

MEMORANDUM

TO: File
FROM: Leah Drennan
RE: Telephonic meeting with ISDA representatives
DATE: December 1, 2011

On December 1, 2011, Donna Chambers, Jack Habert, Andy Schoeffler, Amy Starr, and Leah Drennan of the Securities and Exchange Commission held a telephonic meeting with David Aron, Lee Ann Duffy, Julian Hammar, and Steve Kane of the Commodity Futures Trading Commission and Mary Johannes of the International Swaps and Derivatives Association, Inc., Robert Lee of Deutsche Bank, Josh Cohn of Mayer Brown LLP, and Anthony Cicia and Maria Douvas of Morgan Stanley (“ISDA representatives”).

The participants discussed the Commissions' proposed guidance with respect to use of certain fixed terms in Title VII instruments in the context of rate resets and, specifically, the purposes and details of rate rests.

[No agenda available for this meeting.]

Drennan, Leah

From: Hammar, Julian [jhammar@CFTC.gov]
Sent: Thursday, December 08, 2011 4:05 PM
To: Chambers, Donna; Drennan, Leah
Subject: FW: SBS Follow-Up [I]
Attachments: 3204_001 (3).pdf

Donna and Leah,

Just received this from ISDA for our consideration.

Julian

From: Mary Johannes [<mailto:MJohannes@isda.org>]
Sent: Thursday, December 08, 2011 3:38 PM
To: Hammar, Julian
Subject: SBS Follow-Up [I]

Julian,

As a follow-up to your request, please find below suggested language that would provide more clarification to the issue raised in ISDA's response to the proposed definition of "swap" and "security-based swap agreement" (ISDA Comment Letter July 22, 2011). We suggest the language below may be inserted at the end of the discussion in Section F "Use of Certain Terms and Conditions in Title VII Instruments" in the attached Federal Register notice. We trust you find this responsive to your question.

That said, changes in the terms of such a swap that are not undertaken primarily to reflect the change or changes in the characteristic of the underlying security would not cause the swap to be a security-based swap. For example, a change in the fixed rate as a result of recouping to adjust credit exposure in such a swap would not cause the swap to be a security-based swap notwithstanding that the fixed rate has varied over the life of the swap.

Please call if you have any further questions.

Best regards,

Mary

Mary P. Johannes
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