

greater amount of withholding or deduction for or on account of taxes or duties would have been imposed under FATCA in respect of Income paid by the issuer on such Securities (or Margin Securities, as applicable) had the Seller (or the first party, as applicable) retained the Securities (or the Margin Securities, as applicable).”

- (b) Subparagraph 6(b) shall be deleted in its entirety and replaced by the following:

“(b)

- (i) Unless otherwise agreed, all money payable by one party to the other in respect of any Transaction shall be paid free and clear of, and without withholding or deduction for, any taxes or duties of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having power to tax unless the withholding or deduction of such taxes or duties is required by law. In that event, unless otherwise agreed, the paying party shall pay such additional amounts as will result in the net amounts receivable by the other party (after taking account of such withholding or deduction) being equal to such amounts as would have been received by it had no such taxes or duties been required to be withheld or deducted. For the avoidance of doubt, the reference to “law” in this paragraph includes FATCA. However, no additional amounts shall be payable by the paying party to the other party under this subparagraph (b)(i) to the extent that such tax is imposed or collected under FATCA.
- (ii) If the paying party is required to make a withholding or deduction under FATCA but does not so withhold or deduct, and a liability resulting from such tax is assessed directly against the paying party, then, except to the extent the other party has satisfied or then satisfies the liability resulting from such tax, the other party will promptly pay to the paying party the amount of such liability (including any related liability for interest, but including any related liability for penalties only to the extent provided in subparagraph b(iii)). No payment under this subparagraph (b)(ii) is required to be made to the extent that the relevant liability arises from any gross negligence or wilful misconduct of the paying party.
- (iii) The amount of related liability for penalties shall only be payable to the paying party under subparagraph (b)(ii) where such penalties become due because the other party has failed to provide appropriate US tax forms.”

- (c) A new subparagraph 6(k) shall be added as follows:

“(k) If at any time a party (the “first party”) is required to remit an amount of tax to the IRS with respect to a payment under a Transaction in connection with FATCA, then without duplication of any amount the first party has deducted on account of such tax from any amount previously paid to the other party (the “second party”) pursuant to the Transaction, the second party shall be required to pay to the first party an amount equal to that amount of tax on the payment date on which a payment giving rise to remittance required under FATCA occurs. Upon the reasonable request of the second party with respect to any payment date, the first party will supply to the second party computations setting forth in reasonable detail the amount payable on such payment date pursuant to the preceding sentence.”

- (d) A new subparagraph 6(l) shall be added as follows:

“(l) For the avoidance of doubt, the imposition of any withholding or deduction pursuant to or on account of FATCA on any amounts paid or received under a Transaction shall not be treated as an Event of Default under paragraph 10 or as a material adverse effect that could cause a Tax Event under paragraph 11, even if such imposition results in either party receiving amounts that differ materially from the amount that the party would have otherwise received if no such withholding or deduction were imposed.”

- (e) A new subparagraph 10(c)(iii) shall be added as follows: