

# ISDA®

International Swaps and Derivatives Association, Inc.

## **Disclosure Annex for Commodity Derivative Transactions**

This Annex supplements and should be read in conjunction with the General Disclosure Statement. **NOTHING IN THIS ANNEX AMENDS OR SUPERSEDES THE EXPRESS TERMS OF ANY TRANSACTION BETWEEN YOU AND US OR ANY RELATED GOVERNING DOCUMENTATION.** Accordingly, descriptions in this Annex of the operation of Commodity Transactions (as defined below) and the consequences of various events are in all cases subject to the actual terms of a Commodity Transaction executed between you and us and its governing documentation (whether or not such qualification is expressly stated).

We refer to Transactions in which the Underliers are physical commodities, contracts for the future delivery of physical commodities, or rights or indexes relating to physical commodities or physical events (such as weather, transportation or emissions) as “**Commodity Transactions**”. The terms of a Commodity Transaction may incorporate standard definitions, annexes thereto and other market standard terms, including terms, customs and usages from the physical markets for Underliers. Such terms may in turn be amended or customized pursuant to the terms of the Commodity Transaction and its governing documentation. Before entering into a Commodity Transaction, you should obtain and review carefully any such materials incorporated by reference as their content could materially affect your rights and obligations under the Commodity Transaction, its value and its appropriateness for your particular objectives.

### **Physical Markets and Price Sources**

Markets in physical commodities are highly differentiated by location, supply and demand, time and manner of delivery, quality standards for deliverable products and other factors. The depth, liquidity and number and nature of participants may vary greatly among segments in the market for the same commodity. Prices prevailing in different segments generally will differ, and historically observed relationships, if any, between prices in different segments or for different commodities may not persist.

The terms of a Commodity Transaction (including certain physically-settled Commodity Transactions) will specify the source or method of determining the prices, levels or values (“**commodity reference prices**”) relevant to the computation of payments and deliveries and the satisfaction of exercise and other conditions, such as automatic exercise and knock-in or knock-out events. Examples of commodity reference prices include price indexes compiled and published by market data providers and prices used to settle exchange-traded or cleared futures or other contracts related to an Underlier. You should independently evaluate the appropriateness of the selected commodity reference price(s) to your objectives for entering into a Commodity Transaction, including whether a specified commodity reference price accurately reflects the prevailing cash market fundamentals in a relevant physical market segment and the potential that it may be susceptible to distortion or manipulation.

Market data providers may compile their commodity reference prices from pricing data submitted voluntarily by market participants. You should be aware that price submissions to a market data provider may or may not be based on actual transactions and that the data provider may not be able to audit submissions for their accuracy or completeness. Other factors you should consider include:

- computational procedures used by the market data provider to reduce the impact of potentially unrepresentative data, such as requiring a minimum number of submissions and the rejection of outlying data;
- conflicts of interest that may affect the market data provider;
- the information the market data provider publicly discloses, which may or may not accurately reflect all relevant information available to the market data provider; and
- governance of the market data provider, whether it is subject to regulatory oversight and the nature of such regulatory oversight.

Market data providers may make certain information relevant to this assessment publicly available, and we urge you to consider such information carefully. If we or an affiliate make submissions that are used to compile a commodity reference price and also act as principal in Commodity Transactions that use the commodity reference price as an Underlier, then we face an inherent conflict of interest.

Prices of exchange-traded contracts may be affected by the method used for determining the official settlement price, including discretionary determinations of an exchange or clearinghouse settlement committee (on which we or an affiliate may participate), and by market disruption events as described below.

An exchange, clearinghouse, market data provider, government agency or other body that determines a commodity reference price may make methodological or other changes that could change the value of the commodity reference price, including changes related to the method by which the commodity reference price is calculated, or the timing for publication of the commodity reference price. In addition, the determining body may alter, discontinue or suspend calculation or dissemination of the commodity reference price or change the terms of or de-list a contract that defines a commodity reference price. Determining bodies and the institutions that make submissions in the commodity reference price determination process, which may include us and our affiliates, have no obligation to consider your interests in calculating, revising, discontinuing or taking other actions that may affect any commodity reference price.

### **Other Factors Relevant to the Valuation of Commodity Transactions**

Please refer to Section II.F – “The economic return of a Transaction may not be the same as the return from the Underlier” – and Section III.A – “Transactions are subject to market risk” – of the General Disclosure Statement regarding other factors (in addition to the commodity reference price) that may be relevant to the valuation of a Commodity Transaction.

## **Corrections to Published Prices**

A price source may announce corrections to a previously published commodity reference price. You should review the terms of a prospective Commodity Transaction to determine how such corrections are treated. The terms of a Commodity Transaction may specify that if the price source for a price that has previously been used to determine a payment or delivery amount under a Commodity Transaction publishes a correction to that price, and if the correction is announced within a specified time period after the original publication date, then a retroactive adjustment may apply to payments and deliveries, including the payment of accrued interest (at a rate determined by the calculation agent) on amounts payable as a result of the correction.

## **Market Disruption Events**

The terms of a Commodity Transaction may specify that certain events and conditions affecting the market for a commodity or related exchange-traded or cleared contract, or a price source, will be treated as market disruptions and their occurrence may result in the consequences discussed below (see “Consequences of Disruption Events”), including, if applicable, postponement of pricing dates and/or changes in the method by which the price, level or value of an Underlier is determined. Subject to the terms of a Commodity Transaction and the governing documentation, such events may include:

- failure of a price source to publish a price or discontinuance of the price source;
- divergences by more than a specified amount of alternative price sources from one another, such as between a price published by a market data provider and one derived from quotations obtained by the calculation agent from reference dealers;
- inability of the calculation agent to obtain quotations from the requisite number of reference dealers;
- suspension of or limitations on trading in an Underlier (or in its components in the case of an index or basket) or related instruments, including the triggering of price fluctuation limits, the establishment by a regulator of price caps, or the unscheduled early closing of a market for an Underlier or related instruments (including market closure due to technological failures or force majeure events);
- changes in the method for determining a commodity reference price or in the composition of an Underlier or related instruments; and
- the imposition of, change in or removal of certain taxes on positions in the Underlier.

The existence of such disruption events and their consequences may be subject to discretionary determinations by the determining party or calculation agent, which may involve subjective judgment and uncertainty.

You should be aware of the potential risks of any market disruptions and should understand their effect on each prospective Commodity Transaction, including the consequences, if any, of any

such event specified under the terms of the Commodity Transaction as well as the possibility that certain events might not be expressly provided for.

### **Consequences of Disruption Events**

The terms and conditions of a Commodity Transaction may specify alternative methods, or “**disruption fallbacks**”, that apply when disruption events occur for determining any affected commodity reference price. If the applicable disruption fallback so provides, then consequences including the following may occur:

- the price sources used by the calculation agent under your Commodity Transaction for determining the price or level of the Underlier may not be the same as those used prior to the disruption event;
- the calculation agent may determine any affected prices or levels in a manner specified under the terms of the Commodity Transaction, which may include taking into account unpublished or unannounced sources and other information the calculation agent deems relevant, and employing its own calculations and estimates;
- the value of the affected price or level used by the calculation agent to determine any amount payable may be materially different from the value of any previously used published price source;
- the determination of the affected price or level may be deferred until the relevant disruption event is no longer continuing, which may result in the use of a price prevailing on a date other than the originally chosen pricing date (“price postponement”), or may result in the use of the price as of the original pricing date if such price is published before an alternative fallback becomes applicable;
- the value of the price or level may be determined at a different time than the date on which it was originally scheduled to be determined, or the value of an average price or level may be based on different pricing dates than originally scheduled;
- the terms of the Commodity Transaction may require the parties to negotiate fallback arrangements in good faith; and/or
- termination of the Commodity Transaction.

The determinations or negotiations called for by a disruption fallback may need to occur under uncertain market conditions. Depending on the terms of your Commodity Transaction, the operation of a disruption fallback may be subject to a specified maximum duration, after which time a different disruption fallback may prevail. Two or more disruption fallbacks may operate concurrently. You should evaluate carefully the interaction of various disruption fallbacks with one another and with any impossibility, illegality or force majeure provisions of the master agreement and other documentation, if any, governing the Commodity Transaction.

Application of disruption fallbacks (including related determinations by the calculation agent, if applicable) may have a significantly detrimental effect on the Transaction Economics.

### **Multiple Underliers**

For Commodity Transactions with more than one Underlier, including for example basis swaps, calendar spreads and basket transactions, it may be important for your intended purpose whether or not disruption fallbacks could result in the use of different pricing dates for different Underliers. You should review the terms of each prospective Commodity Transaction carefully, including to determine whether or not the prospective Commodity Transaction includes “common pricing” provisions to address the possible divergence of pricing dates.

### **Effects of Regulatory Changes and Actions on our Hedging Positions**

Commodity futures contracts, options on such contracts and, in some cases, economically related instruments are subject to extensive and changing regulatory and self-regulatory requirements. The U.S. Commodity Futures Trading Commission, for example, is authorized to direct exchanges, derivatives clearing organizations and other registered entities under its jurisdiction to take extraordinary action in the event of a market emergency, including the setting of temporary emergency margin levels and retroactive position limits. Regulators in various jurisdictions are examining the effects of speculative trading and financial investing on commodity markets. Although it is impossible to predict the outcome of such regulatory initiatives, they may include the imposition of new or more restrictive position limits on commodity futures contracts and economically related instruments. Notably, the U.S. Commodity Futures Trading Commission issued a final rule imposing position limits on certain physical commodity futures contracts traded on U.S. futures exchanges and economically related swaps. The final rule has been vacated by a U.S. federal court and remanded to the Commodity Futures Trading Commission. Further developments are uncertain.

Legal and regulatory developments or the exercise of existing regulatory authority may affect our or an affiliate’s ability to hedge our exposures resulting from Commodity Transaction and cause us to invoke the types of provisions described in Section III.P – “Dependence of Transactions on our Hedging Positions” – of the General Disclosure Statement, which may adversely affect the Transaction Economics of a Commodity Transaction.

### **Physical Settlement**

If you enter into a physically settled Commodity Transaction, you (either directly or through a third party acting on your behalf) must have the operational capabilities to make or take delivery of the Underlier in accordance with the terms of the Commodity Transaction and you should be thoroughly familiar with delivery practices, procedures, customs and usages of the physical market and the governing contractual provisions, laws and regulations. Issues with which you should be familiar include, as applicable:

- delivery instruments (e.g., warehouse receipts, bills of lading, warehouse releases, consignment agreements or other instruments);

- the time and location at which title to the Underlier and/or risk of loss passes to the recipient;
- the conditions, if any, under which delivery may be excused, delayed or prevented;
- quality or quantity discrepancies with respect to a delivered commodity;
- the possibility that congestion in the deliverable supply of a commodity could prevent you from acquiring the commodity to meet your delivery obligations or make it significantly more costly for you to do so;
- the consequences of failing to make or take delivery in accordance with the terms of a Commodity Transaction, including the applicable measure of damages and additional liabilities such as borrowing costs, imbalance charges, storage, transportation costs such as demurrage, regulatory penalties, and other costs, damages or expenses recoverable in a particular Commodity Transaction;
- various modes of delivering or transporting the commodity subject to a Commodity Transaction and related legal instruments (e.g., rail/trucking and other freight and handling agreements, container line contracts of carriage, charter parties and contracts of affreightment), as well as any regulatory, health and safety, compliance and other related procedures, rules, tariffs and regulations incident thereto;
- indemnification obligations of the parties, including with respect to title defects and liabilities to third parties;
- limitations on liability or exclusions thereto, if any;
- features of transmission, transportation or electronic tracking systems generally, including, in particular, those that may result in mis-delivery or under-delivery and the process for reconciling outstanding balances among users of the system and between us under a Commodity Transaction;
- availability of insurance and scope of applicable policy coverage;
- settlement risk when payment dates occur after delivery dates; and
- in the case of physically settled Commodity Transactions subject to the rules of an exchange or clearinghouse, the rules and procedures governing delivery, including notice requirements and the procedures for matching long and short positions for delivery.

You should be aware, however, that not all contracts or transactions with such physical delivery features are Commodity Transactions or Transactions and that various differences in the applicable regulatory regimes and other circumstances may follow from this distinction. Please see Section II.A – “Arm’s length contractual counterparty to Transactions” – of the General Disclosure Statement.