



## U.S. Department of Labor, Fiduciary Rule Disclosure

Dear Client:

As you may be aware, the U.S. Department of Labor issued a final regulation (the "Regulation") re-defining when one becomes a fiduciary under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and Section 4975 of the Internal Revenue Code of 1986, as amended ("Code") in connection with the provision of "investment advice", which regulation is expected to become applicable on or after June 9, 2017. The Regulation provides an exception to fiduciary status in connection with the provision of advice by a person (e.g., a bank or broker-dealer) to a fiduciary of a plan (including a fiduciary to an investment contract, product or entity that holds "plan assets") who is independent of the advice provider in connection with arm's length transactions related to the investment of securities or other property (the "Exception").

You (or one of your affiliates) may be acting as a fiduciary on behalf of a plan governed by ERISA and/or Section 4975 of the Code, or similar law, or an entity (e.g., a bank collective investment trust or private investment fund) considered to hold "plan assets" for purposes of ERISA, Section 4975 of the Code or any similar law (each a "Plan Client") in connection with one or more accounts, relationships or transactions with Macquarie Capital (USA) Inc. ("MCUSA") and Macquarie Bank Limited ("MBL") and/or their affiliates in our Advisory & Capital Markets, Asset Financing, Financing, Trading and Hedging (collectively "Non-Fiduciary") business segments ("Macquarie", "us" or "we"). **Macquarie does not act as a fiduciary (as defined under ERISA, Section 4975 of the Code, the Regulation or any similar law) to Plan Clients in respect of its Non-Fiduciary business lines.**

To utilize the Exception, certain conditions must be satisfied, including that the person providing any advice knows or reasonably believes that it is dealing with an independent fiduciary that meets certain conditions, and provides certain disclosures to such fiduciary. We are providing this letter to supplement any existing agreements regarding a Plan Client or disclosures previously provided by us, or otherwise to obtain the representations set forth herein and provide the required disclosures with respect to a Plan Client. **If you are not the fiduciary responsible for the Plan Client's account, relationship or transaction with Macquarie, please forward this letter to the appropriate responsible fiduciary and/or persons representing the fiduciary. Further, if one or more of your affiliates is acting on behalf of any Plan Clients, please forward this letter to the appropriate person(s).**

**I. Non-Fiduciary Nature of Macquarie's Non-Fiduciary Businesses.** In connection with Macquarie engaging in any transaction with, or providing services to, a Plan Client in any Non-Fiduciary business (each, a "Transaction") we are not undertaking to provide impartial advice or give advice in a fiduciary capacity for purposes of ERISA, Section 4975 of the Code or otherwise.

**II. Nature of Macquarie's Interests in Non-Fiduciary Business Transactions.** As a general matter, we have a financial interest in each Transaction. Depending upon the type of Transaction, we may have a variety of financial interests. These interests are described more fully in the attached Appendix A. For further information, you should also consult any Plan Client trade confirmation or similar document, any Plan Client account agreement or other disclosures related to the Transactions including our ERISA Section 408(b)(2) disclosures (see Appendix B). In addition, Plan Client fiduciaries should also consider other industry resources (such as those referenced in Appendix B, and others produced by the Futures Industry Association and the International Swaps and Derivatives Association). For more information about the nature of our interests, please also review our other annual securities related disclosure, our Commodities and Global Markets related disclosures along with other materials located on our website.

### III. Deemed Representations of the Independent Fiduciary and Plan Client

In addition to the foregoing, unless we are notified in writing to the contrary, by continuing any Transaction in place on June 9, 2017 (the "Applicable Date") or entering into any new Transaction on or after the Applicable Date, the independent fiduciary making the investment decision(s) on behalf of Plan Client with respect to such Transaction and the Plan Client will be deemed to represent (which representations will be deemed repeated, with respect to any particular Transaction, at all times until the termination of such Transaction) that:

(a) The independent fiduciary is either (1) a bank as defined in Section 202 of the Investment Advisers Act of 1940 (the "Advisers Act") that is regulated and supervised and subject to periodic examination by a State or Federal agency, (2) an insurance carrier which is qualified under the laws of more than one State to perform the services of managing, acquiring or disposing of assets of a plan, (3) an investment adviser registered under the Advisers Act or, if not registered by reason of paragraph (1) of Section 203A of such Act, is registered as an investment adviser under the laws of a State in which it maintains its principal office and place of business, (4) a broker-dealer registered under the Securities Exchange Act of 1934, or (5) any independent fiduciary that holds, or has under its management and control, total assets of at least \$50 million provided in such case, that the Plan Client is subject to Title I of ERISA;

(b) The independent fiduciary is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies;

(c) The independent fiduciary is independent within the meaning of the Regulation, a fiduciary under ERISA or Section 4975 of the Code, or both, with respect to the Transaction, and is responsible for exercising independent judgment in evaluating each Transaction;

(d) The independent fiduciary understands, agrees, and acknowledges that Macquarie is not undertaking to provide impartial investment advice, or give advice in a fiduciary capacity, in connection with the Transaction in respect of any Macquarie Non-Fiduciary business lines; and

(e) Macquarie is not receiving a fee or other compensation directly from Plan Client, any plan fiduciary, plan participant or beneficiary, IRA or IRA owner for the provision of investment advice (as opposed to other services) in connection with the Transaction.

**Macquarie is entitled to and will rely upon the foregoing representations until it is notified in writing that any such representations are or will be untrue.**

For the avoidance of doubt, nothing contained in this letter expands Macquarie's obligations under any non-ERISA statutory or regulatory scheme.

If you have any questions regarding the foregoing, please contact your Macquarie representative.

Very truly yours,

[MACQUARIE]

## APPENDIX A

Without limiting the generality of the Section II of the letter (“**Nature of Macquarie’s Interests in Non-Fiduciary Business Transactions**”), Macquarie’s interests may include, among others:

- Our receipt of fees, commissions, mark-ups or mark-downs, interest charges, discounts, rebates, credits, refunds, fee waivers, compensation for acting in roles associated with the relevant Transaction (e.g., calculation agent or trustee);
- Structuring fees that may be earned as distinct from payments made in connection with a Transaction;
- Compensation and custody fees we earn when we act as prime broker or clearing broker;
- Business relationships which may provide an incentive for us to make introductions;
- Acting as calculation agent, underwriter, servicer, sponsor, originator, trustee, insurer, obligor, liquidity provider, transaction (e.g., swap) counterparty or other type of service provider with respect to certain offerings of financial instruments, depending upon the Transaction or asset (including structured products or securitization transactions), for which we may receive a fee or other compensation;
- Compensation associated with originating or acquiring collateral sold to a structured product or an asset-backed security (“ABS”) issuer prior to, on or following the issuance date and we may receive compensation for acting as warehouse provider for assets of an issuer prior to the issuance of a structured product or ABS security;
- Profits from implied derivative embedded in the structure of certain structured securities and investment products;
- Revenues or profits received from financing for, or the provision of other services to, investors or other participants in a Transaction (including financing or services related to such investment or participation) for which we would expect to receive fees or other compensation;
- The receipt of gifts (other than cash or cash equivalents), entertainment or meals by our employees from third parties or their attendance at educational conferences hosted by third parties that are ancillary in nature which are not related to any particular Plan Client. In this regard, Macquarie employees are subject to internal policies and procedures relating to gifts, meals, entertainment, and conferences that are consistent with regulatory requirements;
- Compensation received by reason of an investor’s or other participant’s involvement in a Transaction where the assets are issued by us or an affiliate, or arise out of a vehicle structured or sponsored by us or an asset sold by us to such Transaction participant;
- MCUSA, the Macquarie U.S. broker-dealer, acts as either a broker or clearing agent (or both) in connection with the purchase and sale (including short sales) of exchange listed or OTC securities executed on an agency or riskless principal basis. In some limited cases, we may directly or through others, including affiliates, also provide similar agency related execution services in connection with fixed income and certain foreign securities. Where applicable, we may also provide custody related services, and the provision of short-term “sweep” or other money market enhancements for available credit balances pending reinvestment or redistribution on behalf of a client account custodied or maintained with us or an affiliate identified in the applicable agreement with the client. We receive compensation from clients in return for these services in the form of commissions (when we execute or clear on an agency basis) and markups and markdowns (when we act in a riskless principal or principal capacity);
- To the extent a client executes trades on a foreign exchange, MCUSA or an affiliate may act as broker or clearing agent or both. In connection with any such transaction, MCUSA may allocate all or a portion of the amount received to such affiliate for the execution services such affiliate performs;
- In connection with entering into securities financing Transactions with a Plan Client, we may also provide ancillary services and enter into related types of Transactions where we have financial interests, such as stock loan and repurchase Transactions. If applicable, consult the Plan Client’s prime brokerage account agreement, any applicable fee schedule, any other related Transaction agreements (e.g., an MSLA or an MRA), and any trade confirmations;
- When engaging in securities lending, unless otherwise agreed, the borrower will pay the lender a loan fee and the lender will pay the borrower a fee or rebate on collateral consisting of cash, in each case at rates as the borrower and lender may agree. When acting as borrower, we borrow securities as principal and may on-lend such securities to other parties or use the securities for our own purposes and may receive compensation in connection with such activity. Our interests will therefore be relevant depending upon which side of the market we are in any given such Transaction;

- We may derive profits, gains or other compensation from repurchase Transactions. In a repurchase Transaction, the parties agree to a financing fee (which is the interest rate for the time period of such Transaction) payable by the seller to the buyer. The repurchase price of such Transaction is typically calculated by adding this financing fee to the purchase price (see, e.g., Master Repurchase Agreement, Global Master Repurchase Agreement, Master Securities Lending Agreement, Global Master Securities Lending Agreement or Master Securities Forward Transaction Agreement) any Plan Client trade confirmations and other relevant documentation;
- We have an interest in using any cash or securities collateral delivered by a Plan Client to us in connection with our business unless the relevant agreement or applicable legal requirements provide otherwise when engaging in a securities lending, repurchase or forward Transaction, if we are borrower, lender, seller or buyer (as applicable). For more information, you should consult the relevant agreement and associated annexes, schedules and Transaction specific terms governing the Transactions (see, e.g., Master Repurchase Agreement, Global Master Repurchase Agreement, Master Securities Lending Agreement, Global Master Securities Lending Agreement or Master Securities Forward Transaction Agreement), any Plan Client trade confirmations and other relevant documentation;
- We may receive compensation from fees and commissions, and/or compensation that is otherwise implicit in the difference between payments and deliveries made to or by us under Transactions and our costs (or gains) in hedging and carrying the resulting exposures where we act as counterparty in certain bilateral derivative Transactions (e.g., foreign exchange (FX) transactions, options (FX or otherwise), swaptions, credit default swaps, credit default options, total return swaps, interest rate swaps, equity swaps, and futures or combinations thereof). These returns may be substantial including by reason of our positions hedging these Transactions;
- We may earn position maintenance fees in connection with clearing OTC derivatives;
- We may receive interest, as well as structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away fees or alternate Transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing in connection with any loan or extension of credit to any Plan Client;
- We may also have an interest in our decisions to enter into certain Transactions to manage the risk of exposures we have accumulated through the conduct of our business that may provide certain incentives;
- We may be able to exercise certain rights and earn additional compensation with respect to any collateral or margin posted by a Client that will generate additional compensation for us, including by reason of our ability to rehypothecate any collateral or margin posted to us;
- We may also derive profits that may arise with respect to currency transactions that occur to settle a securities Transaction in non-US markets for a Plan Client where the Plan Client account settles the Transaction in a currency different from the currency in which the Transaction was executed;
- We may also receive reimbursement of expenses incurred in connection with a Transaction;
- We may also have an interest in certain transactions by reason of our risk management of exposures we have accumulated through the conduct of our business, profits associated with our hedging of Transactions and profits associated with the use of assets provided to us (e.g., collateral, margin and/or deposits) in connection with a Transaction, in all cases subject to the documentation governing the relevant Transaction and applicable law;
- We also may receive revenue obtained from the proceeds of securities sold by us in the primary market which may be used by the issuer to satisfy a loan or other extension of credit made by us to the issuer or an affiliate of the issuer;
- We may also have an interest in certain transactions as opposed to others because we may earn higher revenues, compensation, gain greater market share or meet other internal or external business objectives;
- We may have arrangements with one or more trading venues, exchanges, or other alternative trading platforms, through which we may receive concessions, rebates, market volume or other discounts and other benefits which may provide incentives for us to route orders to one or more particular such venue rather than others that may be available in the marketplace. These may include ownership interests. We thus may direct orders to third parties (e.g., executing firms, brokers, clearing firms or market-makers), trading venues (e.g., securities exchanges, designated contract markets, or alternative trading systems), or to derivatives trading platforms (including derivatives exchanges, clearing organizations, swap execution facilities or similar derivatives trading platforms or systems) where we may receive or be eligible for concessions, credits, rebates, market volume discounts, refunds, rebates, fee waivers, caps/floors or similar arrangements, payments, benefits or incentives or are otherwise members (for example, we may have an interest in avoiding certain market venues for Transactions where we may not be a

member of a clearing or other trading venue for cleared swaps). To the extent a Market Venue<sup>1</sup> charges a fee, it may be reflected as an increase in the commission rate that a client pays for a trade. Pursuant to SEC Rule 606, Macquarie discloses on a quarterly basis covered Market Venues to which it routes customer orders for execution as required by the rule;

- Macquarie or one or more of its affiliates may also have ownership interests in one or more Market Venues. As a result, the client or its fiduciary should be aware that Macquarie or its affiliates might receive financial benefits related to its ownership interest in or revenue sharing arrangements amongst members when trades are executed on such an exchange or cleared at such a Market Venue;
- We may have business relationships with other clients which cause us to be in possession of information that may be unknown to you, and which allow us to act, to the extent permitted under law, in connection with such information;
- We may also have interests when we originate, manage, assign, and participate in syndicates of loans and other debt products to companies in a number of commercial scenarios including financings and refinancings for operations, plant and equipment, working capital or other corporate purposes, as well as for acquisitive (or dispositive) corporate transactions;
- We may earn compensation when we act as a loan syndication agent, arranger, administrative agent, collateral agent or in similar functions in which we may have financial or commercial interests that may be different than those of investors;
- We may have certain powers when we act as a loan administrative agent or participation agent or similar function, if exercised (*i.e.*, the ability to enforce certain payment rights, calls of default, exercise of remedies etc.) may result in outcomes different from those desired by a holder of the relevant debt or participation interest;
- We may also have interests in creating secondary markets in loans, and receive fees, commissions, spreads and other revenues related thereto, as well as sell (or buy) credit protection with respect to the reference entity to other financial institutions or other institutional market participants;
- We may also have interests in any given Transaction or Transactions which may vary from time to time relative to other Transactions depending on the overall profitability or other desired commercial objectives. For example, we may act as a financial advisor to corporations and other issuers concerning their capital structure and other related matters and may have interactions with you concerning Transactions involving the purchase, sale, exchange or tender of securities or other financial instruments with respect to such issuers in which we may earn commissions, discounts, advisory or similar fees, selling concessions, “success” premiums, origination and other hedging related compensation with respect to such companies. Our relationships with these and other clients may create certain incentives for us in our interactions with you, as fiduciary for any Plan Client, to offer investments relating to these companies rather than other investments available in the marketplace; and
- From time to time, Macquarie may sponsor entertainment events. These events are unrelated to any contract or arrangement for services with any particular Plan Client and the cost of these events may be subsidized by a third party. Macquarie’s sponsorship of such events is intended to be ancillary in nature.

---

<sup>1</sup> “Market Venues” refers to U.S. or foreign exchanges and clearing houses, consortium- owned alternative trading platforms or similar venues.

## APPENDIX B

### Additional Resources

- Macquarie website, available at <https://www.macquarie.com/us/corporate>;
- Macquarie “Regulatory Disclosures”, available on its website at <http://www.macquarie.com/us/about/disclosures/regulatory-disclosures>;
- “United States – Important disclosures and information for clients”, available at <http://www.macquarie.com/us/about/disclosures/us-disclosures>;
- Macquarie “Sales and Trading Disclosures”, available at <http://www.macquarie.com/us/about/disclosures/sales-and-trading-disclosures>;
- Macquarie “Swaps Disclosures”, available at <http://www.macquarie.com/mgl/com/swap-disclosures>;
- Macquarie’s Rule 606 disclosures, as may be updated from time to time. The most recently available report may be found at <https://vrs.vista-one-solutions.com/sec606rule.aspx>;
- ISDA CFTC Disclosure Documents, available at <https://www.isda.org/tag/cftc-disclosure-documents/> ;
- FIA Disclosure of Futures Commission Merchant Material Conflicts of Interest, available at [https://fia.org/sites/default/files/content\\_attachments/FCM-Conflicts-Disclosure-Statement-071312.pdf](https://fia.org/sites/default/files/content_attachments/FCM-Conflicts-Disclosure-Statement-071312.pdf); and
- SIFMA Model Underwriter Disclosures Pursuant to MSRB Rule G-17, available at <https://www.sifma.org/resources/general/municipal-securities-markets/>;