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**SUPPLEMENTAL AGREEMENT RELATING TO PAST SALES OF  
INTEREST RATE HEDGING PRODUCTS**

**("the Supplemental Agreement")**

**Parties:** (1) **THE FINANCIAL SERVICES AUTHORITY**  
("the FSA"), of 25 The North Colonnade, Canary Wharf,  
London, E14 5HS

(2) *[NAME OF FIRM]*, of *[insert address]* ("the Firm")

together "the Parties".

**Date:** **January 2013**

**Recitals:**

- (A) The FSA and the Firm entered into an agreement on [ ] June 2012 in relation to sales of interest rate hedging products (the "Agreement"). On that date, the Firm also provided an Undertaking to the FSA.
- (B) In the Undertaking, the Firm undertook to (a) provide proactive redress to all Customers who did not meet the Sophisticated Customer Criteria to whom the Firm sold Structured Collars on or after 1 December 2001; (b) carry out a past business review of sales of all other Interest Rate Hedging Products (except Caps) to Customers made on or after 1 December 2001 (including appropriate redress); and, (c) if, during the period of the Skilled Person's appointment, the Firm receives a Complaint from a Customer (who does not meet the Sophisticated Customer Criteria) in relation to the sale of a Cap made on or after 1 December 2001, reviewing the circumstances of the sale and determining and, if relevant, providing redress (together, the "proactive redress and past business review exercise").

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- (C) The Firm has tested its methodology for carrying out the proactive redress exercise and past business review by assessing a number of sales files and these have been reviewed by the Skilled Person (the “pilot exercise”).
- (D) The FSA has also considered the cases assessed by the Firm and Skilled Person during the pilot exercise and each of the Parties considers it desirable that certain changes be made to the Undertaking.

**Amendment of the Undertaking**

- 1. The FSA and the Firm agree that the Undertaking be amended in accordance with the provisions set out in the Schedule.

**Application of the Agreement and Undertaking**

- 2. References in the Agreement to the “Undertaking” shall be construed as references to the Undertaking as amended by this Supplementary Agreement.
- 3. The provisions of clauses 3 to 15 of the Agreement shall apply to this Supplementary Agreement as they apply to the Agreement.

**Signature**

**Signed by:** ..... **Dated**.....

*[insert name of CEO]*

Duly authorised to sign for and on behalf of *[insert name of Firm]*

**Signed by:** ..... **Dated**.....

For and on behalf of the FSA

**SCHEDULE**

**AMENDMENTS TO THE UNDERTAKING**

**Definitions and Interpretation**

1. For clause 1.11 substitute—

1.1.1. “‘Sophisticated Customer Criteria’ shall be construed in accordance with following.

1.1.2. A Customer who did not belong to a Companies Act group at the time of the sale meets the Sophisticated Customer Criteria if any of the tests set out in clauses 1.11.2.1, 1.11.2.2 or 1.11.4 are met.

1.1.2.1. A Customer who did not belong to a Companies Act group at the time of the sale meets the Sophisticated Customer Criteria if, in the financial year during which the sale was concluded, the Customer met—

1.1.2.1.1. the section 382 thresholds set out in clauses 1.11.5.1 (turnover), 1.11.5.2 (balance sheet) and 1.11.5.3 (employees); or

1.1.2.1.2. the section 382 thresholds set out in clauses 1.11.5.1 (turnover) and 1.11.5.2 (balance sheet); or

1.1.2.1.3. the section 382 thresholds set out in clauses 1.11.5.1 (turnover) and 1.11.5.3 (employees).

1.1.2.2. Where there is insufficient information to determine whether a Customer (who did not belong to a Companies Act group at the time of the sale) met the section 382 thresholds pursuant to clause 1.11.2.1 in the financial year during which the sale was concluded, or where the Customer met —

1.1.2.2.1. none of the section 382 thresholds (in the financial year during which the sale was concluded); or

1.1.2.2.2. only one of the section 382 thresholds (in the financial year during which the sale was concluded); or

1.1.2.2.3. only the section 382 thresholds set out in clauses 1.11.5.2 (balance sheet) and 1.11.5.3 (employees) (in the financial year during which the sale was concluded),

then the Customer shall only meet the Sophisticated Customer Criteria if either—

(a) the Customer:

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- (i) was a member of a BIPRU group; and
    - (ii) the aggregate notional value of all the Interest Rate Hedging Products in existence immediately after the particular sale being assessed was entered into and which had been entered into by members of the BIPRU group was greater than £10 million; or
  - (b) the Customer:
    - (i) was not a member of a BIPRU group; and
    - (ii) the aggregate notional value of all the Interest Rate Hedging Products in existence immediately after the particular sale being assessed was entered into and which had been entered into by the Customer was greater than £10 million.
- 1.1.3. A Customer who belonged to a Companies Act group at the time of the sale meets the Sophisticated Customer Criteria if any of the tests set out in clauses 1.11.3.1, 1.11.3.2 or 1.11.4 are met.
- 1.1.3.1. A Customer who belonged to a Companies Act group at the time of the sale meets the Sophisticated Customer Criteria if, in the financial year during which the sale was concluded, the Customer's Companies Act group met—
- 1.1.3.1.1. the section 383 thresholds set out in clauses 1.11.6.1 (turnover), 1.11.6.2 (balance sheet) and 1.11.6.3 (employees); or
  - 1.1.3.1.2. the section 383 thresholds set out in clauses 1.11.6.1 (turnover) and 1.11.6.2 (balance sheet); or
  - 1.1.3.1.3. the section 383 thresholds set out in clauses 1.11.6.1 (turnover) and 1.11.6.3 (employees).
- 1.1.3.2. Where there is insufficient information to determine whether a Companies Act group (to which the Customer belonged at the time of the sale) met the section 383 thresholds pursuant to clause 1.11.3.1 in the financial year during which the sale was concluded, or where the Customer's Companies Act group met:
- 1.1.3.2.1. none of the section 383 thresholds (in the financial year during which the sale was concluded); or
  - 1.1.3.2.2. only one of the section 383 thresholds (in the financial year during which the sale was concluded); or

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1.1.3.2.3. only the section 383 thresholds set out in clauses 1.11.5.2 (balance sheet) and 1.11.5.3 (employees) (in the financial year during which the sale was concluded),

then the Customer shall only meet the Sophisticated Customer Criteria if either—

(a) the Customer:

- (i) was a member of a BIPRU group; and
- (ii) the aggregate notional value of all the Interest Rate Hedging Products in existence immediately after the particular sale being assessed was entered into and which had been entered into by members of the BIPRU group was greater than £10 million; or

(b) the Customer:

- (i) was not a member of a BIPRU group; and
- (ii) the aggregate notional value of all the Interest Rate Hedging Products in existence immediately after the particular sale being assessed was entered into and which had been entered into by the Customer's Companies Act group was greater than £10 million.

1.1.4. A Customer meets the Sophisticated Customer Criteria if the Firm is able to demonstrate that, at the time of the sale, the Customer had the necessary experience and knowledge to understand the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved.

1.1.5. In this clause 1.11, the 'section 382 thresholds' are—

- 1.1.5.1. a turnover of more than £6.5 million;
- 1.1.5.2. a balance sheet total of more than £3.26 million;
- 1.1.5.3. more than 50 employees,

calculated in accordance with relevant provisions of the Companies Act 2006 (as amended).

1.1.6. In this clause 1.11, the 'section 383 thresholds' are—

- 1.1.6.1. a turnover of more than £6.5 million net (or £7.8 million gross);
- 1.1.6.2. a balance sheet total of more than £3.26 million net (or £3.9 million gross);

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1.1.6.3. more than 50 employees,

calculated in accordance with relevant provisions of the Companies Act 2006 (as amended).

1.1.7. In this clause 1.11, 'Companies Act group' shall be construed in accordance with the definition of 'group' in section 474(1) of the Companies Act 2006, and the related definitions of 'undertaking', 'parent undertaking' and 'subsidiary undertaking' in sections 1161 and 1162 of, and Schedule 7 to, the Companies Act 2006.

1.1.8. In this clause 1.11, 'BIPRU group' means one of the following:

1.1.8.1. two or more persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others; or

1.1.8.2. two or more persons between whom there is no relationship of control as set out in (1) but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, in particular funding or repayment difficulties, the other or all of the others would be likely to encounter funding or repayment difficulties,

and for these purposes, 'control' means control as defined in Article 1 of the Seventh Council Directive 83/349/EEC (the Seventh Company Law Directive) or a similar relationship between any person and an undertaking."