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**YEAR 2000 REVIEW OF  
ISDA DOCUMENTATION**

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ISDA®

**INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.**

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**ISDA YEAR 2000 REVIEW OF  
STANDARD DOCUMENTATION**

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# Table of Contents

|   | Page |
|---|------|
| INTRODUCTION.....   | 1    |
| A. THE YEAR 2000 PROBLEM.....   | 1    |
| B. PURPOSE OF THE YEAR 2000 REVIEW OF ISDA DOCUMENTATION .....                                      | 1    |
| C. Y2K SCENARIOS RELEVANT TO PARTICIPANTS IN THE PRIVATELY NEGOTIATED DERIVATIVES<br>INDUSTRY ..... | 2    |
| D. BEST PRACTICE IN THE FOREIGN EXCHANGE MARKET .....   | 3    |
| E. STRUCTURE OF THE YEAR 2000 REVIEW OF ISDA DOCUMENTATION .....                                    | 5    |
| F. IMPOSSIBILITY UNDER ISDA DOCUMENTATION.....  | 6    |
| SUMMARY OF PRINCIPAL ISSUES .....   | 7    |

## PART I

### 1992 ISDA MASTER AGREEMENTS

|  |    |
|--|----|
| A. INTRODUCTION.....   | 9  |
| B. RELEVANT SECTIONS AND DEFINITIONS .....   | 9  |
| 1 Section 2(a)(ii): Obligations – General Conditions .....   | 9  |
| 2 Section 5(a): Events of Default.....   | 9  |
| 3 Termination Events under the Master Agreement – Illegality .....                                   | 10 |
| 4 Section 6(a): Right to Terminate Following Event of Default – Automatic Early<br>Termination ..... | 11 |
| 5 Section 6(e): Payments on Early Termination – Market Quotation .....                               | 11 |
| 6 Section 12: Notices – Effectiveness .....  | 12 |
| 7 Local Business Day.....  | 12 |

## PART II

### THE ISDA CREDIT SUPPORT DOCUMENTS

|   |    |
|---|----|
| A. INTRODUCTION.....                        | 13 |
| B. RELEVANT PROVISIONS AND DEFINITIONS..... | 13 |
| 1 Credit Support Obligations .....          | 13 |
| 2 Transfers.....                            | 14 |
| 3 Calculations .....                        | 14 |
| 4 Substitutions/Exchanges.....              | 15 |
| 5 Custodians .....                          | 16 |
| 6 Use of Posted Collateral .....            | 17 |
| 7 Demands and Notices.....                  | 17 |
| 8 Local Business Day.....                   | 17 |

## PART III

### 1991 ISDA DEFINITIONS

|   |    |
|---|----|
| A. INTRODUCTION.....  | 19 |
| B. RELEVANT DEFINITIONS .....   | 19 |
| 1 Section 1.3. Banking Day .....  | 19 |
| 2 Section 1.4. Business Day; Section 4.14. Calculation Agent; Section 7.1. Rate<br>Options; Section 7.2. Price Options; Section 7.3. Certain Published and<br>Displayed Sources; Section 7.4. Certain General Definitions Relating to<br>Floating Rate Options; Section 7.4(m) Market Disruption Event; and Section<br>7.7. Effect of Market Disruption Event; Section 7.5. Corrections to Published<br>and Displayed Rates and Prices; Section 7.6. Certain Adjustments in Indices ..... | 20 |
| 3 Section 3.3. Termination Date .....   | 20 |

|   |  |    |
|---|--|----|
| 4 | Section 4.11. FRN Convention; Eurodollar Convention; Section 4.12. Business Day Convention ..... | 20 |
|---|--|----|

|  |  |    |
|--|--|----|
|  | TABLE OF TERMS IN THE 1991 DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS ..... | 21 |
|--|--|----|

**PART IV**

**1998 SUPPLEMENT TO THE 1991 ISDA DEFINITIONS**

|    |  |    |
|----|--|----|
| A. | INTRODUCTION.....  | 23 |
| B. | RELEVANT DEFINITIONS .....   | 23 |
| 1  | Section 1.4. Business Day .....  | 23 |
| 2  | Section 1.6. ECU Settlement Day .....  | 24 |
| 3  | Section 1.7. Euro Settlement Date .....  | 24 |
| 4  | Section 4.14. Calculation Agent .....  | 24 |
| 5  | Section 7.1. Rate Options; Section 7.2. Price Options; Section 7.3. Certain Published and Displayed Sources; and Section 7.4. Certain General Definitions Relating to Floating Rate Options..... | 25 |
| 6  | Section 7.4(m) Market Disruption Event; Section 7.7. Effect of Market Disruption Event.....  | 26 |
| 7  | Section 7.5. Corrections to Published and Displayed Rates and Prices .....   | 26 |
| 8  | Section 7.6. Certain Adjustments in Indices .....  | 27 |

|  |  |    |
|--|--|----|
|  | TABLE OF TERMS IN THE 1998 SUPPLEMENT TO THE 1991 ISDA DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS ..... | 28 |
|--|--|----|

**PART V**

**1993 ISDA COMMODITY DERIVATIVES DEFINITIONS**

|    |  |    |
|----|--|----|
| A. | INTRODUCTION.....  | 29 |
| B. | RELEVANT DEFINITIONS .....   | 29 |
| 1  | Section 1.3. Business Day .....  | 29 |
| 2  | Section 1.4. Commodity Business Day .....  | 29 |
| 3  | Section 8.5(h) Seller Business Day .....   | 30 |
| 4  | Section 4.6. Calculation Date.....   | 30 |
| 5  | Section 7.1. Commodity Reference Prices.....   | 30 |
| 6  | Section 7.3. Corrections to Published Prices .....   | 31 |
| 7  | Section 7.4. Market Disruption Events; Additional Market Disruption Events and Section 7.5. Disruption Fallbacks ..... | 31 |

|  |   |    |
|--|---|----|
|  | TABLE OF TERMS IN THE 1993 ISDA COMMODITY DERIVATIVES DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS ..... | 33 |
|--|---|----|

**PART VI**

**1996 ISDA EQUITY DERIVATIVES DEFINITIONS**

|    |   |    |
|----|---|----|
| A. | INTRODUCTION.....   | 34 |
| B. | RELEVANT DEFINITIONS .....  | 34 |
| 1  | Section 1.16. Exchange .....  | 34 |
| 2  | Section 1.18. Clearance System.....   | 34 |
| 3  | Section 1.19. Seller Business Day.....  | 35 |
| 4  | Section 1.20. Exchange Business Day.....                                      | 35 |
| 5  | Section 1.21. Currency Business Day.....                                      | 36 |
| 6  | Section 1.22. Clearance System Business Day .....                             | 36 |
| 7  | Section 3.4. Automatic Exercise where Physical Settlement is Applicable ..... | 36 |

|    |  |    |
|----|--|----|
| 8  | Section 4.1. Valuation Date .....              | 37 |
| 9  | Section 4.4(d). Market Disruption.....         | 37 |
| 10 | Section 4.4(e). Adjustments to Index .....     | 38 |
| 11 | Section 4.5. Futures Price Valuation .....     | 38 |
| 12 | Section 6.5. Settlement Disruption Event ..... | 39 |
| 13 | Section 6.9. Failure to Deliver .....          | 40 |
| 14 | Section 8.1. Adjustments to Index .....        | 40 |
| 15 | Section 8.2. Correction of Index .....         | 40 |

|   |    |
|---|----|
| TABLE OF TERMS IN THE 1996 EQUITY DERIVATIVES DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS ..... | 42 |
|---|----|

## PART VII

### 1997 ISDA BULLION DEFINITIONS AND 1997 ISDA SHORT FORM BULLION DEFINITIONS

|    |   |    |
|----|---|----|
| A. | INTRODUCTION.....   | 44 |
| B. | RELEVANT DEFINITIONS .....  | 44 |
| 1  | Section 1.2. Bullion Business Day .....   | 44 |
| 2  | Section 2.5. Bullion Options.....   | 45 |
| 3  | Section 2.9. Payment of Premiums .....  | 45 |
| 4  | Article 3. Settlement by Delivery.....  | 45 |
| 5  | Section 3.4. Settlement Disruption.....   | 46 |
| 6  | Section 10.1. Market Disruption Events; Additional Market Disruption Events<br>and Section 10.2. Disruption Fallbacks ..... | 47 |
| 7  | Section 13.1. GOFO and Section 13.2. LGLR.....  | 48 |

|   |    |
|---|----|
| TABLE OF TERMS IN THE 1997 ISDA BULLION DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY OR OTHER CONVENTIONS..... | 49 |
|---|----|

## PART VIII

### 1997 ISDA GOVERNMENT BOND OPTION DEFINITIONS

|    |   |    |
|----|---|----|
| A. | INTRODUCTION .....                      | 50 |
| B. | RELEVANT DEFINITIONS.....               | 50 |
| 1  | Section 3.2. Business Day .....         | 50 |
| 2  | Section 3.3. ECU Settlement Day .....   | 50 |
| 3  | Section 3.4. Seller Business Day.....   | 50 |
| 4  | Section 3.5. Exchange Business Day..... | 50 |
| 5  | Article 4. Exercise of Options.....     | 51 |
| 6  | Article 6. Physical Settlement.....     | 51 |
| 7  | Article 7. Cash Settlement .....        | 52 |

|  |    |
|--|----|
| TABLE OF TERMS IN THE 1997 GOVERNMENT BOND OPTION DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY OR OTHER CONVENTIONS ..... | 53 |
|--|----|

## PART IX

### 1998 ISDA EURO DEFINITIONS

|    |   |    |
|----|---|----|
| A. | INTRODUCTION .....  | 54 |
| B. | RELEVANT DEFINITIONS.....                                     | 54 |
| 1  | Section 2.2. ECU Settlement Day .....                         | 54 |
| 2  | Section 2.3. Euro Business Day .....                          | 54 |
| 3  | Section 2.1. TARGET Settlement Day.....                       | 54 |
| 4  | Section 2.4 Business Day and Banking Day Clarifications ..... | 55 |

|   |   |    |
|---|---|----|
| 5 | Section 3.1 Euro Rate Options.....                                      | 55 |
| 6 | Section 4.3 Legacy Transaction Price Source Fallbacks .....             | 55 |
| 7 | Floating Rates in Legacy Transactions over the Millennium Weekend ..... | 55 |

**PART X**

**1998 FX AND CURRENCY OPTION DEFINITIONS**

|    |  |    |
|----|--|----|
| A. | INTRODUCTION .....   | 57 |
| B. | RELEVANT DEFINITIONS.....  | 57 |
| 1  | Section 1.1. Business Day .....  | 57 |
| 2  | Section 4.1(a). Multiple Price Sources; Section 4.5. Settlement Rate Options. .... | 58 |
| 3  | Section 4.7. Corrections to Published and Displayed Rates.....                     | 58 |
| 4  | Section 5.1. Disruption Events; Section 5.2. Disruption Fallbacks.....             | 58 |

|   |    |
|---|----|
| TABLE OF TERMS IN THE 1998 FX AND CURRENCY OPTION DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS ..... | 60 |
|---|----|

**PART XI**

**1999 ISDA CREDIT DERIVATIVES DEFINITIONS**

|    |  |    |
|----|--|----|
| A. | INTRODUCTION .....   | 61 |
| B. | RELEVANT DEFINITIONS.....  | 61 |
| 1  | Section 1.15. Business Day.....  | 61 |
| 2  | Section 1.8. Event Determination Date; Section 3.4. Notice of Intended Physical Settlement.....  | 61 |
| 3  | Section 1.11. Grace Period; Grace Period Business Day; Section 1.10. Grace Period Extension Date .....                                   | 62 |
| 4  | Section 1.17. ISDA Master Agreement.....   | 62 |
| 5  | Section 2.11. Business Day Convention.....   | 62 |
| 6  | Section 3.3. Credit Event Notice.....  | 63 |
| 7  | Section 3.5. Publicly Available Information.....   | 63 |
| 8  | Section 4.1. Credit Event.....   | 63 |
| 9  | Cash Settlement; 7.2. Cash Settlement Date; Section 7.3. Cash Settlement Amount; Section 7.4. Final Price; Section 7.8(a) Quotation..... | 64 |
| 10 | Section 9.4. Partial Cash Settlement Due to Impossibility and Illegality; Section 9.8. Latest Permissible Physical Settlement Date ..... | 65 |

|   |    |
|---|----|
| TABLE OF TERMS IN THE 1999 CREDIT DERIVATIVES DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS ..... | 67 |
|---|----|

|  |    |
|--|----|
| APPENDIX 1 GLOBAL 2000 COORDINATING GROUP BANK HOLIDAY CALENDAR..... | 69 |
|--|----|

|   |    |
|---|----|
| APPENDIX 2 TABLE OF ISDA BUSINESS DAY CONVENTIONS ..... | 73 |
|---|----|

## **YEAR 2000 REVIEW OF ISDA DOCUMENTATION**

### **INTRODUCTION**

#### **A. The Year 2000 Problem**

There has been considerable global focus on the year 2000 (“**Y2K**”) date change problem. As is generally known, the problem stems from the fact that a number of older computers use a two-digit format for displaying the year relevant to any date. As a result, there is a risk that many computers will interpret references to “00” as a reference to the year 1900 or to a meaningless date and will either perform incorrectly or crash. Although considerable resources have been dedicated worldwide to preparing for the Y2K date change, it is difficult to estimate with certainty how well prepared certain jurisdictions or systems are to cope with potential problems.

The Y2K date change problem presents participants in the financial markets with a number of potential challenges. ISDA considers that, to participants in the privately negotiated derivatives industry, the Y2K date change problem presents challenges relating principally to the temporary (and potentially protracted) inability of counterparties to perform valuations and discharge payment or delivery obligations as a result of systems failures.

#### **B. Purpose of the Year 2000 Review of ISDA Documentation**

ISDA has been working with the Financial Markets Lawyers Group (the “**FMLG**”) and with the Global Year 2000 External Risk Mitigation and Contingency Planning Committee (“**Global 2000**”) to consider issues arising from the Y2K date change problem that may affect the financial markets. The Year 2000 Review of ISDA Documentation (the “**Review**”) represents one aspect of ISDA’s efforts in this regard.

In addition to ISDA, a number of other financial markets industry associations are conducting a review of their standard form documentation with a view to highlighting any provisions of which industry participants should be particularly aware in light of the Y2K date change problem.

Since different entities and jurisdictions are in more or less developed states of preparedness for Y2K-related challenges, the Y2K issue is regarded by many as a counterparty-specific issue. As such, the development of a uniform resolution of all associated problems may not be practicable. It is not the purpose of the Review to propose industry-wide policy solutions to Y2K problems. Rather, the Review is intended solely to draw attention to those provisions contained in ISDA’s standard form documentation which ISDA considers to be of interest in light of potential Y2K date change problems. Although the Review intends to focus attention on particular provisions that may have been (or may be)

incorporated into individual Transactions, it does not recommend specific amendments to those provisions in light of the Y2K date change problem.

Capitalized terms not otherwise defined in the Review will have the meanings given to them in the document to which the relevant Part of the Review relates.

**This Review is provided for information purposes only. It does not purport to address any specific Transaction or contractual relationship and ISDA does not accept responsibility for any use to which this Review or any of its documentation may be put. Although care has been taken in the preparation of this Review, it does not purport and should not be considered to be a guide to or an explanation of all relevant issues or considerations in relation to the year 2000 date change problem. Parties should therefore conduct their own due diligence and consult with their legal and other advisers as they deem appropriate. On occasion in this Review, there is conjecture as to potential temporary failures on the part of service providers, banks, central banks, payments systems and telecommunications systems due to year 2000-related computer incidents. Such conjecture is essential in the context of this Review. It does not represent any belief or suggestion on the part of ISDA, its officers, employees or members that such failure will or is likely to occur and it is not intended that any negative inference be drawn therefrom. Such conjecture is not based on any statement or other information provided to ISDA either by the party or entity in question or any other person. Furthermore, ISDA expressly acknowledges that such failures may occur through no fault whatsoever of an affected party.**

**C. Y2K Scenarios Relevant to Participants in the Privately Negotiated Derivatives Industry**

Industry participants should be focusing on the Y2K issue in relation to Transactions that have already been executed and in the execution of future Transactions which either mature around the millennium date change or in relation to which dates in late December 1999 or early January 2000 will be relevant.

In the course of its involvement with the FMLG and Global 2000, ISDA has identified the following Y2K scenarios as being of particular relevance to participants in the privately negotiated derivatives industry:

- (i) a failure of a counterparty to a privately negotiated derivative transaction to perform in accordance with its obligations under relevant ISDA documentation due to a failure in its own systems;
- (ii) temporary failure on the part of a major provider of electronic price or rate sources to publish relevant display pages;

- (iii) the inability of a custodian to process instructions to transfer collateral;
- (iv) failure of a counterparty's clearing bank;
- (v) the temporary inability of a central payments system to process payments;
- (vi) temporary closure of a central bank; and
- (vii) significant infrastructural problems causing disruption of electronic communications.

#### **D. Best Practice in the Foreign Exchange Market**

This part of the Review summarizes the efforts of the Foreign Exchange Committee (the "**FX Committee**") to prepare participants in the foreign exchange markets for possible Y2K-related disruptions. The full text of the Best Practices summarized below can be accessed at [www.emta.org](http://www.emta.org).

The FX Committee, the Emerging Markets Traders Association ("**EMTA**") and ISDA ( the "**Associations**") have issued a release setting out their view of the "**Best Practice**" to be followed in the foreign exchange market concerning the effect of certain Y2K events on foreign exchange contracts, options and swaps (collectively, "**Transactions**").

The Associations hope that this statement of Best Practice will minimize the confusion associated with the failure to settle Transactions by setting out guidelines for market participants as to how each should attempt to resolve Y2K issues, should they arise. The Associations are hopeful that this Best Practice will promote legal certainty in the markets and facilitate the maintenance of orderly markets during times of crisis. The Associations expect that, by adopting the suggested Best Practice, market participants will maintain the basic economics of outstanding Transactions as originally agreed by either settling Transactions in accordance with their terms or by providing for close-out of Transactions at then current market prices.

In the suggested Best Practice, the term "**Y2K Event**" is defined as any event that results in an erroneous result caused by any computer software (a) incorrectly reading the date "01/01/00" or any year thereafter, (b) incorrectly identifying a date in the year 1999 or any year thereafter, and (c) any other computer error that is directly or indirectly related to (a) or (b) above.

A Foreign Exchange Committee Working Group reviewed a number of issues pertaining to Y2K generally, and spent considerable time reviewing the specific

issues which Y2K presents for the currency trading community as well as consulting with representatives of ISDA, EMTA and the Global 2000 Coordinating Group, who participated in this process.

The Working Group concluded that two scenarios should be the subject of a statement of Best Practice, since they are events generally outside the control of an individual market participant yet will impact many (if not all) participants involved in the settlement of a particular currency. These are the occurrence, due to a Y2K Event, of :

- (1) the failure of a clearing bank to clear some or all Transactions; or
- (2) the failure of a central bank to effect transfers of its local currency.

The Best Practice is intended to apply whether or not the Transactions in question are covered by a master agreement. Set out below is the suggested Best Practice.

#### Scenario 1 – Clearing Bank Fails to Clear

This scenario covers the case where, due to a Y2K Event, a clearing bank fails to clear for one of the Parties (the “**Affected Party**”) to a Transaction. In such event, the recommended Best Practice for Transactions between those Parties is as follows:

1. After the failure to clear, there is a three Business Day waiting period (the “**Waiting Period**”) to arrange a settlement or to determine whether the issue has resolved itself with no further action being necessary. If a payment under a Transaction is due during the Waiting Period, the due date for that payment is deferred for three Business Days (so that, if the Y2K Event is cured, all deferred Transactions do not settle on the same date).
2. If the Y2K Event is not cured by the close of business on the last Business Day of the Waiting Period, the other Party (the “**non-Affected Party**”) has the right (but not the obligation) to liquidate any or all Affected Transactions between those Parties that would have settled during the Waiting Period and that would settle within the Interim Liquidation Period. “**Interim Liquidation Period**” means the shorter of (a) ten Business Days commencing on the First Business Day after the end of the Waiting Period, and (b) the period through (and including) the Sunset Date.
3. If the Y2K Event is not cured by the close of business on the last Business Day of the Interim Liquidation Period, a non-Affected Party has the right (but not the obligation) to liquidate any or all Affected Transactions between those Parties.

## Scenario 2 – Central Bank Fails to Transfer Currency

This scenario covers the case where, due to a Y2K Event, a central bank fails to effect transfers of its local currency, whether or not that failure to pay involved the Parties to the Transaction as to which this Best Practice is being invoked. In such event, the recommended Best Practice is as follows:

1. After the failure of a central bank to settle a payment in its local currency, there is a three Business Day Waiting Period for all Transactions in that currency to determine whether the central bank resumes transfers of its currency. If a payment under a Transaction is due during the Waiting Period, the due date for that payment is deferred for three Business Days (so that, if the Y2K Event is cured, all deferred Transactions do not settle on the same date).
2. If the Y2K Event is not cured by the close of business on the last Business Day of the Waiting Period, either Party has the right (but not the obligation) to liquidate any or all Affected Transactions.

### **E. Structure of the Year 2000 Review of ISDA Documentation**

ISDA has involved certain of its members with established expertise in particular areas of ISDA's documentation in the development of the Review. ISDA also made drafts of the Review available to its Documentation and Operations Committees for consideration. Each Part of the Review considers the provisions of a particular area of ISDA's standard documentation in light of the Y2K date change problem. ISDA is conscious that scheduled and unscheduled widespread bank closures may have a significant impact on a number of the definitions contained in the ISDA documentation. Appendix 1 of the Review sets out the Bank Holiday Calendar prepared by Global 2000 which, based on information received from participants in the financial markets, estimates closures around the Y2K date change in a number of jurisdictions. As they become available, ISDA intends to publish periodic updates to this calendar on its web site ([www.isda.org](http://www.isda.org)). User's of privately negotiated derivatives are also advised to check the Global 2000 website ([www.global2k.com](http://www.global2k.com)) for information concerning Y2K issues and are requested to provide ISDA or Global 2000 with any relevant information they may have in this regard. Appendix 2 of the Review contains an assumed business day calendar for the Y2K date change period and a table highlighting the effect of the application of ISDA's Business Day Conventions to that assumed calendar. **ISDA is not, however, making definitive statements as to whether, due to relevant scheduled or unscheduled closures, particular days will or will not meet particular ISDA definitions. Such closures must be considered in light of the relevant facts and circumstances.**

A number of relevant dates set out in ISDA documentation are, in the absence of a contrary provision, expressed to vary in accordance with a particular Business Day Convention. Where appropriate, a table is set out at the end of each Part of

the Review summarizing the effect of applying the relevant Business Day Convention to particular definitions considered in that Part.

#### **F. Impossibility under ISDA Documentation**

One possible impact of the Y2K problem on participants in the privately negotiated derivatives industry may be to make performance of obligations under certain Transactions either impossible to perform or capable of performance only at an excessive and unreasonable cost (impracticable).

Industry participants are reminded that the standard forms of ISDA Master Agreement do not contain a Termination Event that addresses impossibility of contractual performance. The issue of impossibility is considered in the User's Guide to the 1992 ISDA Master Agreements published by ISDA (the "**User's Guide**") (at pages 64 to 66). The User's Guide suggests language that may be incorporated into the Schedule to an ISDA Master Agreement to address the impossibility issue. Many parties have addressed impossibility in their Master Agreements although not necessarily with the language in the User's Guide. Parties to ISDA Master Agreements who have not explicitly addressed impossibility may wish to consider the implications of an assertion by their counterparty that the counterparty's performance has been rendered impossible due to some Y2K-related event.

The User's Guide comments that in considering the issue of impossibility, parties should be cognizant of any product-specific provisions. Consideration should be given to the relationship between an impossibility Termination Event and treatment agreed to with respect to particular products. A number of ISDA definitions booklets (such as the 1998 FX and Currency Option Definitions, published jointly with EMTA, and the 1996 ISDA Equity Derivatives Definitions) contain provisions that address a broad range of settlement and market disruption events. These provisions typically provide industry participants with fallbacks and means of substitute performance that avoid what might otherwise constitute an impossibility. Industry participants are advised to consider the terms of their Transactions to assess whether they have included provisions that may offset or allocate some of the risks associated with the Y2K issue.

## SUMMARY OF PRINCIPAL ISSUES

The issues set out below are those ISDA documentation issues which appear most relevant in the context of Y2K. Since some of these issues are relevant in respect of a number of ISDA publications, they are discussed in similar terms in various Parts of the Review.

### Notices

Due to possible failures in electronic communication networks, when issuing notices electronically around the millennium date change, it may be advisable to take account of possible disruption in telecommunication networks over that period and to consider dispatching duplicate notices in hard-copy format or by more than one electronic means.

### Y2K Readiness of Custodians, Clearing Banks and other Relevant Third Parties

A number of the possible Y2K scenarios discussed in the Review illustrate the possible impact on an institution's ability to discharge its obligations resulting from the failure of third parties to prepare adequately for Y2K events. Industry participants are urged to take steps to assess the level of Y2K preparedness not just of their own institutions but also of their custodians, clearing banks and other relevant third party service providers. Industry participants may also wish to consider other service providers, if available, as back-up in the event of failure by their primary providers.

### Business Days

One impact of the Y2K problem discussed throughout this Review is the impact of scheduled and unscheduled national holidays and closures of banks, exchanges and clearing systems. The issue pervades the ISDA documentation architecture since virtually all ISDA documents contain definitions such as "**Business Day**", "**Local Business Day**", "**Exchange Business Day**", "**Clearance System Business Day**", etc. These various dates are relevant to the timing of payments, deliveries of notices, commencement and completion of various periods and other matters. The effect of national holidays or closures of financial institutions on these definitions differs depending upon the nature and purpose of the definition. Many of the relevant dates will adjust in accordance with an appropriate Business Day Convention. Parties are advised to consider the impact on their transactions of scheduled and unscheduled national holidays and bank exchange and clearance system closures around the Y2K date change.

### Duties of Calculation Agents

The role of the Calculation Agent may vary considerably depending upon the nature of the transaction. In addition to its regular role, the Calculation Agent often is the party required to obtain quotations and to issue determinations and notifications in the event that a market, rate or price relevant to a transaction becomes disrupted. As such (and as highlighted in various parts of the Review), the Calculation Agent may be called upon more often to make these determinations in the event of disruptions around the Y2K date change. Parties are reminded of this potential increased responsibility around the Y2K date change when acting in the role of Calculation Agent.

## Disruptions in Screen-Based Price Sources

There is a risk that the systems of electronic information providers that publish rate information may suffer a Y2K-related failure, with the result that certain rates or prices would not appear on the specified page at the specified time. Certain provisions in ISDA documentation permit information vendors to designate an alternative display page for the purpose of displaying the relevant rate in certain circumstances. In some cases, the definitions allow the information provider to nominate other services for the publication of the relevant rate. Institutions should be cognizant of these provisions and ensure that they are aware of the possibility of the election of such alternatives.

## Rate and Price Fallbacks

A number of the rates set out in the ISDA definitions booklets that rely on the electronic publication of rates establish fallbacks in the event of the non-appearance of such rates. Typically, the fallback requires the collection of rates (generally by the Calculation Agent) from relevant Reference Banks. In the event of a significant Y2K failure causing an information provider to be unable to publish the Relevant Rate on either the primary page or an alternate page, Reference Banks for highly liquid contracts may become subject to a significant level of requests for rates. There is concern that the sheer volume of the Transactions and portfolios that would require quotes could tax dealers' capacity to respond. Institutions should be aware of this potential additional pressure.

## Disruption Events and Fallbacks

A number of the definitions booklets published by ISDA contain provisions addressing disruption events and, in many cases, establishing fallbacks relevant to those disruption events. Those definitions booklets and the relevant provisions are set out in the table below.

| Definitions Booklet                          | Relevant Provisions   |
|--|---|
| 1991 ISDA Definitions                        | Section 7.4(m) Market Disruption Event<br>Section 7.7. Effect of Market Disruption Event                        |
| 1993 ISDA Commodity Derivatives Definitions  | Section 7.4. Market Disruption Events; Additional Market Disruption Events<br>Section 7.5. Disruption Fallbacks |
| 1996 ISDA Equity Derivatives Definitions     | Section 4.3. Market Disruption Event<br>Section 4.4(d) Market Disruption  |
| 1997 ISDA Bullion Definitions                | Section 3.4. Settlement Disruption<br>Article 10. Market Disruption   |
| 1997 ISDA Bullion Definitions                | Section 3.4. Settlement Disruption  |
| 1997 ISDA Government Bond Option Definitions | Section 6.2 Settlement Disruption Event   |
| 1998 FX and Currency Option Definitions      | Article 5. Disruption Events  |
| 1998 Supplement to the 1991 ISDA Definitions | Section 7.4(m) Market Disruption Event<br>Section 7.7. Effect of Market Disruption Event                        |
| 1999 Credit Derivatives Definitions          | Section 4.1 Credit Event<br>Section 9.4 Partial Cash Settlement Due to Impossibility or Illegality              |

## **PART I**

### **1992 ISDA MASTER AGREEMENTS**

#### **A. Introduction**

The Master Agreement is the cornerstone of the ISDA documentation architecture. The Multicurrency – Cross Border version of the ISDA Master Agreement is the more widely used version. Generally, the Y2K-related considerations are the same in relation to both the Multicurrency – Cross Border and Local Currency – Single Jurisdiction versions of the ISDA Master Agreement. This Part of the Review discusses Sections of the ISDA Master Agreements that may merit particular consideration in light of the Y2K issue. The comments made in this Part of the Review may also be of relevance to Transactions entered into under earlier forms of ISDA master documentation, such as the 1987 ISDA Interest Rate and Currency Exchange Agreement.

#### **B. Relevant Sections and Definitions**

##### **1 Section 2(a)(ii): Obligations – General Conditions**

Pursuant to this Section of the Master Agreements, payment and delivery obligations are not discharged until payment or delivery is made (not tendered) for receipt on the due date. As such, an inability on the part of the paying/delivering party to effect payment or delivery due to a Y2K-related incident, whether arising as a result of failures in its own systems or in the systems of its agent (such as a paying bank or custodian), may give rise to an Event of Default on the part of the payer/deliverer pursuant to Section 5(a)(i) (Failure to Pay or Deliver) if not remedied within three Local Business Days after notice of such failure is given. In this context, Y2K-related failures appear to be of principal concern to the payer/deliverer.

##### **2 Section 5(a): Events of Default**

2.1 Perhaps the primary concern of industry participants in relation to the Y2K problem is that operational difficulties may give rise to Events of Default under the Master Agreements or the ISDA credit support documents. It is possible to envisage Y2K scenarios under which any of the following Events of Default could be triggered: (1) Failure to Pay or Deliver, (2) Credit Support Default, (3) Default under Specified Transaction and (4) Cross Default. It is worthy of note that each of Credit Support Default, Default under Specified Transaction and Cross Default is construed by reference to the effective operation of, or compliance with, other agreements. A Y2K-related systems failure affecting performance under one of these documents may trigger an Event of Default under the Master Agreements. Industry participants are advised to consider the terms of

all relevant related documents in light of the Y2K problem in addition to the terms of standard ISDA documentation.

- 2.2 The Bankruptcy Event of Default (and, as such, Automatic Early Termination) is likely to be relevant, if at all, as a secondary event arising from a Y2K problem. However, the events of late 1998 highlighted the potential impact on solvency of a significant liquidity squeeze. Illiquidity may become a significant concern in the event of the prolonged absence from the market of one or more significant liquidity providers due to Y2K date change problems. See the discussion of Automatic Early Termination, below.
- 2.3 It is possible that a Y2K disruption may delay or temporarily prevent a party from exercising rights under the Master Agreement. Furthermore, parties faced with a Potential Event of Default by a counterparty that has experienced a Y2K problem, may prefer to wait and see if the problem is resolved quickly. Section 9(f) of the Multicurrency – Cross Border version of the Master Agreement (No Waiver of Rights)<sup>1</sup> provides that a failure or delay in the exercise of rights, powers or privileges under the Master Agreement does not constitute a waiver of those rights, privileges or powers or preclude their exercise at a later date. Parties who adopt a "wait and see" approach early in the year 2000 in light of Y2K problems but do not wish to prejudice any rights they may otherwise have in respect of a Transaction, should be able to rely on this provision.

### **3 Termination Events under the Master Agreement – Illegality**

- 3.1 It is impossible to predict with certainty the response of a sovereign to the failure of its central banking system and systems for currency transfer due to a Y2K problem. One response may be the imposition of, for example, short-term emergency currency controls. The imposition of such controls may render the Affected Party unable to perform any absolute or contingent obligation to make *or* receive payment or delivery in respect of a Transaction or Transactions, to comply with other material obligations related to the Transaction or to comply with its credit support obligations. Industry participants are reminded that an inability to perform in such circumstances may render Affected Transactions subject to Early Termination on the basis of Section 5(b)(i) of the Master Agreements (Illegality).
- 3.2 Industry participants are reminded that, by virtue of Section 5(c) of the Master Agreements (Event of Default and Illegality), if an event or circumstance that would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, that event or circumstance will be treated as an Illegality (i.e., a Termination Event), rather than as an Event of Default.

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<sup>1</sup> Section 8(f) of the Local Currency – Single Jurisdiction version of the Master Agreement.

#### **4 Section 6(a): Right to Terminate Following Event of Default – Automatic Early Termination**

The Automatic Early Termination provision relates only to Section 5(a)(vii) of the Master Agreements (Bankruptcy). Certain of the legal opinions obtained by ISDA on the enforceability of close-out netting suggest the adoption of Automatic Early Termination. It can serve a valuable purpose and any Y2K considerations must be set against that value. As mentioned above, parties may adopt a "wait and see" approach to the Y2K issue, on the assumption that many of the issues associated with the Y2K problem may be short-term in nature, and in the knowledge that waiting will not prejudice a Non-defaulting Party's legal rights. Parties are reminded that, if elected, the Automatic Early Termination mechanism is inconsistent with a "wait and see" approach because an Early Termination Date will occur immediately upon the occurrence with respect to a party of the relevant Bankruptcy event. Such events are not likely to be caused directly by a Y2K event. Where an Early Termination Date must be designated by notice as a result of an event within Section 5(a)(vii) of the Master Agreement (Bankruptcy) parties will be in a better position to consider as much relevant information as possible before taking action that triggers a close-out.

#### **5 Section 6(e): Payments on Early Termination – Market Quotation**

The Market Quotation payment measure of loss assumes the availability of relevant quotations from at least three Reference Market Makers.<sup>2</sup> It is conceivable that, due to Y2K date change problems, either some of the providers of such quotations will be out of operation temporarily or subject to a very high volume of requests for quotations. It is also possible that the media through which such quotations are conveyed will be out of order temporarily. The definition of Market Quotation acknowledges the difficulties that may arise in obtaining quotations from Reference Market Makers and allows the party making the determination to request each Reference Market-Maker to provide its quotations "as of the same day and time...on or as soon as reasonably practicable after the relevant Early Termination Date ". Although this is helpful, the passage of time potentially increases exposure. A fallback to Loss is available for Terminated Transactions in respect of which the determining party concludes that Market Quotation cannot be determined or would produce a commercially unreasonable result.

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<sup>2</sup> A party may (but need not) calculate Loss by reference to quotations of relevant rates or prices from one or more dealers in the relevant market. Consequently, this issue is relevant also in the context of the Loss measure. See the definition of Loss, Sections 14 of the Multicurrency – Cross Border version of the Master Agreement and Section 12 of the Local Currency – Single Jurisdiction version.

## **6 Section 12: Notices – Effectiveness<sup>3</sup>**

- 6.1 Each of the Master Agreements permits the parties to issue certain notices electronically (including by telex, facsimile transmission or electronic messaging system). When issuing notices electronically around the millennium date change, it may be advisable to take account of possible disruption in telecommunication networks over that period and to consider dispatching duplicate notices in hard-copy format or by more than one electronic means.
- 6.2 Industry participants are reminded that notices are subject to the Local Business Day definition contained in the Master Agreements (see below).

## **7 Local Business Day**

- 7.1 The term “**Local Business Day**” is defined in Section 14 of the Multicurrency – Cross Border version of the Master Agreement<sup>4</sup> and is used for a number of different purposes, including determining various grace periods, dates for payment and effective dates for the delivery of notices.
- 7.2 Whether a day constitutes a Local Business Day turns on whether "commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits)" in a particular location. A number of jurisdictions have announced bank or market closures or public holidays around the millennium date change. This may otherwise cause certain days that would otherwise have been Local Business Days to no longer be Local Business Days. Please refer also to Appendix 1 to the Review.

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<sup>3</sup> Section 10 of the Local Currency – Single Jurisdiction version of the Master Agreement.

<sup>4</sup> Section 12 of the Local Currency – Single Jurisdiction version of the Master Agreement.

## **PART II**

### **THE ISDA CREDIT SUPPORT DOCUMENTS<sup>5</sup>**

#### **A. Introduction**

The 1994 ISDA Credit Support Annex subject to New York Law (the “**NY Annex**”), the 1995 ISDA Credit Support Deed subject to English Law (the “**Deed**”), the 1995 ISDA Credit Support Annex subject to English Law (the “**Transfer Annex**”) and the 1995 ISDA Credit Support Annex subject to Japanese Law (the “**Japanese Annex**”) (together, the “**ISDA Credit Support Documents**”) are the primary means by which credit support is established for trading exposures under the Master Agreements. This Part of the Review discusses Paragraphs of the ISDA Credit Support Documents that may merit particular consideration in light of the Y2K date change problem. Where appropriate, distinctions are drawn between the different ISDA Credit Support Documents.

#### **B. Relevant Provisions and Definitions**

##### **1 Credit Support Obligations**

- 1.1 Paragraph 2 of each of the NY Annex, the Deed and the Japanese Annex and Paragraph 3 of the Transfer Annex set out the mechanics for determining when a party is required to deliver credit support to its counterparty, and the circumstances under which it is entitled to the return of some or all of that collateral. As explained in Part I of the Review, Section 2(a)(i) of the Master Agreements states that payment or delivery obligations (which, at least in relation to the Transfer Annex, would include the delivery of credit support) are discharged until payment or delivery is made (not tendered) for receipt on the due date. Therefore, an inability on the part of the credit support provider to effect payment or delivery due to a Y2K-related incident, whether arising as a result of failures in its own systems or in the systems of its agent (such as a paying bank or custodian) may (without more) give rise to an Event of Default on the part of the credit support provider pursuant to Section 5(a)(iii)(1) of the Master Agreements (Credit Support Default) in relation to the NY Annex, the Deed and the Japanese Annex or Section 5(a)(i) of the Master Agreements (Failure to Pay or Deliver) in relation to the Transfer Annex if not remedied within two Local Business Days (in relation to the NY Annex and the Deed) or three Local Business Days (in relation to the Transfer Annex and the Japanese Annex) after notice is given by the recipient of credit support.

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<sup>5</sup> In this Review, in keeping with common commercial usage, the term “collateral” is used to refer to assets transferred by one party to the other from time to time. In relation to the 1995 ISDA Credit Support Annex subject to English Law, the use of the term “collateral” in this Review is without prejudice to the fact that the English Annex is not intended to create a charge or other security interest under English law over the assets transferred under its terms.

- 1.2 In addition, under the ISDA Credit Support Documents (unless amended), the recipient of credit support is also the Valuation Agent. The calculation mechanism depends on the ability of the Valuation Agent to calculate the Credit Support Amount. An inability on the part of the Valuation Agent (whether the Valuation Agent is the recipient of credit support or a third party) to calculate the Credit Support Amount is discussed below.

## 2 Transfers

- 2.1 Paragraphs 4(b) (Transfer Timing) and 12 (Definitions, “**Transfer**”) of the NY Annex and the Deed, Paragraph 3(a) (Delivery Amount) of the Transfer Annex and Paragraphs 4(b) (Transfer Timing) and 12 (Definitions, “Transfer”) of the Japanese Annex govern when transfers of credit support will be made. As discussed in Part I of the Review, the obligation to pay or deliver under ISDA documentation is usually discharged once payment or delivery is actually made. This, however, is not the case for book-entry securities delivered as credit support.
- 2.2 In relation to securities which the parties have agreed will be delivered by book entry, the delivery obligation imposed on the provider of credit support is limited to an obligation to give written instructions to the relevant depository (or other) institution (with a copy to the recipient of credit support) which, *if complied with*, would be sufficient to enable the transfer of the relevant securities to the recipient of credit support. Consequently, a systems failure on the part of a depository (or other) institution resulting in an inability to execute instructions received from a provider of credit support would be of concern to the recipient of credit support rather than the provider of credit support. The provider would still need to establish that the appropriate instructions had been transmitted to the depository. Parties should be careful to keep records.

## 3 Calculations

- 3.1 All Credit Support Obligations will be calculated by the Valuation Agent as of the Valuation Time on the Valuation Date. In order to make the calculations, Paragraph 4(c) (Calculations) of the NY Annex, the Deed and the Japanese Annex and Paragraph 3(b) of the Transfer Annex each provides that the Valuation Agent determine the value of credit support held (the “**Value**”) and the amount that would be payable if all Transactions were terminated (the “**Exposure**”) as of the Valuation Time on the Valuation Date. In order to calculate Value and Exposure, the Valuation Agent is required to use market-based valuations.
- 3.2 A Valuation Agent may experience difficulty in obtaining Market Quotations due to a Y2K-related incident by reason, for example, of communications difficulties or failures on the part of electronic services providers. The potential difficulties in obtaining Market Quotations are discussed in Part I above. Even if a Valuation

Agent is able to perform a calculation, a Y2K-related incident may prevent that calculation from being performed in accordance with customary market practice. Such a non-standard calculation may increase the likelihood of disputes arising in relation to the Delivery Amount or Return Amount calculated. It should be noted that the Dispute Resolution procedure set out in Paragraph 5 of the NY Annex, the Deed and the Japanese Annex and Paragraph 4 of the Transfer Annex also requires the Valuation Agent to obtain Market Quotations.

#### **4 Substitutions/Exchanges**

- 4.1 To the extent that Y2K-related problems affect liquidity in the markets, it is possible that a Y2K-related incident may affect substitutions of collateral under Paragraph 4(d) (Substitutions) of the NY Annex, the Deed and the Japanese Annex or exchanges of collateral under Paragraph 3(c) (Exchanges) of the Transfer Annex. While disruptions to the substitution/exchange provisions could increase exposure between the parties, it is potentially of greater significance in relation to the consequential effect liquidity problems may have on obligations owed to third parties.

As between the parties:

- (a) Although, in theory, the transfer of Substitute Credit Support/New Credit Support should take place before the return of original Posted Credit Support/Old Credit Support, in commercial practice this is often not the case. The transfer of Substitute Credit Support/New Credit Support may fail causing the recipient of credit support to be undercollateralized if the transfer of original Posted Credit Support/Old Credit Support has been made. Subject to the discussion above in relation to book-entry securities, this could give rise to an Event of Default on the part of the provider of the credit support pursuant to Section 5(a)(iii)(1) of the Master Agreements in relation to the NY Annex, the Deed and the Japanese Annex and Section 5(a)(i) of the Master Agreements in relation to the Transfer Annex if not remedied within two Local Business Days (in relation to the NY Annex and the Deed) or three Local Business Days (in relation to the Transfer Annex and the Japanese Annex) after notice is given by the recipient of credit support.
- (b) The transfer of original Posted Credit Support/Old Credit Support may fail after the Substitute Credit Support/New Credit Support has been transferred leaving the provider of credit support with a claim for the return of the original Posted Credit Support/Old Credit Support. Again, subject to the discussion above in relation to book-entry securities, this could give rise to an Event of Default on the part of the recipient of credit support pursuant to Section 5(a)(iii)(1) of the Master Agreements in relation to the NY Annex, the Deed and the Japanese Annex or Section 5(a)(i) of the Master Agreements in relation to the Transfer Annex

if not remedied within two Local Business Days (in relation to the NY Annex and the Deed) or three Local Business Days (in relation to the Transfer Annex and the Japanese Annex) after notice is given by the provider of credit support.

- (c) If the consent of the recipient of credit support is not a pre-condition to a substitution/exchange in the NY Annex or the Japanese Annex (consent is always required under the Transfer Annex and the Deed), then the recipient of credit support may find itself forced to source equivalent fungible securities in circumstances where, because of Y2K-related problems, the market is illiquid and it is difficult to obtain the relevant securities.

4.2 In relation to third parties, as substitutions/exchanges are often necessary to cover obligations owed by the provider of credit support to third parties, the provider of credit support may face increased exposure if the return of the original Posted Credit Support/Old Credit Support fails meaning that the provider is unable to deliver collateral in accordance with contractual obligations owed to third parties. This may expose the provider to risk of Events of Default under agreements with such third parties.

4.3 Industry participants are reminded that there are potential consequential effects from Y2K-related problems in relation to transfers of fungible securities (whether or not for collateral purposes) in a chain of back-to-back delivery obligations in relation to the same securities.

## **5 Custodians**

5.1 Paragraph 6(b) (Eligibility to Hold Posted Collateral; Custodians) of the NY Annex and the Deed and Paragraph 6(c) (Eligibility to Hold Posted Collateral; Custodians) of the Japanese Annex each allows the recipient of credit support to appoint a Custodian. The recipient of credit support remains liable for acts or omissions of its Custodian. Therefore, an inability on the part of the Custodian to effect payment or delivery due to a Y2K-related incident may (without more) give rise to an Event of Default on the part of the recipient of credit support pursuant to Section 5(a)(iii)(1) of the Master Agreements if not remedied prior to the expiration of any applicable grace period. (Use of a custodian by the recipient of credit support is not relevant under the Transfer Annex.)

5.2 If a Custodian is unable to satisfy any other conditions that may be specified in Paragraph 13 (Elections and Variables) of the NY Annex, the Deed and the Japanese Annex due to a Y2K-related incident, the recipient of credit support will have five Local Business Days (seven Local Business Days under the Japanese Annex) after a demand is made by the provider of credit support to transfer the collateral held to a new Custodian or to itself. Industry participants are advised to consider the Y2K-preparedness of all Custodians appointed.

## **6 Use of Posted Collateral**

- 6.1 Paragraph 6(c) (Use of Posted Collateral) of the NY Annex grants the recipient of credit support wide rights of use (including the right to sell the collateral) and Paragraph 6(d) (Use of Posted Pledging Collateral) of the Japanese Annex grants the recipient of credit support narrow rights of use (limited to the right to re-pledge) over credit support it holds. The recipient of credit support may find it difficult to source equivalent fungible securities if required to pay or deliver a Return Amount because of a Y2K-related incident affecting third parties to whom collateral has been sold or re-pledged. (Note that use of credit support is not allowed under the Deed.)
- 6.2 As the recipient of credit support is the owner of credit support under the Transfer Annex, use of credit support is not an issue. Note, however, that the recipient of credit support may find it difficult to source equivalent fungible securities (if required to deliver a Return Amount) in circumstances where, because of Y2K-related problems, the market is illiquid and it is difficult to obtain the relevant securities.

## **7 Demands and Notices**

Paragraph 11(e) of the NY Annex and the Japanese Annex, Paragraph 11(e) of the Deed and Paragraph 9(c) of the Transfer Annex each deals with notices. For a discussion of the Y2K-related issues pertaining to the issuance of notices in electronic format, see Part I section 6 above.

## **8 Local Business Day**

- 8.1 The terms “Local Business Day”, and the related terms “Valuation Date”, “Settlement Day”, “Substitution Date”, “Exchange Date” and “Recalculation Date” (each of which must be a Local Business Day) are each defined in Paragraph 12 (Definitions) of the NY Annex, the Deed and the Japanese Annex and Paragraph 10 (Definitions) of the Transfer Annex. These definitions serve a number of different functions in the ISDA Credit Support Documents, including determining various grace periods, dates for valuation (as well as recalculation of a valuation) of credit support, settlement of securities, substitution/exchange of credit support and effective dates for the delivery of notices.
- 8.2 Whether a day constitutes a Local Business Day turns on whether:
- (a) commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in a particular location in relation to a transfer of cash or other property (other than securities), valuation or notices; or

- (b) the clearance system agreed between the parties for delivery of securities used as credit support is open for acceptance and execution of settlement instructions in a particular location in relation to the transfer of securities.

As discussed in Part I, above, it should be noted that a number of dates around the millennium date change may not constitute Local Business Days by reason of scheduled or unscheduled closures or bank holidays. In this regard, please refer to Appendix 1 of the Review.

## **PART III**

### **1991 ISDA DEFINITIONS**

#### **A. Introduction**

The 1991 ISDA Definitions (the “**1991 Definitions**”) are perhaps the most widely used set of ISDA Definitions. The purpose of the 1998 Supplement is to replace (and in some instances to supplement) corresponding provisions in the 1991 Definitions. As such, a number of the concepts discussed in Part 3 of the Review apply equally in relation to the 1991 Definitions. Where appropriate, reference is made to the relevant sections of Part 3 of the Review.

#### **B. Relevant Definitions**

##### **1 Section 1.3. Banking Day**

- 1.1 The definition of Banking Day is similar to that of Business Day in both the 1998 Supplement and the 1991 Definitions. It relates to the days on which commercial banks in a given city are open for business (including dealing in foreign exchange and foreign currency deposits).
- 1.2 A number of jurisdictions have scheduled closures and bank holidays over the millennium date change period. It is also conceivable that Y2K-related disruptions may necessitate the widespread closure of banks or central clearing systems for the processing of payments in foreign currencies in certain cities. Either of these events may have the effect that certain days around the millennium date change may not constitute Banking Days within the scope of the definition.
- 1.3 The Banking Day definition is relevant to a number of Rate Options defined in Section 7.1 of both the 1991 Definitions and the 1998 Supplement for the purposes of establishing a Relevant Rate. A Relevant Rate is often determined by reference to a published rate appearing on a designated electronic price source a specified number of Banking Days prior to the relevant Reset Date. As such, scheduled and unscheduled closures and bank holidays may become relevant in the establishment of certain Rate Options.
- 1.4 The occurrence of a millennium holiday in a particular city (relevant for the purposes of a Rate Option) or large-scale unscheduled bank closures in that city will typically result in an anticipated rate determination being adjusted to the previous good Banking Day. For example, USD-LIBOR-BBA is determined two London Banking Days prior to a Reset Date. For a Reset Date scheduled for January 4, 2000, rates would normally be determined on December 30, 1999. However, because December 31, 1999 has now been declared a UK holiday, the rate determination date will now be December 29, 1999.

**2 Section 1.4. Business Day; Section 4.14. Calculation Agent; Section 7.1. Rate Options; Section 7.2. Price Options; Section 7.3. Certain Published and Displayed Sources; Section 7.4. Certain General Definitions Relating to Floating Rate Options; Section 7.4(m) Market Disruption Event; and Section 7.7. Effect of Market Disruption Event; Section 7.5. Corrections to Published and Displayed Rates and Prices; Section 7.6. Certain Adjustments in Indices**

See the comments made in Part 3 above with regard to the relevant provisions contained in the 1998 Supplement. Those comments are of equal relevance in relation to the 1991 Definitions.

**3 Section 3.3. Termination Date**

The Termination Date definition is relevant to a number of other Booklets or within the 1991 Definitions. Industry participants are reminded that unless parties specify in a Confirmation that the Termination Date is subject to adjustment in accordance with a particular Business Day Convention, the Termination Date for a Swap Transaction is not subject to adjustment in accordance with any Business Day Convention. Accordingly, the Termination Date of a Transaction will not be affected by a Y2K Event.

**4 Section 4.11. FRN Convention; Eurodollar Convention; Section 4.12. Business Day Convention**

The effects of these date-adjustment provisions are considered in the tables set out at the end of each relevant part of the Review. See also Appendix 1 to the Review.

**TABLE OF TERMS IN THE 1991 DEFINITIONS SUBJECT TO AMENDMENT IN  
ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS**

| DEFINED TERM        | SECTION | EFFECT OF APPLYING RELEVANT ADJUSTMENT   |
|---------------------|---------|--|
| Banking Day         | 1.3     | Descriptive definition. In respect of any city, any day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in that city.   |
| Calculation Date    | 4.15    | Relevant notice to be given no later than close of business on Business Day next preceding the Payment Date. Assuming that either December 31, 1999 or January 3, 2000 would otherwise have been the next preceding Business Day, roll back to December 30, 1999.    |
| Compounding Date    | 6.3 (b) | Adjust in accordance with the Business Day Convention applicable to Period End Dates in respect of the Swap Transaction or a party. See Period End Date.   |
| Exchange Date       | 3.5     | Adjust in accordance with the Modified Following Business Day Convention. May fall back to Termination Date. See Termination Date.   |
| Final Exchange Date | 3.5     | Adjust in accordance with the Modified Following Convention. May fall back to Termination Date. See Termination Date.  |
| Maturity Date       | 3.5     | Adjusts in accordance with the Modified Following Business Day Convention. May fall back to Termination Date. See Termination Date.  |
| No Adjustment       | 4.1     | If "No Adjustment" is specified with reference to a Period End Date, no adjustment would be made to the Period End Date notwithstanding that the Period End Date occurs on a day that is not a Business Day.   |
| Payment Date        | 4.9     | Adjust in accordance with the Modified Following Business Day Convention.<br>Under FRN Convention, if a Payment Date would otherwise fall on a day that is not a Business Day, effectively adjust in accordance with the Modified Following Business Day Convention. |

| DEFINED TERM         | SECTION | EFFECT OF APPLYING RELEVANT ADJUSTMENT   |
|----------------------|---------|--|
| Period End Date      | 4.10    | <p>If no Period End Dates are established, relevant Payment Dates are Period End Dates. See Payment Date.</p> <p>If Period End Dates are specified, apply the Modified Following Business Day Convention.</p> <p>Under FRN Convention, if a Period End Date would otherwise fall on a day that is not a Business Day, effectively adjust in accordance with the Modified Following Business Day Convention.</p> <p>See also No Adjustment.</p> |
| Premium Payment Date | 8.5 (b) | Adjust in accordance with the Modified Following Business Day Convention.  |
| Reset Date           | 6.2 (b) | <p>(i) If a Price Option or method for determining a price is specified, adjust in accordance with the Following Business Day Convention; or</p> <p>(ii) if any other Floating Rate Option is specified for that Reset Date, adjust in accordance with either the Business Day Convention applicable to Floating Rate Payer Payment Dates under that Transaction or in accordance with the Preceding Business Day Conventions.</p>             |
| Termination Date     | 3.3     | Not subject to adjustment.   |
| Value Date           | 3.5     | Apply the Modified Following Business Day Convention.  |

## **PART IV**

### **1998 SUPPLEMENT TO THE 1991 ISDA DEFINITIONS**

#### **A. Introduction**

The 1998 Supplement to the 1991 ISDA Definitions (the “**1998 Supplement**”) is an update of certain sections of the 1991 ISDA Definitions. The issues discussed in this Part of the Review are relevant in circumstances where parties have incorporated the 1998 Supplement into their agreements by referencing the “1991 ISDA Definitions (as supplemented by the 1998 Supplement)”.

ISDA is aware that there are a number of Transactions outstanding that do not incorporate the 1998 Supplement. Where the 1998 Supplement amends definitions contained in the 1991 ISDA Definitions, those amendments do not automatically amend Transactions that incorporated the 1991 ISDA Definitions. Transactions that predate the publication of the 1998 Supplement and incorporate the 1991 ISDA Definitions are not, without further action, affected by the use of the 1998 Supplement for subsequent Transactions. A number of the definitions in the 1998 Supplement do, however, rely on definitions set out in the 1991 Definitions. As such, institutions should consider carefully both the 1998 Supplement and the 1991 ISDA Definitions in light of the Y2K date change problem.

#### **B. Relevant Definitions**

##### **1 Section 1.4. Business Day**

1.1 The Business Day definition is relevant in the context of a number of definitions throughout the 1998 Supplement, principally in relation to the question of whether a day constitutes a "good day" for payment purposes, and if payments cannot be made on that day, determining the day on which payments should be made.

The definition focuses on:

- (a) in respect of any date that is specified as being subject to adjustment in accordance with any applicable Business Day Convention, days on which commercial banks and foreign exchange markets settle payments in the relevant location and on the relevant day; and
- (b) in circumstances where places and days are not so specified, days on which commercial banks and foreign exchange markets settle payments in the same currency as the payment obligation that is payable on or calculated by reference to that date in certain financial centers with relevant financial centers for various currencies being specified in the definition.

1.2 The Business Day definition becomes relevant because, in a number of jurisdictions, commercial banks are scheduled to be closed on both December 31, 1999 and January 3, 2000 (see Appendix 1 to the Review). It is also possible that due to a significant Y2K Event affecting, for example, either the central bank or payments system in a particular jurisdiction,

one or more unscheduled bank holidays or bank closures may occur. This means that parties' expectations of the Business Day calendar applicable to their Transactions may vary.

- 1.3 Users of ISDA documentation should ensure that they are cognizant of the impact of relevant Business Day Conventions on relevant dates in such circumstances (see the table of ISDA Business Day Conventions in Appendix 2).

## **2 Section 1.6. ECU Settlement Day**

- 2.1 Whether a day constitutes an ECU Settlement Day as defined in section 1.6 is relevant to payments originally expressed to have been payable in ECU. There has been some discussion of the relevance of this definition in light of the substitution of the euro for ECU. However, since certain agreements in relation to so-called "legacy transactions" continue to refer to the definition, it remains relevant for the purposes of this Review.
- 2.2 Essentially, an ECU Settlement Day constitutes a Business Day where ECU (now euro) payments are involved. An ECU Settlement Day is any weekday on which payments in ECU (now euro) can be settled (i) in the international interbank market (as designated by the Euro Banking Association) and (ii) by commercial banks and in foreign exchange markets in the place where the relevant account for payment is located. Assuming part (i) of this test is satisfied, whether part (ii) is satisfied will again turn on the existence of millennium holidays and the occurrence of Y2K Events affecting banks or payment systems in the place where the account is located.

## **3 Section 1.7. Euro Settlement Date**

The definition of Euro Settlement Date determines Business Days for euro payments. Whether a day is a Business Day for this purpose is simply a function of whether the TARGET system is open. It should be noted that the European Central Bank has announced that the TARGET system will be closed on December 31, 1999, meaning that December 31, 1999 will not be a good Euro Settlement Date.

## **4 Section 4.14. Calculation Agent**

- 4.1 The purpose of this definition is to outline the responsibilities of the party to a Swap Transaction designated as the Calculation Agent for that Swap Transaction. The role of the Calculation Agent becomes relevant in the context of a number of the definitions contained in the 1998 Supplement (as well as the various other ISDA definitions booklets discussed below).
- 4.2 The Calculation Agent should be cognizant of scheduled bank holidays and closures and anticipate date changes arising from the application of relevant Business Day Conventions over the date change period. The occurrences of unscheduled bank holidays and closures will also be of considerable relevance.

4.3 Pursuant to the 1998 Supplement and the various other definitions booklets issued by ISDA, the functions of a Calculation Agent typically include the making of various determinations (for example, as to whether a Market Disruption Event exists on any Reset Date) and the collection of a variety of information. Parties that are designated as Calculation Agents in respect of relevant Transactions are reminded that they may be subject to increased requests for determinations in this regard over the date-change period.

**5 Section 7.1. Rate Options; Section 7.2. Price Options; Section 7.3. Certain Published and Displayed Sources; and Section 7.4. Certain General Definitions Relating to Floating Rate Options**

5.1 The definitions set out in Section 7.1 of the 1998 Supplement are used to determine the Relevant Rate for a Reset Date in respect of certain Floating Rate Options. A significant proportion of the rates depend for their definition on the appearance of a Relevant Rate on a specified, electronically-displayed page of a specified source at a specified time. Most of the remainder are established on the basis of requirements by either a party or the Calculation Agent to a specified number of Reference Banks subject to certain criteria.

5.2 There is a risk that the systems of the information providers that publish the rate information on which a large number of these rates are based may suffer a Y2K-related failure, meaning that the rates in question would not appear on the specified page at the specified time. In the context of more limited failures, the definitions of Bloomberg Screen, Reuters Screen and Telerate (located at Section 7.3 (c), (d) and (e) respectively (Certain Published and Displayed Sources)) become relevant because they each allow for the relevant information vendor to designate an alternative display page on the service for the purpose of displaying the relevant rate. In the case of Bloomberg Screen and Telerate, the definitions also allow for the information provider to nominate other services for the publication of the relevant rate. Institutions should be cognizant of these provisions and ensure that they are aware of the possibility of the election of such alternatives.

5.3 A number of the rates which can be determined in accordance with the 1998 Supplement and that rely on the electronic publication of rates by information providers provide for fallbacks in the event of the non-appearance of such rates. Typically, the fallback requires the collection of rates (generally by the Calculation Agent) from relevant Reference Banks. In the event of a significant Y2K failure causing an information provider to be unable to publish the Relevant Rate on either the primary page or an alternative, Reference Banks for highly liquid contracts may become subject to a significant level of requests for rates. There is concern that the sheer volume of the Transactions and portfolios that would require quotes could overwhelm dealers' capacity to respond. Institutions should be aware of this potential additional pressure.

5.4 Clearly, there are similar concerns with regard to rates published via any electronic source in relation to which polling, calculation or publication may be affected by a Y2K failure. As such, the comments above apply equally to rates published by exchanges and other institutions. See also the comments in Part I with regard to Market Quotation in relation to the Master Agreements.

## **6 Section 7.4(m) Market Disruption Event; Section 7.7. Effect of Market Disruption Event**

- 6.1 These provisions are relevant only to certain commodity- and equity-linked Transactions documented using the 1998 Supplement. The position under standard ISDA documentation concerning market and settlement disruption provisions has developed considerably since the publication of the 1991 ISDA Definitions on which the provisions are based. These subjects are given more detailed treatment in definitions booklets such as the 1993 ISDA Commodity Derivatives Definitions, 1996 ISDA Equity Derivatives Definitions and the 1998 FX and Currency Option Definitions (see below). The Market Disruption Event provisions may become relevant in the context of a Y2K scenario. Industry participants are reminded that the effect of Market Disruption Event provisions will operate if an alternative method for determining the Relevant Rate by reference to a Price Option in the event of a Market Disruption Event has not been specified by the parties.
- 6.2 Institutions are reminded that, in the absence of contrary specification in an agreement, Market Disruption Events under the 1998 Supplement result only from:
- (i) *suspension or material limitation of trading* (excluding daily settlement limits in the normal course of trading) in any commodity, or affecting any index, on *all* Exchanges specified in a Confirmation as relevant to the determination of the Relevant Rate; or
  - (ii) in respect of any Price Option calculated by reference to values of components, *suspension or material limitation of trading* (excluding daily settlement limits in the normal course of trading) in a material number of the components of that Price Option on all Exchanges specified in a Confirmation as relevant to the determination of a Relevant Rate.

## **7 Section 7.5. Corrections to Published and Displayed Rates and Prices**

- 7.1 Localized failures may result in incorrect prices being posted inadvertently in circumstances where correction is possible. For example, where a Relevant Rate is based on information obtained from the Reuters Monitor Money Rates Service or the Dow Jones Telerate Service, that Relevant Rate is subject to corrections subsequently displayed within one hour of the time when the rate is first displayed. Other rate sources have other presumptions as to when corrections will affect the Relevant Rate.
- 7.2 Section 7.5(e) provides for payment of appropriate adjustments resulting from such corrections.

## **8 Section 7.6. Certain Adjustments in Indices**

- 8.1 The provisions of this Section apply in determining a price for any Reset Date with respect to a Price Option absent a contrary specification in a Confirmation. These provisions are relevant in two sets of circumstances:

- (i) if the relevant person discontinues calculation and publication of the index on which the price is based; and
- (ii) if the information necessary for that person to perform the necessary calculation is not available to it.

8.2 Discontinuation of calculation or publication is not likely to arise as an immediate result of a Y2K failure. Temporary unavailability (which may occur) is not what this provision is intended to address. Thus, the incidence of occurrences falling within (i) above is likely to be very low. Similarly, it seems likely that it will be possible for information necessary to the calculation of rates to be gathered manually to the extent that it cannot be gathered electronically. Thus, (ii) above is likely to be relevant in relatively few situations. Rate sponsors that must collect rate price information from banks or other market-makers may find it difficult to obtain such information as a result of a Y2K problem.

8.3 The standard market and price disruption provisions contained in the 1998 Supplement are unlikely to address all possible Y2K scenarios. For example, the Market Disruption Event provisions do not address the temporary disappearance of a price source in the absence of a suspension or material limitation of trading. Similarly, such an occurrence may not be addressed by the Certain Adjustments in Indices provisions. Again, other ISDA Definitions provide more comprehensive treatment of these issues.

**TABLE OF TERMS IN THE 1998 SUPPLEMENT TO THE 1991 ISDA DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS**

| <b>DEFINED TERM</b>            | <b>SECTION</b> | <b>EFFECT OF APPLYING RELEVANT ADJUSTMENT</b>   |
|--------------------------------|----------------|---|
| Bermuda Option Exercise Date   | 13.1(c)        | Adjusts to the next following Seller Business Day. See Seller Business Day.   |
| Cash Settlement Payment Date   | 18.2 (d)       | Adjusts in accordance with Following Business Day Convention.   |
| Cash Settlement Valuation Date | 18.2 (c)       | Adjusts in accordance with the Modified Following Business Day Convention.  |
| Euro Settlement Date           | 1.7            | Descriptive definition. Subject to adjustment depending upon the use to which the definition is put. E.g., if linked to Payment Date, apply Modified Following/FRN Convention.  |
| Exercise Date                  | 13.1 (b)       | See Exercise Period.  |
| Exercise Period                | 13.1 (a)       | <p><i>European style Option:</i> If Expiration Date is not a Seller Business Day, adjust to the next day that is a Seller Business Day. See Seller Business Day.</p> <p><i>Bermuda style Option:</i> If Bermuda Option Exercise Date is not a Seller Business Day, adjust to the next day that is a Seller Business Day. See Seller Business Day.</p> <p><i>American style Option:</i> Exercisable on any Seller Business Day from Commencement Date to Expiration Date. As to Commencement Date, see Premium Payment Date. If Expiration Date is not a Seller Business Day, adjust to next day that is a Seller Business Day. See Seller Business Day.</p> |
| Expiration Date                | 13.1 (b)       | Adjusts to the next Seller Business Day (see Seller Business Day).  |
| Premium Payment Date           | 12.3 (b)       | Adjusts in accordance with the Following Business Day Convention.   |
| Seller Business Day            | 12.4           | See Banking Day discussion Section 2.1 of Part III above.   |
| Valuation Business Day         | 12.4           | See Banking Day discussion Section 2.1 of Part III, above.  |

## **PART V**

### **1993 ISDA COMMODITY DERIVATIVES DEFINITIONS**

#### **A. Introduction**

The 1993 ISDA Commodity Derivatives Definitions (the “**Commodity Derivatives Definitions**”) are designed for use in cash-settled commodity derivatives transactions. They do not contain provisions relating to the documentation of physically-settled commodity derivatives transactions. Parties entering into physically-settled commodity derivatives transactions are advised to review the terms of their documentation separately to assess any potential Y2K-related issues.

#### **B. Relevant Definitions**

##### **1 Section 1.3. Business Day**

The Business Day definition is relevant in the context of a number of other definitions. It focuses on days on which commercial banks and foreign exchange markets settle payments in local currency in the places specified for that purpose in the related Confirmation, and, if a place is not so specified, days on which commercial banks and foreign exchange markets settle payments in US Dollars in New York (if the relevant payment obligation is in US Dollars) and Sterling in London (if the relevant payment obligation is in Sterling). A number of jurisdictions have declared December 31, 1999 and January 3, 2000 to be public or bank holidays with the effect that neither commercial banks nor foreign exchange markets are likely to be open on those dates. Parties should be aware that this may reduce the number of Business Days occurring around the millennium date change period. See also Appendix 1 to the Review.

##### **2 Section 1.4. Commodity Business Day**

Commodity Business Day is defined in terms of (i) days which are trading days on the relevant exchange (in respect of Transactions for which the commodity Reference Price is a price announced or published by an Exchange) and (ii) days on which the relevant Price Source published a price (in respect of Transactions for which the Commodity Reference Price is not a price announced or published by an Exchange). See also the discussion of Market Disruption Event, below. In the case of both (i) and (ii), a day may constitute a Commodity Business Day notwithstanding the occurrence of a Market Disruption Event on that day. The Commodity Derivatives Definitions establish separate conventions for the adjustment of Business Days and Commodity Business Days (see Section 1.5 of the Commodity Derivatives Definitions). As stated above in relation to the definition of Business Day, a number of jurisdictions have announced holidays and market closures around the millennium date change. This may result in a

reduction in the number of Commodity Business Days occurring during that period.

### **3 Section 8.5(h) Seller Business Day**

In relation to an Option, a Seller Business Day is a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the city in which the Seller is located for purposes of receiving notices. Given that the Exercise Date and the day on which Notice of Exercise in relation to the Option may be given must be a Seller Business Day, market participants are advised to note that additional bank holidays may affect dates on when Options can be exercised.

### **4 Section 4.6. Calculation Date**

- 4.1 The Calculation Date in respect of any Settlement Date or Payment Date is the earliest day on which it is possible for the Calculation Agent to provide the requisite notice and, in any event, no later than the Business Day next preceding the relevant Settlement Date or Payment Date (with further provisions addressing the situation in which the preceding Business Day is also a Pricing Date).
- 4.2 The announcement of bank and foreign exchange market closures around the millennium date change may become relevant in this context. For example, assuming that December 31, 1999 and January 3, 2000 are not Business Days for the purposes of a Transaction in respect of which January 3, 2000 is a Payment Date, the Payment Date will, unless a Business Day Convention other than the Following or Modified Following Business Day Convention is specified, adjust to January 4, 2000 while the final Calculation Date may be brought forward to the Close of Business on December 30, 1999, one day earlier than it would otherwise have fallen.
- 4.3 Parties are encouraged to be particularly aware of the relationship between Calculation Dates and Settlement/Payment Dates around the millennium date change.

### **5 Section 7.1. Commodity Reference Prices**

Section 7.1 of the Commodity Derivatives Definitions sets out a number of Commodity Reference Prices by means of which a Relevant Price may be established. The sources of these Commodity Reference Prices are either commercial publications or prices published by certain exchanges. There is a risk that the systems of the information providers that publish the relevant information on which these rates are based may suffer a Y2K-related failure. The result may be that, for Pricing Dates around the millennium date change, the information in question may not be available. In this regard, see the discussion of Market Disruption Events and Additional Market Disruption Events below.

## **6 Section 7.3. Corrections to Published Prices**

These comments are relevant in the context of localized Y2K-related failures. Localized failures may result in incorrect prices being posted inadvertently in circumstances where correction is possible. Where a Relevant Price is subsequently corrected and the relevant correction is published or announced by the party responsible for the publication or announcement of the Relevant Price within thirty calendar days of the initial announcement or publication, either party may notify the other (within thirty days of the publication or announcement of the relevant correction) of the fact of such correction. Parties are reminded of the provisions of Section 7.3 concerning the payment or return of appropriate amounts (plus interest) following such corrections.

## **7 Section 7.4. Market Disruption Events; Additional Market Disruption Events and Section 7.5. Disruption Fallbacks**

7.1 The Market Disruption Events, Additional Market Disruption Events and Disruption Fallbacks set out in the Commodity Derivatives Definitions may be of particular relevance in the context of Y2K-related systems failures. As discussed above, the Commodity Reference Prices set out in the Commodity Derivatives Definitions are drawn either from commercial publications or from prices provided by certain exchanges. The systems of the providers of these prices may be affected by a Y2K-related failure which could affect the publication of the relevant Commodity Reference Prices.

7.2 Market Disruption Events and Additional Market Disruption Events are events that, if specified as applicable, give rise either to:

- (a) an alternative basis for determining the Relevant Price in respect of a specified Commodity Reference Price; or
- (b) the termination of the Transaction,

if the event in question occurs or exists on a Pricing Date or a day on which prices for that Pricing Date would ordinarily be published or announced by the Price Source. If such an event occurs, certain Disruption Fallbacks will apply.

7.3 If the Calculation Agent determines that an applicable Market Disruption Event (or an Additional Market Disruption Event, as the case may be) has occurred on a Pricing Date for a Transaction (or on a day on which prices for that Pricing Date would ordinarily be published or announced by the Price Source), the Relevant Price for that Pricing Date will be determined in accordance with the first-specified applicable Disruption Fallback that provides the parties with a Relevant Price or, if there is no such Relevant Price, provides for the termination of the Transaction.

- 7.4 The parties can select in their Transaction the various Market Disruption Events and Additional Market Disruption Events that will apply. Certain Market Disruption Events to apply automatically in the event that the parties do not specify any Market Disruption Events in the relevant Confirmation. Similarly, the parties may specify that particular Disruption Fallbacks will apply in respect of a Transaction and, again, if no Disruption Fallbacks are specified as applicable to a Transaction, the Commodity Derivatives Definitions provide that certain Disruption Fallbacks will apply automatically.
- 7.5 Certain Market Disruption Events may be particularly relevant in the context of the Y2K problem. For example, Section 7.4(c)(i) (Price Source Disruption), which addresses (among other things) the failure of a Price Source to announce or publish the Specified Price and the temporary unavailability of the Price Source, may be of particular importance in relation to temporary Y2K systems failures. Other Market Disruption Events such as “Trading Suspension”, “*De Minimis* Trading” and “Trading Limitation” may also be of some relevance. If the parties have not specified any Market Disruption Events as being applicable to a Transaction then, in accordance with Section 7.4(d), the “Price Source Disruption” and “Trading Suspension” Market Disruption Events will be deemed to be applicable to the Transaction (as will “Disappearance of Commodity Reference Price”, “Material Change in Formula” and “Material Change in Content” although these are likely to be less relevant in the context of Y2K).
- 7.6 Industry participants are advised to consider the terms of their Transactions to ensure that they are cognizant of the Market Disruption Events, Additional Market Disruption Events and Disruption Fallbacks applicable to those Transactions.

**TABLE OF TERMS IN THE 1993 ISDA COMMODITY DERIVATIVES DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS**

| <b>DEFINED TERM</b>  | <b>SECTION</b> | <b>EFFECT OF APPLYING RELEVANT ADJUSTMENT</b>  |
|----------------------|----------------|--|
| Expiration Date      | 8.5 (g)        | Adjusts to the first following day that is a Commodity Business Day.                                 |
| Settlement Date      | 3.4            | Adjusts in accordance with the Following Business Day Convention.                                    |
| Payment Date         | 3.4            | Adjusts in accordance with the Following Business Day Convention.                                    |
| Termination Date     | 3.5            | Does not adjust in accordance with any Business Day Convention or Commodity Business Day Convention. |
| Premium Payment Date | 8.6 (c)        | Adjusts in accordance with the Following Business Day Convention.                                    |

## **PART VI**

### **1996 ISDA EQUITY DERIVATIVES DEFINITIONS**

#### **A. Introduction**

The 1996 ISDA Equity Derivatives Definitions (the “**Equity Derivatives Definitions**”) are primarily an expansion of the 1994 ISDA Equity Options Definitions. The 1994 ISDA Equity Options Definitions are not discussed in the Review; however, the discussion in this part will be relevant to those Definitions. Provisions for the following types of transaction are included in the Equity Derivatives Definitions:

- (1) OTC single index option transactions;
- (2) OTC single share option transactions (cash-settled and physically settled);
- (3) OTC index basket option transactions;
- (4) OTC share basket option transactions (cash-settled and physically-settled);
- (5) Single index swap transactions;
- (6) Single share swap transactions;
- (7) Index basket swap transactions; and
- (8) Share basket swap transactions.

#### **B. Relevant Definitions**

##### **1 Section 1.16. Exchange**

This definition provides that if the specified Exchange ceases to list or otherwise include a relevant Share, the parties will negotiate in good faith to agree on another exchange or quotation system (if any) in relation to such Share. This language was intended to address permanent cessations of listings and not a temporary inability on the part of an Exchange or quotation system to list a price for a relevant Share. As such, the language would not address a situation where an Exchange or quotation system fails temporarily to list a price for a Share or to include a Share in an index by reason of a Y2K-related systems failure.

##### **2 Section 1.18. Clearance System**

This definition provides that if the relevant Clearance System ceases to clear a relevant Share, the parties will negotiate in good faith to agree on another manner of delivery. This language was intended to address permanent cessations of clearing and not a temporary inability on the part of a Clearance System to clear a Share. As such, the language would not address a situation where a Clearance System is temporarily unable to clear a Share due to a Y2K-related systems failure.

### **3 Section 1.19. Seller Business Day**

- 3.1 The Seller Business Day definition is relevant in a number of contexts. In respect of Sellers which are commercial banks, the definition focuses on days on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the places specified for that purpose in the Confirmation or, failing such specification, the city where the Sellers are located for the purpose of receiving notices. In the case of Sellers that are not commercial banks, the focus is on scheduled trading days on local securities exchanges.
- 3.2 Scheduled and unscheduled commercial bank and exchange closures around the millennium date change may mean that certain days that would otherwise constitute Seller Business Days may not be considered Seller Business Days. It should be noted that a significant number of jurisdictions have declared December 31, 1999 and January 3, 2000 to be holidays with the effect that neither banks nor (in all probability) securities exchanges are likely to be open for business on those dates (see also Appendix 1 to the Review). The likelihood of this occurring and the effect on certain transactions should be considered by the parties.
- 3.3 The exercise of an Option is tied to the definition of Exchange Business Days rather than Seller Business Days. As such, it is possible that an Option could be exercised on a day that is not a business day in the jurisdiction of the Seller. Parties should consider this possibility as the Seller may find itself unable to adjust its hedging position in relation to the exercised Option.

### **4 Section 1.20. Exchange Business Day**

- 4.1 An Exchange Business Day is any day that is a trading day on each Exchange and each Related Exchange whether or not a Market Disruption Event occurs or is continuing on that day, provided that a day on which an Exchange or Related Exchange is *scheduled* to close prior to its regular weekday closing time will not be an Exchange Business Day. Scheduled bank holidays and exchange closures (or early closures) may reduce the number of Exchange Business Days occurring around the millennium date change period. This is an important consideration because the Exercise Date definition is based on Exchange Business Days. A reduction in the number of Exchange Business Days will reduce the number of Exercise Dates in an Exercise Period for an American-style option. It is also an important consideration in the context of Averaging Dates; Averaging Dates must be Exchange Business Days. However, as stated above, a day may be an Exchange Business Day notwithstanding the occurrence of a Market Disruption Event. Consequently, unless an appropriate election is made under “Averaging Date Market Disruption”, Averaging Dates in respect of a Valuation Date may fall on a day on which there has been a Market Disruption Event. See further the discussion of Market Disruption Events, below. Unlike Exchange Business Days,

a Valuation Date cannot fall on a day on which a Market Disruption Event occurs or is continuing.

- 4.2 In the context of Exchange closures, the Equity Derivatives Definitions do not define the term "scheduled". They do, however, effectively provide that unscheduled closure or early closure of an Exchange or Related Exchange will not prevent a day from being an Exchange Business Day. As such, early closure of an exchange by reason of a Y2K-related disruption will not prevent a day from being an Exchange Business Day unless that day was (giving the term "scheduled" its ordinary dictionary meaning) designated as a day on which the relevant Exchange or Related Exchange would close or close early.

## **5 Section 1.21. Currency Business Day**

The definition focuses on days on which commercial banks are open for business, including foreign exchange business, in the principal financial center for the relevant currency. Y2K-related scheduled and unscheduled bank closures may result in reduction in the number of Currency Business Days around the millennium date change period.

## **6 Section 1.22. Clearance System Business Day**

See also the discussion of Settlement Disruption Event at paragraph 2.12 of this Part of the Review. The occurrence of an event beyond the control of the parties resulting in the inability of a Clearance System to clear the transfer of a Share will not prevent a day from being considered a Clearance System Business Day. As such, if a day would otherwise have been a day on which a Clearance System would have been open for the acceptance and execution of instructions but that Clearance System is unable to open due to a Y2K occurrence, that day will still constitute a Clearance System Business Day.

## **7 Section 3.4. Automatic Exercise where Physical Settlement is Applicable**

- 7.1 The Automatic Exercise provisions contained in the Equity Derivatives Definitions apply differently to Cash-settled and Physically-settled Options. Limitations on the operation of the Automatic Exercise mechanism in relation to Option Transactions to which Physical Settlement is applicable may be of concern in the context of Y2K date change problems.

- 7.2 In relation to Transactions to which Cash Settlement is applicable, Automatic Exercise will operate unless, prior to the Expiration Time on the Expiration Date, the Buyer indicates that it does not wish Automatic Exercise to occur. Physically-settled Option Transactions are subject to a similar qualification and to the further qualification that Automatic Exercise will not operate if the Reference Price necessary to determine that an Option is In-the-Money cannot be determined at the Expiration Time on the Expiration Date. It is possible that, due to disruptions

associated with the Y2K date change, it may not be possible to determine certain Reference Prices. As such, relying on Automatic Exercise in relation to Physically-settled Option Transactions around the millennium date change may be problematic.

## **8 Section 4.1. Valuation Date**

- 8.1 It is quite possible that the response of an exchange to a Y2K disruption will be to limit or suspend trading in certain instruments. It should be noted that a relevant material suspension of, or limitation in, trading (due to movements in price exceeding limits permitted by the relevant Exchange or otherwise) during the one-half hour period that ends at the relevant Valuation Time may prevent a date from constituting a Valuation Date<sup>6</sup>.
- 8.2 Parties are reminded that, in the case of (i) an Index Transaction, (ii) a Share Transaction, (iii) Indices relevant to an Index Basket Transaction that are affected by a Market Disruption Event and Shares relevant to a Share Basket Transaction which are affected by a Market Disruption Event, the relevant Valuation Date will roll forward to the next following Exchange Business Day on which there is not a Market Disruption Event. Parties are reminded that, in the event that the Market Disruption continues for five Exchange Business Days following the Scheduled Valuation Date, that fifth Exchange Business Day will constitute the Valuation Date notwithstanding the existence of a Market Disruption Event. In such circumstances, it will fall to the Calculation Agent to calculate or estimate the relevant Exchange traded price.

## **9 Section 4.4(d). Market Disruption**

The provisions of Section 4.4(d) of the Equity Derivative Definitions may become particularly relevant in light of Y2K-related Market Disruption Events. Section 4.4(d) is relevant only where Averaging Dates are specified in the relevant Confirmation. The consequences of a Market Disruption Event occurring on an Averaging Date will differ depending on whether the parties have specified “Omission”, “Postponement” or “Modified Postponement” under “Averaging Date Market Disruption” in the related Confirmation. Section 4.4(d) does not specify a fallback position in the event that the parties have failed to specify any of “Omission”, “Postponement” or “Modified Postponement” in the related Confirmation. As such, parties are advised to ensure that an appropriate selection has been made in respect of all relevant Transactions.

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<sup>6</sup> Parties are reminded that if “Futures Price Valuation” is specified in relation to an Index, “Valuation Date” means each day on which the Official Settlement Price is published and in all cases (except in relation to Non-Commencement or Discontinuance of Exchange-traded Contract), irrespective of whether there is a Market Disruption Event on that day.

## 10 Section 4.4(e). Adjustments to Index

Section 4.4(e) is relevant in the context of Index Transactions and Index Basket Transactions and may become relevant in the context of Y2K-related disruptions affecting the ability of an exchange to calculate or post relevant Indices. The provision addresses circumstances in which a relevant Index sponsor:

- (i) materially changes the formula for the calculation of that Index;
- (ii) in any way materially modifies that Index (other than in accordance with (i) above or as a reflection of changes in constituent stock and capitalization and other routine events); or
- (iii) on any Averaging Date, fails to calculate and announce a relevant Index.

In such circumstances, the Calculation Agent will be responsible for calculating the relevant Settlement Price or Final Price (as appropriate) in accordance with the formula for and method of calculating that Index last in effect prior to the change or failure, but using only those securities that comprised that Index immediately prior to that change or failure (excluding securities that have since ceased to be listed).

## 11 Section 4.5. Futures Price Valuation

The provisions in Section 4.5 of the Equity Derivatives Definitions are relevant only in circumstances where the parties have provided that “Futures Price Valuation” is applicable in the valuation of an Index on a Valuation Date. In such circumstances, both the Settlement Price and Final Price are calculated by reference to the official settlement price on maturity of the relevant Exchange-traded Contract published by the relevant exchange or its clearing house the (“**Official Settlement Price**”). In general, for the purposes of Section 4.5, the occurrence of a Market Disruption Event does not prevent a date from constituting a Valuation Date.

### (i) *Section 4.5(e) Adjustments of the Exchange-traded Contract*

Although possible, it seems improbable that a Y2K-related occurrence would cause an exchange to change the terms of an Exchange-traded Contract. As such, this provision is less likely to be relevant in the context of the Y2K date change problem.

(ii) ***Section 4.5 (f) Adjustments of the Official Settlement Price***

Since, for the purposes of Section 4.5, Valuation Date generally includes days on which Market Disruption Events occur, it seems more likely that the provisions of Section 4.5(f) will become relevant in the context of Y2K disruptions. For example, a material suspension in trading during the one-half hour period that ends on the Valuation Time may result in a change in the timing of the valuation of stock prices comprised in the relevant Index. Parties are reminded that, subject to Section 4.5(e), Calculation Agents are to ignore adjustments made by the exchange to the method of calculation of the Official Settlement Price.

(iii) ***Section 4.5(g) Non-Commencement or Discontinuance of the Exchange-traded Contract***

Since this provision addresses the absence of an Official Settlement Price due to failures to commence trading and *permanent* discontinuance in trading in an Exchange-traded Contract, ISDA does not consider this provision likely to be of particular relevance in relation to the Y2K problem.

(iv) ***Section 4.5(h) Corrections of the Official Settlement Price***

Section 4.5(h) may become relevant in the context of Y2K occurrences. Due to a Y2K disruption, an Exchange may publish an inaccurate price as the Official Settlement Price on a given Valuation Date. Parties are reminded that corrections to the Official Settlement Price published by the Exchange within thirty days of the original publication and notified by one party to the other within thirty days of the date of correction, may result in the need to make appropriate balancing payments.

## **12 Section 6.5. Settlement Disruption Event**

Section 6.5 defines a Settlement Disruption Event in terms of an occurrence that is beyond the control of the parties resulting in the relevant Clearance System being unable to clear the transfer of a relevant Share. Although there are clearly scenarios in which this provision may be of considerable assistance, it should be noted that Section 6.5 would not appear to be relevant where, for example, the relevant Clearance System is unable to clear the transfer of a Share because of a systems failure on the part of one of the parties resulting in the non-receipt of instructions by the Clearing System. See the discussion of the effect of Settlement Disruption Events on the Settlement Date definition in the table at the end of this part.

### **13 Section 6.9. Failure to Deliver**

Since the temporary absence from the market of one or more major liquidity providers may be a consequence of Y2K systems disruptions, the provisions of Section 6.9 of the Equity Derivatives Definitions may become relevant in the context of Physically-settled Option Transactions. If “Failure to Deliver” is specified to be applicable to a Physically-settled Option Transaction, the provisions of Section 6.9 afford protection from Events of Default under an ISDA Master Agreement in the event that a party is unable to deliver relevant Shares due to illiquidity in the relevant market. Parties are reminded that, instead of an Event of Default, the failure to deliver will give rise to an Additional Termination Event in respect of the relevant Transaction (or relevant portion of that Transaction as the case may be), with the Loss payment measure being deemed applicable irrespective of the payment method elected by the parties in the Master Agreement.

### **14 Section 8.1. Adjustments to Index**

14.1 Section 8.1(a) of the Equity Derivatives Definitions addresses circumstances in which a relevant Index is either published by a successor sponsor acceptable to the Calculation Agent or replaced by a closely comparable index. These may become relevant considerations to the extent that exchanges develop Y2K contingency plans involving the publication by Exchange X of indices normally published by Exchange Y in the event that Exchange X suffers a Y2K disruption. Parties are advised to familiarize themselves with the contingency plans of all relevant Exchanges.

14.2 Section 8.1(b)(i) addresses circumstances in which a relevant Index sponsor makes material changes in the formula for or method of calculating an Index or in any other way materially modifies that Index. Although this may become relevant in light of Y2K disruptions, it appears less likely that such disruptions will result in a change in the methodology for calculating indices. The more likely scenario would be a temporary or prolonged inability on the part of the Index sponsor to calculate or publish the Index due to systems failures. In this case Section 8.1(b)(ii) becomes relevant providing the Calculation Agent would calculate the relevant Settlement Price or Final Price in accordance with the method for calculating that Index last in effect prior to the failure, using those securities comprised in that Index immediately prior to that failure. This, of course, assumes that prices for the underlying securities can be obtained.

### **15 Section 8.2 Correction of Index**

Section 8.2 of the Equity Derivatives Definitions may become relevant in the context of Y2K occurrences. It may be the case that, due to a Y2K disruption, an Index sponsor (or a successor sponsor) may publish an inaccurate price as the Official Settlement Price on a given Valuation Date. Parties are reminded that corrections to the Official Settlement Price published by the Exchange within

thirty days of the original publication and notified by one party to the other within thirty days of the date of correction, may result in the need to make appropriate balancing payments.

**TABLE OF TERMS IN THE 1996 EQUITY DERIVATIVES DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS**

| <b>DEFINED TERM</b>          | <b>SECTION</b> | <b>EFFECT OF APPLYING RELEVANT ADJUSTMENT</b>   |
|------------------------------|----------------|---|
| Premium Payment Date         | 2.5 (b)        | If a specified Premium Payment Date is not a Currency Business Day, Premium Payment Date adjusts to the next Currency Business Day.   |
| Exercise Period              | 3.1 (a)        | In relation to a European style Option Transaction, see Expiration Date.<br><br>In relation to an American style Option Transaction, the Exercise Period includes all Exchange Business Days from, and including, the Commencement Date to, and including, the Expiration Date. See Expiration Date and note that a reduction in the number of Exchange Business Days will reduce the number of available Exercise Dates in the Exercise Period.  |
| Expiration Date              | 3.1 (e)        | Adjusts to the next day that is an Exchange Business Day.   |
| Averaging Date               | 4.4 (a)        | If an Averaging Date would otherwise fall on a day that is not an Exchange Business Day, it adjusts to the next following Exchange Business Day.  |
| Cash Settlement Payment Date | 5.5            | If no such date is specified in the related Confirmation and the application of the fallback mechanics result in the date falling on a day that is not a Currency Business Day, adjusts to the next succeeding Currency Business Day.<br><br>In the case of an Index Basket Option Transaction or Share Basket Option Transaction, if a Market Disruption Event results in there being more than one Valuation Date, then the Cash Settlement Payment Date shall be determined by reference to the last Valuation Date to occur |

| DEFINED TERM        | SECTION  | EFFECT OF APPLYING RELEVANT ADJUSTMENT  |
|---------------------|----------|---|
| Settlement Date     | 6.2      | If a Settlement Disruption Event prevents delivery on the first day on which settlement of a sale of relevant Shares would customarily take place through the relevant Clearance System, adjust to first succeeding day on which delivery can take place through the relevant Clearing System unless the Settlement Disruption Event prevents settlement on each of the following 10 Clearance System Business Days in which case, attempt delivery in another commercially reasonable manner. The Settlement Date will be the date on which settlement of a sale of Shares executed on that 10th relevant Clearance System Business Day customarily would take place using such other commercially reasonable manner. If Shares cannot be delivered in another commercially reasonable manner, Settlement Date is postponed until delivery can be effected through the relevant Clearance System or in another commercially reasonable manner. |
| Equity Payment Date | 7.3      | In the case of an Index Basket Swap Transaction or Share Basket Swap Transaction, if, as a result of a Market Disruption Event, there is more than one Valuation Date in relation to a Scheduled Valuation Date with respect to indices or shares comprised in the Basket, the relevant Equity Payment Date is to be determined by reference to the Valuation Date that is last to occur.   |
| Dividend Period     | 7.12 (c) | The final Dividend Period will end on, and include, the final Valuation Date which may, by provision in the relevant Confirmation, be subject to adjustment.  |

## PART VII

### 1997 ISDA BULLION DEFINITIONS AND 1997 ISDA SHORT FORM BULLION DEFINITIONS

#### A. Introduction

The 1997 ISDA Bullion Definitions (the "**1997 Bullion Definitions**") are intended for use in agreements that document Bullion transactions. As used in the 1997 Bullion Definitions, the term "**Bullion**" means each of gold, silver, platinum and palladium. Set out below are sections of the 1997 Bullion Definitions which merit attention in light of potential Y2K events. The 1997 ISDA Short Form Bullion Definitions (the "**1997 Short Form Bullion Definitions**") are intended to be incorporated into agreements relating to physically-settled (on an unallocated basis) bullion spot and forward trades and options and were extracted from the 1997 Bullion Definitions to meet the needs of certain market participants who desired a short form of the 1997 Bullion Definitions covering only those types of transactions. The discussion below of provisions in the 1997 Bullion Definitions that may give rise to Y2K problems refers to the corresponding provisions in the 1997 Short Form Bullion Definitions where relevant.

#### B. Relevant Definitions

##### 1 Section 1.2. Bullion Business Day

- 1.1 The definition of Bullion Business Day is relevant in the context of a number of other definitions, principally in those that relate to payment and delivery obligations and option terms.
- 1.2 A Bullion Business Day is a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in each of the following places:
  - (a) London;
  - (b) New York; and
  - (c) the location where payment is to be made.

In the case of a Bullion Trade or a Bullion Option to which Settlement by Delivery applies, there is an additional requirement that the day be a scheduled trading day in the Bullion market in the delivery location. The declaration of bank and exchange closures and additional holidays around the millennium date change in one or more relevant locations may impact on whether or not a day is a Bullion Business Day.

1.3 The comments above apply also to Section 1.2 of the 1997 Short Form Bullion Definitions.

## **2 Section 2.5. Bullion Options**

2.1 Section 2.5(j) provides that the Buyer may deliver notice of exercise of a Bullion Option by electronic means. To the extent that parties to Bullion Transactions intend to issue notices around the millennium date change electronically, it may be advisable to take account of possible disruptions in electronic messaging services and telecommunications networks during that period and to consider dispatching duplicate notices in hard copy format or by more than one electronic medium.

2.2 The comments above apply also to Section 2.5(i) of the 1997 Short Form Bullion Definitions.

## **3 Section 2.9. Payment of Premiums**

3.1 Section 2.9 of the 1997 Bullion Definitions provides the Seller with the option either to accept late payment of Premium or to give notice of the non-payment and either declare the Bullion Option to be void or treat the non-payment as an Event of Default under Section 5(a)(i) (Failure to Pay or Deliver) of the Master Agreement if payment has not been made within three Local Business Days of the giving of notice. Potential Y2K-related issues related to the definition of Local Business Day are discussed in Part 1 of the Review in relation to the Master Agreements.

3.2 The comments above apply also to Section 2.10 of the 1997 Short Form Bullion Definitions.

## **4 Article 3. Settlement by Delivery**

4.1 Article 3 of the 1997 Bullion Definitions sets out the provisions governing Bullion Transactions to which Settlement by Delivery applies. Y2K events may impact settlement provisions in a number of ways. Essentially, Section 3.1 provides that, where Settlement by Delivery applies to the relevant Bullion Transaction, unless specified otherwise in a Confirmation, each party shall deliver to the other party the amount of Currency or Bullion they are required to deliver under the terms of the Bullion Obligation, to the relevant place on the Value Date.

4.2 Since the term Value Date (Section 1.16) adjusts for non-Bullion Business Days, the declaration of additional millennium holidays or unscheduled bank or market closures in the relevant jurisdictions may delay delivery and payment obligations in respect of physically-settled transactions (see 2.1 above).

4.3 The comments above apply also to Section 3.1 and Section 1.14 of the 1997 Short Form Bullion Definitions.

## **5 Section 3.4. Settlement Disruption**

- 5.1 The Settlement Date of the transaction may be affected by a Settlement Disruption Event. Settlement Disruption Event is defined in the 1997 Bullion Definitions as “an event beyond the control of the parties as a result of which delivery cannot be effected by the method of delivery specified by the parties”. It is possible that the incidence of such occurrences will increase around the millennium date change period due to temporary (and potentially protracted) systems failures. In relation to Settlement Disruption Events, the 1997 ISDA Bullion Definitions provide as follows:
- (a) if the Confirmation states that the consequence of a Settlement Disruption Event is to be “Negotiation”, then the Value Date can be postponed for up to ten Bullion Business Days. If a Settlement Disruption Event prevents settlement on each of the ten Bullion Business Days immediately following the date that would otherwise have been the original Value Date, the parties will either negotiate a commercially reasonable alternative means of delivering the Bullion and, if the Bullion cannot be delivered in any other commercially reasonable manner, the parties will negotiate in good faith to agree on a commercially reasonable means of settling the relevant Bullion Transaction; and
  - (b) if the Confirmation states that the consequence of a Settlement Disruption Event is to be “Cancellation and Payment” (or if Cancellation and Payment is deemed to be the consequence of a Settlement Disruption Event by virtue of Section 3.4(c)), the Value Date will be the first succeeding day on which delivery can be effected by the method specified by the parties. If the Settlement Disruption Event persists on each of the two Bullion Business Days following that date that would otherwise have been the original Value Date, an Early Termination Date will be deemed to occur on the second such Bullion Business Day (on the basis that a Termination Event has occurred), with the relevant Bullion Transaction as the sole Terminated Transaction and the party that was required to make the relevant delivery as the Affected Party.
- 5.2 Institutions should review the terms of their transactions to ensure that they are cognizant of the potential impact of Settlement Disruption Events on their portfolios. Industry participants should also note that, although these provisions may be helpful in relation to Y2K-related problems associated with the physical delivery of the Bullion, they will not assist in cases where the problem is a Y2K-related failure in payment mechanisms, resulting in an inability to deliver Currency.
- 5.3 The comments above apply also to Section 3.4 of the 1997 Short Form Bullion Definitions.

**6 Section 10.1. Market Disruption Events; Additional Market Disruption Events and Section 10.2. Disruption Fallbacks**

6.1 Market Disruption Events and Additional Market Disruption Events are events which, if specified as applicable, give rise either to:

- (a) an alternative basis for determining the Relevant Price in respect of a specified Bullion Reference Price; or
- (b) the termination of the Bullion Transaction,

if the event in question occurs or exists on a Pricing Date for that Bullion Transaction or a day on which prices for that Pricing Date would ordinarily be published or announced by the Price Source. If such an event occurs, certain Disruption Fallbacks will apply.

6.2 The Market Disruption Events set out in Section 10.1 of the 1997 Bullion Definitions are:

- (a) Price Source Disruption;
- (b) Trading Suspension or Limitation; and
- (c) Disappearance of Bullion Reference Price.

6.3 If the Calculation Agent determines that an applicable Market Disruption Event (or Additional Market Disruption Event, as the case may be) has occurred on a Pricing Date in relation to a Bullion Transaction, the Relevant Price for that Pricing Date will be determined in accordance with the first applicable Disruption Fallback that provides a Relevant Price or, if there is no such Relevant Price, the Bullion Transaction will be terminated. The Disruption Fallbacks are set out in Section 10.2 of the 1997 Bullion Definitions and are:

- (a) "Fallback Reference Price";
- (b) "Negotiated Fallback";
- (c) "Postponement";
- (d) "No Fault Termination";
- (e) "Calculation Agent Determination"; and
- (f) "Average Daily Price Disruption"

6.4 Parties can select in their Transaction the various Market Disruption Events and Additional Market Disruption Events that will apply. The 1997 Bullion Definitions also

provide for particular Market Disruption Events to apply automatically in the event that the parties do not specify any Market Disruption Events as applicable to a Bullion Transaction. Similarly, provision is made for the election of Disruption Fallbacks and, if no Disruption Fallbacks are specified as applicable to a Transaction, the 1997 Bullion Definitions provide that certain Disruption Fallbacks will apply automatically.

- 6.5 Certain Market Disruption Events may be particularly relevant in the context of the Y2K problem. For example, Section 10.1(c)(i), “**Price Source Disruption**”, which addresses (among other things) the failure of a Price Source to announce or publish the Bullion Reference Price and the temporary unavailability of the Price Source may be of particular importance in relation to Y2K systems failures. The “Trading Suspension or Limitation” Market Disruption Event may also be relevant. If, in relation to a Bullion Transaction, the parties have not specified any Market Disruption Events as applicable, then, in accordance with Section 10.1(d), the “Price Source Disruption” and “Trading Suspension or Limitation” Market Disruption Events will be deemed to apply to that Bullion Transaction (as will “Disappearance of Bullion Reference Price”).
- 6.6 Industry participants are advised to review the terms of their Bullion Transactions and to ensure that they are cognizant of the effects of any Market Disruption Events, Additional Market Disruption Events and Disruption Fallbacks which are either specified as applicable to those Bullion Transactions or deemed to be applicable.

## **7 Section 13.1. GOFO and Section 13.2. LGLR**

The Additional Definitions in Section 13.1 and 13.2 of the 1997 Bullion Definitions which concern the establishment of rates for a Reset Date for a transaction also refer to electronic price sources. Where the relevant Price Sources are not available, those definitions provide that rates are to be obtained from Reference Dealers (as defined in Section 11.2(b)). In the event of widespread Y2K systems failures, such Reference Dealers may experience a significant increase in requests for rates.

**TABLE OF TERMS IN THE 1997 ISDA BULLION DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY OR OTHER CONVENTIONS**

**1997 ISDA BULLION DEFINITIONS**

| <b>DEFINED TERM</b>  | <b>SECTION</b> | <b>EFFECT OF APPLYING RELEVANT ADJUSTMENT</b>  |
|----------------------|----------------|--|
| Period End Date      | 6.7            | Adjusts to the next day that is a Bullion Business Day, unless another Business Day Convention is specified in the Confirmation. |
| Payment Date         | 6.8            | Adjusts to the next day that is a Bullion Business Day, unless otherwise specified in the Confirmation.                          |
| Premium Payment Date | 2.5 (l)        | Adjusts to the next day that is a Bullion Business Day.  |
| Pricing Date         | 4.2 (b)        | Adjusts to the preceding Bullion Business Day.   |
| Settlement Date      | 2.5 (p)        | Adjusts to the next Bullion Business Day.  |
| Termination Date     | 6.9            | Not subject to adjustment unless specified in the Confirmation.  |
| Value Date           | 1.16           | Adjusts to the next Bullion Business Day.  |

**1997 ISDA SHORT FORM BULLION DEFINITIONS**

| <b>DEFINED TERM</b>  | <b>SECTION</b> | <b>EFFECT OF APPLYING RELEVANT ADJUSTMENT</b> |
|----------------------|----------------|---|
| Premium Payment Date | 2.5 (l)        | Adjusts to the next Bullion Business Day.     |
| Settlement Date      | 2.5 (p)        | Adjusts to the next Bullion Business Day.     |
| Value Date           | 1.16           | Adjusts to the next Bullion Business Day.     |

## **PART VIII**

### **1997 ISDA GOVERNMENT BOND OPTION DEFINITIONS**

#### **A. Introduction**

The 1997 ISDA Government Bond Option Definitions (the "**1997 Bond Option Definitions**") are intended to be incorporated into agreements relating to options (whether cash or physically settled) written on bonds. They were drafted principally for use in transactions relating to European government bonds.

#### **B. Relevant Definitions**

##### **1 Section 3.2. Business Day**

The definition of Business Day is similar to that contained in the 1991 Definitions. Refer to Part 3, above, for a discussion of relevant issues. The definition is relevant for determining the date for payments of premium (Section 2.5(c) - Premium Payment Date) and settlement payments (Section 5.1(d) - Settlement Date).

##### **2 Section 3.3. ECU Settlement Day**

The definition of ECU Settlement Day is similar to that set out in the 1998 Supplement. Refer to Part 3, above, for a discussion of the relevant issues.

##### **3 Section 3.4. Seller Business Day**

The definition of Seller Business Day refers to days on which "commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits)" in either a specified place (or places) or the place where the seller of the option is located. In some circumstances (where the seller is not a commercial bank), the relevant test is whether a day is a scheduled trading day on local securities exchanges in the relevant place (or places). The definition is relevant to the exercise provisions of the 1997 Bond Option Definitions. Both parts of the definition could be affected by millennium holidays and unscheduled bank or exchange closures caused by Y2K date change problems.

##### **4 Section 3.5. Exchange Business Day**

The definition of Exchange Business Day refers to days that are trading days on certain specified exchanges, other than days on which trading on the relevant exchange is scheduled to close prior to its regular weekday closing time. The definition is relevant to the exercise and valuation provisions of the 1997 Bond Option Definitions. Whether any day qualifies as an Exchange Business Day

turns on whether exchanges are open on that day. This could be affected by millennium holidays and unscheduled exchange closures.

## **5 Article 4. Exercise of Options**

5.1 Article 4 contains provisions relating to the exercise of options. Many of the dates relevant to these provisions are subject to adjustment in the event that the day originally designated is not an Exchange Business Day or a Seller Business Day:

- (a) the Expiration Date is adjusted if the date originally specified is not both an Exchange Business day and a Seller Business Day (Section 4.1(f) (Expiration Date));
- (b) days constituting the exercise period for an American-style option must be both Exchange Business Days and Seller Business Days (Section 4.1(a) (Exercise Period)); and
- (c) the time limit on the Buyer's ability to exercise pursuant to the Limited Right to Confirm Exercise provision is limited to ten Seller Business Days after the Expiration Date (Section 4.5(a)(ii)).

5.2 The ability of a buyer of an option to exercise that option may be affected by Y2K events (by virtue of such events affecting the question of whether a day is an Exchange Business Day and/or a Seller Business Day).

## **6 Article 6. Physical Settlement**

6.1 Following exercise of an option to which Physical Settlement applies, Y2K events may impact settlement provisions in a number of ways.

6.2 Unless the parties agree otherwise, physical settlement will take place on a delivery versus payment basis. If payment is postponed or adjusted due to the application of Business Day Conventions where the Settlement Date proves not to be a good Business Day as a result of a Y2K event, then the delivery obligation will also be adjusted (Section 6.1. (Physical Settlement)).

6.3 The Settlement Date for a physically-settled transaction may also be adjusted if a Settlement Disruption Event occurs on the Settlement Date (Section 6.2 (Settlement Disruption Event)). This provision allows settlement to be postponed for up to 30 calendar days (which ought to be sufficient time to take account of temporary problems caused by Y2K). A Settlement Disruption Event is "an event beyond the control of the parties as a result of which the Clearance System cannot clear the transfer" of the relevant bonds. This provision may be of assistance in addressing Y2K problems affecting clearance systems.

- 6.4 Section 6.4 (Failure to Deliver and Buy-in Procedures) deals with the situation where a party required to deliver bonds fails to do so. This is to be distinguished from the provisions relating to settlement disruption: if a Settlement Disruption Event occurs, the Settlement Date itself is postponed, so that these failure to deliver provisions do not apply.
- 6.5 A Y2K event affecting a party's systems might cause that party to fail to meet certain delivery obligations under transactions incorporating the 1997 Bond Option Definitions. In such cases, an Event of Default under any relevant ISDA Master Agreement would not occur until the other party had given notice of the failure and a grace period of three Local Business Days had elapsed (see Part 1 for a discussion of Local Business Days). Prior to that, the party expecting to receive bonds may demand security or execute a buy-in.

## **7 Article 7. Cash Settlement**

- 7.1 Following exercise of an option to which Cash Settlement applies, a Cash Settlement Amount is determined by reference to spot prices of the relevant bonds on the associated Exercise Date. Since an option can only be effectively exercised on a day that is both an Exchange Business Day and a Seller Business Day, exercise (and valuation) may be postponed as a result of Y2K events affecting the location in which the seller is located (see 2.3 and 2.4 above).
- 7.2 Valuation may be further postponed by a dispute over the spot price determination (Section 5.3 (Dispute Resolution)) because the time limits placed on the parties for this purpose are described by reference to Exchange Business Days. Where the dispute resolution provisions are used, therefore, the occurrence of Y2K events may delay this procedure.
- 7.3 Section 7.3 (Corrections to Published Prices) provides for adjustments to cash settlement payments to reflect subsequent corrections to published prices used to determine the Cash Settlement Amount payable. The period allowed for publication of corrections is 30 calendar days. A Y2K event might lead to an increased instance of incorrect prices being published. If the Calculation Agent relies on these incorrect prices, then the 30 calendar day period ought to be sufficient for the publisher to correct those prices.

**TABLE OF TERMS IN THE 1997 GOVERNMENT BOND OPTION DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY OR OTHER CONVENTIONS**

| <b>DEFINED TERM</b>   | <b>SECTION</b> | <b>EFFECT OF APPLYING RELEVANT ADJUSTMENT</b>  |
|---|----------------|--|
| Expiration Date<br>(Exercise Date for European Style Option; last day of Exercise Period for American Style Option) | 4.1 (f)        | Adjusts to next day that is both a Seller Business Day and an Exchange Business Day.                             |
| Premium Payment Date  | 2.5 (i)        | Adjusts in accordance with the Following Business Day Convention.  |
| Settlement Date   | 5.1 (d)        | Adjust in accordance with the Following Business Day Convention.<br>Note effect of Settlement Disruption Events. |

## **PART IX**

### **1998 ISDA EURO DEFINITIONS**

#### **A. Introduction**

The 1998 ISDA Euro Definitions (the "**Euro Definitions**") are designed to be used as a supplement to other sets of definitions and provisions published by ISDA. Many of the issues raised by Y2K in the context of the Euro Definitions are therefore covered in more detail in other the Parts of the Review. Where appropriate, reference is made to the relevant discussions in other Parts of the Review.

#### **B. Relevant Definitions**

##### **1 Section 2.2. ECU Settlement Day**

With certain minor additions, this definition is largely the same as the definition of ECU Settlement Day contained in the 1991 Definitions and the 1998 Supplement. A discussion of issues related to this definition is contained in Part III of the Review.

##### **2 Section 2.3. Euro Business Day**

2.1 This provision adapts the Business Day definitions found in the 1991 Definitions, the 1998 Supplement and the 1997 Bond Option Definitions for transactions in which the currency of payment/calculation is the euro. A discussion of issues related to this definition is contained in Part III of the Review.

2.2 Where payments are to be made in euros, whether a day constitutes a good "Business Day" depends on whether that day is a "TARGET Settlement Day".

##### **3 Section 2.1. TARGET Settlement Day**

3.1 This definition is relevant for the interpretation of the Business Day definition for euro payment obligations (see 2.2 above) and for certain Euro Rate Options (see 5 below).

3.2 A TARGET Settlement Day is essentially a day on which the TARGET system is open. The European Central Bank has also announced that the TARGET system will be closed on December 31, 1999. If the TARGET system were closed on any day due to the occurrence of a Y2K event, that day would not be a TARGET Settlement Day.

## **4 Section 2.4 Business Day and Banking Day Clarifications**

- 4.1 Section 2.4 of the Euro Definitions amends certain Business Day and Banking Day definitions used in other sets of definitions and provisions published by ISDA where the Euro Definitions and those other sets of definitions are relevant to a transaction. The amendments are designed to ensure that days on which banks are open in a particular location for purposes of settling euro payments should not be considered good Business Days or Banking Days where the relevant Business Day or Banking Day definition refers to banks being open for certain purposes in that location.
- 4.2 Other than these clarifications, Section 2.4 does not vary the principles discussed in Parts 3 and 4 above in relation to Business Days and Banking Days.<sup>7</sup> The effect of applicable Business Day Conventions will be the same.

## **5 Section 3.1 Euro Rate Options**

Section 3.1 introduces certain rate options for euros. The Y2K concerns are the same as those discussed in Parts III and IV above in relation to rate options contained in the 1998 Supplement and the 1991 ISDA Definitions. The only difference is that, instead of rates being determined on "Banking Days" in certain locations, rates determined using certain euro rate options are determined on TARGET Settlement Days. The analysis of the appropriate rate setting calendar is therefore determined by reference to whether the TARGET system is open rather than whether banks in a particular city are open.

## **6 Section 4.3 Legacy Transaction Price Source Fallbacks**

Section 4.3 of the Euro Definitions repeats certain provisions from Annex 2 of the ISDA EMU Protocol. It introduces fallbacks (in addition to the traditional form of reference bank fallback) for situations where a price source referred to in an agreement either disappears or is substantially modified. These provisions are unlikely to be of assistance where a price source fails temporarily due to a Y2K event.

## **7 Floating Rates in Legacy Transactions over the Millennium Weekend**

Market participants should note that Annex 2 of ISDA's EMU Protocol (the "**Protocol**") provides guidance on how to settle legacy transactions following the introduction of the Euro.

In particular, Annex 2 (d) of the Protocol ensures that fixing periods (the period between the date a rate is published and the date that rate becomes effective) are preserved when setting floating rates in respect of legacy transactions. Market participants should be aware that, in certain circumstances, the occurrence of

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<sup>7</sup> A similar analysis will apply where transactions are subject to Annex 4 of the ISDA EMU Protocol.

additional holidays over the millennium date change period, when combined with this approach of preserving fixing periods, could impact on the level of the floating rate.

The most obvious example of this effect is in relation to legacy transactions referring to FRF-PIBOR. FRF-PIBOR would originally have been quoted on the basis of a one day fixing period. The terms of the Protocol effectively require parties to such transactions to refer now to EURIBOR rates instead of PIBOR rates. EURIBOR is quoted on the basis of a two day fixing period. For FRF-PIBOR legacy transactions, the EURIBOR rate is used as though it were quoted on the basis of a one day fixing period. This means that EURIBOR rates quoted for deposits maturing after the millennium date change will be used in these legacy transactions, where, if a true one day fixing existed, the rate quoted would have been for deposits maturing prior to the millennium date change. The difference between rates over this period is significant.

Example: legacy transaction with a Reset Date falling on September 30, 1999 where the floating rate is expressed to be 3 month PIBOR. If PIBOR had continued to exist, the rate used would have been the 3 month PIBOR rate published on September 29 for value September 30 (i.e., for a deposit maturing on December 29, 1999). Now, the rate used will be the 3 month EURIBOR rate published on 29th September for value October 1 (i.e., for a deposit maturing December 31, 1999). In fact, because December 31 will be a TARGET holiday, the maturity date for the deposit rate will be the first good TARGET day in 2000.

This preservation of Fixing Periods is clearly described in the EMU Protocol and is an unavoidable consequence of the "settle as dealt" approach which was agreed following comprehensive market consultation prior to January 1999.

Market participants could choose to change this through bilateral agreement, but it is expected that most FRF-PIBOR legacy trades will settle according to terms of the EMU Protocol despite the unanticipated rate movement.

## **PART X**

### **1998 FX AND CURRENCY OPTION DEFINITIONS**

#### **A. Introduction**

The 1998 ISDA FX and Currency Option Definitions (the “**FX Definitions**”) are primarily an expansion of the 1992 ISDA FX and Currency Option Definitions. It is not proposed to discuss the 1992 ISDA FX and Currency Option Definitions in this Review. The FX Definitions provide a basic framework for the documentation of foreign exchange and currency option transactions and are intended for use in confirmations of individual transactions governed by (i) the 1992 ISDA Master Agreements; (ii) the International Foreign Exchange and Options Master Agreement (“FEOMA”); (iii) the International Currency Options Market Master Agreement (“ICOM”); or (iv) the International Foreign Exchange Master Agreement (“IFEMA”) or other similar agreements. The Review considers the FX Definitions only in the context of the ISDA Master Agreements.

Shortly after the publication of the FX Definitions, the User’s Guide to the 1998 FX and Currency Option Definitions (the “**User’s Guide to the FX Definitions**”) was published. The User’s Guide to the FX Definitions contains a detailed discussion of the provisions of the FX Definitions and, in particular, of the Disruption Events and Disruption Fallbacks that are a central focus of the FX Definitions. Industry participants are strongly advised to review the User’s Guide to the FX Definitions in anticipation of any Y2K problem.

#### **B. Relevant Definitions**

##### **1 Section 1.1. Business Day**

The definition of Business Day contained in the FX Definitions differs according to context. Except with respect to Transactions involving euro, the Business Day definition is tied to the concept of commercial banks being open for business, including dealings in foreign exchange. In relation to Transactions involving euro, the Business Day Definition is linked to days on which the TARGET system is open. A number of jurisdictions have declared December 31, 1999 and January 3, 2000 to be public or bank holidays with the effect that neither commercial banks nor foreign exchange markets are likely to be open on those dates. The European Central Bank has also announced that the TARGET system will be closed on December 31, 1999. Parties should be aware that these developments may reduce the number of Business Days occurring around the millennium date change. See also Appendix 1 to the Review.

## **2 Section 4.1(a). Multiple Price Sources; Section 4.5. Settlement Rate Options.**

Section 4.5 of the FX Definitions (contained in Annex A to the FX Definitions (“Annex A”)) sets out a series of Settlement Rate Options which (subject to Article 5 of the FX Definitions) apply for the purpose of determining a Spot Rate. A number of those Settlement Rate Options are drawn from electronic price sources. As discussed elsewhere in the Review, electronic price sources may be subject to disruption due to Y2K systems failures. Section 4.1(a) of the FX Definitions may be of some relevance in light of this potential problem. Section 4.1(a) addresses a situation where an applicable Settlement Rate Option is published or announced by more than one price source and the price source referred to in the Settlement Rate Option fails to publish or announce the relevant currency exchange rate on the Rate Calculation Date. In such circumstances, Section 4.1(a) of the FX Definitions provides significant flexibility by allowing the Spot Rate to be determined as if the parties had specified any other available price source that actually publishes or announces the currency exchange rate on the relevant Rate Calculation Date as the applicable Settlement Rate Option. This flexibility may be of assistance in the event of localized Y2K systems failures affecting individual price sources.

## **3 Section 4.7. Corrections to Published and Displayed Rates**

- 3.1 These comments are again relevant in the context of localized Y2K failures. Localized failures may result in incorrect prices being posted inadvertently in circumstances where correction is possible. This issue is addressed in Section 4.7 of the FX Definitions which is contained in Annex A. Section 4.7(a) provides that where a Spot Rate for a Rate Calculation Date is based on information obtained from the Reuter Monitor Money Rates Service or the Dow Jones Telerate Service, that Spot Rate is subject to corrections subsequently displayed within one hour of the time when the rate is first displayed. In accordance with Section 4.7(b), where the Relevant Rate is based on information published or announced by a Governmental Authority, the Spot Rate is subject to correction within five days of the Rate Calculation Date.
- 3.2 Institutions are reminded of the provisions of Section 4.7(c) concerning the giving of notice of corrections and the payment of appropriate amounts resulting from such corrections.

## **4 Section 5.1. Disruption Events; Section 5.2. Disruption Fallbacks**

- 4.1 The User’s Guide to the FX Definitions contains a highly detailed discussion of the Disruption Events and Disruption Fallbacks contained in the FX Definitions. As the User’s Guide to the FX Definitions states, by incorporating Disruption Events into a Transaction, parties are able to allocate certain event risks by providing (through the selection of Disruption Fallbacks) for an agreed method of

determining rates or settling Transactions upon the occurrence of certain events. The allocation of such risks in this manner promotes contractual certainty. The User's Guide to the FX Definitions describes the Disruption Event/Disruption Fallback provisions as addressing the following four types of event risks:

- (i) price source risks;
- (ii) convertibility and transferability risks;
- (iii) sovereign risks; and
- (iv) other risks.

4.2 It is, of course, impossible to predict with any certainty which (if any) of the thirteen Disruption events set out in the FX Definitions will be of particular relevance in the context of the Y2K date change problem. However, it seems that certain Disruption Events, such as Price Source Disruption, are more likely than others to be of relevance. Price Source Disruption addresses circumstances where it becomes impossible to obtain the relevant Settlement Rate on the Valuation Date (or, if different, the day on which rates for that Valuation Date would, in the ordinary course, be published or announced by the price source). The temporary unavailability of price sources may be one of the more disruptive consequences of Y2K-related systems failures. Since Non-Deliverable Transactions are always subject to price source risk, unless specified otherwise by the parties, Price Source Disruption applies automatically in respect of all Non-Deliverable Transactions. It is the only Disruption Event that is automatically applicable and it is automatically applicable *only* in the context of Non-Deliverable Transactions. The User's Guide to the Definition contains a detailed discussion of the timing and other issues associated with the Price Source Disruption Disruption Event.

4.3 The User's Guide to the FX Definitions also considers the relationship between the various Disruption Events and Illegality and Impossibility. Industry participants are advised to consider closely the discussion of Disruption Events and Disruption Fallbacks contained in the User's Guide to the FX Definitions. It is advisable that industry participants assess which Disruption Events and Disruption Fallbacks are specified as applicable to particular Transactions and to consider the implications of those Disruption Events and Disruption Fallbacks in the context of the Y2K date change problem.

**TABLE OF TERMS IN THE 1998 FX AND CURRENCY OPTION DEFINITIONS SUBJECT TO AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS**

| DEFINED TERM            | SECTION     | EFFECT OF APPLYING RELEVANT ADJUSTMENT   |
|-------------------------|-------------|--|
| Averaging Date          | 3.8 (a)     | Subject to contrary agreement, adjust in accordance with Preceding Business Day Convention.  |
| Early Termination Date  | 5.2(c) (ix) | Refer to the Master Agreement. Note that a notice designating an Early Termination Date is subject to the Local Business Day definition contained in Section 14 of the Master Agreement.   |
| Euro Settlement Date    | 1.11        | Descriptive definition. Subject to adjustment depending upon the use to which the definition is put. E.g., if linked to Settlement Date, apply the Following Business Day Convention, subject to contrary agreement.   |
| Exercise Date           |             | See Exercise Period  |
| Exercise Period         | 3.5(c)      | <p><i>American style Currency Option Transaction:</i> Exercisable on all Business Days from Commencement Date to Expiration Date. Expiration Date adjusts in accordance with the Following Business Day Convention, subject to contrary agreement.</p> <p><i>European style Currency Option Transaction:</i> Expiration Date adjusts in accordance with the Following Business Day Convention, subject to contrary agreement.</p> <p><i>Bermuda style Currency Option Transaction:</i> May be exercised on each Specified Exercise Date from Commencement Date to Expiration Date. Specified Exercise Date and Expiration Date adjust in accordance with the Following Business Day Convention, subject to contrary agreement.</p> |
| Expiration Date         | 3.5(d)      | Adjusts in accordance with the Following Business Day Convention, subject to contrary agreement.   |
| Payment Date            | 1.24        | Adjusts in accordance with the Following Business Day Convention, subject to contrary agreement.   |
| Premium Payment Date    | 3.4 (b)     | Adjusts in accordance with the Following Business Day Convention, subject to contrary agreement.   |
| Settlement Date         | 1.24        | Adjusts in accordance with the Following Business Day Convention, subject to contrary agreement.   |
| Specified Exercise Date | 3.5 (h)     | Adjusts in accordance with the Following Business Day Convention, subject to contrary agreement.   |
| Valuation Date          | 1.16 (f)    | If a Valuation Date is specified or otherwise determinable, adjusts in accordance with the Preceding Business Day Convention, subject to contrary agreement.   |

## **PART XI**

### **1999 ISDA CREDIT DERIVATIVES DEFINITIONS**

#### **A. Introduction**

The 1999 ISDA Credit Derivatives Definitions (the "**Credit Derivatives Definitions**") are intended for use in confirmations of individual credit derivative transactions. The Credit Derivatives Definitions are primarily intended for use in credit default products, but elements of them can be used to document transactions that reference baskets of reference entities, total-return swaps or credit-linked notes.

#### **B. Relevant Definitions**

##### **1 Section 1.15. Business Day**

1.1 The Business Day definition is relevant in the context of a number of other definitions throughout the Credit Derivatives Definitions, principally in relation to the question of whether a day constitutes a "good day" for valuation or settlement purposes. If a relevant date falls on a day that is not a Business Day, it will be adjusted in accordance with the appropriate Business Day Convention. A Business Day is defined as a day on which commercial banks and foreign exchange markets are generally open to settle payments in the place or places and on the days specified for that purpose in the relevant Confirmation and, if a place or places are not so specified, in the jurisdiction of the currency of the Floating Rate Payer Calculation Amount.

1.2 Due to the numerous scheduled public holidays, bank closure, and exchange closure days around the millennium date change (see Appendix 1 to the Review), parties' expectations of the Business Day calendar applicable to their credit derivative transactions may vary. It is also possible, due to a significant Y2K event affecting, for example, either the central bank or payments system in a particular jurisdiction, that one or more unscheduled bank holidays or bank closures may occur.

1.3 Industry participants should ensure that they are aware of the impact of relevant Business Day Conventions (see Section below and Appendix 2 to the Review).

##### **2 Section 1.8. Event Determination Date; Section 3.4. Notice of Intended Physical Settlement**

The Event Determination Date is the date on which the Credit Event Notice and/or the Notice of Publicly Available Information is effective. The Buyer has thirty calendar days after the Event Determination Date in which to give Notice of Intended Physical Settlement. Industry participants are reminded that a Y2K disruption affecting Public Sources (such as Bloomberg, Telerate, Reuters, etc.) could delay the Buyer's ability to obtain the Specified Number of Public Sources

as indicated in the relevant Confirmation in order to be able to deliver an effective Notice of Publicly Available Information, if applicable to a credit derivative transaction. Such a delay could postpone the setting of the Event Determination Date beyond the Scheduled Termination Date and any applicable Grace Period Extension.

### **3 Section 1.11. Grace Period; Grace Period Business Day; Section 1.10. Grace Period Extension Date**

3.1 The purpose of these definitions is to introduce the concept of a minimum grace period with respect to Obligations, and, in particular, with respect to a Potential Failure to Pay Credit Event that occurs on or before the Scheduled Termination Date. In effect, Obligations that do not provide for a grace period with respect to payments, or provide for a grace period with respect to payments of less than three Grace Period Business Days, will be deemed to provide for a Grace Period of three Grace Period Business Days. Unless Grace Period Extension for the Failure to Pay Credit Event is specified as applicable in the related Confirmation, this minimum Grace Period shall expire no later than the Scheduled Termination Date.

3.2 Therefore, in the event of a Potential Failure to Pay Credit Event that occurs close to the Scheduled Termination Date, any applicable Grace Period may be shorter than three Grace Period Business Days unless Grace Period Extension is specified as applicable in the Confirmation. Industry participants are reminded that a Grace Period Business Day is defined as a day on which commercial banks and foreign exchange markets are generally open to settle payments in the place or places and on the days specified for that purpose in the relevant Obligation and, if a place or places are not so specified, in the jurisdiction of the currency of denomination of the relevant Obligation.

3.3 As with other Business Day related definitions, industry participants should be aware of the impact of scheduled or unscheduled bank and payment system closures on their transactions. In the event of unscheduled closures, a Grace Period could extend much longer, in calendar days, than expected.

### **4 Section 1.17. ISDA Master Agreement**

The Credit Derivatives Definitions make use of certain terms from the standard form ISDA Master Agreement (Multicurrency - Cross Border). Part 1 of the Review contains a discussion of the potential impact of Y2K-related events on those terms, such as "Event of Default" (Section 2), "Illegality" (Section 3) and "Market Quotation" (Section 5).

### **5 Section 2.11. Business Day Convention**

The Credit Derivatives Definitions allow parties to select a Business Day Convention for each date in the Confirmation. If a Business Day Convention is not selected for a relevant date in the Confirmation, but a Business Day

Convention is specified in the Confirmation, that Business Day Convention will apply to all relevant dates not falling on a Business Day. If a Confirmation does not specify a Business Day Convention, the Modified Following Business Day Convention shall apply to all relevant dates. Industry participants are reminded that this may have the effect of shortening the protection period of the credit derivative transaction if the effect of applying this Business Day Convention is to move the Scheduled Transaction Date to the preceding Business Day. Appendix 2 to the Review outlines the impact of the Business Day Conventions over the millennium date change.

## **6 Section 3.3. Credit Event Notice**

A party may give notice of a Credit Event, as defined in the Credit Derivatives Definitions and discussed below in Section 9. The Credit Event Notice may be given orally by the notifying party to be followed by a written confirmation as required in Section 3.9 of the Credit Derivatives Definitions. The Credit Event that is the subject of the Credit Event Notice need not be continuing on the date that the Credit Event Notice is effective. Therefore, disruptions related to the millennium date change could trigger a Credit Event, such as a Potential Failure To Pay, which can form the basis of an effective Credit Event Notice even if the Credit Event is not continuing at the time of notice. This may be a relevant consideration where a temporary failure caused by Y2K-related systems failure results in a default under a Reference Obligation (see Section 9 below).

## **7 Section 3.5. Publicly Available Information**

Publicly Available Information means information that reasonably confirms any of the facts relevant to the determination that the Credit Event described in the Credit Event Notice has occurred and which has been published in not less than the Specified Number of internationally recognized published or electronically displayed news sources listed in the Confirmation as Public Sources. In the event of a temporary failure on the part of a major news source to publish as a result of a Y2K-related event, a notifying party required to give Notice of Publicly Available Information may not be able to meet this Condition to Payment within the Notice Delivery Period. Industry participants are reminded that the Notice Delivery Period includes the period from the Effective Date specified in the Confirmation until and including the date that is fourteen calendar days after the Scheduled Termination Date or the Grace Period Extension Date if specified as applicable in the related Confirmation.

## **8 Section 4.1. Credit Event**

- 8.1 Credit Event means, with respect to a Credit Derivative Transaction, one or more of Bankruptcy, Failure to Pay, Obligation Acceleration, Obligation Default, Repudiation/Moratorium, or Restructuring, as specified in the related Confirmation.

8.2 Industry participants are reminded that if an occurrence would otherwise constitute a Credit Event, such occurrence will constitute a Credit Event whether or not such occurrence arises directly or indirectly from: (a) any lack or alleged lack of authority or capacity of a Reference Entity to enter into any Obligation, (b) any actual or alleged unenforceability, illegality, impossibility, or invalidity with respect to any Obligation, however described, (c) any applicable law, order, regulation, decree or notice, however described, or the promulgation of, or any change in, the interpretation by any court, tribunal, regulatory authority or similar administrative or judicial body with competent or apparent jurisdiction of any applicable law, order, regulation, decree or notice, however described, or (d) the imposition of, or any change in any exchange controls, capital restrictions or any other similar restrictions imposed by any monetary or other authority, however described.

8.3 It is possible that a Failure to Pay Credit Event may arise during the millennium date change period due to impossibility. For example, a Reference Entity may be unable to make certain payments on its Obligations due to a Y2K-related failure in the systems of any relevant third party used to effect payments for the Reference Entity. Parties to a Credit Derivative Transaction have the option of specifying a Grace Period Extension for the Failure to Pay Credit Event in the Confirmation to avoid triggering a Credit Event that is not related to a downgrade in the creditworthiness or financial condition of the Reference Entity. As mentioned in Section 7 of this Part XI, the notifying party may deliver an effective Credit Event Notice even if the Credit Event is no longer continuing at that time. Therefore, a short period in which payment is impossible, due to Y2K disruptions, could trigger a Failure to Pay Credit Event without an applicable Grace Period or Grace Period Extension being specified in the relevant Confirmation.

**9 Section 7.1. Cash Settlement; 7.2. Cash Settlement Date; Section 7.3. Cash Settlement Amount; Section 7.4. Final Price; Section 7.8(a) Quotation**

9.1 The parties to a Confirmation may specify Cash Settlement as the means of settlement. If no Cash Settlement Amount is specified, the Cash Settlement Date will be the number of Business Days specified in the Confirmation (if none is so specified, then three Business Days) following the calculation of the Final Price. The Calculation Agent must calculate the Final Price using the Valuation Method specified in the Confirmation. As explained below, the Calculation Agent may require a number of days to determine the Final Price and then the Cash Settlement Amount depending on the availability of Quotations from Dealers.

9.2 In order to calculate the Final Price, the Calculation Agent must attempt to obtain Full Quotations from five Dealers with respect to an Obligation on each Valuation Date or on the Single Valuation Date as specified in the Confirmation. If the Calculation Agent is unable to obtain at least two Full Quotations on the same Business Day within three Business Days of a Valuation Date, he/she must continue to attempt to do so or to obtain a Weighted Average Quotation for at least 10 Business Days. In the event that neither the Calculation Agent nor either

party to the transaction is able to obtain at least two Full quotations or a Weighted Average Quotation on the same Business Day within an additional Five Business Days, the Quotations shall be deemed to be zero. The effect of this is that the full value of the credit derivative transaction must be paid by Seller to Buyer.

- 9.3 It is conceivable that, due to Y2K date change problems, Dealers will be out of operation temporarily or subject to a very high volume of requests for Quotations. It is also possible that the media through which such quotations are conveyed will be out of order temporarily.
- 9.4 If Dealers that provide the necessary Quotations are unable to do so because of Y2K disruptions, the Calculation Agent may be delayed in determining the Final Price in order to calculate the Cash Settlement Amount. In the alternative, if the Calculation Agent and/or the parties are unable to obtain two Full Quotations or a Weighted Average Quotation on the same Business Day within the requisite period, the Quotations shall be deemed to be zero by the Calculation Agent in determining the Final Price.

**10 Section 9.4. Partial Cash Settlement Due to Impossibility and Illegality; Section 9.8. Latest Permissible Physical Settlement Date**

- 10.1 Industry participants are reminded that, if, due to an event beyond the control of Buyer, it is impossible or illegal for Buyer to Deliver, or due to an event beyond the control of Seller, it is impossible or illegal for Seller to accept Delivery of, any portion of the Portfolio specified in the Notice of Intended Physical Settlement on the Physical Settlement Date (including, without limitation, failure of the relevant clearance system or due to any law, regulation or court order, but not including market conditions or the failure to obtain requisite consent with respect to the Delivery of Loans), and such portion of the Portfolio that was not Delivered to Seller remains undeliverable on or prior to the Latest Permissible Physical Settlement Date, then Cash Settlement pursuant to the Partial Cash Settlement Terms shall be deemed to apply.
- 10.2 The Latest Permissible Physical Settlement Date for Obligations is 30 Business Days after the Physical Settlement Date. The Latest Permissible Physical Settlement Date for Assignable Loans, Consent Required Loans or Participations is fifteen Business Days after the Physical Settlement Date.
- 10.3 If the clearance system that was to deliver the Portfolio is unable to do so because of Y2K-related failure, such a failure would fall within the exception that allows delayed Physical Settlement or Partial Cash Settlement. In the event that the affected clearance system is unable to correct the failure by the Latest Permissible Physical Settlement Date, the parties to the credit derivative transaction may use the Partial Cash Settlement Terms in Section 9.9 of the Credit Derivatives Definitions.
- 10.4 Partial Cash Settlement Due to Impossibility and Illegality is a broadly drafted term, therefore, other Y2K-related failures, such as a failure in the custody system which holds the Obligations, could also arguably fall within the Impossibility

rubric and could excuse or delay full Physical Settlement on the Physical Settlement Date, possibly resulting in partial cash settlement.

**TABLE OF TERMS IN THE 1999 CREDIT DERIVATIVES DEFINITIONS SUBJECT TO  
AMENDMENT IN ACCORDANCE WITH PARTICULAR BUSINESS DAY CONVENTIONS**

| <b>DEFINED TERM</b>              | <b>SECTION</b> | <b>EFFECT OF APPLYING RELEVANT ADJUSTMENT</b>  |
|----------------------------------|----------------|--|
| Business Day                     | 1.15           | Descriptive definition. A day on which commercial banks and foreign exchange markets are generally open to settle payments in the place or places and on the days specified for that purpose in the relevant Confirmation and, if a place or places are not so specified, in the jurisdiction of the currency of the Floating Rate Payer Calculation Amount. |
| Effective Date                   | 1.4            | Apply Business Day Convention specified in the Confirmation for the defined term. If none is specified, apply the Business Day Convention specified generally in the Confirmation. If none is specified, apply the fallback Modified Following Business Day Convention.  |
| Scheduled Termination Date       | 1.6            | Apply Business Day Convention specified in the Confirmation for the defined term. If none is specified, apply the Business Day Convention specified generally in the Confirmation. If none is specified, apply the fallback Modified Following Business Day Convention.  |
| Termination Date                 | 1.7            | Adjusts in accordance with the Business Day Convention specified for the relevant term that determines the Termination Date. If none is specified, apply the fallback Modified Following Business Day Convention.  |
| Fixed Rate Payer Period End Date | 2.8            | Apply Business Day Convention specified in the Confirmation for the defined term. If none is specified, apply the Business Day Convention specified generally in the Confirmation. If none is specified, apply the fallback Modified Following Business Day Convention. See also Fixed Rate Payer Payment Date.  |
| Fixed Rate Payer Payment Date    | 2.10           | Apply Business Day Convention specified in the Confirmation for the defined term. If none is specified, apply the Business Day Convention specified generally in the Confirmation. If none is specified, apply the fallback Modified Following Business Day Convention.  |

| <b>DEFINED TERM</b>        | <b>SECTION</b> | <b>EFFECT OF APPLYING RELEVANT ADJUSTMENT</b>   |
|----------------------------|----------------|---|
| Settlement Date            | 6.2            | See Cash Settlement Date and Physical Settlement Date.  |
| Cash Settlement Date       | 7.2            | Apply Business Day Convention specified in the Confirmation for the defined term. If none is specified, apply the Business Day Convention specified generally in the Confirmation. If none is specified, apply the fallback Modified Following Business Day Convention. |
| Valuation Date             | 7.5            | Apply Business Day Convention specified in the Confirmation for the defined term. If none is specified, apply the Business Day Convention specified generally in the Confirmation. If none is specified, apply the fallback Modified Following Business Day Convention. |
| Physical Settlement Date   | 8.3            | Descriptive definition. The date that is the number of Business Days constituting the Physical Settlement Period following the satisfaction of all applicable Conditions to Payment.  |
| Physical Settlement Period | 8.5            | Apply Business Day Convention specified in the Confirmation for the defined term. If none is specified, apply the Business Day Convention specified generally in the Confirmation. If none is specified, apply the fallback Modified Following Business Day Convention. |

## APPENDIX 1

### GLOBAL 2000 COORDINATING GROUP BANK HOLIDAY CALENDAR

The text and calendar set out below were produced by Global 2000 on the basis of contributions received from industry participants.

#### I. Purpose of this document

This document sets out to the best of our knowledge the declared public holidays where these are known. This is provided for information and those using this are advised to perform their own due diligence where necessary. Please forward any additions or changes to the Global 2000 Co-ordinating Group for inclusion.

Entries in italics indicate changes since the previous version.

**Key:** B = Bank Holiday only

E = Exchange holiday only

H = Half day (early close)

Closed = All of the above

???? = Country not mentioned in contributing calendars

|                        | Thu         | Fri           | Sat        | Sun        | Mon         | Tue        |
|------------------------|-------------|---------------|------------|------------|-------------|------------|
|                        | 30-Dec-1999 | 31-Dec-1999   | 1-Jan-2000 | 2-Jan-2000 | 3-Jan-2000  | 4-Jan-2000 |
| Angola                 |             |               | Closed     | Closed     |             |            |
| Argentina              |             | Closed        | Closed     | Closed     |             |            |
| Australia              |             | E             | Closed     | Closed     | Closed      |            |
| Austria                | E           | <i>Closed</i> | Closed     | Closed     |             |            |
| Bahamas                |             |               | Closed     | Closed     |             |            |
| Bangladesh             |             | B             | Closed     | Closed     |             |            |
| Belgium                |             | Closed        | Closed     | Closed     | * See Notes |            |
| Bolivia                |             | BH            | Closed     | Closed     |             |            |
| Botswana               |             |               | Closed     | Closed     |             |            |
| Brazil                 |             | B             | Closed     | Closed     |             |            |
| British Virgin Islands |             |               | Closed     | Closed     | Closed?     |            |
| Bulgaria               |             | Closed        | Closed     | Closed     |             |            |
| Canada                 |             | EH            | Closed     | Closed     | Closed      |            |
| Cayman Islands         |             |               | ?????      | ?????      |             |            |
| Channel Islands        |             | Closed        | Closed     | Closed     | Closed      |            |
| Chile                  |             | Closed        | Closed     | Closed     |             |            |
| China                  |             |               | Closed     | Closed     |             |            |
| Colombia               | Closed      | Closed        | Closed     | Closed     |             |            |
| Costa Rica             | Closed      | Closed        | Closed     | Closed     |             |            |

|                    | Thu         | Fri           | Sat        | Sun        | Mon        | Tue        |
|--------------------|-------------|---------------|------------|------------|------------|------------|
|                    | 30-Dec-1999 | 31-Dec-1999   | 1-Jan-2000 | 2-Jan-2000 | 3-Jan-2000 | 4-Jan-2000 |
| Croatia            |             |               | Closed     | Closed     |            |            |
| Cyprus             |             |               | Closed     | Closed     |            |            |
| Czech Republic     |             | E, *See Notes | Closed     | Closed     | *See Notes |            |
| Denmark            |             | EH            | Closed     | Closed     |            |            |
| Dominican Republic |             | H             | Closed     | Closed     |            |            |
| Ecuador            |             |               | Closed     | Closed     |            |            |
| Estonia            |             | Closed        | Closed     | Closed     |            |            |
| Egypt              | H           | Closed        | Closed     | H          | H          | H          |
| Finland            |             | EH            | Closed     | Closed     |            |            |
| France             |             | Closed        | Closed     | Closed     |            |            |
| Germany            |             | Closed        | Closed     | Closed     |            |            |
| Ghana              |             |               | Closed     | Closed     | Closed     |            |
| Greece             |             | Closed (tbc)  | Closed     | Closed     |            |            |
| Guatemala          |             | Closed        | Closed     | Closed     |            |            |
| Haiti              |             | H             | Closed     | Closed     |            |            |
| Honduras           |             | Closed        | Closed     | Closed     |            |            |
| Hong Kong          |             |               | Closed     | Closed     |            |            |
| Hungary            | E           | E             | Closed     | Closed     | E          |            |
| India              |             |               | BH         | Closed     |            |            |
| Indonesia          |             | E? H?         | Closed     | Closed     |            |            |
| Ireland            |             | Closed        | Closed     | Closed     | Closed     |            |
| Israel             |             | Closed        | Closed     | Closed     |            |            |
| Italy              |             | Closed        | Closed     | Closed     |            |            |
| Ivory Coast        |             |               | ?????      | ?????      |            |            |
| Jamaica            |             |               | Closed     | Closed     |            |            |
| Japan              | E, H        | Closed        | Closed     | Closed     | Closed     |            |
| Jordan             |             |               | ?????      | ?????      |            |            |
| Kenya              |             |               | Closed     | Closed     |            |            |
| Korea              | E           | Closed        | Closed     | Closed     | Closed     |            |
| Latvia             |             | Closed        | Closed     | Closed     |            |            |
| Lebanon            |             | Closed        | Closed     | Closed     | Closed     |            |
| Liechtenstein      |             |               | Closed     | Closed     |            |            |
| Lithuania          |             |               | Closed     | Closed     |            |            |
| Luxembourg         |             | Closed        | Closed     | Closed     |            |            |
| Malaysia           |             | Closed        | Closed     | Closed     |            |            |
| Malta              |             |               | Closed     | Closed     |            |            |

|                              | Thu         | Fri         | Sat        | Sun        | Mon        | Tue        |
|------------------------------|-------------|-------------|------------|------------|------------|------------|
|                              | 30-Dec-1999 | 31-Dec-1999 | 1-Jan-2000 | 2-Jan-2000 | 3-Jan-2000 | 4-Jan-2000 |
| <b>Mauritius</b>             |             |             | Closed     | Closed     |            |            |
| <b>Mexico</b>                |             | Closed      | Closed     | Closed     |            |            |
| <b>Mozambique</b>            |             |             | Closed     | Closed     |            |            |
| <b>Namibia</b>               |             |             | ?????      | ?????      |            |            |
| <b>Netherlands</b>           |             | Closed      | Closed     | Closed     |            |            |
| <b>New Zealand</b>           |             |             | Closed     | Closed     | Closed     | Closed*    |
| <b>Norway</b>                |             | BH, E       | Closed     | Closed     |            |            |
| <b>Pakistan</b>              |             | B           | Closed     | Closed     |            |            |
| <b>Panama</b>                |             | B           | Closed     | Closed     |            |            |
| <b>Papua New Guinea</b>      |             | H           | Closed     | Closed     |            |            |
| <b>Paraguay</b>              |             | Closed      | Closed     | Closed     |            |            |
| <b>Peru</b>                  |             | E           | Closed     | Closed     |            |            |
| <b>Philippines</b>           | Closed      | Closed      | Closed     | Closed     |            |            |
| <b>Poland</b>                |             | E, B?, H?   | Closed     | Closed     |            |            |
| <b>Portugal</b>              |             |             | Closed     | Closed     |            |            |
| <b>Puerto Rico</b>           |             |             | Closed     | Closed     |            |            |
| <b>Romania</b>               |             |             | Closed     | Closed     |            |            |
| <b>Russia</b>                |             | E           | Closed     | Closed     | Closed     | Closed     |
| <b>Saudi Arabia</b>          |             | Closed      | Closed?    |            |            |            |
| <b>Singapore</b>             |             | Closed      | Closed     | Closed     |            |            |
| <b>Slovak Republic</b>       |             | Closed      | Closed     | Closed     |            |            |
| <b>South Africa</b>          | E           | Closed      | Closed     | Closed     | Closed     |            |
| <b>Spain</b>                 |             | H           | Closed     | Closed     |            |            |
| <b>Sri Lanka</b>             | Closed      | Closed      | Closed     | Closed     |            |            |
| <b>Sweden</b>                |             | Closed      | Closed     | Closed     |            |            |
| <b>Switzerland</b>           |             | Closed      | Closed     | Closed     | B, E*      |            |
| <b>Taiwan</b>                |             |             | Closed     | Closed     | B          |            |
| <b>Thailand</b>              |             | Closed      | Closed     | Closed     | Closed     |            |
| <b>Trinidad &amp; Tobago</b> |             |             | Closed     | Closed     |            |            |
| <b>Turkey</b>                |             |             | Closed     | Closed     |            |            |
| <b>Uganda</b>                |             |             | Closed     | Closed     |            |            |
| <b>United Arab Emirates</b>  |             | Closed      | Closed     |            |            |            |
| <b>United Kingdom</b>        | EH          | Closed      | Closed     | Closed     | Closed     |            |
| <b>United States</b>         |             | EH*         | Closed     | Closed     | *          |            |
| <b>Uruguay</b>               |             | H           | Closed     | Closed     |            |            |
| <b>Venezuela</b>             |             |             | Closed     | Closed     |            |            |
| <b>Zambia</b>                |             |             | Closed     | Closed     |            |            |

|                 | Thu         | Fri         | Sat        | Sun        | Mon        | Tue        |
|-----------------|-------------|-------------|------------|------------|------------|------------|
|                 | 30-Dec-1999 | 31-Dec-1999 | 1-Jan-2000 | 2-Jan-2000 | 3-Jan-2000 | 4-Jan-2000 |
| <b>Zimbabwe</b> |             |             | Closed     | Closed     |            |            |

Notes: Belgium, 3rd January 2000 - banks, markets and clearing open, bank branches closed  
India, 1st January 2000 - A working day for some parts of the market to allow testing  
United States, 31st December 1999 - NYSE and NASDAQ closed in the afternoon  
United States, 31st December 1999 and 3rd January 1999 - NYMEX closed

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**APPENDIX 2**  
**TABLE OF ISDA BUSINESS DAY CONVENTIONS**

For the purposes of the table overleaf, it is assumed the following calendar is applicable over the millennium date change period:

**December 31, 1999:** With a view to facilitating the transition into the year 2000, a number of jurisdictions (including the United Kingdom) have declared December 31, 1999 to be a public holiday. Consequently, banks and foreign exchange markets in those jurisdictions will not settle payments on that date. The European Central Bank has also announced that the TARGET system (including the Interlink mechanism and all domestic euro RTGS systems participating in or connected to TARGET) will be closed on that date.

**January 1, 2000:** Saturday

**January 2, 2000:** Sunday

**January 3, 2000:** Public holiday in a number of jurisdictions with the effect that banks and foreign exchange markets in those jurisdictions will not settle payments on that date. The TARGET system will operate on January 3, 2000.

**January 4, 2000:** Normal business day in the majority of jurisdictions.

**TABLE: IMPACT OF BUSINESS DAY CONVENTIONS OVER THE MILLENNIUM DATE CHANGE PERIOD ASSUMING THE ABOVE CALENDAR**

| <b>SPECIFIED BUSINESS DAY CONVENTION</b>         | <b>RELEVANT DATE</b> | <b>ADJUSTMENT TO RELEVANT DATE</b> |
|--|----------------------|------------------------------------|
| <b>“Following”</b>                               | December 31, 1999    | Adjust to January 4, 2000          |
| <b>“Following”</b>                               | January 3, 1999      | Adjust to January 4, 2000          |
| <b>“Modified Following”</b> or <b>“Modified”</b> | December 31, 1999    | Adjust to December 30, 1999        |
| <b>“Modified Following”</b> or <b>“Modified”</b> | January 3, 1999      | Adjust to January 4, 2000          |
| <b>“Preceding”</b>                               | December 31, 1999    | Adjust to December 30, 1999        |
| <b>“Preceding”</b>                               | January 3, 1999      | Adjust to December 30, 1999        |
| <b>“Nearest”</b> <sup>8</sup>                    | December 31, 1999    | Adjust to December 30, 1999.       |
| <b>“Nearest”</b>                                 | January 3, 2000      | Adjust to January 4, 2000          |
| <b>“FRN Convention”</b>                          | December 31, 1999    | Adjust to December 30, 1999.       |
| <b>“FRN Convention”</b>                          | January 3, 2000      | Adjust to January 4, 2000          |

<sup>8</sup> The Nearest Business Day Convention is relevant to the 1998 FX and Currency Option Definitions and the 1993 ISDA Commodity Derivatives Definitions.

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