

North American Tax Committee  
International Swaps and Derivatives Association, Inc.  
360 Madison Avenue, 16th Floor  
New York, NY 10017

Attention: Johanna Schwab

10 December 2003

Our Ref                      Stephen Taylor

Dear Sir/Madam

## **Credit Default Swaps - United Kingdom Withholding Tax Position**

We are writing to confirm our advice regarding the United Kingdom withholding tax position in respect of payments by a United Kingdom tax resident company under a Credit Default Swap as described in the Appendix to this letter. We can confirm that on the assumptions:

- 1**        that the Credit Default Swap is treated as a "derivative financial instrument" for the purposes of United Kingdom Financial Reporting Standard 13 issued in September 1998 by the Accounting Standards Board, as it has effect for periods of account ending on 31 December 2002 (or, in relation to any accounting period for which it is required or permitted to be used by the company, any subsequent accounting standard dealing with transactions which are derivative financial instruments or financial assets under Financial Reporting Standard 13, as from time to time amended); and
- 2**        that the Reference Obligations for the Swap are, as a matter of applicable general law, obligations under debt securities rather than equities

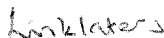
United Kingdom Tax Counsel would be able to give a "will" level no-UK withholding tax opinion.

As respects the first of those assumptions, we understand that such Credit Default Swaps would be regarded as "derivative financial instruments" for the purposes of FRS 13. That said, strictly speaking, accountancy advisers rather than tax advisers would need to opine to that point.

Secondly, in the overwhelming majority of cases, even if one or both of these assumptions were not satisfied, there would still be no UK withholding tax in respect of payments by a UK resident company under a Credit Default Swap, albeit strictly speaking one would then need to consider further the terms and circumstances of the swap in question in order to reach that conclusion. Where the assumptions obtain, such further inquiries would not be necessary.

We would be happy to provide any further information, as required.

Yours faithfully



Linklaters

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## Appendix

### Description of Credit Default Swaps

A US party and a non-US party enter into an over-the-counter derivative contract that creates synthetic exposure to the credit of one or more issuers (a "**Credit Default Swap**"). The Credit Default Swap is governed by an ISDA Master Agreement wherein one party (the Buyer of credit protection) makes periodic payments (based on a notional principal amount) or a lump sum payment in exchange for a payment from another party (the "**Seller**" of credit protection) solely upon the occurrence of a Credit Event with regard to one or more obligors (a "**Reference Entity**" or "**Entities**") under one or more obligations ("**Reference Obligations**"). The contract may provide either the Buyer or Seller the right, within specified constraints, to remove or add Reference Entities or Reference Obligations. A Reference Obligation may either be a single specified obligation or any one from a broadly defined class that includes debt issued in different markets and having a potentially wide range of interest rates or maturities. The Credit Events are set forth in the ISDA Master Definitions and include events that indicate a decline in the creditworthiness of the Reference Entity or Entities.

If a Credit Event occurs, the Seller's obligations may be settled either in cash or physically through delivery by the Buyer of Deliverable Obligations (either specified Reference Obligations or other obligations of the Reference Entity or Entities that are expected to approximate the post-Credit Event value of the Reference Obligations). If settled in cash, the Seller may pay the Buyer either a predetermined fixed amount, or an amount equal to the excess of the notional principal amount of the Credit Default Swap over the Reference Obligation's post-Credit Event fair market value (measured by a specified procedure at an agreed upon time following the Credit Event). If settled physically, the Buyer delivers to the Seller a Deliverable Obligation and receives the par amount of that Deliverable Obligation. The Seller's obligations under the Credit Default Swap are absolute regardless of whether or not the Buyer has suffered a loss.