

**MEMORANDUM OF LAW
FOR THE INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.**

*Enforceability under Czech Law of Close-out Netting of Privately Negotiated Derivatives Transactions
under the 1992 ISDA Master Agreements and the 2002 ISDA Master Agreement*

ISDA Close Out Amount Protocol

17 March 2009

ALLEN & OVERY

Allen & Overy (Czech Republic) LLP, organizační složka

30047-00799 PRG:544443.1

1. INTRODUCTION

We refer the ISDA Close-out Amount Protocol (the **Close-out Amount Protocol**) as published by the International Swaps and Derivatives Association, Inc. (**ISDA**) on 27 February, 2009 and to the Memorandum of Law for ISDA entitled 'Enforceability under Czech law of Close-out Netting of Privately Negotiated Derivatives Transactions under the 1992 ISDA Master Agreements and the 2002 ISDA Master Agreement' dated 16 January, 2009 prepared by Allen & Overy (Czech Republic) LLP, organizační složka (the **Czech Netting Opinion**). We refer to the e-mail instructions of 20 February, 2009 from ISDA to us as further amended by an e-mail instruction of 27 February, 2009 from ISDA to us setting out the terms on which we are asked to advise.

The Close-out Amount Protocol amends the Covered Master Agreement to reflect certain provisions of the 2002 ISDA Master Agreements, in particular to replace Market Quotation and (subject to the election made in the Close-out Amount Protocol to preserve Loss provisions) Loss with Close-out Amount.

This memorandum amends and must be read in conjunction with the Czech Netting Opinion. This memorandum is subject to the qualifications set out in the Czech Netting Opinion.

Capitalised terms used in this memorandum without definition have, unless the context indicates otherwise, the meanings given to those terms in the Czech Netting Opinion and Close-out Amount Protocol.

2. CLOSE-OUT AMOUNT PROTOCOL

2.1 Assumptions

For the purposes of this memorandum we have made the following assumptions:

- (a) Assumptions listed in Part 3.1 of the Czech Netting Opinion and assumptions listed in Part 4.1 of the Czech Netting Opinion.
- (b) The obligations of each party under the Close-out Amount Protocol and Covered Master Agreement, as amended by the Close-out Amount Protocol are legal, valid and binding under the relevant governing law.
- (c) The amendment of the Covered Master Agreement through the Close-out Amount Protocol as of the Implementation Date constitutes legal, valid and binding contractual arrangement amending the Covered Master Agreement under the relevant governing law.
- (d) With respect to a Close-out Amount Protocol there are no mandatory (in Czech, *imperativní*) rules of law of the country with which the situation has a close connection. This assumption is applicable only if, and to the extent that, such rules would affect the conclusions set out in this memorandum and if, according to the laws of that country, such rules must be applied regardless of the law governing the contract.
- (e) Each party has the relevant power and capacity to adhere, enter into and perform their obligations under the Close-out Amount Protocol and the Covered Master Agreements, as amended by the Close-out Amount Protocol and such Close-out Protocol and Covered Master Agreement, as amended by the Close-out Amount Protocol are duly executed and delivered by the parties in accordance with their constitutional documents and all applicable laws.

- (f) The Close-out Amount Protocol and the Covered Master Agreements, as amended by the Close-out Amount Protocol are executed, entered into by each party and become effective (respectively) between the parties prior to any action being taken in respect of either party for, or in connection with, the commencement of insolvency, bankruptcy, reorganisation, composition, debt discharge, dissolution, liquidation, administration, interim injunction, court or other involuntary enforcement or public auction proceedings under applicable Czech law.
- (g) The Close-out Amount Protocol and the Covered Master Agreements, as amended by the Close-out Amount Protocol are entered into, and each payment or delivery made thereunder is made, at arm's-length so that no element of gift or undervalue from one party to the other party is involved and without any intention of the former party to prefer the latter party in the event of the former party becoming insolvent.
- (h) The Czech Entity is, at the time it adheres to and executes the Close-out Amount Protocol and at the time the Covered Master Agreement is amended (as at the Implementation Date), not insolvent (in Czech, *v úpadku*) under applicable Czech law and its insolvency does not threaten and it will not cause itself to become insolvent under applicable Czech law as a result of adhering to and executing the Close-out Amount Protocol and amending the Covered Master Agreement.

2.2 Confirmation

We confirm that the changes made by the Close-out Amount Protocol would not materially affect our conclusions reached in the Czech Netting Opinion.

As to assumption 3.1(b) in the Czech Netting Opinion (no provision of the Master Agreement that is necessary for the giving of this opinion has been altered in any material respect), in our view, no change to the Covered Master Agreement contemplated by the Close-Out Amount Protocol and no selection contemplated by and made in Close-Out Amount Protocol would be considered a material alteration for this purpose.

We do not give any opinion on the validity or enforceability under Czech law of the Close-out Amount Protocol itself.

This memorandum of law is rendered solely to ISDA for the benefit and use of its members. This memorandum of law may not be relied upon by any other person or used, circulated, quoted or otherwise referred to or relied upon for any other purpose without our prior written consent. This memorandum may, however, be shown by an ISDA member to a competent regulatory authority for such ISDA member for the purposes of information only, on the basis that we assume no responsibility to such authority or any person as a result, or otherwise.



Václav Valvoda

on behalf of Allen & Overy (Czech Republic) LLP, organizační složka