

To:	Adherents to the ISDA Derivatives/FX PB Business Conduct Allocation Protocol
From:	Foreign Exchange Committee and Financial Markets Lawyers Group
Date:	July 29, 2014
Re:	Intermediated FX Prime Brokerage Arrangements

In the interest of facilitating potential intermediated FX prime brokerage arrangements, as described in the attached Illustrative Implementation Steps and Best Practices (“IISBP”), the Foreign Exchange Committee (the “FXC”) and the Financial Markets Lawyers Group (the “FMLG”)¹ are making the IISBP available to market participants. Participation in such arrangements is entirely voluntary and at the discretion of market participants.

The IISBP contain sample forms of certifications from FX intermediaries and prime brokerage counterparties to prime brokers, certifications from FX intermediaries to executing dealers, and notices between participating swap dealers for use in designating prime brokerage counterparties that may transact pursuant to Covered PB Arrangements (as defined in the IISBP) as “Covered PB counterparties” (as defined in the Annex to the ISDA Derivatives/FX Prime Brokerage Business Conduct Allocation Protocol (the “PB Protocol”)). The IISBP are not intended to preclude further negotiation of these sample forms or the use of alternative structures for intermediated FX prime brokerage arrangements.

The IISBP also contain best practice recommendations of the FXC and FMLG for swap dealers that participate in Covered PB Arrangements. The best practice recommendations relate to designating Covered PB counterparties, adding new prime brokerage accounts and related matters in connection with Covered PB Arrangements, and are being issued to facilitate performance of swap dealers’ respective obligations under the PB Protocol. The FXC and FMLG recommend that swap dealers that participate in Covered PB Arrangements take these best practices into consideration as a market practice.

¹ Although the FXC and the FMLG are sponsored by the Federal Reserve Bank of New York, the IISBP are not endorsed by and do not necessarily reflect the views of the Federal Reserve Bank of New York or the Federal Reserve System. The IISBP do not purport to be comprehensive of all matters that market participants should consider in deciding whether to participate in a Covered PB Arrangement or in implementing such an arrangement, nor are they intended as legal advice. If legal advice or other expert assistance is required, the services of a qualified professional should be obtained.

Illustrative Implementation Steps and Best Practices for Covered PB Arrangements¹

The description below is provided to illustrate the procedural steps that an FX Intermediary and the swap dealers who wish to participate in a Covered PB Arrangement may take to implement such arrangement. The illustrative steps assume that all swap dealers participating in the arrangement are registered with the CFTC and have adhered to the ISDA Derivatives/FX Prime Brokerage Business Conduct Allocation Protocol (“ISDA Protocol”). Capitalized terms used but not defined in this description have the meanings assigned to them in Appendix I. The illustrative steps will generally need to be tailored to the documentation and other characteristics of a particular Covered PB Arrangement.

1. The FX Intermediary consults with its sales contacts at the relevant swap dealers (both executing dealers and prime brokers) with whom it plans to deal to determine if they might be willing to participate in a Covered PB Arrangement in either capacity.
2. The FX Intermediary, after entering into an Agency Agreement containing the Core Provisions with a Counterparty, prepares Certifications addressed to each prime broker (“PB”) and executing dealer (“ED”) in the form attached as Appendix I hereto. (Note that the form requires references to the relevant give-up or other agreements to be filled in, certain terms to be defined, and bracketed provisions for investment managers to be employed or removed, as appropriate. It is appropriate for the FX Intermediary to consult its PB to make sure that the references to the give-up or other agreement are accurate.) The FX Intermediary signs the Certifications, obtains the Counterparty’s (or, in some cases, investment manager’s) signature on those Certifications that require it, and then delivers the executed Certifications to each PB and ED. Receipt of a Certification does not create any obligation for an ED to engage in Covered Transactions with an FX Intermediary, for a PB to accept Covered Transactions initiated by an FX Intermediary and submitted for give-up to the PB, or for any ED or PB to engage in any preparatory steps for such activities, such as reviewing or preparing any documentation.
3. The PB or ED reviews the Certifications delivered to it. Among other matters, it may wish to consider any factors bearing on its ability to reasonably rely on the representations in the Certifications and what degree of additional due diligence, if any, to perform. For example, EDs may wish to consult (a) their own prime brokerage areas to determine if their institution is comfortable with these arrangements and (b) the PBs in the arrangement to determine if the PBs have received their Certifications and/or that the PBs have direct relationships with the Counterparties. Further, the PB or ED will need to consider if they require additional changes to underlying documentation. These implementation steps and best practices do not impose any obligations on PBs to furnish copies of Certifications received to EDs or other PBs.

¹ These implementation steps and best practices were developed by the Financial Markets Lawyers Group (FMLG). While the FMLG is sponsored by the Federal Reserve Bank of New York, this note is not endorsed by and does not necessarily reflect the views of the Federal Reserve Bank of New York or the Federal Reserve System. Furthermore, this note does not purport to be comprehensive of all matters that market participants should consider in deciding whether to participate in a Covered PB Arrangement or in implementing the arrangement, nor is it intended as legal advice. This note does not preclude the adoption of other practices by the parties involved in Covered PB Arrangements. If legal advice or other expert assistance is required, the services of a qualified professional should be obtained.

4. After reviewing the Certification(s) for a Counterparty or relevant class of Counterparties, and consulting with the FX Intermediary's PB to determine if the FX Intermediary's PB is participating in the Covered PB Arrangement, if the Destination PB, in its sole discretion, decides to participate in the Covered PB Arrangement, the Destination PB sends:

A. a Notification to PB Counterparties (in the form attached to the Annex to the ISDA Protocol) to each Counterparty (to the extent it has not already done so);²

B. (unless the Destination PB and FX Intermediary's PB are the same) a Notice to FXI's PB (FX Intermediary Arrangements)³ to the FX Intermediary's PB designating as Covered PB counterparties (as defined in the ISDA Protocol) those PB counterparties (as defined in the ISDA Protocol) for which it has received a Certification and that the Destination PB has determined⁴ should be classified as Covered PB counterparties in accordance with paragraph (b)(3) of the ISDA Protocol Annex. If the Destination PB chooses to designate a class of PB counterparties as Covered PB counterparties, then before sending the notice it should verify that it has received Certifications for all those PB counterparties within the class to whom the Destination PB has determined that it owes obligations under Subpart H of the CFTC Regulations Part 23. The notice should state that the FX Intermediary is "acting as intermediary and agent for receipt of Rule 23.431 Disclosure on behalf of" the relevant PB counterparties or class thereof. See Appendix II for an example of such designation. The actual designation should be tailored to the documentation that exists between the two PBs, taking into account the information known to the recipient PB regarding the underlying accounts; and

C. if relevant and appropriate, any other notices, foreign exchange prime brokerage agreements, reverse give-up agreements or amendments thereto or other documentation required under existing agreements between the PBs or required to be entered into by the Destination PB or the FX Intermediary's PB with each other, the FX Intermediary or any Counterparty in order to participate in a Covered PB Arrangement or to add Counterparties to or expand the product scope of the arrangement.

These illustrative steps and best practices do not impose any particular timeframe for the Destination PB to decide whether to participate in a Covered PB Arrangement or to prepare and send the documentation described in subparagraphs A, B and C above.

² In addition, a Destination PB may choose to send this notification to the FX Intermediary. Prime brokers that utilize reverse or multi-party give-ups in connection with Covered PB Arrangements may choose to supplement the form of this notification set out in the Annex to the ISDA Protocol to indicate that the agreement of the executing dealer may be obtained through another, intermediating prime broker. For example, language such as the following could be used: "With respect to reverse give-up or other arrangements, in which transaction details are given up to us by an intermediating prime broker, the intermediating prime broker will have entered into such allocation agreements with executing dealers that have adhered to the ISDA PB Protocol. We will fulfill the role of the derivatives prime broker accordingly." In many such instances, however, the PB counterparties or their investment manager will already be aware of the nature of the arrangement (e.g., because they have executed a multi-party give-up agreement).

³ A form that may be helpful in preparing this notice is contained in Appendix II.

⁴ As provided in the CFTC external business conduct rules and other guidance, the Destination PB and the FX Intermediary's PB may rely on representations and information received from or on behalf of PB counterparties in making the determinations as to counterparty status described in this note.

5. After reviewing the Certification(s) for a Counterparty or relevant class of Counterparties and, if applicable, the notice from the Destination PB(s) referred to in paragraph 4.B above, if the FX Intermediary's PB decides, in its sole discretion, to participate in the Covered PB Arrangement, the FX Intermediary's PB sends:

A.a Supplemental Notice from PB to ED (FX Intermediary Arrangements)⁵ to each relevant ED designating as a class of Covered PB counterparties the name of the FX Intermediary "acting as intermediary and agent for receipt of Rule 23.431 Disclosure on behalf of" the relevant PB counterparties or classes thereof. See Appendix II for an example of such designation. The actual designation should be tailored to the give-up agreement between the FX Intermediary's PB and the ED and the associated designation notice(s), taking into account the information known to the ED regarding the ultimate PB counterparties. The form of Supplemental Notice from PB to ED (FX Intermediary Arrangements) in Appendix II has been prepared on the assumption that a single set of limits and a single designation notice govern an ED's transactions with a given FX Intermediary, irrespective of whether the FX Intermediary is acting for more than one PB counterparty or for PB counterparties of more than one Destination PB. An ED receiving a form of supplemental notice pursuant to these implementation steps generally will expect this to be the case, unless differing arrangements are specifically drawn to the ED's attention. See footnote 8 to the form of Supplemental Notice from PB to ED (FX Intermediary Arrangements) in Appendix II. If the FX Intermediary's PB is itself the prime broker to any persons within the class of Covered PB counterparties specified in the notice, then before sending the notice it should verify that it has received Certifications from all such persons to whom it has determined that it owes obligations under Subpart H of CFTC Regulations Part 23; and

B. if relevant and appropriate, any of the documentation described in subparagraph 4.C above and any other notices or documentation required under the give-up agreement between the FX Intermediary's PB and the ED in order to add PB counterparties to or expand the product scope of the give-up arrangement.

These illustrative steps and best practices do not impose any particular timeframe for the FX Intermediary's PB to decide whether to participate in a Covered PB Arrangement or to prepare and send the documentation described in subparagraphs A and B above.

6. The effectiveness of this notice to the ED is governed by the terms agreed to between the FX Intermediary's PB and the ED, as contemplated by paragraph (b)(3) of the ISDA Protocol Annex.⁶ If the ED has not completed its review of the Certifications or any additional prerequisites to its decision to participate in the Covered PB Arrangement, or has determined that

⁵ A form that may be helpful in preparing this notice is contained in Appendix II.

⁶ For example, the FX Intermediary's PB and the ED may choose to agree that the terms set out in Annex B of the Best Practices for Designation of Covered PB Counterparty (available at http://www.newyorkfed.org/FXC/2013/Best_Practices_for_Designation_of_Covered_PB_Counterparties_09_30_13.pdf) shall govern the effectiveness of this notice. Those terms provide for notices pursuant to paragraph (b)(3) of the ISDA Protocol Annex to take effect 48 Weekday Hours (as defined in such Annex B) after receipt by the ED, unless the ED notifies the PB within that time period of the ED's good faith belief that information in a notice is erroneous, in accordance with the terms of such Annex B.

it does not wish to participate, by the time this notice becomes effective, it should refrain from trading in non-spot foreign exchange transactions with the FX Intermediary or take other appropriate steps. These illustrative steps and best practices are not intended to affect existing practices for the issuance or amendment of designation notices pursuant to any master give-up agreement between an ED and a PB. Accordingly, receipt of a designation notice with respect to the FX Intermediary from the FX Intermediary's PB remains a pre-requisite for an ED's participation in a Covered PB Arrangement.

7. As a best practice, a Destination PB should manage its onboarding of new PB counterparty accounts so as to ensure that (a) it has received the relevant Certifications prior to enabling trading and/or the receipt of allocations for any PB counterparty that will be represented by an FX Intermediary and to which the Destination PB has determined that it will owe duties under Subpart H of CFTC Regulations Part 23 and (b) its arrangements with the new PB counterparties to be onboarded to a Covered PB Arrangement are consistent with notices previously delivered to the FX Intermediary's PB or such notices are amended in a timely manner. Corresponding considerations apply to an FX Intermediary's PB when it enters into a Covered PB Arrangement with a new Destination PB. A Destination PB should be aware that, in order to maintain the accuracy of previously delivered notices, changes in arrangements with or circumstances of a PB counterparty (e.g., termination of an Agency Agreement) may require or make it appropriate for a Destination PB to suspend or revoke the ability of an Investment Manager to make allocations of Covered Transactions to that PB counterparty or the authority of an FX Intermediary to engage in Covered Transactions for give-up to the Destination PB for the account of that PB counterparty. These implementation steps and best practices do not impose diligence obligations on the Destination PB with respect to the arrangements or circumstances of PB counterparties or other participants in a Covered PB Arrangement.

Appendix I

Form of Certification to Prime Brokers

Form of Certification to Executing Dealers

Certification to Prime Brokers

We refer to that certain [*insert reference to the relevant 3- or 4-party give-up agreement*] among [*insert definitions, after the relevant party's name, of "Swap Dealer", "FX Intermediary", "Investment Manager"/ "Counterparty", as appropriate*].⁷

Each of the undersigned hereby represents and agrees for the benefit of Swap Dealer [which representation and agreement, in the case of Investment Manager, is given and made (i) on behalf of each Relevant Counterparty (as defined below) in the case of paragraphs A, B, C, D, H, I, K and L below and (ii) by Investment Manager in its personal capacity in the case of paragraphs C, I, J, K and L below]⁸ as follows:

- A. FX Intermediary and Counterparty have entered into an agreement whereby Counterparty has appointed FX Intermediary as Counterparty's agent for the receipt of certain disclosure pursuant to CFTC Regulation § 23.431 ("Agency Agreement"), which Agency Agreement:
- contains verbatim the provisions set out in the Annex hereto (the "Core Provisions") and contains no provisions that alter the Core Provisions; and
 - contains the entire agreement between Counterparty and FX Intermediary regarding the timing and manner of transmittal of Rule 23.431 Disclosure (as defined in the Core Provisions) by FX Intermediary to Counterparty;
- B. The Core Provisions constitute its legal, valid and binding obligations, enforceable against it in accordance with their terms (subject to applicable bankruptcy, reorganization, 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));
- C. Upon request from Swap Dealer, it shall promptly furnish a copy of the Agency Agreement [from which the names and other identifying information of Counterparties have been redacted]⁹;
- D. FX Intermediary and Counterparty agree, with respect to any transactions executed or committed to by FX Intermediary for give up to Swap Dealer pursuant to the aforementioned agreement(s), that an Executing Dealer (as defined in the Core Provisions) may provide oral

⁷ The term "Swap Dealer" refers to the swap dealer that will be the recipient of the Certification. The term "Counterparty" refers to the PB counterparty (as defined in the ISDA Protocol) of the Destination PB to which the give-up agreement relates. If the give-up agreement does not relate to a specified PB counterparty (e.g., only an Investment Manager is named), then the term "Counterparty" should be separately defined to mean each PB counterparty of the Destination PB to which the give-up agreement relates.

⁸ Include bracketed text if the certification is given to a prime broker, where a 3-way or 4-way give-up agreement is executed by an Investment Manager. In the case of a 4-way give-up agreement executed by an Investment Manager, a prime broker that is not the Destination Prime Broker may know only the identity of the Investment Manager.

⁹ Include bracketed text if the certification is given to a prime broker that knows only the identity of the Investment Manager.

disclosures of any (A) pre-trade mid-market marks and price required pursuant to CFTC Regulation § 23.431(a)(3)(i) and (B) material economic terms, including without limitation notional amount and termination date, pursuant to CFTC Regulation § 23.431(a)(2), provided such disclosures are confirmed by written notice (which may be post-trade, and which may be by posting on a web page at, or accessible through, a URL or other means utilized by the Executing Dealer) to the FX Intermediary;

- E. FX Intermediary agrees that, if it has actual knowledge that its conduct in connection with or its participation in the execution of a Covered Transaction pursuant to the prime brokerage arrangement described above may have the effect of undermining or impairing Swap Dealer's ability to discharge its responsibilities pursuant to Subpart H of CFTC Regulations Part 23, then FX Intermediary shall cease and desist from, or remedy, such conduct or participation and shall not submit any committed terms (or "original swap") resulting from or related to such conduct or participation for acceptance to Swap Dealer;
- F. FX Intermediary represents that:
 - 1. FX Intermediary does not constitute, maintain or provide a system, facility or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, including any "trading facility" as defined in section 1a(51) of the Commodity Exchange Act, unless such system, facility or platform is organized as a separate entity and registered with the CFTC as a swap execution facility or a designated contract market;
 - 2. Each trade submitted by FX Intermediary pursuant to a Covered PB Arrangement results from a commitment to terms reached between it on behalf of a single Client of FX Intermediary and the ED on a bilateral basis. In the course of negotiating any such commitment to terms, FX Intermediary has not provided to the Executing Dealer any information regarding bids or offers made by any other Executing Dealer with respect to such trade. In connection with reaching such commitment to terms on behalf of such single Client, FX Intermediary has not used information gained in any contemporaneously pending solicitation or negotiation on behalf of any person other than such Client to reach a commitment to terms with an Executing Dealer, nor has FX Intermediary used information gained in the course of reaching such commitment to terms on behalf of such Client for the purpose of any contemporaneously pending solicitation or negotiation to reach a commitment to terms on behalf of any person other than such Client. This representation does not restrict an FX Intermediary's communication of general, publicly available market information to a Client. "Client" means (i) a Counterparty or (ii) a group of Counterparties if a single investment manager has discretionary authority on behalf of each Counterparty comprised in such group to allocate among such Counterparties the Covered Transaction resulting from a commitment to terms reached between FX Intermediary and an Executing Dealer;
 - 3. FX Intermediary has not entered into any agreement or arrangement with any Executing Dealer that allows FX Intermediary to set the terms on which the Executing Dealer will submit a trade notification to a PB;

4. FX Intermediary never acts as principal to a Covered Transaction and has no proprietary trading book; and
 5. FX Intermediary is either an “introducing broker” as defined in CEA section 1a(31) or a “futures commission merchant” as defined in CEA section 1a(28) and, in either case, is duly registered as such with the Commodity Futures Trading Commission;
- G. FX Intermediary agrees to indemnify and hold harmless Swap Dealer and its affiliates, and their respective directors, officers, employees, agents and permitted successors and assigns from and against any and all liabilities, losses, settlement payments, damages, costs, and expenses whatsoever (including without limitation reasonable attorneys’ fees) (collectively, “Damages”) arising out of any actions, demands, claims, proceedings, or lawsuits relating to (i) any disagreement or dispute between FX Intermediary and Counterparty regarding any terms relating to compensation of the FX Intermediary (including, without limitation, all details relating to the charging and collection of FX Intermediary fees by any swap dealer on behalf of the FX Intermediary, whether by way of the incorporation of such fees into the terms of a Covered Transaction with Counterparty or otherwise) or with respect to conflicts of interest or incentives of the FX Intermediary; (ii) any failure by the FX Intermediary to perform its agency duties to the Counterparty under the Agency Agreement, including without limitation with respect to the delivery to Counterparty of Rule 23.431 Disclosure which FX Intermediary has received from the executing dealer pursuant to a Covered PB Arrangement; or (iii) any inaccuracy of a representation or acknowledgment given by FX Intermediary pursuant to this Certification or any breach by it or failure caused by it of the terms of this Certification, including without limitation any breach by it of the Agency Agreement, inaccuracy of any representation or acknowledgment made by it contained in the Agency Agreement or any failure of the Agency Agreement to be in full force and effect (including, without limitation and to the fullest extent permitted by applicable law, any actions, demands, claims, proceedings, or lawsuits brought or asserted by it (or anyone on its behalf) against Swap Dealer contrary to the provisions of this Certification or the Agency Agreement);
- H. Counterparty agrees to indemnify and hold harmless Swap Dealer and its affiliates, and their respective directors, officers, employees, agents and permitted successors and assigns from and against any and all liabilities, losses, settlement payments, damages, costs, and expenses whatsoever (including without limitation reasonable attorneys’ fees) (collectively, “Damages”) arising out of any actions, demands, claims, proceedings, or lawsuits relating to (i) any inaccuracy of a representation or acknowledgment given by Counterparty pursuant to this Certification or any breach by it or failure caused by it of the terms of this Certification, including without limitation any breach by it of the Agency Agreement, inaccuracy of any representation or acknowledgment made by it contained in the Agency Agreement or any failure of the Agency Agreement to be in full force and effect (including, without limitation and to the fullest extent permitted by applicable law, any actions, demands, claims, proceedings, or lawsuits brought or asserted by it (or anyone on its behalf) against Swap Dealer contrary to the provisions of this Certification or the Agency Agreement); or (ii) any disagreement or dispute between FX Intermediary and Counterparty regarding any terms relating to compensation of the FX Intermediary (including, without limitation, all details relating to the charging and collection of FX Intermediary fees by any swap dealer on behalf

of the FX Intermediary, whether by way of the incorporation of such fees into the terms of a Covered Transaction with Counterparty or otherwise) or with respect to conflicts of interest or incentives of the FX Intermediary;

- I. Promptly upon becoming aware that an Agency Agreement entered into with any Counterparty has ceased to be in full force and effect, that any of the Core Provisions contained therein has been amended, that the Counterparty (or any person appointed to act on its behalf) has disaffirmed, disclaimed, repudiated, or rejected, or challenged the validity of, in whole or in part, an Agency Agreement, or that any circumstance has occurred that makes or will make the representations in paragraphs A or B inaccurate in any respect, each of the undersigned shall notify Swap Dealer of such circumstance and, in the case of notice given by FX Intermediary, of the identity of the [Counterparty][Investment Manager] that is party to such Agency Agreement. Promptly upon becoming aware of any regulatory inquiry that relates to the subject matter of this Certification, each of the undersigned shall notify Swap Dealer in writing of the existence and nature of such inquiry and shall provide such further details regarding such inquiry as FX Intermediary is permitted by applicable laws and regulations to disclose;
- J. [Investment Manager hereby represents that (1) it is duly authorized to execute and deliver this Certification, and enter into each Agency Agreement, on behalf of each Relevant Counterparty, and (2) each Counterparty to which Investment Manager may make an allocation of all or any portion of a transaction executed or committed to by FX Intermediary for give up to Swap Dealer pursuant to the agreement(s) referred to in the first paragraph of this Certification either (a) has entered into an Agency Agreement with FX Intermediary or (b) is not a Relevant Counterparty.]¹⁰
- K. The foregoing representations and agreements shall be deemed repeated to Swap Dealer with respect to each transaction executed or committed to by FX Intermediary for give up to Swap Dealer pursuant to the aforementioned agreement(s); and
- L. Without limitation of the provisions of any agreement or applicable law that permit or authorize disclosure of this Certification, Swap Dealer may furnish to any swap dealer that has adhered to the ISDA Derivatives/FX Prime Brokerage Business Conduct Allocation Protocol a copy of this Certification from which the name and other identifying information of [Counterparty][Investment Manager] have been redacted.

[“Counterparty” means each PB counterparty (as defined in the ISDA Protocol) of the swap dealer that is acting as the Destination PB (as defined in the Core Provisions) with respect to the agreement(s) referred to in the first paragraph of this Certification.

“Relevant Counterparty” means each Counterparty to which Investment Manager may make an allocation of all or any portion of a transaction executed or committed to by FX Intermediary for give up to Swap Dealer pursuant to the aforementioned agreement(s), other than any

¹⁰ Include bracketed text if the certification is given to a prime broker by an Investment Manager.

Counterparty that is not a person to whom any relevant Destination Prime Broker (as defined in the Core Provisions) owes any obligations under Subpart H of CFTC Regulations Part 23.]¹¹

IN WITNESS WHEREOF, [Counterparty][Investment Manager, on behalf of each Counterparty,] and FX Intermediary have executed this Certification as of the date first written above.

[Signature Blocks]

¹¹ Include bracketed text if the certification is given to a prime broker by an Investment Manager. ***Investment Managers should be aware that this definition and the structure of the representations above may require them to enter into additional Agency Agreements as new counterparties are added to a Covered PB Arrangement.***

Certification to Executing Dealers

[FX Intermediary] (“FX Intermediary”) hereby represents and agrees for the benefit of [Executing Dealer] (“Executing Dealer”) that:

- A. FX Intermediary and each Relevant Counterparty have entered into an agreement whereby such Relevant Counterparty has appointed FX Intermediary as such Relevant Counterparty’s agent for the receipt of certain disclosure pursuant to CFTC Regulation § 23.431 (“Agency Agreement”), which Agency Agreement:
- contains verbatim the provisions set out in the Annex hereto (the “Core Provisions”) and contains no provisions that alter the Core Provisions; and
 - contains the entire agreement between such Relevant Counterparty and FX Intermediary regarding the timing and manner of transmittal of Rule 23.431 Disclosure (as defined in the Core Provisions) by FX Intermediary to such Relevant Counterparty;
- B. The Core Provisions constitute legal, valid and binding obligations, enforceable against each party to each Agency Agreement in accordance with their terms (subject to applicable bankruptcy, reorganization, 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));
- C. FX Intermediary represents that:
1. FX Intermediary does not constitute, maintain or provide a system, facility or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, including any “trading facility” as defined in section 1a(51) of the Commodity Exchange Act, unless such system, facility or platform is organized as a separate entity and registered with the CFTC as a swap execution facility or a designated contract market;
 2. Each trade submitted by FX Intermediary pursuant to a Covered PB Arrangement results from a commitment to terms reached between it on behalf of a single Client of FX Intermediary and the Executing Dealer on a bilateral basis. In the course of negotiating any such commitment to terms, FX Intermediary has not provided to the Executing Dealer any information regarding bids or offers made by any other Executing Dealer with respect to such trade. In connection with reaching such commitment to terms on behalf of such single Client, FX Intermediary has not used information gained in any contemporaneously pending solicitation or negotiation on behalf of any person other than such Client to reach a commitment to terms with an Executing Dealer, nor has FX Intermediary used information gained in the course of reaching such commitment to terms on behalf of such Client for the purpose of any contemporaneously pending solicitation or negotiation to reach a commitment to terms on behalf of any person other than such Client. This representation does not restrict an FX Intermediary’s communication of general, publicly available market information to a Client. “Client”

means (i) a Counterparty or (ii) a group of Counterparties if a single investment manager has discretionary authority on behalf of each Counterparty comprised in such group to allocate among such Counterparties the Covered Transaction resulting from a commitment to terms reached between FX Intermediary and an Executing Dealer;

3. FX Intermediary has not entered into any agreement or arrangement with any Executing Dealer that allows FX Intermediary to set the terms on which the Executing Dealer will submit a trade notification to a PB;
 4. FX Intermediary never acts as principal to a Covered Transaction and has no proprietary trading book; and
 5. FX Intermediary is either an “introducing broker” as defined in CEA section 1a(31) or a “futures commission merchant” as defined in CEA section 1a(28) and, in either case, is duly registered as such with the Commodity Futures Trading Commission;
- D. FX Intermediary agrees to indemnify and hold harmless Executing Dealer and its affiliates, and their respective directors, officers, employees, agents and permitted successors and assigns from and against any and all liabilities, losses, settlement payments, damages, costs, and expenses whatsoever (including without limitation reasonable attorneys’ fees) (collectively, “Damages”) arising out of any actions, demands, claims, proceedings, or lawsuits relating to (i) any disagreement or dispute between FX Intermediary and any Counterparty regarding any terms relating to compensation of the FX Intermediary (including without limitation all details relating to the charging and collection of FX Intermediary fees by any swap dealer on behalf of the FX Intermediary, whether by way of the incorporation of such fees into the terms of a Covered Transaction with such Counterparty or otherwise) or with respect to conflicts of interest or incentives of the FX Intermediary; (ii) any failure by the FX Intermediary to perform its agency duties to any Counterparty under the Agency Agreement including without limitation with respect to the delivery to such Counterparty of Rule 23.431 Disclosure which FX Intermediary has received from the executing dealer pursuant to a Covered PB Arrangement; or (iii) any inaccuracy of a representation pursuant to this Certification or any breach or failure of the terms of this Certification, including without limitation any breach of an Agency Agreement, any inaccuracy of any representation or acknowledgment contained in an Agency Agreement or any failure of an Agency Agreement to be in full force and effect (including, without limitation and to the fullest extent permitted by applicable law, any actions, demands, claims, proceedings, or lawsuits brought or asserted by it or by any Counterparty (or by anyone acting on its or such Counterparty’s behalf) against Executing Dealer contrary to the provisions of this Certification or an Agency Agreement);
- E. Our prime broker(s) with respect to Covered PB Arrangements is/are: [Name(s) of FX Intermediary’s PB(s)];
- F. Promptly upon becoming aware of any regulatory inquiry that relates to the subject matter of this Certification, FX Intermediary shall notify Executing Dealer in writing of the existence and nature of such inquiry and shall provide such further details regarding such inquiry as FX Intermediary is permitted by applicable laws and regulations to disclose; and

G. The foregoing representations and agreements shall be deemed repeated to Executing Dealer with respect to each transaction executed or committed to between FX Intermediary and Executing Dealer (other than any transaction executed or committed to in whole by FX Intermediary as principal solely for its own account).

“Counterparty” means any person that, pursuant to a Covered PB Arrangement (as defined in the Core Provisions), may become a counterparty to a swap transaction with a Destination Prime Broker (as defined in the Core Provisions) as the result of a transaction the material economic terms of which have been executed or committed to by FX Intermediary and Executing Dealer.

Relevant Counterparty” means any Counterparty, other than any such person to whom no relevant Destination Prime Broker (as defined in the Core Provisions) owes any obligations under Subpart H of CFTC Regulations Part 23.

IN WITNESS WHEREOF, FX Intermediary has executed this Certification as of the date first written above.

[Signature Block]

ANNEX – Core Provisions of Agency Agreement

1. Counterparty hereby appoints FX Intermediary as Counterparty’s agent for purposes of receiving Rule 23.431 Disclosure. FX Intermediary hereby accepts its appointment as the agent of Counterparty for the purposes set out in the immediately preceding sentence. “Rule 23.431 Disclosure” means (i) any information required to be disclosed to Counterparty pursuant to CFTC Regulation § 23.431 in connection with any swap entered into by Counterparty through a Covered PB Arrangement, with respect to which information the obligation to disclose has been allocated to an “executing dealer” pursuant to the Annex to the ISDA Derivatives/FX Prime Brokerage Business Conduct Allocation Protocol and (ii) notices required to be given to Counterparty pursuant to CFTC Letter No. 13-11 in connection with any Covered PB Arrangement.
2. Counterparty agrees and acknowledges pursuant to CFTC Regulation § 23.402(e) that the furnishing of Rule 23.431 Disclosure to FX Intermediary through any means agreed to by FX Intermediary shall constitute a reliable means of providing such disclosure to Counterparty.
3. Counterparty acknowledges that it has received and reviewed the disclosure statement in the form attached hereto regarding compensation, incentives and conflicts of interest of FX Intermediary (“Standard Conflicts Disclosure”).¹² Counterparty acknowledges that FX Intermediary’s fees may be incorporated into the terms of the Covered Transaction between Counterparty and its prime broker, which may differ from the terms of the Covered Transaction that FX Intermediary committed to with an executing dealer.
4. FX Intermediary agrees that it shall disclose to Counterparty FX Intermediary’s material conflicts and incentives with respect to each transaction executed pursuant to a Covered PB Arrangement in accordance with CFTC Regulation § 23.431(a)(3), it being understood that FX Intermediary may utilize the Standard Conflicts Disclosure for this purpose but shall remain responsible for determining whether additional disclosure (beyond that contained in the Standard Disclosure) regarding its material incentives or conflicts of interest is necessary in order to satisfy the requirements of CFTC Regulation § 23.431(a)(3).
5. Counterparty and FX Intermediary hereby designate any Swap Dealer that participates in a Covered PB Arrangement as a third party beneficiary of this Agreement with full right and entitlement to rely on and enforce this Agency Agreement. Counterparty and FX Intermediary further agree that no such Swap Dealer, nor any of its affiliates, officers, directors, employees, agents or permitted successors or assigns is bound by this Agreement, nor shall any such person be subject to any liability or claims (whether legal or equitable, arising under contract, tort or otherwise) arising out of or relating to this Agreement, nor does this Agreement or any certification given with respect to this Agreement give rise to a “counterparty” relationship (within the meaning of Subpart H of CFTC Regulations Part 23) or create any duties to Counterparty on the part of any such Swap Dealer.
6. Counterparty agrees and acknowledges that no Swap Dealer that participates in a Covered PB Arrangement shall have any liability or responsibility on account of any disclosure (or non-

¹² A form of Standard Conflicts Disclosure has been prepared by a group of FX Intermediaries.

disclosure) of (a) FX Intermediary's material incentives and conflicts of interest, (b) the pre-trade mid-market marks and price required pursuant to CFTC Regulation § 23.431(a)(3)(i), (c) any material economic terms, including without limitation notional amount and termination date, pursuant to CFTC § Regulation 23.431(a)(2) or (d) any other Rule 23.431 Disclosure (provided that the information referred to in (b), (c) and (d) is disclosed to the FX Intermediary, which disclosures may be furnished orally provided such disclosures are confirmed by written notice (which may be post-trade, and which may be by posting on a web page at, or accessible through, a URL or other means utilized by such Swap Dealer), or in such other manner as agreed to by such Swap Dealer and FX Intermediary).

7. FX Intermediary agrees to maintain a copy of this Agreement, the Standard Conflicts Disclosure and any supplemental disclosure provided pursuant to paragraph 4 at its main business office in accordance with the books and records regulations of the Commodity Futures Trading Commission (CFTC) applicable to FX Intermediary.

“Covered PB Arrangement” means an arrangement among Counterparty, FX Intermediary, one or more swap dealers registered as such with the CFTC (each a “Prime Broker”) and an executing dealer that is registered as a swap dealer with the CFTC (“Executing Dealer”) that is evidenced by one or more written agreements between or among such parties, pursuant to which arrangement:

(1) FX Intermediary obtains the agreement of (A) one or more executing dealers to the material terms and conditions of a Covered Transaction to be entered into by each such executing dealer and (B) Counterparty to the terms and conditions of a Covered Transaction, the terms of which are substantially equal but opposite to the terms of the Covered Transaction(s), considered in the aggregate, agreed with such executing dealer(s) (other than adjustments attributable to fees of the FX Intermediary or a Prime Broker);

(2) Upon satisfaction of conditions agreed upon between the Prime Brokers, one or more executing dealers, Counterparty, and FX Intermediary, one of the Prime Brokers (the “Destination Prime Broker”) is required to enter into a Covered Transaction with Counterparty and one or more Covered Transactions with executing dealer(s) (or another Prime Broker that directly or indirectly enters into a matching Covered Transaction with executing dealer(s)); and

(3) As a result of the foregoing:

(i) The Destination Prime Broker and Counterparty are parties to a Covered Transaction in which all material terms and conditions are substantially identical (other than adjustments attributable to fees of the FX Intermediary or a Prime Broker) to the terms and conditions to which Counterparty and FX Intermediary previously committed; and

(ii) The Destination Prime Broker and the executing dealer (or another Prime Broker that directly or indirectly enters into a matching Covered Transaction with the executing dealer) are parties to one or more Covered Transactions with, in the aggregate, substantially equal but opposite terms and conditions (other than adjustments attributable to fees of the FX Intermediary or a Prime Broker) to the Covered Transaction between the Destination Prime Broker and Counterparty.

“Covered Transaction” shall mean any foreign exchange transaction (other than a foreign exchange transaction that settles via an actual delivery of the relevant currencies within two business days).

“Swap Dealer” means “swap dealer” as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulations § 1.3(ggg) thereunder, duly registered with the CFTC.

Appendix II

**Form of Notice to FXI's PB (FX Intermediary Arrangements), including
Form of Supplemental Notice from PB to ED (FX Intermediary Arrangements)**

Form of Notice to FXI's PB (FX Intermediary Arrangements)

[Destination PB Letterhead]

Re: Designation of Covered PB Counterparties under Reverse or Multiparty Give-Up Arrangement involving FX Intermediary

[Date]

Dear Sir/Madam:

Reference is made to (i) [*insert reference to the relevant 4-party give-up arrangement (or equivalent arrangement) among* [Name of Destination PB] ("**Destination PB**"), [FX Intermediary's PB] ("**FXI's PB**"), [FX Intermediary] ("**FXI**") and [Investment Manager] ("**Manager**")]) (the "**Agreement**"), pursuant to which Destination PB receives transaction details from FXI's PB, which, pursuant to separate give-up arrangements, receives transaction details from an executing dealer (a "**Relevant ED**") that has committed to swap terms (or entered into an original swap for novation to FXI's PB) with FXI, acting as agent on behalf of PB counterparties of Destination PB, for give-up to FXI's PB and further give-up in accordance with the Agreement to Destination PB and (ii) the ISDA Derivatives/FX Prime Brokerage Business Conduct Allocation Protocol ("**ISDA PB Protocol**") to which both the FXI's PB and Destination PB are "Adhering Parties" (as defined in the ISDA PB Protocol). Capitalized terms used but not defined in this Notice have the meanings given to them in the Annex to the ISDA PB Protocol (the "**Annex**") or the Core Provisions (as defined in the form of Certification attached hereto).

In accordance with CFTC Letter No. 13-11 and paragraph (b)(3) of the Annex, we hereby notify you, for your communication to the Relevant EDs, that we designate the PB counterparties or classes of PB counterparties specified below as Covered PB counterparties or classes thereof and, with respect to each such counterparty or class, the relevant information for purposes of paragraph (b)(8) of the Annex is as follows:

Covered PB counterparty/Class of Covered PB counterparties	Agreed in writing to (x) oral disclosure of pre-trade mid and basic METs and (y) disclosure for multiple swaps as described in CFTC Rule 23.402(f)? ¹	Agreed in writing to non-disclosure of pre-trade mid in accordance with relief provided in the following CFTC Letters? ²		
		No. 12-42	No. 12-58	Additional relief
1. [FX Intermediary's name] acting as intermediary and agent for receipt of Rule 23.431 Disclosure on behalf of [name of Covered PB counterparty]/[persons for whom [name of investment manager] acts as investment manager that may become counterparties to Covered Transactions with Destination PB as the result of transaction notices that FXI's PB may provide to Destination PB pursuant to the Agreement]	[Yes][No]	No	No	No
2.				
3....				

Destination PB shall perform the obligations of a prime broker as set forth in the Annex, mutatis mutandis, with respect to each Covered PB counterparty or class thereof specified above.

¹ See paragraph (b)(8)(a) of the Annex. See Section 2.12 of ISDA August 2012 DF Supplement. A Destination PB should be in a position to determine that the agreement in clause (x) has been obtained if the FX Intermediary and PB counterparty have executed the standard form of Certification, but the Destination PB should verify that this is indeed the case.

² See paragraph (b)(8)(b) of the Annex and Section 2(a)-(c) of Addendum II to ISDA August 2012 DF Protocol Questionnaire. The column "Additional Relief" is intended to indicate an affirmative response to Section 2(c) of Addendum II. Notwithstanding that these agreements may have been obtained from the relevant PB counterparties, a "No" response is indicated in order to minimize the operational burden of having to verify pre-trade mid waivers for all of the PB counterparties that may be aggregated into the notice received by the ED.

FXI's PB shall not submit to Destination PB any transaction details with respect to a Covered Transaction (as defined in CFTC Letter No. 13-11) taken in from an executing dealer that relate to a PB counterparty or class thereof specified above unless such executing dealer is an Adhering Party and such PB counterparty or class has been designated to such executing dealer as a Covered PB counterparty or class thereof and such designation has become effective as between such executing dealer and FXI's PB.³

Please feel free to contact [_____] if you have any questions or comments.⁴

Sincerely,

[Destination PB]

Accepted and Agreed

[FXI's PB]

³ In order to implement the terms of this Notice, FXI's PB may deliver a Supplemental Notice from PB to ED (FX Intermediary Arrangements) in the form attached hereto.

⁴ As a facilitating practice, Destination PBs may consider furnishing the following optional information to FXI's PB (subject to any confidentiality restrictions that may apply), either in this notice or in a subsequent communication: CICI, LEI or fund identifiers for Covered PB counterparties; a contact email address for notifications to a Covered PB counterparty or class thereof.

Form of Supplemental Notice from PB to ED (FX Intermediary Arrangements)

[FXI's PB Letterhead]

Re: Covered PB Counterparties represented by FX Intermediary

[Date]

Dear Sir/Madam:

Reference is made to the (i) [Master Give-Up Agreement] dated [date] (as such may be amended from time to time) in which [Prime Broker] ("**PB**") acts as the prime broker and [Executing Dealer] ("**ED**") acts as the executing dealer (the "**Give-Up Agreement**"), and (ii) ISDA Derivatives/FX Prime Brokerage Business Conduct Allocation Protocol ("**ISDA PB Protocol**") to which both PB and ED are or expect to become "Adhering Parties" (as defined in the ISDA PB Protocol). Capitalized terms used but not defined in this Notice have the meanings given to them in the Annex to the ISDA PB Protocol (the "**Annex**") or the Core Provisions (as defined in the form of Certification attached hereto).

This Notice supplements and/or amends any prior PB Notice to ED that we may have delivered pursuant to paragraphs (b)(3) and (b)(8) of the Annex. The Covered PB counterparties or classes set forth below are ones for which Covered Transactions may be allocated to one or more other prime brokers (each, a "**Destination PB**") pursuant to reverse or multiparty give-up arrangements between us and such prime brokers. Each Destination PB has undertaken to perform the obligations of a prime broker as set forth in the Annex, mutatis mutandis, with respect to the relevant Covered PB counterparties or classes, and will rely on ED for performance of the obligations of an executing dealer as set forth in the Annex with respect to such Covered PB counterparties or classes.

Paragraph (b)(3) of the Annex requires that we negotiate in good faith the notice period for designations of additional Covered PB counterparties or classes, if any, to become effective. ***[Insert cross-reference to any such agreement; if none, insert terms to govern notice effectiveness.]***

In accordance with paragraphs (b)(3) and (b)(8) of the Annex, we hereby notify you that we designate the PB counterparties or classes of PB counterparties specified below as Covered PB counterparties and, with respect to each such counterparty or class, the relevant information for purposes of paragraph (b)(8) of the Annex is as follows:

Covered PB counterparty/Class of Covered PB counterparties	Agreed in writing to (x) oral disclosure of pre-trade mid and basic METs and (y) disclosure for multiple swaps as described in CFTC Rule 23.402(f)? ⁵	Agreed in writing to non-disclosure of pre-trade mid in accordance with relief provided in the following CFTC Letters? ⁶		
		No. 12-42	No. 12-58	Additional relief
1. [FX Intermediary’s name] acting as intermediary and agent for receipt of Rule 23.431 Disclosure on behalf of persons that may become counterparties to Covered Transactions with [PB or] ⁷ a Destination PB as the result of transaction notices that ED may	[Yes][No]	No	No	No

⁵ See paragraph (b)(8)(a) of the Annex. See Section 2.12 of ISDA August 2012 DF Supplement. In the event that the ED to whom this form is sent is a Relevant ED (as defined in the Notice to FXI’s PB (FX Intermediary Arrangements)) with respect to reverse or multiparty give-up arrangements with more than one Destination PB, PB should generally complete this notice by consolidating the information contained in each Notice to FXI’s PB (FX Intermediary Arrangements) received by PB into a single Supplemental Notice from PB to ED (FX Intermediary Arrangements). For certain type of arrangements, however, the delivery of more than one Supplemental Notice from PB to ED (FX Intermediary Arrangements) may be appropriate. See footnote 8 below. In completing the second column of this Supplemental Notice from PB to ED (FX Intermediary Arrangements), PB should review the notices from each relevant Destination PB and complete the columns based on the most restrictive response with respect to a given investment manager or other class. For example, if an investment manager has agreed to oral disclosure of the pre-trade mids and basic METs with respect to Destination PB1 but not Destination PB2, a “No” response should be given in the second column. If PB is itself acting as the Destination PB for any counterparties to which this notice relates, PB should be in a position to determine that the agreement in clause (x) has been obtained if the FX Intermediary and PB counterparty have executed the standard form of Certification, but PB should verify that this is indeed the case.

⁶ See paragraph (b)(8)(b) of the Annex and Section 2(a)-(c) of Addendum II to ISDA August 2012 DF Protocol Questionnaire. The column “Additional Relief” is intended to indicate an affirmative response to Section 2(c) of Addendum II. Notwithstanding that these agreements may have been obtained from the relevant PB counterparties, a “No” response is indicated in order to minimize the operational burden of having to verify pre-trade mid waivers for all of the PB counterparties that may be aggregated into the notice received by the ED.

⁷ Include bracketed text if PB is itself acting as the Destination PB for any such counterparties.

provide to PB pursuant to the Give-Up Agreement ⁸				
2.				
3....				

Please feel free to contact [_____] if you have any questions or comments.⁹

Sincerely,

[Prime Broker]

Accepted and Agreed

[Executing Dealer]

⁸ FXI's PB should consider whether greater specificity is needed in light of its arrangements with the ED. For example, if FXI's PB has imposed differing exposure or product scope limits with respect to different Destination PBs or transactions for which FXI's PB is also the PB of the counterparty, then this Notice may need to identify a particular designation notice under the Give-Up Agreement.

⁹ As a facilitating practice, FXI's PB may consider furnishing the following optional information to executing dealers (subject to any confidentiality restrictions that may apply), either in this notice or in a subsequent communication: CICI, LEI or fund identifiers for Covered PB counterparties; a contact email address for notifications to a Covered PB counterparty or class thereof.