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EXPLANATORY NOTE
ON THE AGREEMENT AND TECHNICAL SCHEDULES[1]

The French Banking Federation ("**FBF**") today publishes an updated version of its Master Agreement on forward financial instruments (the "**Agreement**").

The first version of the Agreement was published in 1994. Two subsequent versions followed, in 2001 and 2007 respectively.

Part of the reason for producing this latest version is to incorporate the new regulatory requirements imposed by Regulation (EU) 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("**EMIR**").

<u>Publication of this new version will not affect the validity or enforceability of existing agreements entered into under the previous version(s) of the Agreement</u>. Nevertheless, the parties are free to decide to amend such existing agreements by, for instance, executing the standard supplemental agreement (see paragraph 1.2 below).

1. GENERAL EXPLANATION OF THE AGREEMENT AND ITS TECHNICAL SCHEDULES

1.1 Scope of application of the Agreement

Transactions covered by the Agreement. The 2013 version of the Agreement is a multi-product agreement covering all transactions on forward financial instruments, hereafter referred to as derivatives. These may take the form of futures or options contracts, swaps or any combination of such contracts and may relate to interest rates, currencies, equities, indices, government securities (Treasury bonds, etc.), commodities, or any combination of such underlyings.

The Agreement thus covers a very broad range of derivative transactions. It covers all transactions defined as such in the French Monetary and Financial Code (Articles L.211-1, D.211-1 A and, where applicable, L.211-36 II), although the Code excludes transactions such as repurchase agreements and securities lending or spot transactions (on currencies, commodities, etc.).

The parties can, however, limit the scope of application of the Agreement to certain categories of transaction. Similarly, they can agree one or more multi-product Agreements with each other. In this case, each Agreement should clearly specify in the Annex which categories of transaction fall within its scope of application.

Derivatives used for hedging purposes. For the contracting party, derivatives can offer a flexible way to hedge various financial assets or flows: borrowings, a securities portfolio, foreign currency receipts or payments made in the course of financial or commercial dealings, or commodities bought and sold for industrial or trading purposes.

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[1] *English version for information purpose only.*

Any hedging transaction is governed by an agreement which is separate from the loan or transaction agreement being hedged. As a result, any amendment to the loan or transaction agreement being hedged does not automatically entail an equivalent amendment to the hedge, which continues on the agreed terms until its maturity date.

Inherent risks of derivative transactions. Any transaction in derivatives involves risks, notably from fluctuations in the value of the underlyings. Therefore, before entering into any such agreement, a party should be in a position to identify its needs for such products by reference to its business, balance sheet and income statement. It should also be able, over the life of the agreements, to monitor any change in its obligations by comparison with the market terms being offered for similar products.

1.2 Documentation

Agreeing transactions. Market practice (the financial terms offered for any transaction are constantly changing*)* has led to derivatives transactions being regularly agreed by telephone. Once a transaction is agreed, one party sends the other, in accordance with the deadlines prescribed by regulations, in particular EMIR, a confirmation. This confirmation sets out the terms of the transaction agreed by telephone. The party receiving the confirmation notifies its agreement to the terms set out therein (Article 4 (*Conclusion of Transactions*)).

Amending the terms of the Agreement - the Annex. The terms of the Agreement can be added to or amended by the parties. Amendments must be included in a document called the "Annex". The new version of the Agreement includes a proposed standard Annex that suggests a number of choices that the parties can make which will then define certain terms. Parties are free to make any changes they wish to the terms set out in the standard Annex. Before doing so, it is however recommended that parties ensure they are fully aware of the legal, tax and regulatory capital consequences of any such changes.

The standard Supplemental agreement and EMIR Annexes. Publication of the new 2013 version of the Agreement is accompanied by the publication of (i) a standard Supplemental agreement for all users who need a standard market-approved document that will enable them to quickly and consistently update the 2007 Agreement for all the main changes in the 2013 version and (ii) three EMIR Annexes that only incorporate the EMIR requirements into existing Agreements signed under the 1994, 2001 and 2007 versions.

Purpose of the technical schedules. The Agreement states that the technical definitions applicable to each category of transaction and underlying should be defined, where necessary, in technical schedules which constitute an integral part of the Agreement in the same way as the associated confirmations. To achieve this, the FBF has published a series of technical schedules setting out the clauses specific to each category of transaction. An additional schedule harmonises the definitions of terms common to several categories of transaction.

It was also considered desirable to formalise market practice by publishing specific Annexes for certain schedules and model confirmations.

Unless the parties agree otherwise, from the date of publication, technical schedules and their Annexes shall prevail for the signatories with regard to current and future transactions covered by the Agreement over all other general terms and conditions or specific agreements.

New additional technical schedules will be published as market needs dictate. Existing technical schedules may also be amended by the FBF. Newly amended documents shall automatically come into force from the date of their publication. They shall replace the previous versions for all transactions concluded as from that date.

1.3 Early termination of transactions.

Termination. Except in an Event of Default or Change of Circumstances (as such terms are defined in the Agreement), , transactions governed by this Agreement may, if the parties so agree, be terminated early in whole or in part via the payment of a settlement amount by one party to the other (although the Agreement contains no specific clause on this subject).

In the case of an Event of Default or Change of Circumstances, the terms and conditions and mechanism for termination shall be as set out in Article 7 (*Termination of Transactions*) which lists the different events of default (Article 7.1 (*Termination due to an Event of Default*)) and changes of circumstances (Article 7.2 (*Termination due to a Change of Circumstances*)) and defines the termination procedures.

Events of Default called by the non-defaulting party entitle it to terminate all transactions governed by the Agreement except where the law dictates otherwise. In derogation from the law on businesses in difficulty ("*Difficultés des entreprises*") as stated in Book VI of the French Commercial Code, the non-defaulting party can terminate these transactions merely by commencing a preservation/safeguard procedure ("*Procedure de Sauvegarde*") or receivership procedure ("*redressement judiciaire*").

Calculation and payment of the settlement amount. Finally, the settlement amount is calculated based on the items described in Article 3 (*Definitions*), which includes the concept of "Replacement Value", and Article 8 (*Calculation and Payment of the Settlement Amount*).

Although the procedures for calculating the settlement amount have proved both effective and robust over the years, including during times of stress, they have nonetheless been amended in the new 2013 version of the Agreement to incorporate more flexibility, deemed necessary as a result of the financial crisis and collapse of systemically important entities.

Regarding payment of the settlement amount, this will be due to one of the parties regardless of their status, i.e whether such party is defaulting or affected party or not. Clauses that might limit or cancel out any payment owed by the non-defaulting party to the defaulting party are therefore disallowed.

The Agreement does however allow that, in the event of a default, the non-defaulting party is authorised to set off any other amount owed to it by the defaulting party for any reason from the settlement amount it is obliged to pay.

2. AMENDMENTS TO THE AGREEMENT IN 2013

2.1 New flexibility in calculating the settlement amount

Determination of the replacement value of terminated transactions. As stated above, the new version of the Agreement allows parties greater flexibility in calculating the replacement value, positive or negative, of a transaction. This can now be based not just on market quotations chosen by the party responsible for the calculation and obtained from leading dealers but also on other market data selected by the party responsible for the calculation, available from third-party public databases commonly used by market participants.

Incorporating liquidity gains and costs. The party responsible for calculating the settlement amount can now include in its calculation the gains and costs from transactions put in place to hedge the cash position generated by the termination of one or more transactions. It can also include any gains, losses and costs incurred in terminating or establishing a hedge in relation to the terminated transactions.

2.2 New EMIR requirements

EMIR was published on 4 July 2012 and imposes new obligations on parties to an OTC derivative contract not cleared by a central counterparty. The changes made to the Agreement serve to incorporate certain of these new obligations.

Declaration of regulatory clearing status. Each party to the Agreement must declare its status in respect of EMIR (whether it is a financial counterparty or non-financial counterparty and whether the mandatory clearing obligation applies to it (Article 6.2 (*Regulatory clearing status*)).

***Obligation to clear certain transactions*.** The Agreement states that the parties, as soon as one or more transactions become clearable under regulations in force, undertake to take all steps to allow a central counterparty to clear their transactions (Article 11.13 (*Central counterparty clearing obligation*)). If this is not done within the deadline set by regulations, the parties are entitled to terminate the transactions by reason of a Change of Circumstances.

***Risk management techniques*.** Under EMIR, parties which are under such an obligation undertake to put in place procedures and steps to measure, monitor and mitigate operational and credit risks to cover (i) the reporting of transactions, (ii) portfolio reconciliation, compression and dispute resolution, (iii) daily valuation of transactions and (iv) timely, accurate and appropriately segregated exchange of collateral(Articles 11.9 to 11.12).

Failure by any of the parties to fulfil any of the commitments in Articles 6.2 and 11.9-11.13 shall not trigger an Event of Default but shall trigger the contractual liability of the party concerned.

2.3 Various amendments and updates

Amendment of certain events of default and the absence of hierarchy. The 2013 version of the Agreement amends certain events of default, including shortening the grace period allowed following failure to make a payment or delivery under a transaction to one business day after notification of the default by the other party.

The 2013 version also specifies, where necessary since this rule has in any case applied to all previous versions of the Agreement since 1994, that there is no hierarchy among the different events of default or changes of circumstances and that, where more than one apply, the non-defaulting party is free to invoke whichever they wish as the cause of termination of the transactions (Article 1 (*General principles of the Agreement*)).

Assignment to a third party. The 2013 version now explicitly states, again where necessary, that each party is free to assign, transfer or pledge as security any net receivable corresponding to the payment of the settlement amount owed to it following termination of the transactions (Article 11.4 (*Assignment to a third party*)).

Translation. The publication of this new version is accompanied by an English translation of the Agreement, the standard Supplemental agreement and the EMIR Annexes.