

Acknowledgment of FINMA's Right to Stay Termination of Agreements

[As of]

between

and

("Party A")

("Party B")

1. Scope and Interpretation

- 1.1 Party A and/or Party B, as applicable,¹ must obtain from the other party (the "**Consenting Party**", and Party A together with Party B the "**Parties**" and each a "**Party**") an acknowledgement of FINMA's powers pursuant to Art. 30a Banking Act. This acknowledgement shall apply to contracts falling into the scope of the obligation of Art. 12(2)(bis) of the Banking Ordinance.
- 1.2 Words and phrases in quotation marks have the meaning given in Art. 12(2)(bis) of the Banking Ordinance, as supplemented by Chapter 5 Art. 56 and 61a of the Bank Insolvency Ordinance, to the bracketed German word or phrase immediately following such word or phrase, and such words or phrases as used in this Acknowledgement shall be interpreted accordingly.

2. Acknowledgement of FINMA's powers

- 2.1 The Consenting Party "acknowledges" (*anerkennt*) FINMA's powers pursuant to Art. 30a of the Banking Act to declare a "suspension of the termination of agreements" (*Aufschub der Beendigung von Verträgen*) in respect of each Covered Agreement entered into by or before the later of the Implementation Date and the Compliance Date.
- 2.2 The acknowledgment of the Consenting Party in Section 2 shall be deemed to be provided, if and when the Consenting Party signs or otherwise accepts this Acknowledgment².

¹ If Party A or Party B is a foreign group company of a Swiss bank or broker-dealer guaranteeing its liabilities in the sense of Art. 56(1)(h) BIO-FINMA, please consider using the following wording instead: "[Party A] is a foreign group company of a bank or broker-dealer incorporated in Switzerland that]."

² To the extent that the declaration shall be entered into with a "negative affirmation" process, please consider adding the following at the end: "[, enters into new Covered Agreements or if the Consent-

3. Applicable law

This Acknowledgment is governed by and construed in accordance with Swiss Law, except that the acknowledgement of FINMA's powers under Section 2 shall be governed by the law specified as the governing law in the respective Covered Agreement.

4. Definitions

The following terms shall have the following meaning for the purposes of this acknowledgement:

- i. "**Bank Insolvency Ordinance**" shall mean the Ordinance of the Swiss Financial Market Supervisory Authority on the Insolvency of Banks and Securities Dealers of 30 August 2012 (SR 952.05).
- ii. "**Banking Act**" shall mean the Swiss Federal Act on Banks and Saving Banks as of 8 November 1934 (SR 952.0).
- iii. "**Banking Ordinance**" shall mean the Swiss Federal Ordinance on Banks and Saving Banks as of 30 April 2014 (SR 952.02).
- iv. "**Compliance Date**" shall be:
 - a) 1 April 2018, if the Consenting Party is either a bank or securities dealer or would be a bank or securities dealer if it was domiciled in Switzerland; and
 - b) 1 October 2018 in any other case
- v. "**Consenting Party**" shall have the meaning as specified in Section 1.1.
- vi. "**Covered Agreements**" means any of the following agreements, provided that they are (i) governed by a law other than the laws of Switzerland or subject to a jurisdiction other than the jurisdiction of Swiss courts and (ii) not Exempted Agreements:
 - a) Contracts for the purchase, sale, lending or repurchase agreements relating to certificated securities, uncertificated securities or intermediated securities and corresponding transactions involving indices containing

ing Party does not object in writing within 30 days of receipt of this Acknowledgment]."

- these underlying assets, as well as options in relation to such underlying assets;
- b) contracts for the purchase and sale with future delivery, lending or repurchase agreements relating to commodities and corresponding transactions involving indices containing these underlying assets, as well as options in relation to such underlying assets;
 - c) contracts for the purchase, sale or transfer of commodities, services, rights or interest at a future date and at a predetermined price (futures contracts);
 - d) contracts for swap transactions relating to interest, foreign exchange, currencies or commodities as well as to certificated securities, uncertificated securities, intermediated securities, the weather, emissions or inflation, and corresponding transactions involving indices containing these underlyings, including credit derivatives and interest rate options;
 - e) interbank borrowing agreements;
 - f) any other contract with a similar effect as those in accordance with letters a-e; and
 - g) contracts in accordance with letters a-f in the form of master agreements.

- vii. **"Exempted Agreements"** means:
- a) A contract which does not provide for the termination or exercise of rights pursuant to Art. 30a para. 1 of the Banking Act that are directly or indirectly triggered by measures taken by FINMA in accordance with section eleven of the Banking Act;
 - b) A contract which is concluded or cleared directly or indirectly through a financial market infrastructure or an organized trading facility;
 - c) A contract relating to placement of financial instruments in the market; and
 - d) Existing agreements which are amended by virtue of their contractual terms without further action by the Parties.
- viii. **"FINMA"** means the Swiss Financial Market Supervisory Authority.
- ix. **"Implementation Date"** means the date specified on the cover of this acknowledgement.
- x. **"Parties"** shall have the meaning as specified in Section 1.1.

Party A

Place, Date: _____

Signature: _____

Place, Date: _____

Signature: _____

Party B

Place, Date: _____

Signature: _____

Place, Date: _____

Signature: _____

Switzerland: Resolution Stay Regulation

Frequently Asked Questions

These Frequently Asked Questions ("FAQ's") are for information purposes only and are not intended to constitute legal advice and must not be relied upon. If you require legal advice in connection with these FAQs, you should consult your own legal advisors.

Background:

1. What are resolution stay clauses?

The global financial crisis illustrated that a key element of any resolution and recovery planning is the ability of regulators to protect financial institutions from an acceleration of events and the termination of existing contracts upon the commencement of protective or reorganisation measures. Resolution stay clauses aim at allowing regulators to prevent the termination of derivatives transactions and certain other financial markets transactions (see question 5) for a short time period (e.g. of up to two business days) to allow for the orderly use of resolution powers. The inclusion of such resolution stay clauses is important for the exercise of resolution stay powers by regulators, where the relevant agreement is subject to the jurisdiction of courts other than Swiss courts or provides for the application of law other than Swiss law.

2. What are the Swiss Financial Market Supervisory Authority's (FINMA) resolution stay powers?

According to Art. 30a of the Federal Act on Banks and Savings Banks (BA), FINMA has the power to temporarily prevent the termination of contracts for up to two business days only in connection with protective measures or reorganisation proceedings established. To the extent ordered by FINMA, there would be a temporary stay for such time period of (i) any contractual termination right of counterparty, (ii) the exercise of any rights of set-off; (iii) the enforcement of collateral, or (iv) porting rights, in particular the porting of derivatives transactions to another clearing member, provided that such termination or other right would otherwise be triggered by the protective measures or reorganisation proceedings that have been initiated. Any termination rights or other contractual rights for example with regards to a failure to pay remain valid, i.e. the counterparty can still exercise those rights.

3. What are the obligations of FINMA regulated banks?

In line with international commitments, Switzerland introduced a new Art. 12 para. 2bis to the Ordinance on Bank and Savings (BO, in force since January 1, 2016) specifying that a bank licensed and supervised by FINMA (incl. its group companies under certain conditions) must, when entering into new agreements or amending existing agreements, include a resolution stay clause into the contract acknowledging the application of FINMA resolution stay powers (see question 2), provided that the agreement is subject to (i) a law other than Swiss law or (ii) provides for the jurisdiction of courts other than Swiss courts. The requirements of this new article are further specified in the FINMA Banking Insolvency Ordinance (BIO-FINMA).

Timing:

4. What is the timeframe for the application of these requirements?

According to Art. 61a BIO-FINMA the requirements set out in Article 12 para. 2bis BO must be met:

- as of April 1, 2018 for the conclusion or amendment of contracts with Swiss banks and securities dealers or with counterparties who would qualify as such if they were established in Switzerland;
- as of October 1, 2018 for the conclusion or amendment of contracts with all other counterparties.

Affected Contracts and Exemptions:

5. Which contracts are affected?

The BIO-FINMA sets out for which contracts the resolution stay powers by FINMA must be acknowledged. Article 56 BIO-FINMA is based on the list of the financial contracts specified in Art. 2(1) (100) of the EU Bank Recovery and Resolution Directive (BRRD) and includes:

- contracts for the purchase, sale, lending or repurchase agreements relating to securities, value rights or book-entry securities and corresponding

transactions involving indices containing these contracts, as well as options in relation to such underlying assets;

b. contracts for the purchase and sale with future delivery, lending or repurchase agreements relating to commodities and corresponding transactions involving indices containing these contracts, as well as options in relation to such underlying assets;

c. contracts for the purchase, sale or transfer of commodities, services, rights or interest at a future date and at a predetermined price (futures contracts);

d. contracts for swap transactions relating to interest, foreign exchange, currencies and commodities as well as to securities, value rights, book-entry securities, the weather, emissions or inflation, and corresponding transactions involving indices containing these contracts, including credit derivatives and interest rate options;

e. interbank borrowing agreements;

f. other contracts with the same effect as those listed under letters a–e;

g. contracts in accordance with letters a-f in the form of master agreements;

h. contracts in accordance with letters a-g entered into by foreign group entities guaranteed or otherwise secured by a bank or securities dealer domiciled in Switzerland.

Affected contracts are typically - but not limited to - agreements such as: Derivatives Master Agreements (ISDA, German Master Agreement etc.), Repo Agreements (GMRA, GMA, EMA etc.) and Securities Lending Agreements (GMSLA, GMA, EMA etc.).

6. Are there any contracts exempted?

According to article 56 para. 2 of the BIO-FINMA the following exemptions apply:

a. contracts which provide for the termination or exercise of rights pursuant to Article 30a para. 1 BA which are neither directly nor indirectly triggered by actions taken by FINMA in accordance with the eleventh section of the Banking Act;

b. contracts which are concluded or settled directly or indirectly through a financial market infrastructure or organized trading facility;

c. contracts with central banks;

d. contracts of group entities which are not active in the financial services sector;

e. contracts with counterparties that are not companies within the meaning of Article 77 of the Financial Market Infrastructure Ordinance of 25 November 2015 (e.g. natural persons);

f. contracts relating to the placement of financial instruments in the market;

g. amendments to existing contracts which become effective pursuant to their terms and conditions and without further action by the parties.

Implementation

7. What do I need to do?

Swiss banks are obliged to receive acknowledgments from relevant counterparties before the deadlines as described under question 4 above.

In general, there are three options to comply with the new obligations: (i) affected contracts can be amended individually (not covered in this FAQ's), or (ii) the parties to affected contracts can enter into a Swiss Bankers Association (SBA) acknowledgment of FINMA's Right to Stay Termination of Agreements (the "**SBA Acknowledgement**"), or (iii) both parties to affected contracts can adhere to the ISDA Swiss Jurisdictional Module to the ISDA Resolution Stay Jurisdictional Modular Protocol.

SBA Acknowledgment of FINMA's Right to Stay Termination of Agreements

In response to an industry request to follow a uniform approach when addressing resolution stay clauses, the SBA provided for the Acknowledgment of FINMA's Right to Stay Termination of Agreements. Please find the corresponding document on the website of SBA in section "Master Agreements & Forms".

Entering into the SBA Acknowledgement means that the consenting party acknowledges FINMA's powers pursuant to Art. 30a BA in respect of each affected contract entered into by the parties by or before a specific date. Affected contracts executed after such date need to include specific Swiss stay clauses encompassing such acknowledgement.

ISDA Modular Resolutions Stay Protocol

Compliance can also be established by way of the ISDA Resolution Jurisdictional Modular Protocol (JMP) together with the Swiss Module, in case both parties to an affected contract adhere to the Protocol/Module (please refer to the FAQ document of ISDA relating to ISDA Resolution Stay Jurisdictional Modular Protocol – Swiss Jurisdictional Module).

**Agent Addendum¹ to the
Acknowledgment of FINMA's Right to Stay Termination of Agreements**

dated as of **[insert date of Acknowledgment]**

between

[insert name] as "Party A"

and

[insert name of agent] ("Agent"), [acting in relation to each Client on behalf of which it has entered into a Covered Agreement as stated in this Addendum] as "Party B"

This Addendum supplements, forms part of, and is subject to, the above-referenced Acknowledgment (the "Acknowledgment"). All capitalized terms used in this Addendum and not otherwise defined herein will have the meaning given to them in the Acknowledgment.

The parties agree as follows:-

1. Agent has executed the Acknowledgment on behalf of, and as agent for, (check one):

all Clients represented by Agent (in which case Agent need not identify each Client in Exhibit A to this Addendum or otherwise) and each such Client with respect to the Acknowledgment is a Consenting Party. For the avoidance of doubt, this includes all Clients that are listed in each Covered Agreement (or other agreement which deems a Covered Agreement to have been created) between Agent and Party A as counterparty with respect to each such Client; or

some, but not all, Clients represented by Agent that are specifically named or identified in Exhibit A to this Addendum and each such Client with respect to the Acknowledgment is a Consenting Party,

provided, in each case, the Acknowledgment is only effective with respect to Covered Agreements entered into, received or provided by Agent on behalf of such Client (or any deemed agreements between a Client and Party A thereunder).

2. Clients Added to a Covered Agreement after the Implementation Date

In respect of any Client added after the Implementation Date to a Covered Agreement that is signed as an umbrella or similar agreement by Agent and Party A (each, a "New Client"), Agent and Party A agree that the terms of such Covered Agreement as between Party A and any New Client will be subject to the terms of the Acknowledgment.

3. Definitions

The following term shall have the following meaning for the purposes of this Addendum and the Acknowledgment:

"Client" shall mean one or more clients, investors, funds, accounts and/or other principals on whose behalf Agent acts

¹ This Agent Addendum is intended for use with an entity that enters into, or provides or receives for the benefit of, a Covered Agreement and executes and delivers a SBA Acknowledgment on behalf of, and as agent for, one or more clients, investors, funds accounts and/or other principals.

Party A

[Include the following text as part of the signature line if you are an Agent and submitted the Acknowledgement on behalf of all Clients that you represent]

[insert name of agent], acting on behalf of each Client listed in each Covered Agreement (or other agreement which deems a Covered Agreement to have been created) between it (as agent) and Party A with respect to each such Client, provided by it (as agent) to Party A with respect to each such Client or received by it (as agent) from Party A with respect to each such Client

[Include the following text as part of the signature line if you are an Agent and submitted the Acknowledgement on behalf of some but not all Clients that you represent]

[insert name of agent], acting on behalf of each Client listed in Exhibit A to this Agent Addendum

Place, Date:

Place, Date:

Signature:

Signature:

Place, Date:

Place, Date:

Signature:

Signature:

