

November 30, 2012

Gary Barnett
Director, Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: The International Swaps and Derivatives Association – Request for Interpretative Relief
Regarding Obligation to Provide Pre-Trade Mid-Market Mark

Dear Mr. Barnett:

The International Swaps and Derivatives Association, Inc. (“ISDA”), on behalf of its members that intend to register as swaps dealers (“SDs”) or major swap participants (“MSPs” and together with SDs, “SD/MSPs”) and other similarly situated persons, is writing to request the interpretive relief described below to exempt certain Derivative Transactions (as defined below) from the requirement that SD/MSPs provide pre-trade mid-market marks to all counterparties and potential counterparties prior to entering into a trade.

ISDA’s mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers.

I. Introduction

Beginning January 1, 2013, registered swap dealers and major swap participants, including ISDA member financial institutions, will be required to comply with the external business conduct standards (the “**Business Conduct Standards**”)¹ with respect to transactions that they enter into or offer to enter into that are swaps, foreign exchange swaps or foreign exchange forwards, as defined in Section 1a of the Commodity Exchange Act (the “**Act**”) and Commission Regulations (“**Derivative Transactions**”). The Business Conduct Standards require SD/MSPs, among other things, to provide each counterparty or potential counterparty with whom the SD/MSP intends to enter into a Derivative Transaction in the over-the-counter market: “[a]t a reasonably sufficient time prior to entering into [the Derivative

¹ 17 C.F.R. §§ 23.400—23.451. See also Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 77 Fed. Reg. 9734 (Feb. 17, 2012) (the “**Business Conduct Release**”).

Transaction]...the mid-market mark of the [Derivative Transaction]....” (the “**Pre-Trade Mid-Market Mark Requirement**”).²

ISDA believes that the Pre-Trade Mid-Market Mark Requirement should not apply to SD/MSPs in connection with: (i) untranching credit default swaps referencing the on-the-run and most recent off-the-run series of the following indices: CDX.NA.IG 5Y, CDX.NA.HY 5Y, iTraxx Europe 5Y and iTraxx Europe Crossover 5yr (“**Covered Credit Derivative Transactions**”) and (ii) interest rate swaps (A) in the “fixed-for-floating swap class” (as such term is used in Rule 50.4(a) of the Commission’s mandatory clearing determination) denominated in USD or EUR, (B) for which the remaining term to the scheduled termination date is no more than 30 years and (C) that have the specifications set out in the Rule 50.4 (“**Covered Rates Derivative Transactions**”, and together with Covered Credit Derivative Transactions”, “**Covered Derivative Transactions**”).³

II. Request for Interpretative Letter

ISDA hereby requests that the Commission’s Division of Swap Dealer and Intermediary Oversight (“**DSIO**”) issue an interpretative letter stating that swap dealers and major swap participants are not required to comply with the Pre-Trade Mid-Market Mark Requirement in Commission Regulation 23.431(a)(3) for Covered Derivative Transactions.

III. The Pre-Trade Mid-Market Mark Requirement Is Not Material for Covered Derivative Transactions and Should Not Be Required.

Covered Derivative Transactions are highly-liquid, exhibit narrow bid-ask spreads and are widely quoted by SD/MSPs in the marketplace through electronic quotation screens, telephonically and otherwise. In the experience of ISDA, prices for these Covered Derivative Transactions are widely available to market participants and quotes provided by SD/MSPs are closely correlated to the publicly available pricing information. In light of the ready availability of reliable pricing information in the market, the transparency of the pricing information, the competitiveness and tightness of spreads and ongoing liquidity of these Covered Derivative Transactions, compliance with the Pre-Trade Mid-Market Mark Requirement does not provide any significant informational value. Many of ISDA’s buy-side members believe that a mid-price for Covered Derivative Transactions is not material and, thus, should not be required as it does not reflect a tradeable price. They are primarily interested in where they can best transact, which is at the best bid or ask. Before trading, the buy-side participants evaluate quoted bids and asks against broader bid and ask pricing obtained either via multiple dealers, execution venues or other sources, which are viewed as widely available. In this context, a mid-price does not add useful information.

In the view of ISDA, the Pre-Trade Mid-Market Mark Requirement will not provide a benefit to counterparties or potential counterparties, will potentially increase costs to all market participants given the need to develop associated processes and will delay the timing of trading in rapidly moving markets

² 17 C.F.R. §23.431(a)(3). The Pre-Trade Mid-Market Mark Requirement is not specifically required by the Act but was adopted by the Commission pursuant to Section 4s(h)(3)(B)(ii) of the Act. That provision requires a swap dealer and major swap participant to disclose “any material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap.” See Business Conduct Release at 9765.

³ The foregoing specifications for Covered Derivative Transactions are based on an industry working group’s examination of data that has been compiled as of the date of this letter. As the industry continues these investigations, ISDA may identify other swap categories for which the requested guidance may be appropriate, in which case ISDA anticipates that it will submit requests for extensions of this guidance to additional swap categories.

thus compromising clients' ability to manage risk and transact efficiently and at the best price. For these reasons, ISDA believes that the relief required does not diminish the protections provided by the Business Conduct Standards but would reduce unnecessary and costly disclosures that do not provide useful information.

A. The Regulatory Goals of the Pre-Trade Mid-Market Mark Requirement are Achieved Already Through the Ready Availability of Pricing Information in the Marketplace

The stated goal of the Pre-Trade Mid-Market Mark Requirement is to “[provide] the counterparty with pricing information that facilitates negotiations and balances historical information asymmetry regarding swap pricing.”⁴ Real-time, tradable, bid and offer prices are widely available with respect to the Covered Derivative Transactions. As a result, the regulatory goals of the Pre-Trade Mid-Market Mark Requirement are already being achieved without requiring dissemination of the Pre-Trade Mid-Market Mark.

B. Sample Data Demonstrates that the Covered Derivative Transaction Prices are Transparent and Competitive

For Covered Derivatives Transactions, the data contained in Exhibits A and B was obtained from Bloomberg. Bloomberg is one of several execution providers for Covered Derivative Transactions. In addition to Bloomberg, market participants can obtain pricing and execution from several other third-party providers (e.g TradeWeb, MarketAxess) as well as from multiple single-dealer platforms and direct email communication.⁵ The prices distributed using these methods are updated in real time throughout the trading day and are intended to be executable. Over a dozen liquidity providers provide electronic execution on these platforms to over 2,000 users representing over 525 institutions.

Information about differences in bid and offer prices provided by different SD/MSPs can be inferred from market observations. As can be inferred from the frequency of pricing updates, consistency of both the price level and the width of the bid/offer visible across multiple venues and the fact the prices provided by dealers are rarely, if ever ‘crossed’,⁶ counterparties are currently able to obtain the information they need in order to determine that the prices that they are receiving from an SD/MSPs are reflective of the overall market without obtaining a Pre-Trade Mid-Market Mark. As the class of Covered Derivatives Transactions is within the specifications of the Commission’s mandatory clearing determination, the Commission’s findings regarding certain statutory factors, including “the existence of significant notional exposures, trading liquidity, and adequate pricing data, apply to the entire class of Covered Derivatives Transactions.

1. Covered Credit Derivative Transactions

As reflected in the data attached as Exhibit A for Covered Credit Derivative Transactions, bid/offer spreads are narrow, consistent, never crossed and readily available. The results show that the average cost to execute \$100mm notional of the 5yr CDX.NA.IG on-the-run or one series off-the-run index is less than \$11,250 or 0.011% of the notional. Similar statistics for 5yr CDX.NA.HY and 5yr

⁴ See Business Conduct Release at 9766.

⁵ By way of example, on a single day in November, one representative dealer sent over 1,000 emails each to several thousand recipients updating prices across all Covered Credit Derivative Transactions.

⁶ A ‘crossed’ market exists when one dealers bid is above another dealers’ offer or vice-versa. The lack of crossed markets is generally indicative of tight bid/offers and a general knowledge of market-clearing price levels.

Traxx Europe are \$72,000 (0.072% of notional) and \$32,000 (0.032% of notional), respectively. For iTraxx Crossover the statistics are \$142,000 or 0.142% of notional. The average executable size offered by dealers is over \$200mm CDX.NA.IG, €100mm iTraxx Europe and \$50mm CDX.NA.HY.

The dataset consists of composite bid and offer prices over the period from September 19, 2012 through November 21, 2012. Snapshots were taken every two hours during which the market was open for each product, a total of 230 observations for European indexes and 247 for North American indexes. The Ask level was compared to the Bid level for each observation and summary statistics were calculated.

2. Covered Rates Derivatives Transactions

As reflected in the data attached as Exhibit B for Covered Rates Derivative Transactions denominated in USD, bid/offer spreads are narrow, consistent, never crossed and readily available. The results show that the average cost to execute \$100mm notional of any of the benchmark fixed vs floating swap is roughly \$200,000 (.20% of notional). Costs vary slightly between tenors from \$150,000 to \$300,000.

The dataset consists of composite bid and offer prices over the period from September 27, 2012 through November 29, 2012. Snapshots were taken every two hours during which the market was open for each product, a total of 461 observations. The Ask level was compared to the Bid level for each observation and summary statistics were calculated.

As of the time of submission of this letter, ISDA members are working to prepare summary statistics of the data presented in Exhibit B (analogous to those presented for Covered Credit Derivative Transactions) and to compile data for interest rates swaps denominated in EUR and for certain liquid and widely-offered interest rate options. ISDA intends to provide such data to the staff of the DSIO when it becomes available.

C. A Pre-Trade Mid-Market Mark would be Costly to Implement and Would Delay the Delivery of Pricing Information

Provision of a Pre-Trade Mid-Market Mark would require SD/MSPs to create a new price stream when quotes are provided electronically and would add additional operational requirements for dealers when quotes are conveyed by voice. Based on an initial analysis, this would add significant costs to a narrow spread environment. In addition, delivery of this pricing information may adversely affect counterparties by delaying the trade time, since delivery must be made “a reasonably sufficient time prior” to trading.

IV. Conclusion

For the reasons stated above and as supported by the data in the Exhibits, ISDA respectfully requests the Commission to issue an Interpretative Letter confirming that swap dealers and major swap participants are not required to comply with the Pre-Trade Mid-Market Mark Requirement for Covered Derivative Transactions.

The Commission staff has not previously issued an exemptive, no-action or interpretative letter regarding the application of Commission Regulation 23.431 to swap dealers and major swap participants in connection with Derivative Transactions or Covered Derivative Transactions.

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If DSIO denies this request for an Interpretative Letter, ISDA requests that DSIO consider granting alternative relief or an alternative position to alleviate the cost and burden of complying with the Pre-Trade Mid-Market Mark Requirement for Covered Derivative Transactions. For example, DSIO could grant interpretative relief stating that the Pre-Trade Mid-Market Mark Requirement was deemed satisfied by the availability of public data and pricing information for the Covered Derivative Transactions.

Thank you for your consideration of these concerns. Please contact me or ISDA staff if you have any questions or concerns.

Sincerely,



Cc:
Mr. Frank Fisanich
Chief Counsel
Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

EXHIBIT A

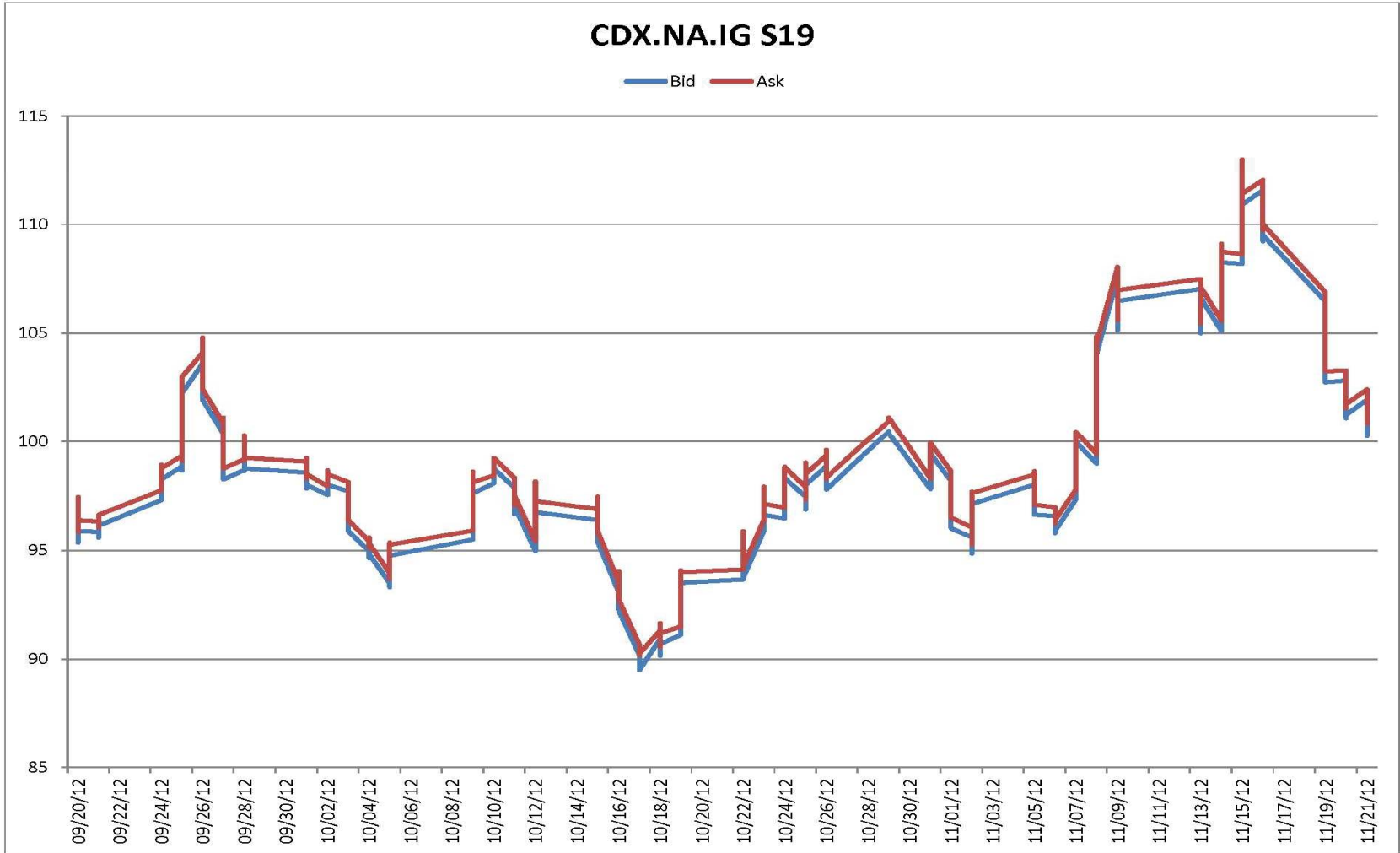
Summary Statistics

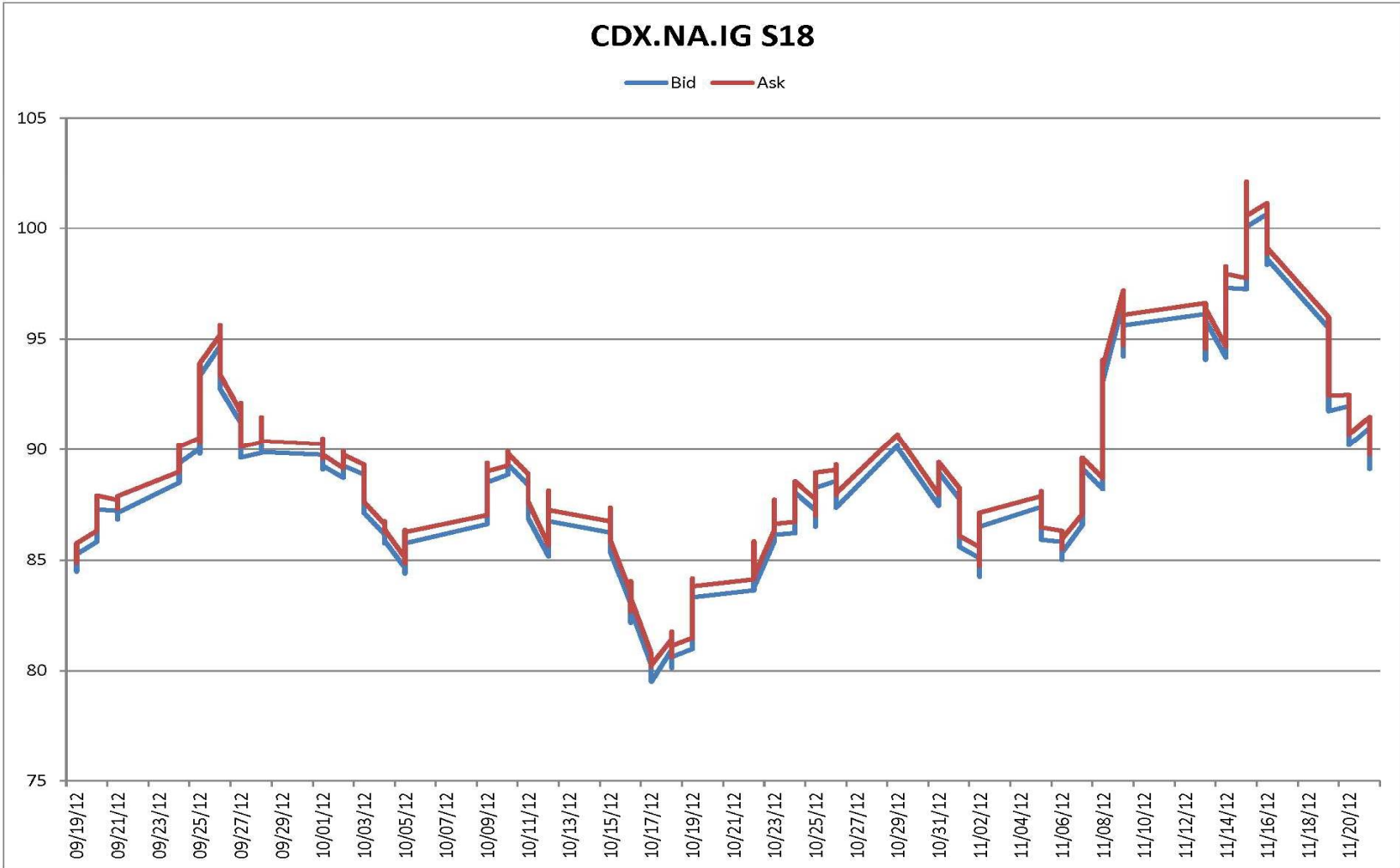
	CDXIG519	CDXIG518	CXPHY519	CXPHY518	iTraxx Europe S18	iTraxx Europe S17
<i>Avg Offer - Bid over period*</i>	0.469	0.504	0.130	0.158	0.630	0.787
<i>Avg Bid/Mid or Mid/Offer per \$100mm</i>	\$11,317	\$11,129	\$64,788	\$78,953	\$29,805	\$33,978
<i>Stdev (Offer - Bid) over period</i>	0.046	0.051	0.026	0.027	0.096	0.090
<i>MAX Offer - Bid over period</i>	0.75	0.75	0.312	0.25	0.916	1.625
<i>MIN Offer - Bid over period</i>	0.365	0.406	0.089	0.115	0.458	0.667
<i>(Avg (Offer - Bid))/(Stdev Price Move)</i>	0.102	0.116	0.120	0.168	0.133	0.160
<i>(Avg (offer - Bid))/(Avg Daily Move)</i>	20.71%	23.76%	27.97%	34.64%	17.92%	22.34%

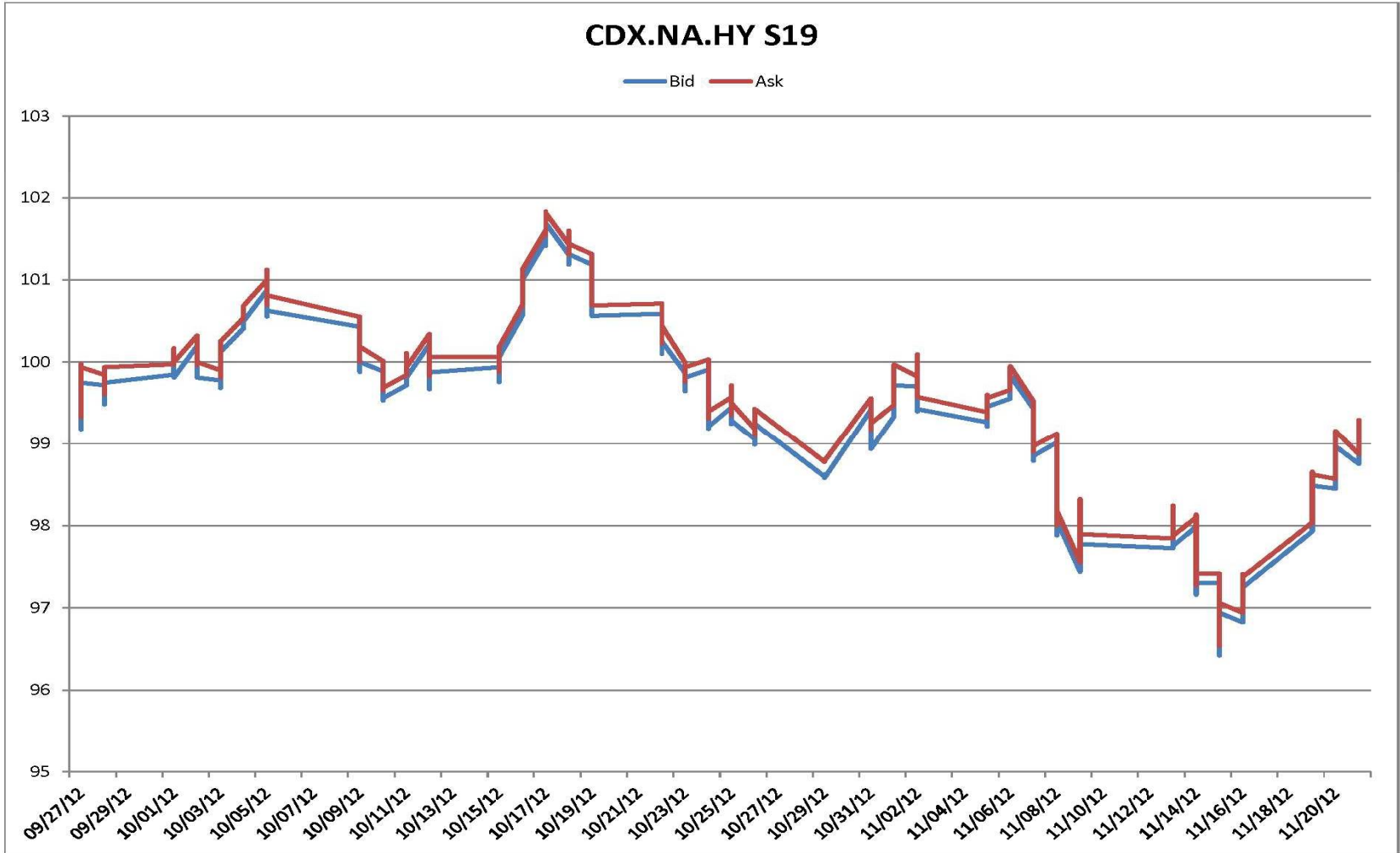
*Units for CDX.NA.HY are in cents per \$100 notional 'price' terms. For all others, the units are basis points running.

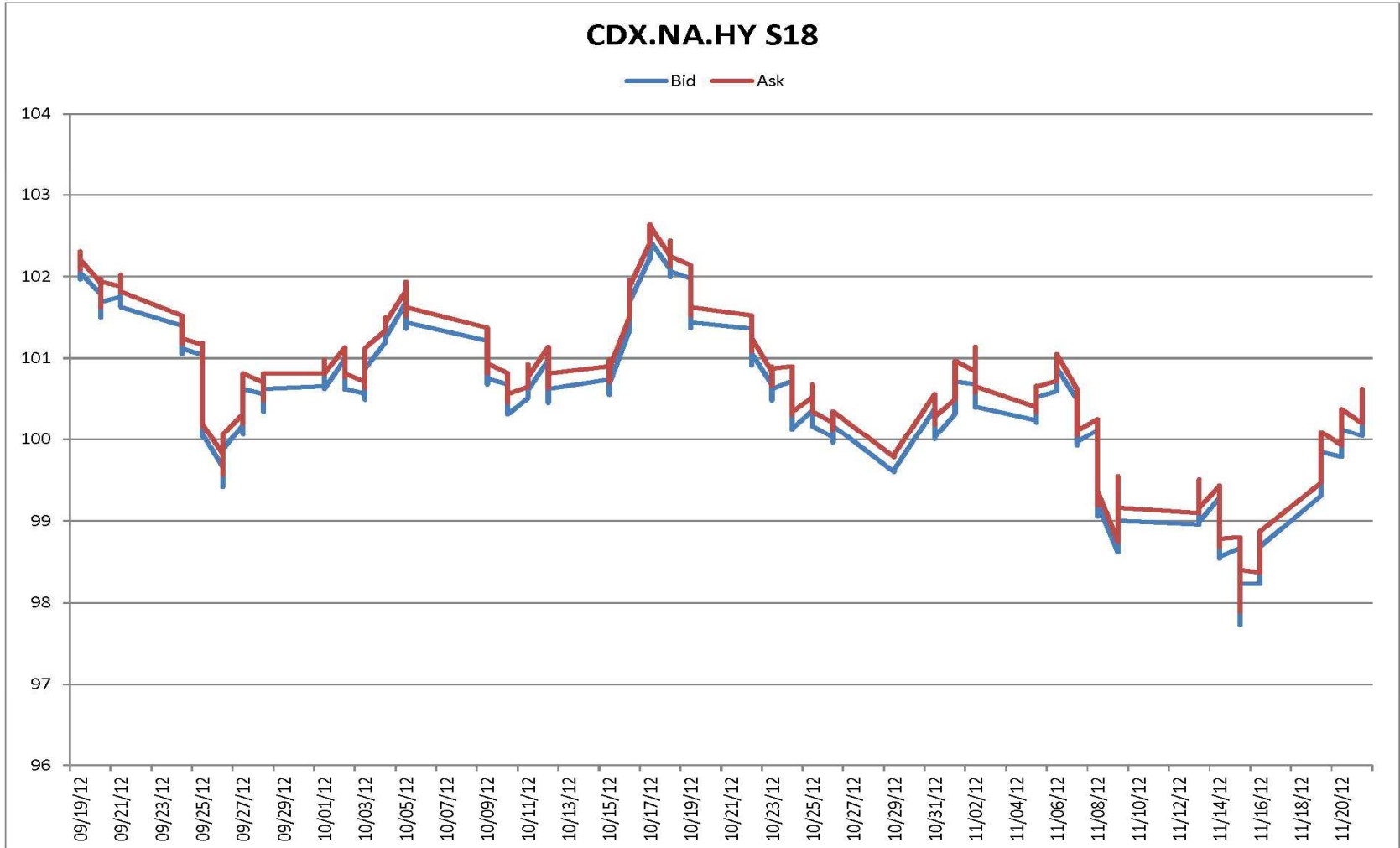
	iTraxx Crossover S17 5yr	iTraxx Crossover S18 5yr
<i>Average Offer - Bid (bps)*</i>	3.15	2.83
<i>Avg Bid/Mid or Mid/Offer per \$100mm</i>	\$148,995	\$133,859

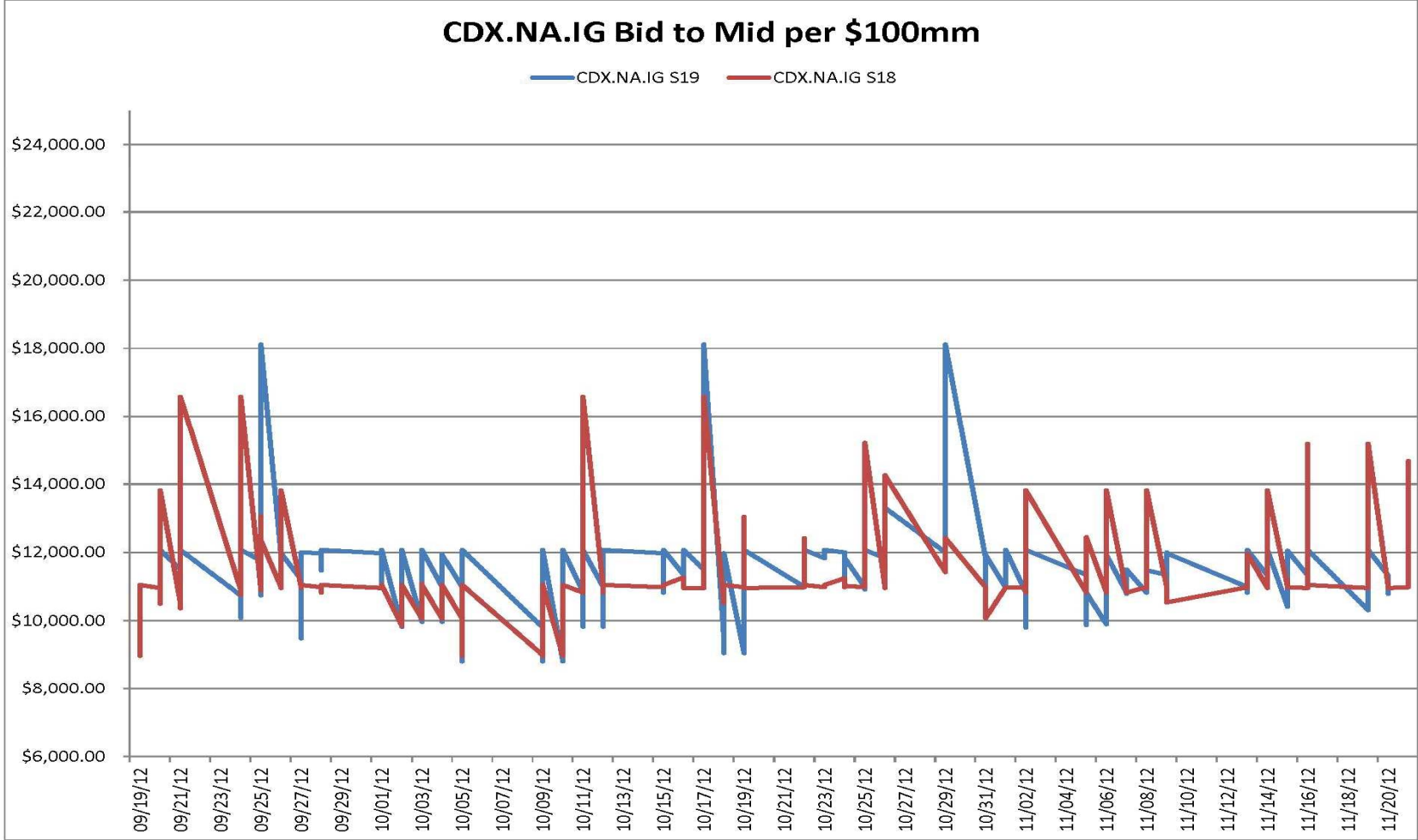
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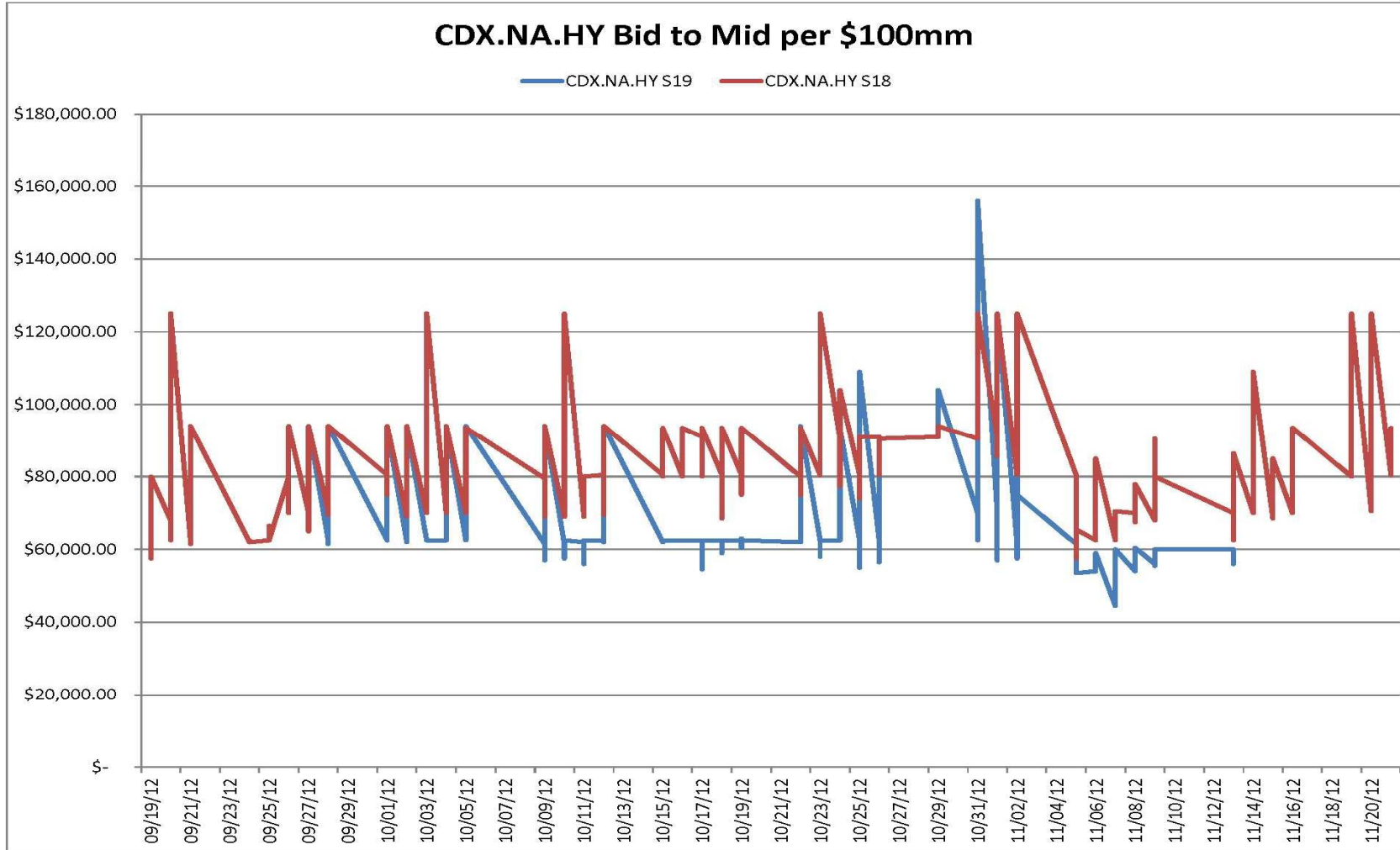


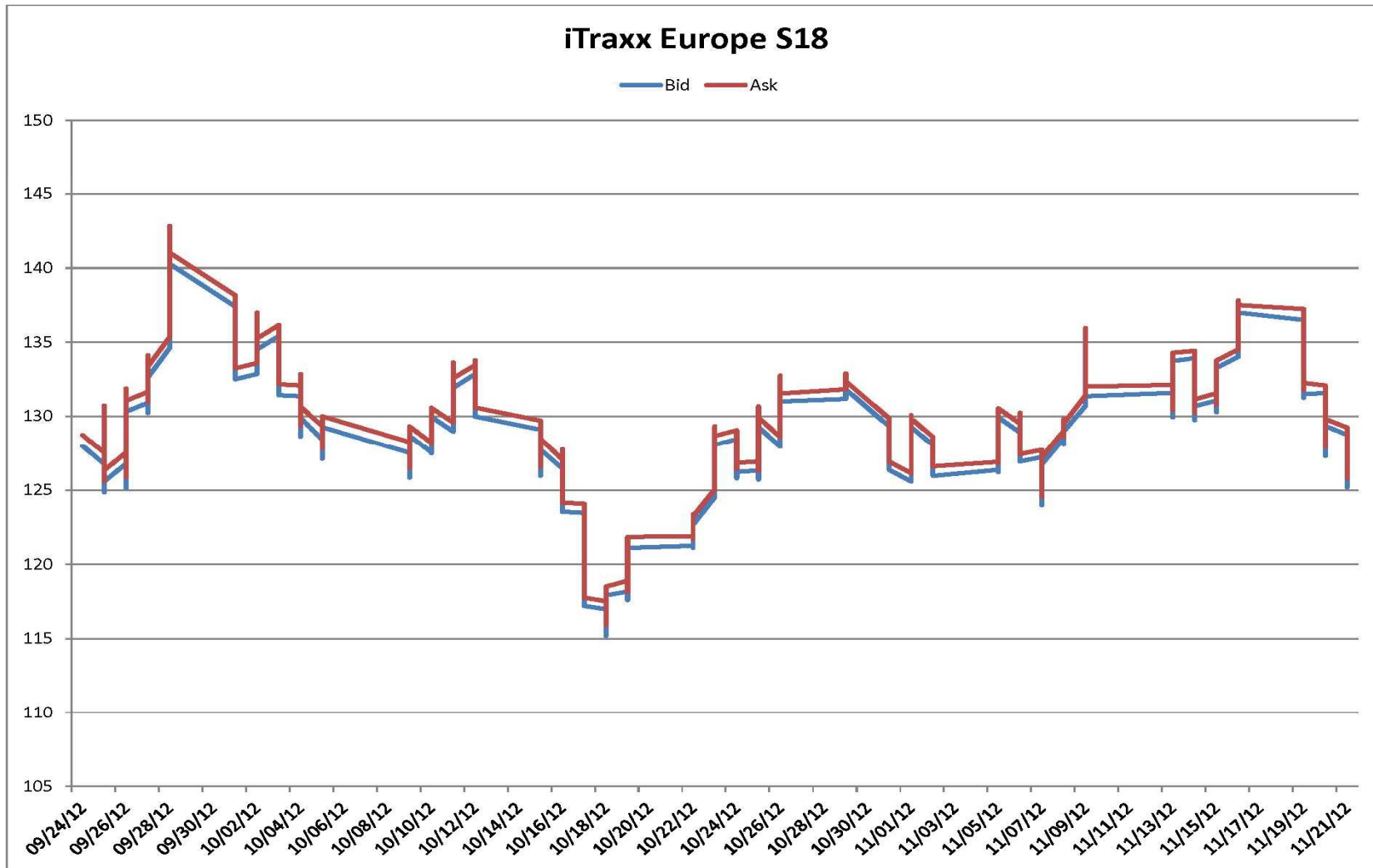


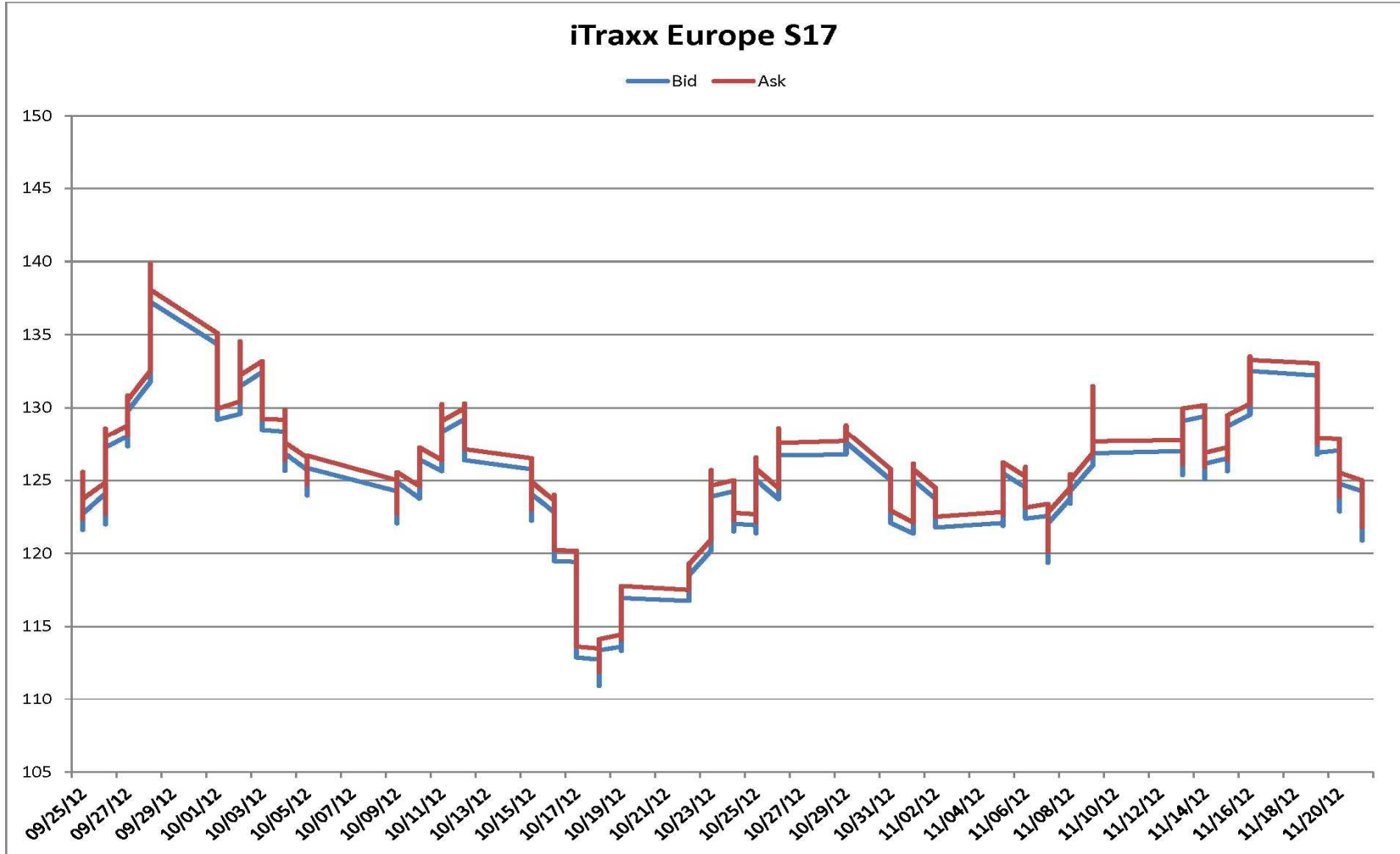












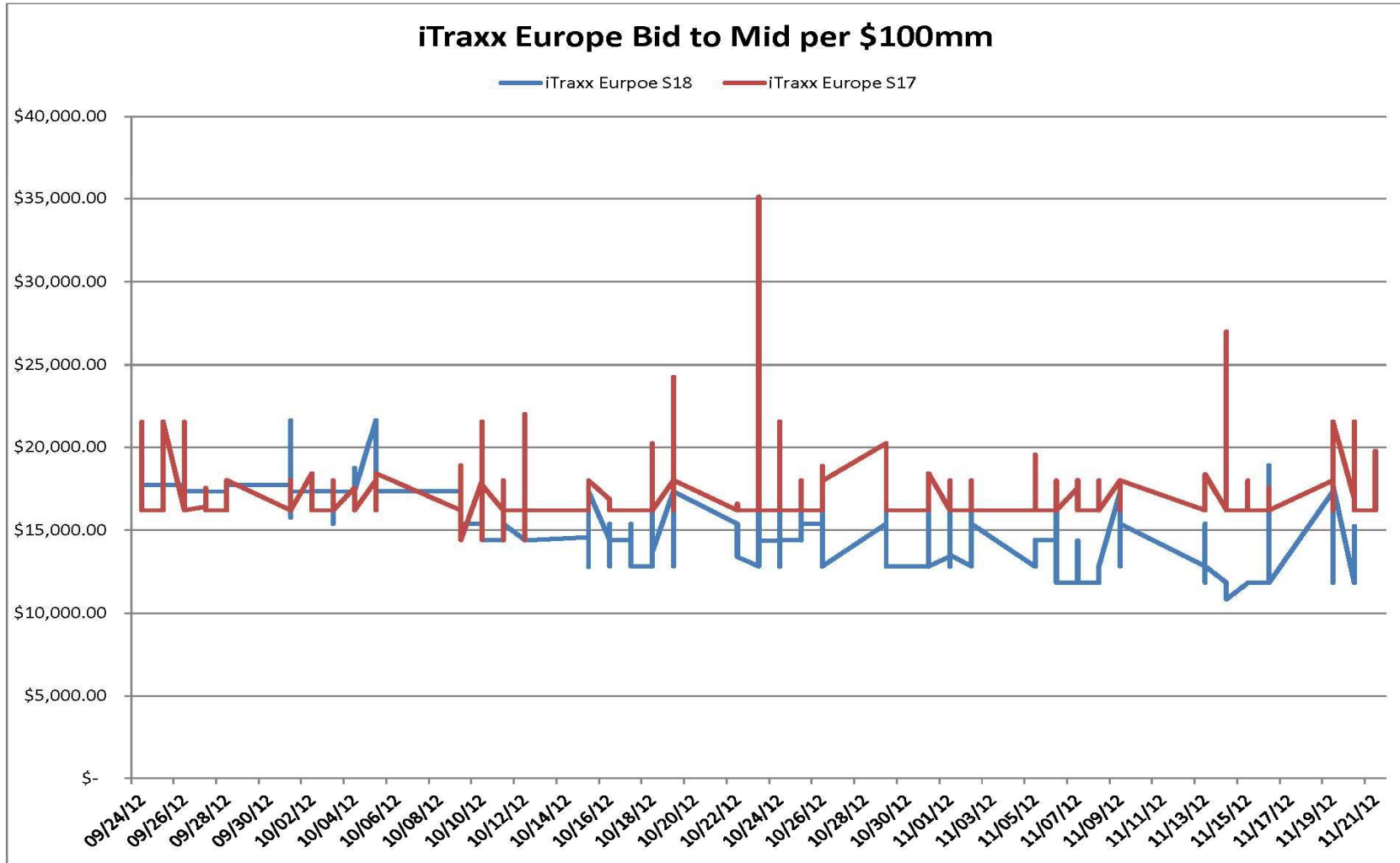
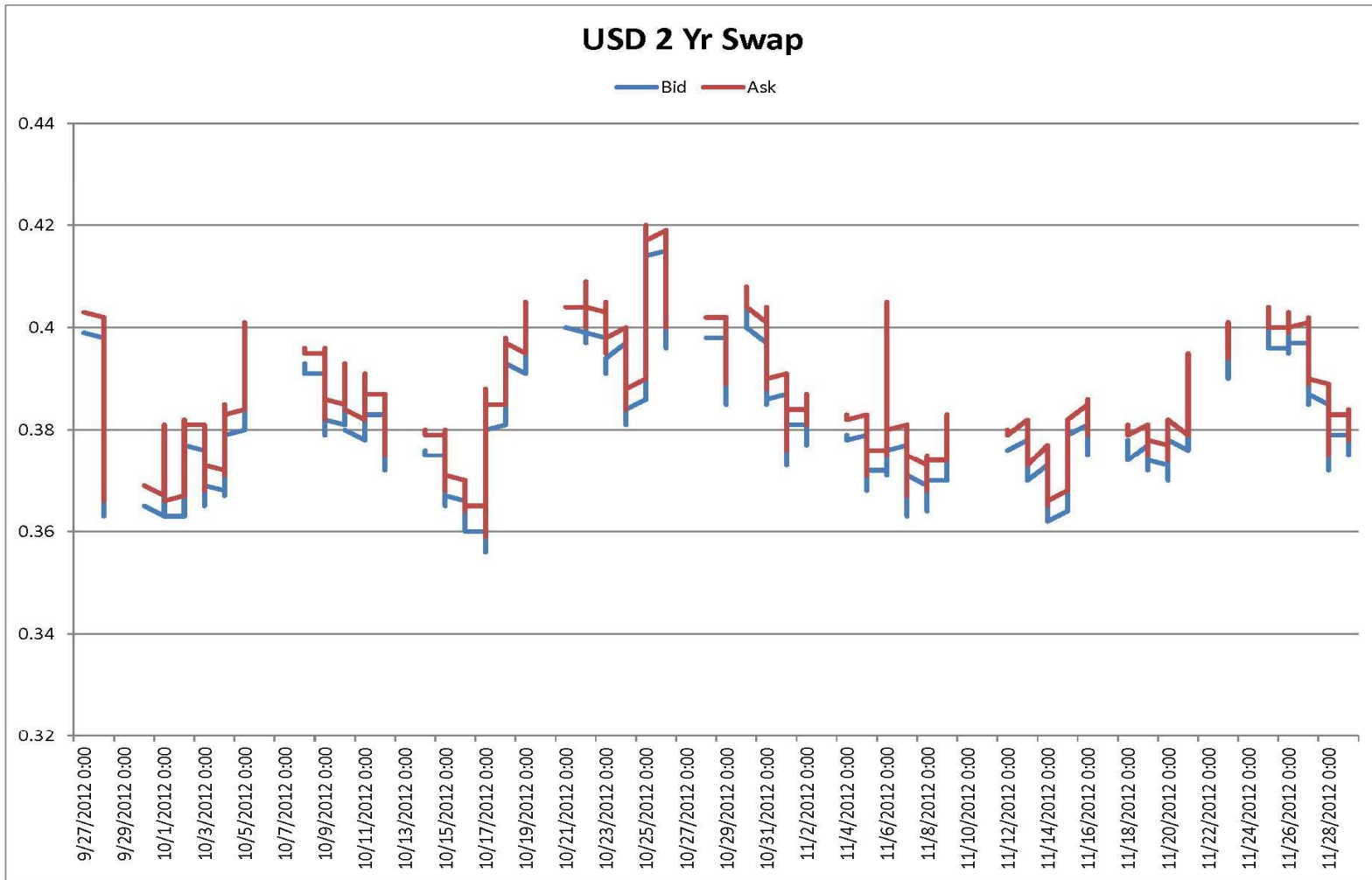
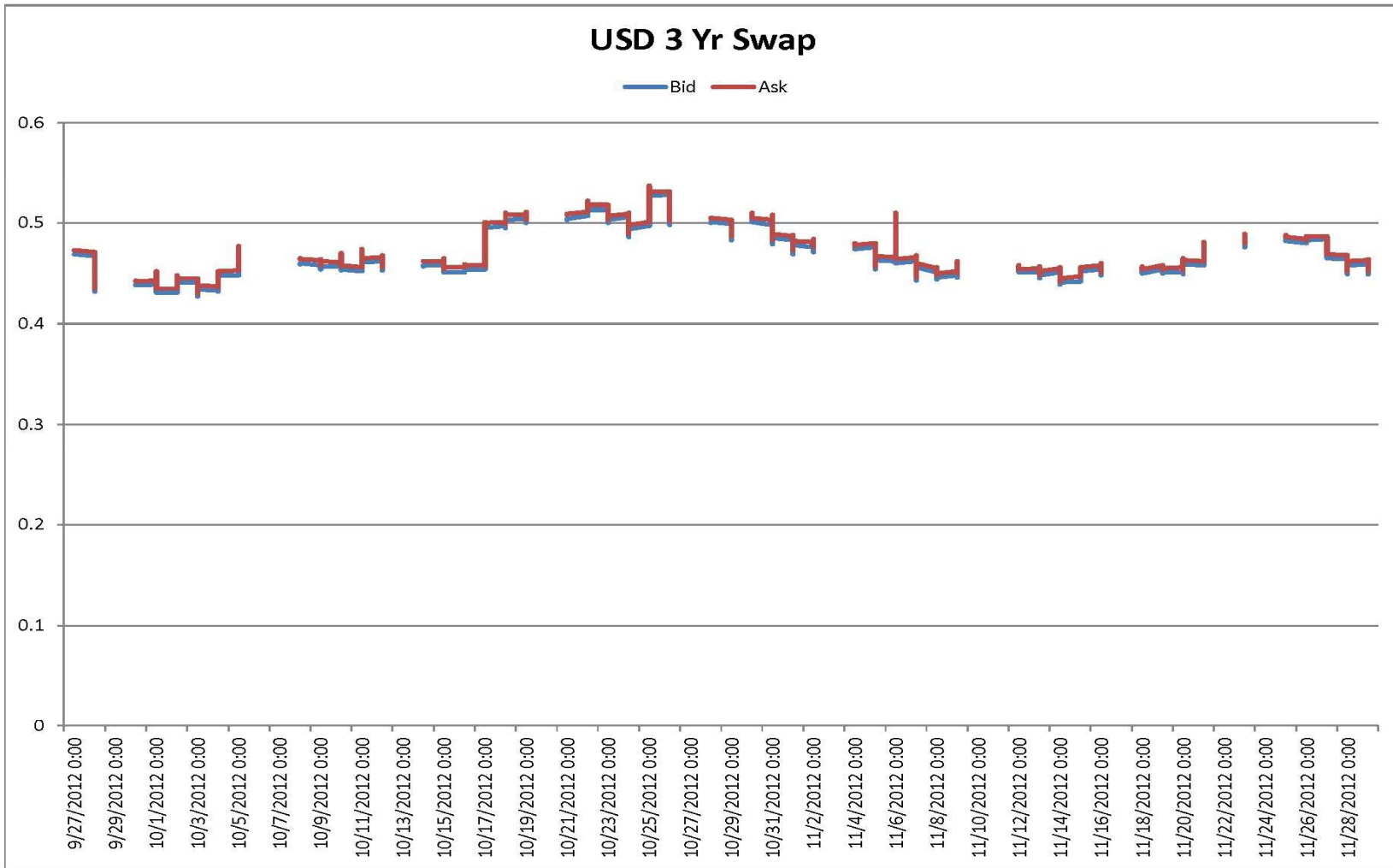
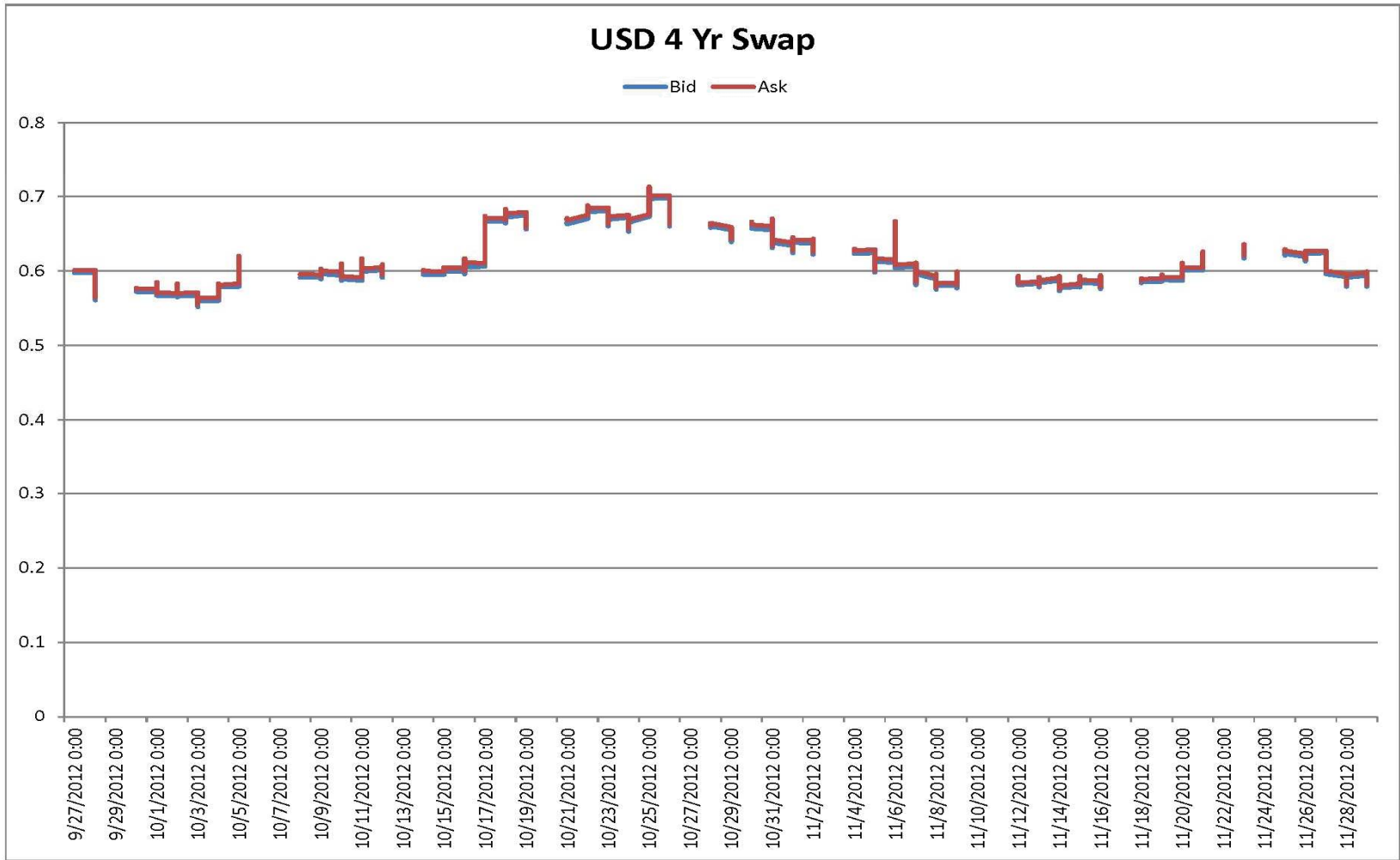


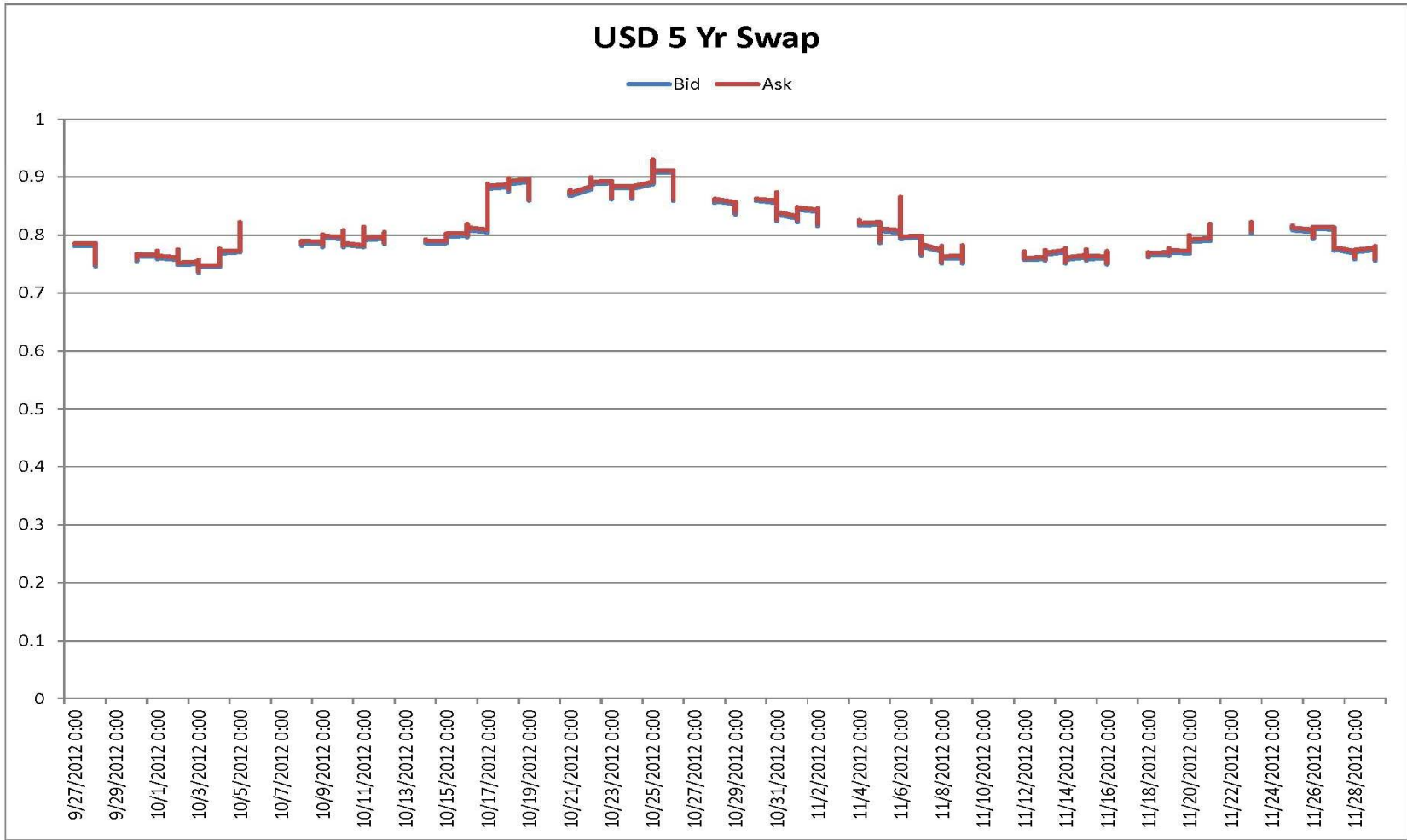
EXHIBIT B

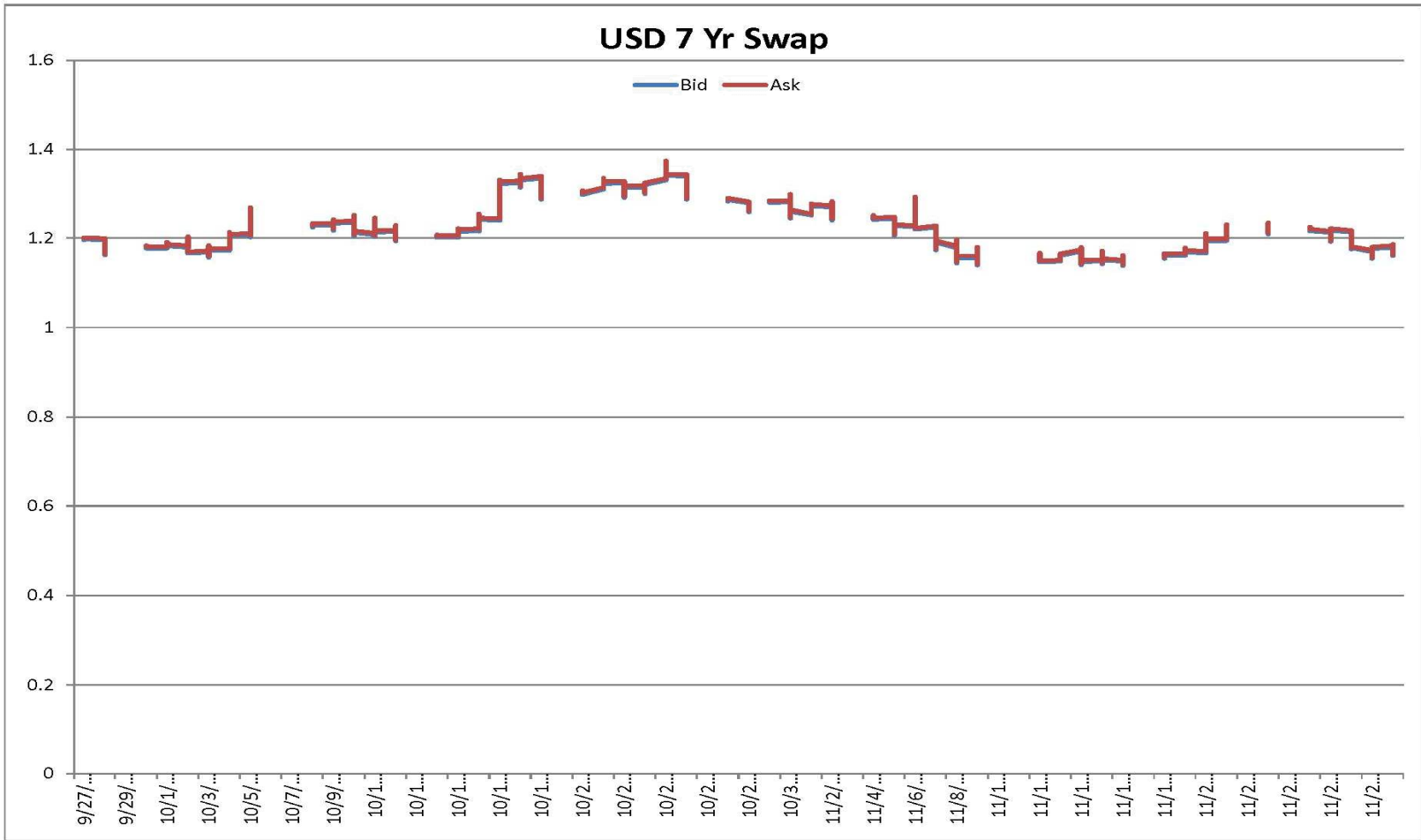
USD Interest Rate Swaps

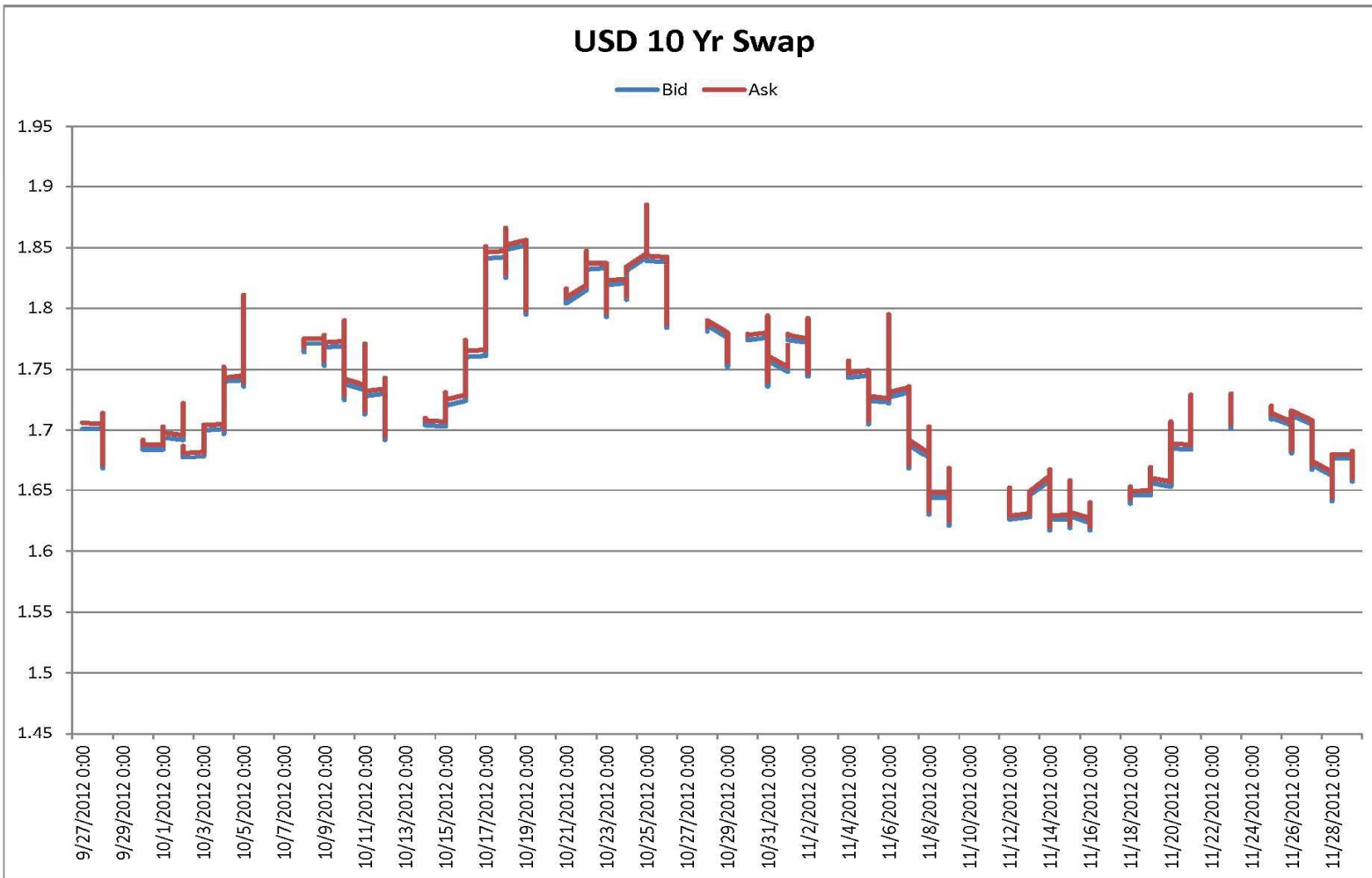


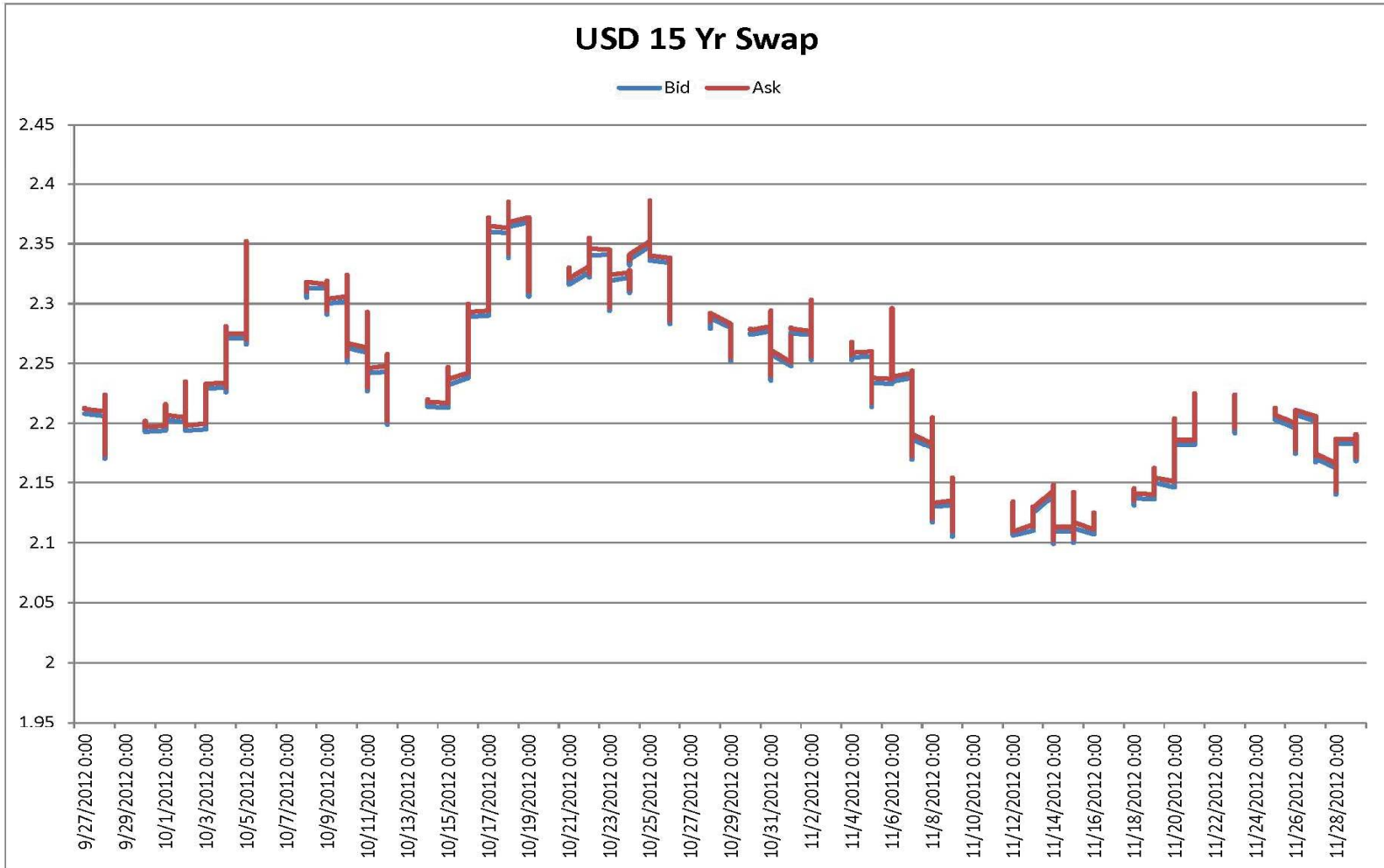


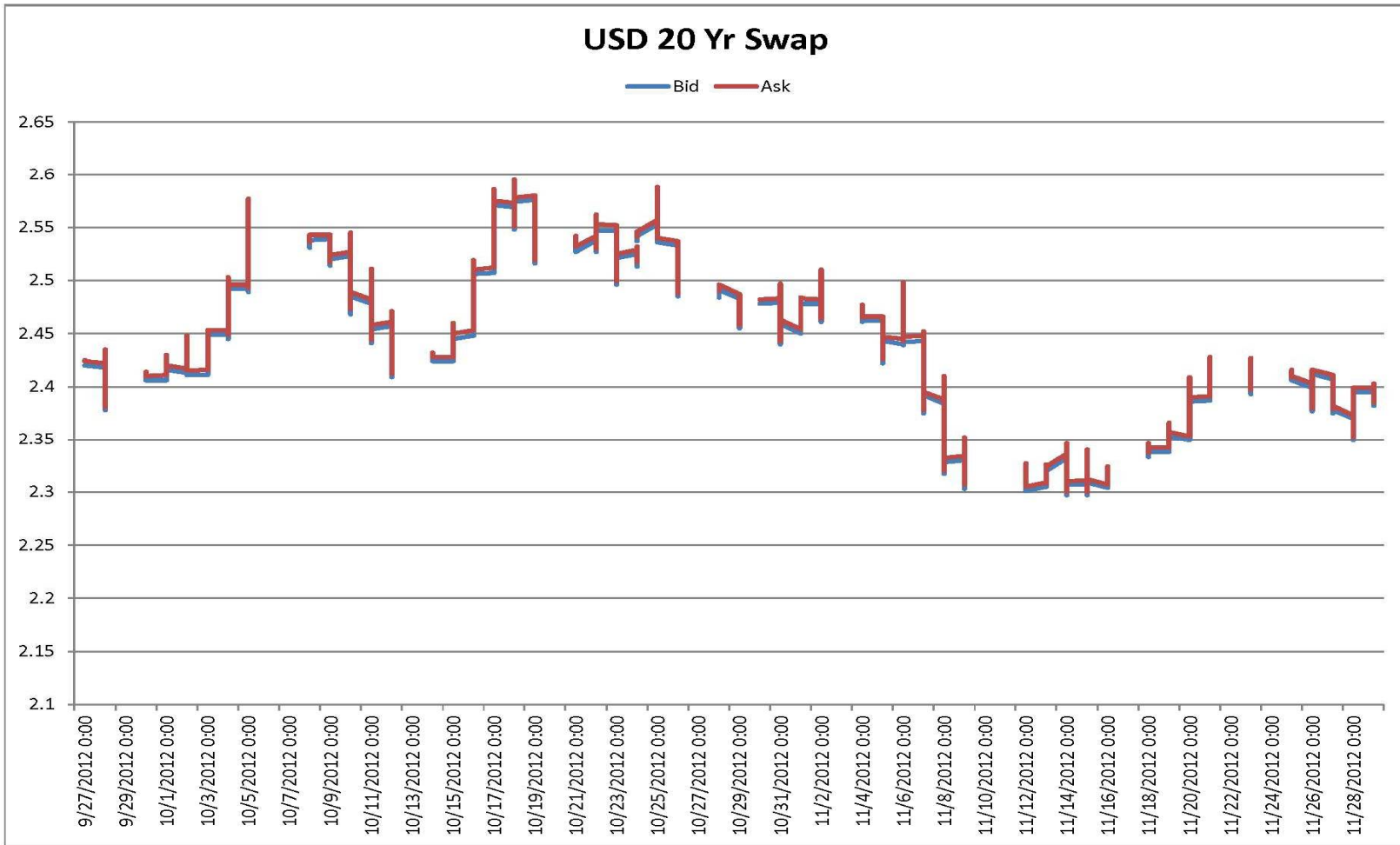


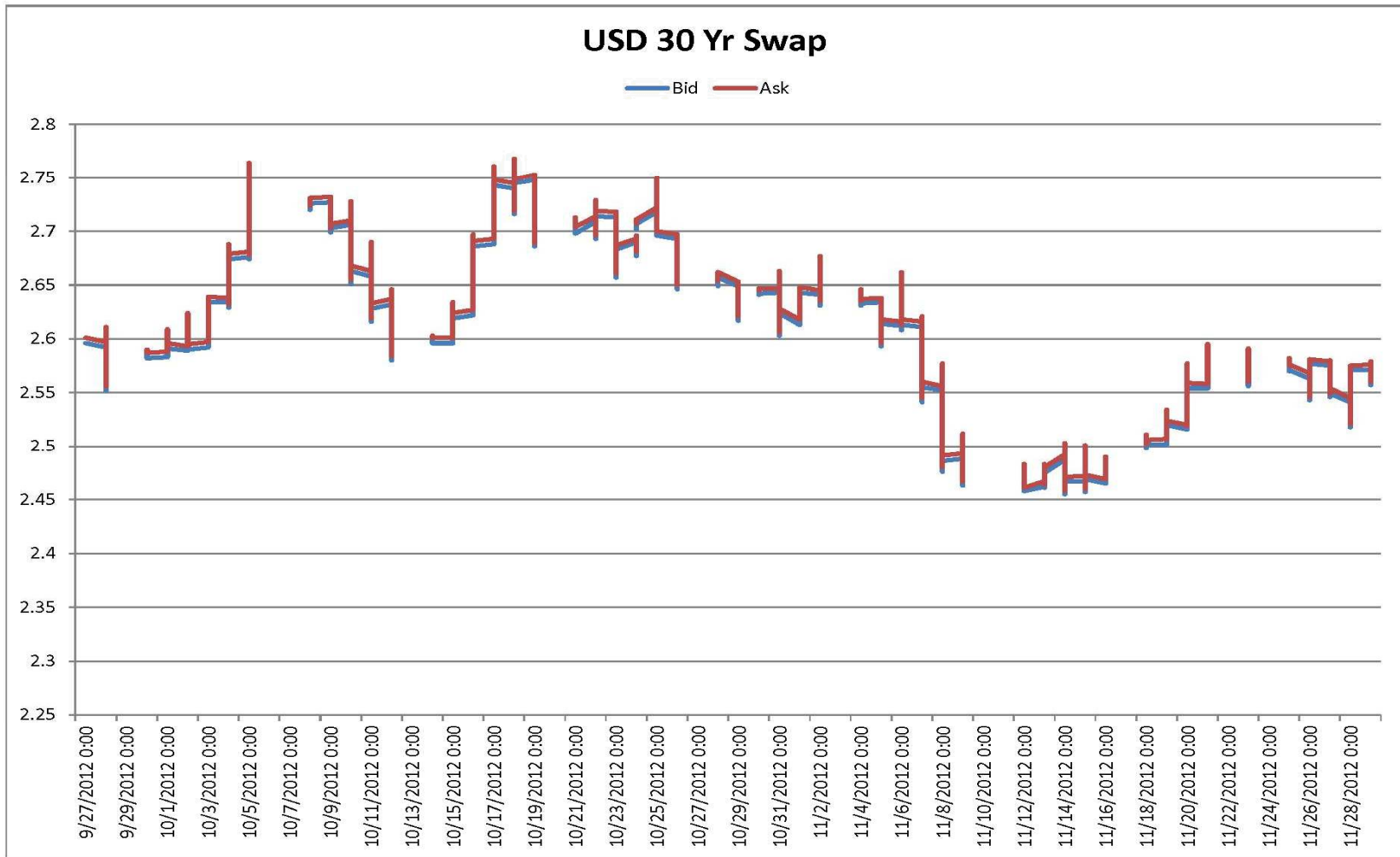


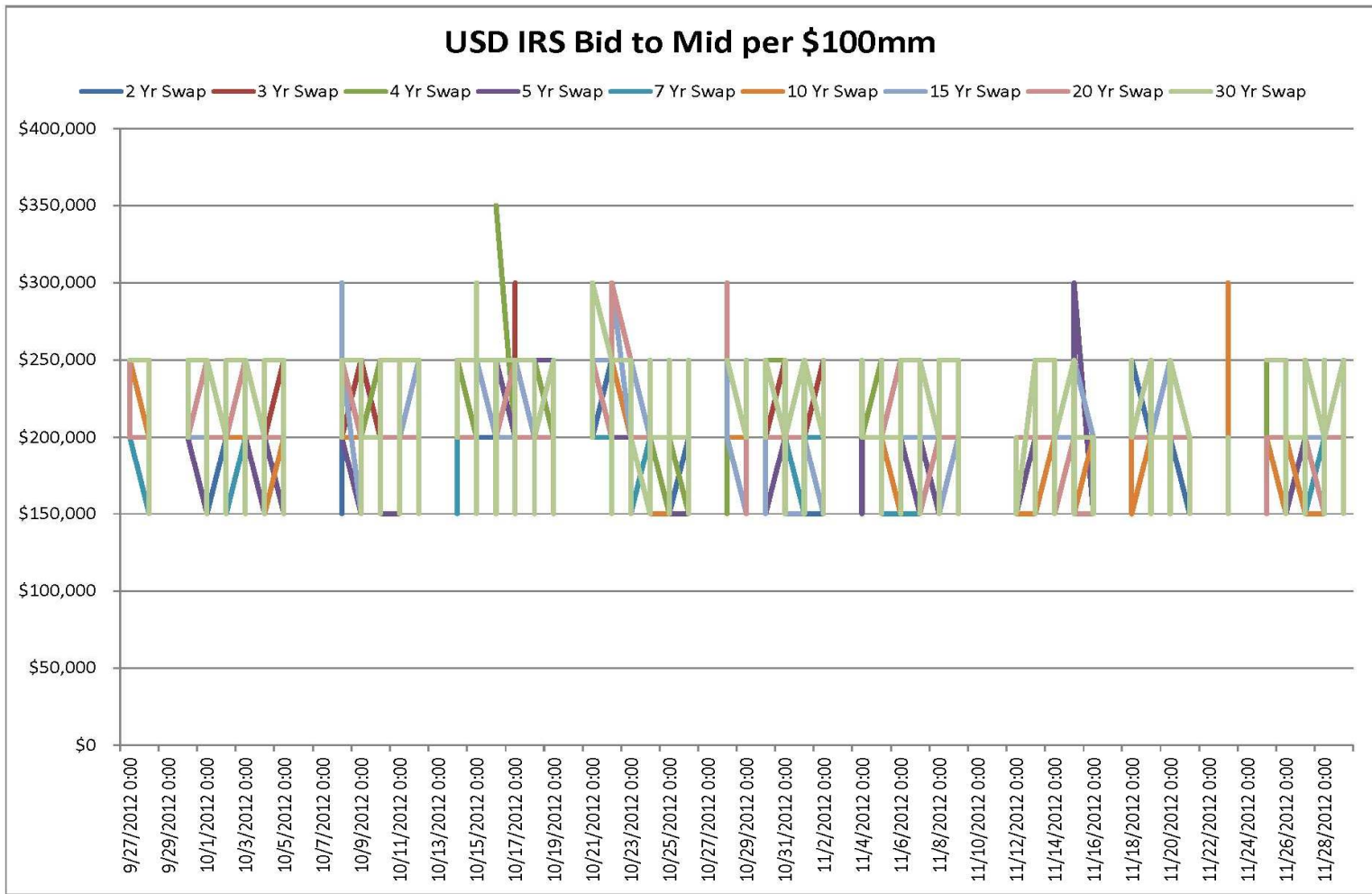












UNDERTAKING AND CERTIFICATION

I, the undersigned, a representative of ISDA who has been duly appointed to sign this Undertaking and Certification on behalf of ISDA, hereby undertake that I will notify U.S. Commodity Futures Trading Commission staff promptly if any of the representations made in connection with or related to ISDA's Request for Interpretative Letter dated November 30, 2012 cease to be true or correct, or become incomplete or misleading.

I hereby certify that the material facts set forth in the attached letter dated November 30, 2012 are true and complete to the best of my knowledge.

Sincerely,

A handwritten signature in black ink, reading "Robert C. Pechel". The signature is written in a cursive style with a large, prominent initial 'R'.