

## ISDA EMIR CLASSIFICATION LETTER

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by the International Swaps and Derivatives Association, Inc.

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TO: whom it may concern

The entity named below (the “*Named Entity*”) makes the statements in Appendix I (*EMIR Clearing Categorisation*) and/or Appendix II (*EMIR Counterparty Classification*), as indicated in each appendix, to provide the recipient of this letter (the “*Recipient*”) with status information needed by the Recipient to determine the application of certain EMIR requirements. The statements in this letter are solely for the purposes of such determinations.

The Named Entity will notify the Recipient in writing before or as soon as reasonably practicable following any of the statements made in Appendix I (*EMIR Clearing Categorisation*) and/or Appendix II (*EMIR Counterparty Classification*), as applicable, ceasing to be true. The Recipient may rely on the statements given by the Named Entity in Appendix I (*EMIR Clearing Categorisation*) and/or Appendix II (*EMIR Counterparty Classification*), as applicable, unless and until the Named Entity notifies the Recipient in writing to the contrary.

If the Recipient receives classification information from the Named Entity in the form of this letter and also in corresponding statements through ISDA Amend and inconsistencies exist between the information received in the two forms, the information provided through ISDA Amend prevails.

In the event the Named Entity completes Appendix I and Appendix II to this letter and there is inconsistency between the statements made by the Named Entity in Appendix I and Appendix II, the statements made by the Named Entity in Appendix I prevail.

Capitalised terms used in this letter have the meanings given to them in Appendix III (*Defined Terms*).

Where this letter is completed and delivered by an agent on behalf of one or more Named Entities, this letter should be treated as if it were a separate letter with respect to each Named Entity listed by the agent.

Executed and delivered with effect from:

Date: 19/05/2016


Full legal name of the Named Entity:

Banca Popolare dell’Alto Adige Soc. Coop. pa

LEI of the Named Entity:

52990033C5FUEN4LMC06

Signature:



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Name of signatory:

Martin Schweitzer

Title of signatory:

Chief Financial Officer

## APPENDIX I

### EMIR CLEARING CATEGORISATION

*If the Named Entity is a Third Country Entity, it should answer questions 1, 2, 3 and 4 on the basis of what its categorisation would be if the Named Entity were established in the EU. If the Named Entity is an entity out of scope for EMIR, it should not answer any of the questions in this Appendix I.*

#### **1 What is your clearing category under the EMIR Interest Rate Products RTS?**

*If the Named Entity is NFC-, it should not answer this question.*

In respect of OTC Derivative Contracts that are the subject of the Interest Rate Products RTS, the Named Entity is a:

- Category 1 Entity;
- Category 2 Entity;
- Category 3 Entity; or
- Category 4 Entity.

#### **2 What is your clearing category under the Second Rates RTS?**

*If the Named Entity is NFC-, it should not answer this question.*

In respect of OTC Derivative Contracts that are the subject of the Second Rates RTS, the Named Entity is a:

- Category 1 Entity;
- Category 2 Entity;
- Category 3 Entity; or
- Category 4 Entity.

#### **3 What is your clearing category under the Index CDS RTS?**

*If the Named Entity is NFC-, it should not answer this question.*

In respect of OTC Derivative Contracts that are the subject of the Index CDS RTS, the Named Entity is a:

- Category 1 Entity;
- Category 2 Entity;
- Category 3 Entity; or
- Category 4 Entity.

#### **4 Are you an Alternative Investment Fund?**

- Yes; or

No.

**5 What type of Pension Scheme Arrangement are you?**

*The Named Entity should only complete this section if it is a Pension Scheme Arrangement. Third Country Entities should not complete this section.*

The Named Entity is a:

- Pension Scheme Arrangement within the meaning of Article 2(10)(a) of EMIR;
- Pension Scheme Arrangement within the meaning of Article 2(10)(b) of EMIR;
- Pension Scheme Arrangement within the meaning of Article 2(10)(c) of EMIR; or
- Pension Scheme Arrangement within the meaning of Article 2(10)(d) of EMIR.

## 6 Use of the Pension Scheme Arrangement Exemption

*The Named Entity should only complete this section if it is a Pension Scheme Arrangement. Third Country Entities should not complete this section.*

The Named Entity makes the statement below as indicated.

**All Contracts.**

Each OTC Derivative Contract (whenever entered into, and whether or not any such contract would otherwise be subject to mandatory clearing under EMIR) is objectively measurable as reducing investment risks directly relating to the financial solvency of the Pension Scheme Arrangement and accordingly has the benefit of the Pension Scheme Arrangement Exemption.

**All Contracts To Which Mandatory Clearing Would Otherwise Apply.**

Each OTC Derivative Contract which would otherwise be subject to mandatory clearing under EMIR is objectively measurable as reducing investment risks directly relating to the financial solvency of the Pension Scheme Arrangement and accordingly has the benefit of the Pension Scheme Arrangement Exemption.

**No General Statement Made.**

(a) Subject to paragraph (b), the Pension Scheme Arrangement makes no general statement as to whether OTC Derivative Contracts have the benefit of the Pension Scheme Arrangement Exemption.

(b) The Pension Scheme Arrangement may from time to time request to enter into OTC Derivative Contracts of a type that are subject to mandatory clearing under EMIR on the basis that they will not be cleared in accordance with the EMIR clearing obligation. By making such request, the Pension Scheme Arrangement makes the statement that each such OTC Derivative Contract is objectively measurable as reducing investment risks directly relating to the financial solvency of the Pension Scheme Arrangement and accordingly has the benefit of the Pension Scheme Arrangement Exemption.

## APPENDIX II

### EMIR COUNTERPARTY CLASSIFICATION

*If the Named Entity is a Third Country Entity, it should answer questions 3 and 4 on the basis of what its categorisation would be if the Named Entity were established in the EU and it should not answer question 5(b).*

#### 1 Third Country Entity

The Named Entity:

- is a Third Country Entity (and so the following elections made should be read in that context); or  
 is not a Third Country Entity.

#### 2(a) Are you an entity out of scope for EMIR?

- Yes; or  
 No.

#### 2(b) Select the entity type that is out of scope

*If you have checked "Yes" in response to question 2(a) above, please confirm the following.*

The Named Entity is fully or partially out of scope of EMIR as it is:

- an EMIR Article 1(4)(a) Entity;  
 an EMIR Article 1(4)(b) Entity;  
 an EMIR Article 1(4)(c) Entity;  
 an EMIR Article 1(5)(a) Entity;  
 an EMIR Article 1(5)(b) Entity;  
 an EMIR Article 1(5)(c) Entity; or  
 a Non-Undertaking.

*If the Named Entity is out of scope for EMIR, it should not complete the remaining sections.*

#### 3 EMIR Entity Type

The Named Entity is a:

- FC; or  
 NFC.

**4 Clearing Threshold**

*If the Named Entity is a NFC, please confirm the following.*

The Named Entity is a:

NFC+; or

NFC-.

**5(a) Are you a Pension Scheme Arrangement?**

Yes; or

No.

**5(b) Do you intend to utilize the Pension Scheme Arrangement Exemption?**

Yes;

No; or

Not decided.

## APPENDIX III

### DEFINED TERMS<sup>1</sup>

“*Alternative Investment Fund*” means an alternative investment fund as defined in Article 4(1)(a) of Directive 2011/61/EU.

“*Category 1 Entity*” means:

(a) in respect of the Interest Rate Products RTS, an entity which, on the date of entry into force of the Interest Rate Products RTS, is a clearing member, within the meaning of Article 2(14) of EMIR, for at least one of the classes of OTC derivatives set out in the annex to the Interest Rate Products RTS, of at least one of the CCPs authorised or recognised before that date to clear at least one of those classes;

(b) in respect of the Second Rates RTS, an entity which, on the date of entry into force of the Second Rates RTS, is a clearing member, within the meaning of Article 2(14) of EMIR, for at least one of the classes of OTC derivatives set out in the annex to the Second Rates RTS or the annex to the Interest Rate Products RTS, of at least one of the CCPs authorised or recognised before that date to clear at least one of those classes; and

(c) in respect of the Index CDS RTS, an entity which, on the date of entry into force of the Index CDS RTS, is a clearing member, within the meaning of Article 2(14) of EMIR, for at least one of the classes of OTC derivatives set out in the annex to the Index CDS RTS, of at least one of the CCPs authorised or recognised before that date to clear at least one of those classes.

“*Category 2 Entity*” means, in respect of a Clearing RTS, an entity which is not a Category 1 Entity in respect of that Clearing RTS and which belongs to a Group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives for the assessment period indicated in that Clearing RTS is above EUR 8 billion and which is:

(a) a FC; or

(b) an Alternative Investment Fund that is a NFC+.

For the purposes of calculating the Group aggregate month-end average of outstanding gross notional amount, all of the Group’s non-centrally cleared derivatives, including foreign exchange forwards, swaps and currency swaps, shall be included. When the entity is an Alternative Investment Fund as defined herein or a UCITS as defined in Article 1(2) of Directive 2009/65/EC, the EUR 8 billion threshold referred to above shall apply individually at fund level.

“*Category 3 Entity*” means, in respect of a Clearing RTS, an entity which is not a Category 1 Entity or a Category 2 Entity in respect of that Clearing RTS and which is:

(a) a FC; or

(b) an Alternative Investment Fund that is a NFC+.

“*Category 4 Entity*” means, in respect of a Clearing RTS, a NFC+ which is not a Category 1 Entity, a Category 2 Entity or a Category 3 Entity in respect of that Clearing RTS.

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<sup>1</sup> As this updated standard form letter is being published before the Second Rates RTS and/or Index CDS RTS are published in final form, it is possible that the final form of either RTS differs from the draft on which this letter is based. The parties should satisfy themselves that the content of this letter accurately reflects the final form of the regulation, particularly in respect of definitions such as the clearing categories as these provisions are intended to track the wording of the regulation as closely as possible.

“**Clearing RTS**” means each of the Interest Rate Products RTS, the Second Rates RTS and the Index CDS RTS.

“**CCP**” means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

“**EMIR**” means Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012.

“**EMIR Article 1(4)(a) Entity**” means any members of the European System of Central Banks or other Member States’ bodies performing similar functions or other European Union public bodies charged with or intervening in the management of the public debt.

“**EMIR Article 1(4)(b) Entity**” means the Bank for International Settlements.

“**EMIR Article 1(4)(c) Entity**” means any central banks and public bodies charged with or intervening in the management of the public debt in the following countries:

- (a) Japan; or
- (b) United States of America.

“**EMIR Article 1(5)(a) Entity**” means any multilateral development banks, as listed under Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC.

“**EMIR Article 1(5)(b) Entity**” means any public sector entities within the meaning of point (18) of Article 4 of Directive 2006/48/EC where they are owned by central governments and have explicit guarantee arrangements provided by central governments.

“**EMIR Article 1(5)(c) Entity**” means each of the European Financial Stability Facility and the European Stability Mechanism.

“**European Union**” means the economic and political union established in 1993 by the Maastricht Treaty, with the aim of achieving closer economic and political union between member states that are primarily located in Europe.

“**FC**” means any investment firm authorised in accordance with Directive 2004/39/EC; credit institution authorised in accordance with Directive 2006/48/EC; insurance undertaking authorised in accordance with Directive 73/239/EEC; assurance undertaking authorised in accordance with Directive 2002/83/EC; reinsurance undertaking authorised in accordance with Directive 2005/68/EC; UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC; institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC; and alternative investment fund managed by alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU.

“**Group**” means the group of undertakings consisting of a parent undertaking and its subsidiaries within the meaning of Articles 1 and 2 of Directive 83/349/EEC or the group of undertakings referred to in Article 3(1) and Article 80(7) and (8) of Directive 2006/48/EC.

“**Index CDS RTS**” means the Commission Delegated Regulation supplementing EMIR of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation in respect of index CDS OTC derivatives, [expected to be] published [●] 2016.<sup>2</sup>

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<sup>2</sup> This amended standard form letter has been published before the date of the Index CDS RTS is known. The parties should retain or delete the square-bracketed text and insert the relevant date, as appropriate, before using this letter.



**“Interest Rate Products RTS”** means the Commission Delegated Regulation supplementing EMIR of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation in respect of interest rate OTC derivatives denominated in Euro, British Pound, Japanese Yen or U.S. Dollar published 1 December 2015.

**“ISDA Amend”** means the electronic solution developed to assist entities with, amongst other things, EMIR status determination and communication of such determination, which is available at <http://www.markit.com/product/isda-amend>.

**“Member States”** has the meaning given to it in EMIR.

**“Named Entity”** has the meaning given to it on the first page of this letter.

**“NFC”** means an undertaking established in the European Union other than a CCP or a FC.

**“NFC-”** means a NFC which is not a NFC+.

**“NFC+”** means a NFC which meets the conditions referred to in Article 10(1)(b) of EMIR.

**“Non-Undertaking”** means a natural or legal person who/which is not an undertaking for the purposes of EMIR.

**“OTC Derivative Contract”** has the meaning given to it in Article 2(7) of EMIR.

**“Pension Scheme Arrangement”** means any:

(a) institutions for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC, including any authorised entity responsible for managing such an institution and acting on its behalf as referred to in Article 2(1) of that Directive as well as any legal entity set up for the purpose of investment of such institutions, acting solely and exclusively in their interest;

(b) occupational retirement provision businesses of institutions referred to in Article 3 of Directive 2003/41/EC;

(c) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, provided that all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertaking, without any possibility of transfer;

(d) any other authorised and supervised entities, or arrangements, operating on a national basis, provided that:

(i) they are recognised under national law; and

(ii) their primary purpose is to provide retirement benefits.

**“Pension Scheme Arrangement Exemption”** means the temporary exemption (including any extension thereof) from the clearing obligation, as described in Articles 89(1) and 89(2) of EMIR.

**“Recipient”** has the meaning given to it on the first page of this letter.

**“Second Rates RTS”** means the Commission Delegated Regulation supplementing EMIR of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation in

respect of interest rate OTC derivatives denominated in Norwegian Krone, Swedish Krona and Polish Zloty, [expected to be] published [●] 2016.<sup>3</sup>

“*Third Country Entity*” means an entity which is not established in the European Union and which is not a FC<sup>4</sup>.

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<sup>3</sup> This updated standard form letter has been published before the date of the Second Rates RTS is known. The parties should retain or delete the square-bracketed text and insert the relevant date, as appropriate, before using this letter.

<sup>4</sup> The words “and which is not a FC” refers to the fact that a non-EU Alternative Investment Fund can be a FC (in which case, the Alternative Investment Fund is a FC and is not a Third Country Entity). If the Named Entity is a Third Country Entity, certain sections of Appendix I and Appendix II require that the Third Country Entity answer on the basis of what the Named Entity would be if it were established in the EU (as indicated in the relevant sections of Appendix I and Appendix II), this may include the Third Country Entity indicating that it is equivalent to a FC or a NFC.