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MEMORANDUM TO MEMBERS

ISDA is aware that market participants have been discussing whether convertible bonds are Deliverable Obligations under existing transactions in light of the forthcoming publication of the “Supplement Relating to Convertible, Exchangeable or Accreting Obligations” which was recently distributed to the Credit Derivatives Market Practice Committee.

ISDA would like to point out that the proposed Supplement states that no inference shall be made as to the interpretation of the “Not Contingent” Deliverable Obligation Characteristic for Credit Derivative Transactions that do not incorporate the Supplement or that do not otherwise specifically address the issue of whether convertible bonds are deliverable. The principal reason for including this statement is to reinforce the position expressed in the final draft User’s Guide to the 1999 ISDA Credit Derivatives Definitions to the effect that bonds that are convertible at the option of the bondholder (or a trustee on behalf of the bondholders) should not for this reason be excluded by the “Not Contingent” Deliverable Obligation Characteristic. Accordingly, ISDA is issuing this Memorandum to Members in order to reiterate the position expressed in the final draft User’s Guide that convertible bonds containing the characteristics described above satisfy the “Not Contingent” Deliverable Obligation Characteristic and should be deliverable unless the parties have otherwise agreed in the Confirmation related to a particular Credit Derivative Transaction.

ISDA understands that some convertible bonds contain provisions pursuant to which a trustee may exercise a conversion right if the conversion option is of significant value to the bondholders. ISDA understands that provisions such as this are typically included to protect bondholders when they have failed to exercise a conversion right on a timely basis and exercise is clearly beneficial for them. ISDA views the provision as analogous to the automatic exercise provision in a swaption and not a contingency to which the “Not Contingent” Deliverable Obligation Characteristic is intended to apply.