

are to be made in escrow. In this case deposit of the payment due earlier on that date shall be made by 2:00 p.m. (local time at the place for the earlier payment if there is a time difference between the cities in which payments are to be made) on that date with an escrow agent selected by the party giving the notice and reasonably acceptable to the other party, accompanied by irrevocable payment instructions (i) to release the deposited payment to the intended recipient upon receipt by the escrow agent of the required deposit of the corresponding payment from the other party on the same date accompanied by irrevocable payment instructions to the same effect or (ii) if the required deposit of the corresponding payment is not made on that same date, to return the payment deposited to the party that paid it into escrow at such party's request. The party that elects to have payments made in escrow shall pay the costs of the escrow arrangements and shall cause those arrangements to provide that the intended recipient of the payment due to be deposited first shall be entitled to interest on that deposited payment for each day in the period of its deposit at the rate offered by the escrow agent for that day for overnight deposits in the relevant currency in the office where it holds that deposited payment (at 11:00 a.m. local time on that day) if that payment is not released by 5:00 p.m. local time on the date it is deposited for any reason other than the intended recipient's failure to make the escrow deposit it is required to make hereunder in a timely fashion.

- (g) **Additional Acknowledgments and Agreements of the Parties.** Section 4 is hereby amended by adding the following new agreements:
- (i) **Waiver of Right to Trial by Jury.** Each of the parties hereby irrevocably waives any and all right to a trial by jury with respect to any legal proceeding arising out of or relating to this Agreement or any Transaction.
 - (ii) **Deutsche Bank Securities Inc.** Each party acknowledges and agrees that (A) Deutsche Bank Securities Inc. or another designated Affiliate of Party A (the "**Designated Agent**") will act as agent for Party A in connection with certain Transactions when so specified in the Transaction Confirmation; and (B) the Designated Agent is acting solely as agent and shall have no liability for the performance of either party's obligations under this Agreement or any Transaction, or for costs, expenses, damages or claims arising out of the failure of either party to perform any such obligation.
 - (iii) **Bankruptcy Code.** Without limiting the applicability if any, of any other provision of the U.S. Bankruptcy Code as amended (the "**Bankruptcy Code**") (including without limitation Sections 362, 546, 556, and 560 thereof and the applicable definitions in Section 101 thereof), the parties acknowledge and agree that all Transactions entered into hereunder will constitute "forward contracts" or "swap agreements" as defined in Section 101 of the Bankruptcy Code or "commodity contracts" as defined in Section 761 of the Bankruptcy Code, that this Agreement is a "master netting agreement" as defined in Section 101 of the Bankruptcy Code, that the rights of the parties under Section 6 of this Agreement will constitute contractual rights to liquidate Transactions, that any margin or collateral provided under any margin, collateral, security, pledge, or similar agreement related hereto will constitute a "margin payment" as defined in Section 101 of the Bankruptcy Code, and that the parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 556, and 560 of the Bankruptcy Code.
- (h) **Amendments.** Section 9(b) is modified by the deletion of the words "or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system".