 ISDA Master Agreement (Multicurrency – Cross Border), as published by ISDA (a **1992 ISDA Master Agreement** and, together with a 2002 ISDA Master Agreement, **ISDA Master Agreements**), entered into by execution by Adhering Parties of a confirmation pursuant to which an Adhering Party is deemed to have entered into a 1992 ISDA Master Agreement with another Adhering Party until such time as a 1992 Master Agreement has been executed by such Adhering Parties and that is still outstanding as at the Implementation Date,
- (iv) any 1992 ISDA Master Agreement executed by two Adhering Parties, and
- (v) any Agent Covered Master Agreement,

in each case, entered into by the Adhering Parties prior to, on or after the Implementation Date or, in the case of an Agent Covered Master Agreement signed by the Agent and the counterparty prior to adherence by both the counterparty and the Agent, on behalf of the relevant client (and including all outstanding Transactions thereunder and outstanding

Credit Support Documents entered into by such Adhering Parties in connection therewith); provided that if

(1) any consent, approval, agreement, authorization or other action of any party to a Third Party Credit Support Document other than either of such Adhering Parties (a Third Party) is expressly required, under the terms of such Third Party Credit Support Document or such ISDA Master Agreement, to amend or otherwise modify such ISDA Master Agreement, or

(2) such Third Party Credit Support Document or such ISDA Master Agreement includes express terms to the effect that any amendment or modification of such ISDA Master Agreement without the consent, approval, agreement, authorization or other action of any such Third Party would void, impair or otherwise adversely affect existing or future obligations owed under such Third Party Credit Support Document, then such ISDA Master Agreement shall not be a Covered Master Agreement.

Implementation Date means with respect to any two Adhering Parties, the date on which adherence is effective as between them pursuant to paragraph 2(b) of this Protocol provided that in the case of an Agent Covered Master Agreement, if the Agent adds a client to the relevant umbrella agreement (the date of such addition, the **Agent Updated Client Date**) after the date on which the Agent's Adherence Letter on behalf of such client is received by ISDA but prior to the Cut-off Date (if any), the Implementation Date between the relevant client and the other Adhering Party shall be the later of the Agent Updated Client Date and the date on which adherence of the other Adhering Party is effective.

Third Party Credit Support Document means, with respect to an Adhering Party to an ISDA Master Agreement, any document in effect on the Implementation Date and executed by one or more Third Parties (whether or not an Adhering Party is a party thereto), which by its terms secures, guarantees or otherwise supports such Adhering Party's obligations under such ISDA Master Agreement from time to time, whether or not such document is specified as such, or as a Credit Support Document, therein or in the ISDA Master Agreement.

EXHIBIT 1
to 2010 Short Form HIRE Act Protocol

Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

Send to: shortformhireactprotocol@isda.org

Dear Sirs,

2010 Short Form HIRE Act Protocol - Adherence

The purpose of this letter is to confirm our adherence to the 2010 Short Form HIRE Act Protocol as published by the International Swaps and Derivatives Association, Inc. on November 30, 2010 (the **Protocol**). This letter constitutes an Adherence Letter as referred to in the Protocol. The definitions and provisions contained in the Protocol are incorporated into this Adherence Letter, which will supplement and form part of each Covered Master Agreement between us and each other Adhering Party.

1. Specified Terms

The amendments in the Attachment to the Protocol shall apply to each Covered Master Agreement to which we are a party in accordance with the terms of the Protocol and this Adherence Letter.

2. Appointment as Agent and Release

We hereby appoint ISDA as our agent for the limited purposes of the Protocol 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 or any actions contemplated as being required by ISDA.

3. Contact Details

Our contact details for purposes of this Adherence Letter are:

Name:

Address:

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Telephone:
Fax:
E-mail:

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,

[ADHERING PARTY]¹

By:

Name:

Title:

Signature:

¹ Specify legal name of Adhering Party. If you are an investment or asset manager and act on behalf of multiple funds, you must indicate in the signature block, "Investment/Asset Manager, acting on behalf of each of the funds and accounts [listed in the relevant Covered Master Agreement (or other agreement which deems a Covered Master Agreement to have been created) between it (as agent) and another Adhering Party as updated from time to time]/[identified in the attachment to this Adherence Letter] ". A separate Adherence Letter for each fund does *not* need to be submitted to ISDA. Further, no specific names of clients of the investment or asset manager will be publicly disclosed on the ISDA website in connection with the Protocol (unless such names are listed in the attachment to the Adherence Letter or any other attached appendix). Where an investment or asset manager wishes to adhere on behalf of certain funds or clients only but cannot or does not wish to name such funds or clients, then provided that it can identify such funds or clients by way of a specific identifier which will be known and recognized by all other Adhering Parties with which the relevant funds or clients have entered into Covered Master Agreements, the funds or clients can be listed by such identifier without including any names. In such case, the identifier(s) will be listed on the ISDA website with the Adherence Letter.

EXHIBIT 2
to 2010 Short Form HIRE Act Protocol

Form of Revocation Notice

[Letterhead of Adhering Party]

[Date]

Send to: shortformhireactprotocol@isda.org

Dear Sirs,

2010 Short Form HIRE Act Protocol – Designation of Annual Revocation Date

The purpose of this letter is to notify you that we wish to designate this year's Annual Revocation Date as the last date on which any counterparty may adhere to the 2010 Short Form HIRE Act Protocol as published by the International Swaps and Derivatives Association, Inc. on November 30, 2010 (the **Protocol**) in respect of any Covered Master Agreement (now or in the future) between us.

This letter constitutes a Revocation Notice as referred to in the Protocol.

We consent to the publication of the conformed copy of this notice by ISDA on and after the Annual Revocation Date and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]²

² Specify legal name of Adhering Party. If you are an investment or asset manager and act on behalf of multiple funds, you must indicate in the signature block, "Investment/Asset Manager, acting on behalf of each of the funds and accounts [listed in the relevant Covered Master Agreement (or other agreement which deems a Covered Master Agreement to have been created) between it (as agent) and another Adhering Party as updated from time to time] / [identified in the attachment to this Adherence Letter] ". A separate Adherence Letter for each fund does *not* need to be submitted to ISDA. Further, no specific names of clients of the investment or asset manager will be publicly disclosed on the ISDA website in connection with the Protocol (unless such names are listed in the attachment to the Adherence Letter or any other attached appendix). Where an investment or asset manager wishes to adhere on behalf of certain funds or clients only but cannot or does not wish to name such funds or clients, then provided that it can identify such funds or clients by way of a specific identifier which will be known and recognized by all other Adhering Parties with which the relevant funds or clients have entered into Covered Master Agreements, the funds or clients can be listed by such identifier without including any names. In such case, the identifier(s) will be listed on the ISDA website with the Adherence Letter.

By:

Name:

Title:

Signature:

ATTACHMENT

With effect from the Implementation Date, each Covered Master Agreement shall be modified as follows.

1. The flush language at the end of Section 2(d)(ii) (Obligations - Deduction or Withholding for Tax – Liability) of each Covered Master Agreement is replaced in its entirety with the following:

"then, except to the extent Y has satisfied (including by making a payment to X pursuant to Section 2(d)(iii)) or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d))."

2. The following is added at the end of Section 2(d) as new section 2(d)(iii):

“(iii) *Amounts for Dividend Equivalent Taxes.*

For all purposes of this Section 2(d), the requirement that X remit any amount of Dividend Equivalent Tax (without regard to whether there is a payment under the Transaction from which to withhold or deduct such Tax) shall be treated as a requirement to withhold or deduct Tax with respect to a payment under the Transaction. If at any time, X is required to remit an amount of Dividend Equivalent Tax with respect to a payment under the Transaction, then without duplication for any amount that X has deducted on account of such Tax from such payment or from any amount previously paid to Y pursuant to the Transaction, with respect to payments made on or after the Implementation Date, the amount so required to be remitted shall be payable by Y to X on the payment date on which a payment giving rise to a remittance required under Section 871(m) occurs. Upon the reasonable request of Y with respect to any payment date, X will supply to Y computations setting forth in reasonable detail computation of the amount of Dividend Equivalent Tax payable by Y to X on such payment date pursuant to the preceding sentence. *Provided however*, that no payment of a Dividend Equivalent Tax, interest or penalties otherwise payable under this Section 2(d) will be owed by Y to X if such tax, interest, and penalties would not have been assessed but for the failure of a representation made by X under the Payer Representation of each Covered Master Agreement to be accurate and true. In such instance, if a Dividend Equivalent Tax is assessed against Y, X shall indemnify Y for such tax, interest, and penalties, if any.”

For purposes of this amendment of Section 2(d) of each Covered Master Agreement, the terms X and Y have the same meaning as used in Section 2(d)(i) of the relevant Covered Master Agreement.

3. The following terms are added to Section 14 (Definitions) of each Covered Master Agreement:

"**Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Dealer**" means a broker-dealer, bank, or other similar financial institution engaged in the business of maintaining a two-way market in swaps and other derivative instruments.

"**Dividend Equivalent Tax**" means any tax imposed on payments treated as dividends from sources within the United States under Section 871(m).

"**Long Party**" means, for any Transaction, the party that is treated as a "long party" within the meaning of Section 871(m) with respect to that Transaction.

"**Section 871(m)**" means (i) Section 871(l) of the Code (as added by United States P.L. 111-147) before it is re-designated as Section 871(m) of the Code by United States P.L. 111-226, (ii) Section 871(m) of the Code after Section 871(l) of the Code (as added by United States P.L. 111-147) is re-designated as Section 871(m) of the Code by United States P.L. 111-226 and (iii) any successor Code provision.

"**Short Party**" means, for any Transaction, the party that is treated as a "short party" within the meaning of Section 871(m) with respect to that Transaction.

4. The following is added to the end of the definition of "Indemnifiable Tax" in Section 14 (Definitions) of each Covered Master Agreement:

"Indemnifiable Tax" shall not include any Dividend Equivalent Tax, other than any Dividend Equivalent Tax that would not have had to be withheld, deducted, remitted or assessed if all of the representations by X under the Payer Representation of each Covered Master Agreement had been accurate and true."

5. The terms of the Payer Representations in each Covered Master Agreement are amended by adding the following at the end of Part 2(a)(i) of the Schedule to each 2002 ISDA Master Agreement and Part 2(a) of the Schedule to each 1992 ISDA Master Agreement:

"For purposes of this representation, "any Tax from any payment" shall not include any Dividend Equivalent Tax."

6. The terms of the Payer Representations in each Covered Master Agreement are further amended by the addition of the following paragraph to Part 2(a) of the Schedule to each Covered Master Agreement:

"With respect to any Transaction entered into on or after September 14, 2010, or the termination occurring on or after September 14, 2010 of any Transaction entered into before September 14, 2010, where (a) it is the Short Party, (b) it is not a Dealer, (c) Long Party has not represented that for United States federal income tax purposes

either (1) it is a “U.S. Person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes or (2) is not a “U.S. Person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) and its income with respect to the Transaction is effectively connected with a trade or business in the United States, and (d) the Transaction provides for one or more amounts that may (directly or indirectly) be contingent upon or be determined by reference to a dividend from sources within the United States, then in each case within the meaning of Section 871(m), Short Party represents that (x) in the event the opening price on such Transaction is determined by reference to “market on close” (“MOC”) or “market on open” (“MOO”) on a given day or days, it has not in connection with entering into the Transaction put in a buy order for the underlying security at MOC or MOO, respectively, on such given day or days and (y) in the event that the closing price on such Transaction is or will be determined by reference to MOC or MOO on a given day or days, it will not in connection with the termination of the Transaction put in a sell order for the underlying security at MOC or MOO, respectively, on such given day or days. A breach of the foregoing representation shall not constitute an event of default, termination event, additional termination event, or other similar event under this Agreement or any other agreement between the parties”.

7. If a party has made a payee representation that is substantially equivalent to the representation in Part 2(b)(i) of the Schedule to an ISDA Master Agreement, then such representation shall also apply to any "Dividends" provision of the Specified Treaty.

8. The following is added to the Payee Representations in the Schedule to each Covered Master Agreement:

“With respect to any Transaction entered into on or after September 14, 2010, or the termination occurring on or after September 14, 2010 of any Transaction entered into before September 14, 2010, where (a) Long Party has not represented that for United States federal income tax purposes either (1) it is a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes or (2) is not a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) and its income with respect to the Transaction is effectively connected with a trade or business in the United States, and (b) the Transaction provides for one or more amounts that may (directly or indirectly) be contingent upon or be determined by reference to a dividend from sources within the United States, then in each case within the meaning of Section 871(m), Long Party represents that (A) it has not transferred and will not transfer the underlying security to Short Party in connection with its entering into such Transaction, and (B) it will not acquire the underlying security from Short Party in connection with the termination of such Transaction. Without limiting the foregoing, if Long Party is not a Dealer, it further represents that (x) in the event that the opening price on such Transaction is determined by reference to “market on close” (“MOC”) or “market on open” (“MOO”) on a given day or days, it has not in

connection with entering into the Transaction put in a sell order for the underlying security at MOC or MOO, respectively, on such given day or days and (y) in the event that the closing price on such Transaction is or will be determined by reference to MOC or MOO on a given day or days, it will not in connection with the termination of the Transaction put in a buy order for the underlying security at MOC or MOO, respectively, on such given day or days. A breach of the foregoing representation shall not constitute an event of default, termination event, additional termination event, or other similar event under this Agreement or any other agreement between the parties”.