

COMMENTS TO PROPOSED NAESB CREDIT SUPPORT ADDENDUM

1. § II. Calculation of Collateral Requirement. The definition of “Secured Party” on page 3, line 42 is confusing. Suggest that the following general definition be added:

“Secured Party” shall mean a party hereunder to which a Pledging Party has granted an interest in, lien on, or assignment of any Eligible Collateral or Eligible Credit Support, or any proceeds resulting therefrom or the liquidation thereof.

2. § II. (2). Page 3, lines 42 to 43. Because the amount of any accrued interest on collateral cash will generally be quite small relative to amount of the collateral threshold and the value of the posted collateral, suggest that the definition of “Collateral Requirement” be revised to delete the reference to accrued interest on line 43 as an offset against a pledging party’s exposure.

3. To avoid confusion with the term “Event of Default” as defined in Section 10.2 of the Base Contract, revise definition of “Credit Support Default” on page 1, lines 51 through 60 as follows:

“Credit Support Default” shall mean that any one or more of the following events shall exist and be continuing with respect to a party (the “Defaulting Party”) to this Credit Support Addendum:

Similarly, rename the definition “Potential Event of Default” on page 2, line 1 to “Potential Credit Support Event of Default” and revise definition as for “Credit Support Default”.

4. Add the following paragraph X (h):

The parties acknowledge and agree that all transactions secured by this Credit Support Addendum constitute “forward contracts” within the meaning of Section 556 of the United States Bankruptcy Code.

Also, include, where appropriate, the following representation:

As of the date of this Credit Support Addendum and the date of entering into any transaction entered into under the Base Contract, each party represents and warrants to the other that it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

5. To the end of § X (b)(i) page 7, line 42 regarding a Pledging Party’s right to substitute different items of collateral, add the following clause:

“provided that, the Substitute Posted Collateral is of equivalent Value to the items of Posted Collateral being exchanged and constitutes Eligible Collateral as defined in this Credit Support Addendum.”

6. Definition of “Letter of Credit”, page 2, lines 30 through 34. Suggest that the references to transferability (or non-transferability) be deleted.

7. § III. (a). page 3, line 48. Replace “Calculation Date” with “Business Day”. On line 54 delete word “Collateral” preceding word “Value”.

8. § III. (b). page 4, lines 11 through 13. Replace “on behalf of the other party to the other party” with “to the Pledging Party”.

9. § V Disputed Calculations. § V. (a), page 5, lines 10 through 15. The procedure as described is confusing. Replace remainder of sentence following the word then with “the disputed Exposure shall be recalculated within two (2) Business Days by the Secured Party based on the arithmetic mean of the current mark-to-market value of each Transaction in dispute, determined from quotations provided by two (2) Reference Market Makers, one to be nominated by the Pledging Party and one to be nominated by the Secured Party; provided, that if both parties agree on the same Reference Market Maker, or one party’s nominated Reference Market Maker shall fail to provide the requested quotations before two (2) Business Days have elapsed, then the one quotation obtained shall be used by the Secured Party to determine the current mark-to-market value of each Transaction in dispute. The Secured Party shall provide the Pledging Party the Exposure recalculation in reasonable detail.”
10. § V. (b), page 5, lines 18 through 32. Same comment as in 9. above.
11. § VI. Letters of Credit. § VI. (a) line 44. With respect to replacement letters of credit, replace “issued [by a] bank acceptable to the Secured Party” with “new Letter of Credit satisfying the requirements set forth in this Credit Support Addendum”.