

- (b) Client will cause its Qualified Independent Representative to deliver to DB a statement in the form of Statement B in Part 4 of the Dodd-Frank Protocol as a condition precedent to discussing additional swaps and/or swap trading strategies with DB.
- 2.4 If Client is an ERISA Special Entity:
- (a) Client represents (which representation is deemed repeated as of the time of each Swap Communication Event) and warrants that it has a fiduciary as defined in Section 3 of ERISA; and
  - (b) Client will cause its fiduciary to deliver to DB a statement in the form of Statement C in Part 4 of the Dodd-Frank Protocol as a condition precedent to discussing additional swaps and/or swaps trading strategies with DB.
- 2.5 DB notifies Client (which notification will be repeated as of the time of each Swap Communication Event) that it is acting as counterparty, it is not acting as a financial or other advisor for Client, and it is not undertaking to assess the suitability of such swap or swap trading strategy for, or act in the best interests of, Client.
- 3. CLEARING.**
- 3.1 Client acknowledges and agrees that, with respect to a swap subject to a mandatory clearing requirement:
- (a) Client has been notified by DB that Client has the sole right to select the derivatives clearing organization which will clear such swap by providing written notice to DB a reasonable amount of time prior to execution of such swap identifying the relevant derivatives clearing organization; and
  - (b) if Client enters into a swap without having selected a derivatives clearing organization to clear such swap, Client agrees to use the derivatives clearing organization designated by DB.
- 3.2 Client acknowledges and agrees that, with respect to a swap that is not subject to a mandatory clearing requirement:
- (a) Client has been notified by DB that Client may elect to require clearing of such swap and Client has the sole right to select the derivatives clearing organization to clear such swap by providing written notice to DB a reasonable amount of time prior to execution of such swap electing that such swap is to be cleared and specifying the derivatives clearing organization selected to clear such swap; and
  - (b) if Client enters into a swap that is not subject to mandatory clearing without having made the elections described in Section 3.2(a), Client agrees that any price, rate, or other financial terms of such swap are for an uncleared swap, and clearing such swap after it is entered into cannot occur without the consent of both Client and DB, which consent may be subject to conditions such as an adjustment to such terms and possible additional payments to take into account the fact that the swap is to be cleared.
- 3.3 Client acknowledges and agrees that:
- (a) if DB does not have a clearing relationship at the derivatives clearing organization selected by Client pursuant to Section 3.1 or 3.2, DB may be unable to enter into such swap with Client; and