To address the effects of the Foreign Account Tax Compliance provisions of the Hiring Incentives to Restore Employment Act ("FATCA")[1] on derivatives transactions, market participants may wish to consider incorporating the below ISDA FATCA Provision, developed by the ISDA North American Tax Committee, into their existing or future ISDA Master Agreements. The impact of the proposed language is to place the FATCA withholding tax burden on the recipient of the payment by eliminating this tax from the definition of "Indemnifiable Tax" in the ISDA Master Agreement. The rationale is that the recipient is the sole party that has the ability to avoid the withholding tax by complying with the FATCA rules; therefore, the recipient should be the party burdened with the FATCA withholding tax if it chooses to not comply.

ISDA FATCA Provision:

"Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this Agreement."

[1] For more information on FATCA, please visit www.isda.org.

IRS Circular 230 Disclosure: ISDA does not provide tax advice. Any discussion of US tax matters in this attachment cannot be used for the purpose of avoiding tax penalties.