

ISDA® News

A round-up of news and developments from the
International Swaps and Derivatives Association

Issue IX, 2009

EXECUTIVE FOCUS

Conrad Voldstad joins ISDA as CEO; Robert Pickel appointed Executive Vice Chairman

The ISDA Board of Directors appointed Conrad “Connie” Voldstad as Chief Executive Officer, effective November 30. Robert Pickel, ISDA Executive Director and CEO since January 2001, assumed the newly created position of Executive Vice Chairman on the same date. Mr Voldstad and Mr Pickel will both serve on the Association’s Board of Directors.

Mr Voldstad is a senior industry executive whose career in the financial markets spans three decades. Mr Voldstad was the founder of Merrill Lynch Derivative Products, the first AAA-rated derivatives products company. From 1988 to 1999, he held several senior positions at Merrill Lynch, including membership on the Oversight Committee responsible for liquidating Long-Term Capital Management; Co-Head of Global Debt Markets in New York; and Head of European Debt Markets in London. From 1974 to 1988, Mr Voldstad held increasingly important positions at JP Morgan and was the first head of that firm’s Global Swap Group. Most recently, he served as Director of RAM Holdings Ltd., a credit reinsurance company, and was founding principal of Arlington Hill Investment Management, a global debt investment management firm.

“I am delighted that Connie Voldstad – an industry pioneer with unparalleled experience in the global capital markets – is joining ISDA,” said Eraj Shirvani, ISDA Chairman and Head of Fixed Income EMEA at Credit Suisse. “His knowledge, experience and leadership skills will be invaluable in guiding ISDA and the industry as we work together to strengthen the framework for privately negotiated derivatives activity.”

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TRADING INFRASTRUCTURE

ISDA creates new industry governance structure

On December 1, ISDA announced a governance structure for the privately negotiated derivatives industry’s market practice and post-trade activities. The industry’s governance structure determines its relationships with other stakeholders, including regulators and vendors, as well as other infrastructure providers. Two underlying and fundamental principles of the governance structure relate to where responsibility and ownership lie for the strategic direction of market practice and post-trade activities, and which groups are responsible for liaising with regulators, and at what levels. It is a three-layered structure:

- Layer 1: The ISDA Industry Governance Committee (IIGC). Many of the industry commitments have significance beyond operations. The IIGC is at the head of the governance structure, and will oversee all strategic market practice and post-trade issues in the privately negotiated derivatives market. The Committee will have strong buy-side representation.
- Layer 2: The Steering Committees (SCs). Four committees related to individual asset classes (rates, equities, credit and commodities), and two which operate at the cross-product level (operations and collateral). These groups draw authority and receive strategic direction and guidance from the IIGC regarding all issues that cannot be resolved at this level. Each of the product-related SCs brings senior business management representation at the asset class level, focusing on business and market practice issues. The Operations and Collateral SCs are made up of senior figures from those fields.

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FINANCIAL LAW REFORM

Switzerland

Swiss financial regulator FINMA started a consultation on a new deposit protection act (*Einlagensicherungsgesetz*), which runs until the end of the year. ISDA is already in discussions with local members and authorities about initial observations on the draft bill. It is being proposed that a new “deposit protection fund” be used to ensure the continuation of banking services in the case of a bank’s reorganization. Such procedures usually constitute a termination event under standard market documentation, as well as a trigger for statutory close-out. Clarifications are being sought as to the effectiveness of netting agreements in light of the new powers under the bill to make cash injections to a banking institution. This would also preserve a clear regime around the continuing use of net calculations undertaken by counterparties for regulatory capital purposes. Another suggestion is to reflect recent experiences in cross-border insolvency cases and allow for equal treatment in the Swiss insolvency proceedings of foreign counterparties to the insolvent bank.

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UNCITRAL on cross-border insolvency

ISDA has long been involved in the various working groups within the United Nations Commission on International Trade Law (UNCITRAL), especially on secured transactions and insolvency. In the area of insolvency, the main UNCITRAL instruments that are of interest to the derivatives industry include the 1997 Model Law on Cross-Border Insolvency, the 2004 Legislative Guide on Insolvency Law and the 2009 Practice Guide on Cross-Border Insolvency. The provisions of the UNCITRAL Model Law are reflected in the provisions on cross-border insolvency in many jurisdictions and the principle of “Center of Main Interest” (COMI), as included in the EU Insolvency Regulation, also reflects principles developed in the context of this work.

In light of increasing numbers of major insolvency cases with cross-border elements, UNCITRAL started a project addressing issues of enterprise groups in insolvency. For example, various national regimes claim the principle of universality in their own insolvency proceedings, but do not recognize universality claimed by foreign jurisdictions. Also, stays or suspensions of proceedings cannot be applied effectively across borders. The Model Law and the Legislative Guide listed above do not discuss the issue of enterprise groups.

The UNCITRAL Working Group is looking to address this issue by adding a new set of recommendations and commentary to the 2004 Legislative Guide. One proposal is to adapt COMI to enable all proceedings with respect to enterprise group members to be commenced in, and administered from, a single center through one court and subject to a single governing law. Another proposal is to identify a coordination center for the group, which might be determined by location of the controlling member of the group; yet another is to permit group members to apply for insolvency in the state in which proceedings have commenced with respect to the insolvent parent of the group.

These proposals raise significant and difficult issues: how to define what constitutes an enterprise group for insolvency purposes; how multinational enterprise groups operate; how to define the location of the center; eligibility to commence insolvency proceedings, and the applicable law in such a case. Other issues for discussion (based on the provisions on possible forms of cooperation according to Article 27 of the Model Law) include the communication between courts, the coordination of debtor’s assets and affairs, the appointment of a court representative, the use of cross-border agreements and the cooperation of insolvency practitioners.

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EXECUTIVE FOCUS

Voldstad / Pickel *continued from page 1*

Mr Voldstad said, “Throughout my career, ISDA has been at the forefront of industry efforts to shape, strengthen and improve global derivatives activity. Its mission and role today have never been more important. I look forward to working with ISDA’s Board, staff, membership and external constituencies on the many important issues that face our business today and in the future.”

As Executive Vice Chairman, Mr Pickel will continue to be a member of the Association’s senior management team, providing leadership and expertise with strategic initiatives. “Bob has made an enormous contribution as Executive Director and CEO over the past nine years,” said Mr Shirvani. “We expect that he will continue to do so for a long time to come in his new role.”

“ISDA remains a vitally important asset for the global derivatives business, and I know that Connie Voldstad will significantly enhance the Association’s accomplishments and effectiveness,” said Mr Pickel. “He brings strong financial markets expertise, solid business experience and a fresh perspective. I look forward to working with him and helping ISDA to leverage the opportunities and address the challenges ahead.”

CREDIT DERIVATIVES

Common principles for give-up agreements for central clearing

On November 10, ISDA published a set of recommended common principles intended to guide documentation for give-up agreements across central counterparties (CCPs) or clearinghouses. This document is the product of a series of meetings of an ISDA-led working group comprising buy- and sell-side participants and CCPs. The group has worked to promote industry-wide dialogue and coordinated solutions to facilitate buy-side access to clearing by December 15. The principles address fallbacks in the event of rejection for clearing, ability to reject trades, reduction of trading limits, and determinations of market decisional bodies in relation to CCPs. The document is available at <http://www.isda.org/credit/docs/Recommended-Common-Principles.pdf>

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European CDS portfolio compression RFP

Following the Request for Proposals issued on October 23, the Credit Steering Committee selected Trioptima for European CDS Portfolio Compression. Compressions began November 23. Further information on the RFP is available at www.isda.org/credit.

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Standardized coupons in Japan

ISDA announced market practice changes to the trading convention for CDS in Japan and Asia ex-Japan. These changes, which will go into effect following the December 20 roll, include the adoption of standard coupons and full first coupons in CDS transactions. Changes will include the following:

- Firms will trade Japan CDS with standard coupons of 25bp, 100bp and 500bp and full first coupons going forward
- Firms will trade Asia ex-Japan CDS with standard coupons of 100bp and 500bp and full first coupons going forward

The industry successfully adopted fixed coupons in North America in April, in Europe in June and in emerging markets in Europe, the Middle East, Latin America and Australia/New Zealand in September. Adoption of standard coupons serves to achieve increased standardization, transparency and liquidity in the CDS market.

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Small Bang Protocol re-opening

ISDA re-opened the Small Bang Protocol with adherence open until January 31, 2011. The Protocol was originally open from July 14-24, with over 2,000 parties adhering. The re-opening comes at the request of ISDA members and is intended to facilitate adherence by new market participants to increase efficiencies in the CDS market.

A particularly important feature of the Small Bang Protocol is its forward-looking provisions, which will amend transactions prospectively to incorporate the amendments to industry documentation that are effected by the Protocol. This will allow parties to continue to trade using existing industry standard documentation even while these documents are being updated. The process of updating will be completed by the end of the new adherence period. The text of the Protocol and form of adherence letter, guidance on mechanics, and an FAQ are available at <http://www.isda.org/smallbang/index.html>.

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TRADING INFRASTRUCTURE

Governance structure *continued from page 1*

- Layer 3: The Implementation layer. The Implementation layer is comprised of the Implementation Groups and the Working Groups. These groups are responsible for the tactical implementation and delivery of the agenda determined for the industry by the IIGC and the SCs.

In addition to the discussion on the various dimensions of each governance layer, the document includes decision-making provisions relating to voting, chairships, record-keeping and de-selection. ISDA published the governance document after extensive consultations with its members and industry constituents, such as the Securities Industry and Financial Markets Association (SIFMA) and the Managed Funds Association (MFA). ISDA will update this document as changes occur in the market place that impact industry governance. The document, as well as accompanying organizational charts, is available at www.isda.org.

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EUROPEAN REGULATORY

Structured investments

The EC has resumed work on packaged retail investment products (PRIPs), focusing on harmonization of sales practices and risk disclosure across different types of “wrappers”: notes, deposits, UCITS funds and insurance policies. Disclosure could include a requirement to state the fair value of each component. ISDA, with the Joint Associations Committee (JAC), attended a Commission workshop in Brussels on October 22 to stress that, rather than the legal form of any given instrument, it is the act of selling to a retail customer that should trigger relevant provisions. At a high level, consistency with the prospectus or key information document is a major industry objective. An EC directive on disclosure and sales practices for all PRIPs remains likely.

In a related development, the Committee of European Securities Regulators (CESR) consulted on structured funds. In comments, the JAC raised two issues:

Performance scenarios (Section 13): CESR believes that the presentation of past performance is inappropriate for structured funds. However, rather than the probability tables it put forward as an option in its July 2009 consultation, it now prefers an explanation of how the return formula or pay-off is calculated by reference to prospective scenarios. As to harmonizing the scenarios, CESR will produce detailed Level 3 guidelines by July 1, 2010.

Risk/reward profile (Section 4): CESR will provide a methodology for a synthetic risk/reward indicator by the end of 2009. It accepts the value of a volatility-based risk-reward indicator but considers that, for some funds a methodology based on VaR might not capture all risks. CESR's feedback is available at www.cesr.eu/index.php?page=groups&id=28.

In the UK, the FSA published its conclusions on the sale of products backed by Lehman Brothers (www.fsa.gov.uk/pages/Library/Communication/PR/2009/144.shtml). It is approaching individual firms where it has detected shortcomings, focusing on the misuse of language with these products. More generally, the FSA will look at derivatives and structured products valuation practice.

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France's Barnier appointed EC Commissioner for financial services

The recent appointment of France's Michel Barnier as EC Internal Market Commissioner for financial services increases the likelihood of stringent EU regulation of derivatives markets. France's President Nicolas Sarkozy has referred to the UK and the City of London as “the big losers” in the selection of the new commissioner, while Mr Barnier himself has called for a “capitalism for entrepreneurs and investors, more than for speculators.”

The appointment of the UK's Jonathan Faull, as the commissioner's most senior reporting civil servant, has been highlighted by Mr Barnier as an indication that he will take a pragmatic, rather than a crusading approach in his policies towards derivatives markets. Mr Barnier will take office on February 1, 2010, assuming the European Parliament approves his appointment in January.

EC Communication sketches picture of 2010 legislative activity on derivatives

On October 20, the European Commission published policy conclusions following its review of issues around derivatives markets. The paper doesn't include any concrete legislative proposals (as we are near the end of the mandate of the present College of Commissioners) but rather indicates the legislative and other steps that will be taken next year.

The EC will likely pursue the G20 exhortation that standardized derivative contracts should be transacted on exchange or electronic trading platforms “where appropriate”. This will be looked at in the review of the EU Market in Financial Instruments Directive (MIFID) by end-2010. This review seems likely to examine what is meant by “appropriate” and “standardized” in this context. Mandatory central clearing of standardized contracts is in proposals for a Clearing and Settlement Directive, for mid-2010.

The new European Securities and Markets Authority (ESMA) would have power to authorize and supervise central counterparty clearinghouses (CCPs), and language is also included which indicates some support for a regional basis for central clearing (i.e. European clearing for “European” trades).

Further incentivization of central clearing is likely through higher capital charges on bilaterally cleared transactions, and consideration of whether higher operational risk charges should apply to non-electronically processed transactions. These actions would be implemented via amendments to the Capital Requirements Directive (CRD) for mid-2010.

Additional key legislative proposals in summary are:

- Proposals on central clearing, trade repositories, transaction reporting and position reporting (mid-2010);
- Proposals for the amendment of MIFID will address designation of trading venue for “standardized” derivatives, and appropriate transparency requirements for different trading venues for OTC derivatives (end-2010);
- Legislation will impose higher capital charges on bilaterally cleared contracts and may also impose changes in bilateral collateralization practices, and higher operational risk charges associated with non-electronically processed contracts (amendment to CRD, end-2010);
- National regulators will be given the power to impose position limits (MIFID);
- The Market Abuse Directive will be amended to capture more of the OTC derivatives market (end-2010).

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US REGULATORY

NCOIL adopts model legislation

The National Conference of Insurance Legislators (NCOIL) adopted Credit Default Insurance Model Legislation at its annual meeting last month. The model bill defines "authorized" credit default insurance (CDI) and establishes a state insurance regulatory regime to oversee the CDI market. Under the model legislation, "unauthorized" CDI would be prohibited. In addition, the model bill bans so-called "naked" credit default swaps.

Following NCOIL adoption of the model bill, state legislators from New York, Virginia and North Dakota are indicating they intend to introduce legislation based on the model bill in their respective state legislatures. Supporters of the NCOIL legislation continue to say that Congress has been slow to act on comprehensive legislation to regulate OTC derivatives, and that absent such federal legislation, individual states need to act.

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House expected to consider OTC legislation

The House is expected to begin consideration of the financial services reform bill, including the OTC derivatives legislation, on December 9. House Financial Services Committee Chairman Barney Frank (D-Mass) and House Agriculture Committee Chairman Collin Peterson (D-Minn) indicate that they have reached agreement on many of the differences between the two versions of the OTC bill, which passed out of their Committees in October. The final language of the derivatives legislation is expected to be available as this issue of ISDA News goes to press.

As agreed, the determination of which transactions must be cleared will be made by the SEC and the CFTC. Earlier versions of the bill would have left the initial determination up to clearinghouses with subsequent approval by the regulators. However, since Committee action, Chairman Frank expressed concern about conflicts of interest if clearinghouses could decide which transactions would be deemed clearable and which would not.

It appears that foreign exchange swaps and forwards will no longer be excluded from the requirements of the bill, as initially proposed and as supported by Treasury. Rather, it is expected that the CFTC and Treasury will be given additional authority over these products.

The issues of whether to require end-users to meet margin requirements for non-cleared trades and whether to restrict the ownership of clearinghouses, exchanges, and alternative swap execution facilities have not been resolved.

House leadership wants to vote on final passage of the comprehensive financial reform legislation before the Christmas break. However, both the House Judiciary and Energy and Commerce Committees have weighed in on the comprehensive package, which could result in a slight delay of consideration by the full House.

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OPERATIONS

Equity OTC derivatives trade reporting repository RFP

DTCC/Markitserv has been selected to build the Equity OTC Derivatives Trade Reporting Repository. All responses to the RFP were reviewed by an evaluation committee, which was a subset of the Equity Implementation Group. A short list of proposals was reviewed and voted on by the Equity Steering Committee.

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In brief

The ISDA Credit Operations Group developed Small Bang Operational Best Practices for firms in regard to processing transactions under the Small Bang. These are published on the Operations page of the ISDA website, at http://www.isda.org/c_and_a/oper_commit.html. ISDA hosted an industry call recently to review the Best Practices and the recording of this call is available on the ISDA website.

The ISDA 2009 Collateral Dispute Resolution Procedure (DR Procedure) and companion Implementation Guidelines have been published on ISDA's website. The DR Procedure is expected to be implemented in phases over the next few months.

An Independent Amount Whitepaper, which provides detailed information on the various types and uses of Independent Amounts, has been published on the ISDA website at http://www.isda.org/c_and_a/pdf/Independent-Amount-WhitePaper-Final.pdf.

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ACCOUNTING

Netting derivatives under IFRS

ISDA has requested the IASB address the topic of netting, as there is a lack of compatibility in balance sheet size between entities reporting under IFRS and US GAAP. This is due to US GAAP allowing the offsetting of derivative assets and liabilities with the same counterparty, traded under an ISDA master netting agreement. This US practice is also consistent with regulatory capital requirements.

The uneven playing field between IFRS and US banks will become increasingly important now that regulators are focused on balance sheet size and leverage ratios. ISDA members met with IASB Board members and emphasized the need to include netting in the project to replace the financial instruments accounting model, which provides a good opportunity to converge the differences in regulation.

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EU delays adoption of IFRS 9

International Financial Reporting Standards 9 (IFRS 9) introduces new requirements for classifying and measuring financial assets. Those requirements must be applied starting January 1, 2013, with earlier adoption permitted including for 2009. The International Accounting Standards Board (IASB) intends to expand IFRS 9 during 2010 to add new requirements for classifying and measuring financial liabilities, derecognition of financial instruments, impairment, and hedge accounting. By end-2010, IFRS 9 will be a complete replacement for IAS 39.

On November 12, the EU delayed the introduction of the new standard. The EC said it would not adopt the changes until it had carried out an in-depth analysis into the new year. The decision means that European banks and insurers will not be able to use the new IFRS 9 for their 2009 accounts while companies in more than 80 countries outside the EU and the US will be able to do so.

The move follows a deep split among European financial institutions over the new accounting standard that favors the use of fair value to measure assets, rather than cost. Some French, German and Italian banks with large investment banking activities would be hit by the changes, forcing them to book losses on large holdings of derivatives. Other banks in the region fear they will be put at a disadvantage to international peers.

ISDA participated in the Third Stakeholders meeting on IFRS 9 Recognition and Measurement at the European Commission in Brussels. More than half of the stakeholders raised objections to the new standard proposed by the IASB. Member States that favor adoption include the UK, Denmark, Ireland, the Netherlands and Spain, (the latter two are comfortable with the delay). Bulgaria, France, Germany, Italy, Hungary, Luxembourg, and Portugal preferred the delay. Opponents of the new standard raised concerns about bifurcation of embedded derivatives and treatment of gains and losses on equities. They also preferred to see the whole of IFRS 9 before endorsement, and Germany felt that delaying endorsement could actually increase the EU's leverage upon IASB.

ISDA and IASB meet on portfolio valuation

Before the Exposure Draft (ED) on Fair Value was published, the ISDA European Accounting Committee met with the International Accounting Standard Board (IASB) that was represented by two board members, John Smith and Steven Cooper to discuss portfolio valuations of derivatives. The new standard on fair value, expected to be published by year-end, shall apply to annual periods beginning as early as 2011 onwards. ISDA is concerned that the ED is unclear as to whether portfolio based valuations are permitted.

We argued that Paragraph 24 of the ED states that "the in-use valuation premise is not relevant for financial instruments" and that paragraph BC 33 states that "the unit of account for a financial instrument is the single instrument". This differs from US GAAP in that SFAS 157 (The Fair Value Option) does not prohibit an in-use premise for financial instruments, and that SFAS 159 (The Fair Value Option for Financial Assets and Financial Liabilities) paragraph A18, which states that the unit of valuation may differ from the unit of account. US banks and other dealers in derivatives, rely on these two principles to make pricing adjustments to mid-market model prices for a portfolio of derivatives, including costs of close out and credit adjustments, on a portfolio basis. Meanwhile the ED proposes to eliminate paragraph AG 72 of IAS 39, which specifically permits a bid-ask spread to be calculated on a net basis for offsetting positions.

The IASB was receptive to ISDA's concerns and open to the possibility of adding our proposed wording to the new IFRS so as to clarify this important issue. If portfolio valuation adjustments are not permitted on derivative portfolios, additional pressure is expected on the capital requirements for regulated institutions and the consequent negative impact on the profitability of banks.

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ASIA-PACIFIC

Hong Kong

On November 13, ISDA organized two member meetings with Theo Lubke, Senior Vice President Bank Supervision Group, Federal Reserve Bank of New York. With the ISDA Asian Steering Committee, Mr Lubke provided his view of the enhancements needed to the regulatory infrastructure for OTC derivatives, including a move to CCPs, buy-side clearing and trade data repositories. He also described global regulatory coordination efforts through the OTC Derivative Regulators Forum.

In a meeting with regional operations and legal heads, members provided Mr Lubke with an update on electronic trade onboarding in the credit, rates and equity spaces. Australia was noted for its participation in the OTC Derivative Regulators Forum and the resultant increase in electronic trade onboarding. ISDA gave an overview of regulatory initiatives of national and regional CCPs. Several countries, including India and Korea, are likely to go down the path of developing national-level CCPs, which will make doing business more expensive. Greater effort to engage countries throughout the region for a harmonized regulatory approach would have great benefit for the industry.

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China

On November 5, ISDA held a member meeting on regulatory issues around market access products issued by Qualified Foreign Institutional Investors licensed in China. Members attending the meeting expressed concerns about the State Administration of Foreign Exchange's (SAFE) recent comment on market access products. ISDA agreed to submit a comment on the industry's concerns to SAFE and to address any issues or misunderstandings regulators may have regarding these products.

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CENTRAL & EASTERN EUROPE

Slovenia

ISDA wrote to the Ministry of Justice, the Ministry of Finance and the National Bank of Slovenia to express its views on the urgent need to introduce provisions on close-out netting into local law. Currently the legal analysis is not ideal as local law does not provide for any substantive provisions. The implementation of various EU directives that refer to netting agreements (e.g. Collateral Directive, Winding-up Directive for Credit Institutions) has not led to any clarification either. Moreover, the distinction between set-off and close-out netting is being blurred due to a somewhat complicated translation of the relevant provisions in the EU directives. ISDA is cooperating with the local banking association (ZBS) on this matter. ISDA's proposal to the authorities is also based on the upcoming implementation of the new EU Directive Amending the Collateral and Settlement Finality Directives.

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Czech Republic

In mid-September, the Czech Ministry of Finance ran a consultation on the review and consolidation of the collateral legislation in the Czech Republic (various provisions are currently scattered across several pieces of legislation). Among the topics raised: the general distinction between security interest and title transfer collateral arrangements; the scope of claims that can be secured by collateral arrangements; the scope of eligible counterparties and the inclusion of corporates; the definition of enforcement events; and conflict of law issues.

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AUCTIONS

Thomson

On December 1, the EMEA Determinations Committee resolved that a bankruptcy credit event had occurred with respect to Thomson, a Paris-headquartered company that provides a range of communications products and services. The Committee also voted to hold an auction for Thomson. On November 30, Thomson announced it had requested and obtained the opening of a *sauvegarde* proceeding in the Tribunal de Commerce de Nanterre. Auctions were previously held on October 22 in respect to Thomson as a result of a Restructuring credit event. This was the first Restructuring credit event to be settled under the terms of the Restructuring Supplement published by ISDA on July 27 and implemented via the Small Bang Protocol. Further information on Thomson is available at www.isda.org/credit.

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Hellas II

On November 19, the EMEA Credit Derivatives Determinations Committee resolved that a bankruptcy credit event occurred in respect to Hellas Telecommunications (Luxembourg) II, a Greek telecom operator. The Committee also voted to hold an auction for Hellas II. ISDA will facilitate the process by publishing the auction terms at www.isda.org/credit, in due course. The auction will be administered by Markit and Creditex.

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CIT

On November 3, the Americas Credit Derivatives Determinations Committee resolved that a bankruptcy credit event occurred in respect of CIT Group Inc., a provider of financing to small businesses and middle market companies. The auction, administered by Markit and Creditex, was held on November 20. Please refer to the CIT Group Inc. Credit Event page for further details: <http://www.isda.org/companies/cit/cit.html>.

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Cemex

On October 9, the Determinations Committee received a request to determine if a Restructuring credit event had occurred with respect to Cemex. The question was subsequently sent to an external review panel on November 11 in accordance with the DC rules. For more information on Cemex, see www.isda.org/credit.

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JAPAN

Financial Instruments and Exchange Act

On November 16, ISDA submitted a comment letter to the FSA on the exposure draft of cabinet ordinances relating to the revised Financial Instruments and Exchange Act (FIEA). ISDA's comments focused on the rules of the customer asset segregation:

- the methodology of segregating collateral assets received from customers under the ISDA Master Agreement and Credit Support Documents;
- the relevancy and consistency of rules with provisions of the Netting Law;
- the consistency of the FIEA approach to asset segregation rules for commodity derivatives transactions, with the approach stipulated in the revised Commodity Futures Act being drafted by the Ministry of Economy, Trade and Industry.

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FpML

New FpML working draft released

The main drivers for the second working draft for FpML Version 4.7 are the changes in equity products. This version includes coverage for EU (Interdealer) Share Swaps and Pan-Asia (Interdealer) Share Swaps. On the interest rate derivatives side, a new structure to support the Brazilian CDI Swaps' Future Value Notional has been introduced. Additionally, new credit events, such as implied writedown and floating rate, have been added to fully support CDS on CDOs. The publication of the final Recommendation for FpML Version 4.7 is expected by the end of this year. The second working draft is available at: <http://www.fpml.org/spec/fpml-4-7-2-wd-2>

The fourth working draft of FpML Version 5.0 is underway. It will include changes from the recently launched FpML Reporting/Regulatory Reporting Working Group on position and event activity reporting, as well as the work on messaging remodeling. The remodeling work addresses existing weaknesses in the 4.x messaging framework by improving the mechanisms to link messages that belong to the same business process and increasing the consistency across the life cycle of a transaction. In terms of product scope, this upcoming draft will be synchronized with the product coverage that is present in the 4.x versions.

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ISLAMIC FINANCE

Tahawwut (Hedging) Master Agreement

ISDA and the International Islamic Financial Market (IIFM) held the second of two final consultative meetings on the ISDA/IIFM Tahawwut (Hedging) Master Agreement in Abu Dhabi, UAE. The document is the Islamic version of the ISDA Master Agreement and represents the first global and pan-Islamic standard contract document for transactions in Shariah-compliant OTC derivatives.

Various scholars and regulators from across the Gulf Cooperation Council region provided comments on the final draft. The intention is to reflect these comments in the final version of the new document which is about to be submitted for official Shariah pronouncement by the IIFM Board of Shariah Experts.

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NEW MEMBERS

Primary

Fortis Bank (Nederland) N.V.

Subscriber

Banca d'Italia
Caixa Económica Montepio Geral
MOL Commodity Trading Ltd.
Raiffeisen-Landesbank Steiermark AG
RBC Dexia Investor Services Limited

Associate

MarkitSERV LLC
Schellenberg Wittmer
Wachtell, Lipton, Rosen & Katz

ISDA[®]

Conferences

To register for these conferences or find out more information, visit: <http://www.isda.org/conf/>

December 3, 2009	<u>ISDA Workshop on Close-outs and the Impact of Market Events</u> Frankfurt	January 26, 2010	<u>Fundamentals of Derivatives Seminar</u> New York
December 8, 2009	<u>Overview of ISDA Documentation and Operational Issues for the Buy-Side</u> New York	January 27, 2010	<u>Understanding The ISDA Master Agreements Conference</u> New York
December 9, 2009	<u>ISDA Symposium - Collateral Commitments</u> New York	January 28, 2010	<u>Understanding Collateral Arrangements and the ISDA Credit Support Documents Conference</u> New York
December 14, 2009	<u>Understanding the ISDA Master Agreements Conference</u> Mumbai	February 9, 2010	<u>Counterparty Credit Risk Seminar</u> New York
December 15, 2009	<u>Understanding Collateral Arrangements and the ISDA Credit Support Documents Conference</u> Mumbai	February 10, 2010	<u>ISDA Symposium - Collateral Commitments</u> London
January 14, 2010	<u>ISDA Commodity Operations Conference</u> London	February 23, 2010	<u>Fundamentals of Derivatives Seminar</u> London
January 20, 2010	<u>Equity Derivatives 2010</u> Hong Kong	February 23, 2010	<u>Fundamentals of Equity Derivatives Seminar</u> New York
January 21, 2010	<u>ISDA Commodity Operations Conference</u> New York	February 24, 2010	<u>ISDA Symposium - New ISDA Americas Equity Master Confirmation Agreements</u> New York
January 22, 2010	<u>Documenting Commodity Transactions using the ISDA Documentation Structure Conference</u> Singapore	February 24, 2010	<u>Understanding the ISDA Master Agreements Conference</u> London
January 26, 2010	<u>ISDA Symposium - New ISDA European Equity Master Confirmation Agreements</u> London	February 25, 2010	<u>Understanding Collateral Arrangements and the ISDA Credit Support Documents Conference</u> London