

# ALLEN & OVERY

10 East 50th Street  
New York, NY 10022

Telephone: (212) 610 6300  
Fax (Group 3): (212) 610 6399  
Fax (Group 4): (212) 610 6359

[www.allenoverly.com](http://www.allenoverly.com)

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1st August, 2001

International Swaps and Derivatives Association, Inc.  
600 Fifth Avenue, 27th Floor  
Rockefeller Center  
New York, New York 10022  
U.S.A.

Ladies and Gentlemen:

## **2001 ISDA Credit Support Protocol**

We have acted as your counsel as to matters of the laws of the State of New York in connection with the 2001 ISDA Credit Support Protocol (the "Protocol") that you ("ISDA") are publishing today.

The Protocol has been developed to enable parties to an ISDA Master Agreement<sup>1</sup> having a Schedule a part of which is a 1995 ISDA Credit Support Annex (Bilateral Form - Transfer - English Law) or a 1994 ISDA Credit Support Annex (Bilateral Form - New York Law) (each an "ISDA CSA" and the latter the "New York CSA")) to confirm their intentions in respect of certain potential amendments to the standard form of each of those ISDA CSA's published by ISDA.

An ISDA CSA supplements, forms part of and is subject to the ISDA Master Agreement. The New York CSA is intended to be used in conjunction with an ISDA Master Agreement subject to the laws of the State of New York. The ISDA Master Agreement expressly contemplates that it may be amended and supplemented from time to time. Its modular architecture provides an open-ended framework to facilitate the ongoing trading relationship of the parties. Relevant sections of the ISDA Master Agreement provide that an amendment or modification of the agreement may be made if it is in writing, and contemplate amendments and modifications that are executed and delivered in counterparts.<sup>2</sup>

Consistent with these provisions of the ISDA Master Agreement, the Protocol provides a mechanism utilizing standardized counterparts to facilitate multiple bilateral amendments to an existing ISDA Master Agreement

<sup>1</sup> This term refers to the 1992 ISDA Master Agreement (Multicurrency--Cross Border), the 1992 ISDA Master Agreement (Local Currency--Single Jurisdiction), the 1987 ISDA Interest Rate and Currency Exchange Agreement and the 1987 ISDA Interest Rate Swap Agreement, in the case of the New York CSA (as defined above). Reference should be made to Appendix G to the "User's Guide to the 1994 Credit Support Annex" when using the New York CSA in conjunction with the agreements published in 1987.

<sup>2</sup> This is implied in the agreements published in 1987 by provisions permitting counterparts executions of both the agreements and related confirmations.

*The firm is a multinational partnership, including Members of the Bar of the State of New York, Solicitors of the Supreme Court of England and Wales, Members of the Bar of the Netherlands and Foreign Legal Consultants in the State of New York. A list of names of the partners and their professional qualifications is open to inspection at the above office.*

AMSTERDAM ANTWERP BANGKOK BEIJING BRATISLAVA BRUSSELS BUDAPEST DUBAI FRANKFURT HAMBURG HONG KONG  
LONDON LUXEMBOURG MADRID MILAN MOSCOW NEW YORK PARIS PRAGUE ROME SINGAPORE TIRANA TOKYO TURIN WARSAW

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of which an ISDA CSA is a part. By executing and delivering to ISDA an Adherence Letter, a party to such an ISDA Master Agreement may adhere to the Protocol. The Adherence Letter must be substantially in the form attached as an exhibit to the Protocol, and it appoints ISDA as the relevant Adhering Party's agent for the limited purposes of the Protocol. In each Adherence Letter, a party may only elect one or more of the amendments contemplated in the Protocol. A party may not specify additional provisions, conditions or limitations in its Adherence Letter or otherwise.

A party is required to deliver to ISDA both a manually signed original Adherence Letter and a conformed copy. ISDA intends to display electronically on its website a record, as well as a conformed copy, of each Adherence Letter it receives.

The elections that may be made are set out in the Annexes to the Protocol. Where two parties submit qualifying Adherence Letters, they may effect one or more amendments to any ISDA CSA between them. As between any two parties, the scope of any modification to an ISDA CSA is determined by the elections made by both parties. If either party has specified a preference that less than all the Annexes to the Protocol are applicable, the ISDA CSA will be modified only by the amendments contained in each Annex to the Protocol elected by both parties. If both parties have specified a preference that all the Annexes to the Protocol are applicable, the ISDA CSA will be modified by the amendments contained in each of the Annexes to the Protocol.

Adherence to the Protocol is open until January 31, 2002. That adherence, once effective, is expressed in Section 5(c) of the Protocol to be irrevocable except that, by subsequently delivering a qualifying notice, a party may designate a date earlier than January 31, 2002 as the last date on which any counterparty may adhere to the Protocol in respect of any ISDA CSA between them.

On the basis of the foregoing, and having regard to such legal considerations as we deem relevant and subject as set out below, we are of the opinion that:

- (a) the delivery to ISDA of an Adherence Letter by each of the two parties to an ISDA Master Agreement subject to the laws of the State of New York having a Schedule a part of which is a New York CSA (a "New York Master") on the terms set out in the Protocol will be sufficient under the laws of the State of New York to confirm or vary terms of that New York Master as contemplated by the Protocol;
- (b) where the parties have each specified in their Adherence Letters a preference that different Annexes to the Protocol are applicable, a New York Master between them will be confirmed or varied only by the amendments set out in the Annexes, if any, which they have both specified as applicable;
- (c) each affected New York Master confirmed or varied by amendments set out in Annexes to the Protocol specified by both parties as described in (b) above will be enforceable as so amended in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws affecting creditors' rights generally from time to time in effect and to general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law; and
- (d) the limited ability of a party to revoke its adherence to the Protocol in accordance with the procedures set out in Section 5(c) of the Protocol would be recognized under the laws of the State of New York.

August 1, 2001

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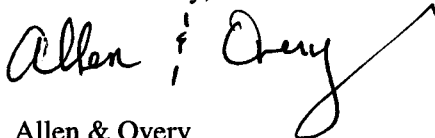
This opinion relates only to an affected New York Master, is confined solely to the contract laws of the State of New York and we have made no investigation of, and no opinion is expressed or implied as to, any other laws. This opinion is also subject to the following assumptions:

- (i) each affected New York Master has been duly authorized and executed by each party and constitutes the legal, valid and binding obligation of each party to that New York Master enforceable in accordance with its terms as at the date of each Adherence Letter;
- (ii) each Adhering Party is able lawfully to adhere to the Protocol on the terms set out in the Protocol, and its adherence to the Protocol is duly authorized and each Adherence Letter and any Revocation Notice is duly executed and delivered;
- (iii) the Protocol reflects correctly the commercial intentions of each Adhering Party;
- (iv) each party has complied with the terms set out in the Protocol, including delivery of an Adherence Letter substantially in the form attached as an exhibit to the Protocol; and
- (v) insofar as performance in any jurisdiction outside of the State of New York is contemplated, such performance will not be illegal or invalid by virtue of the laws of that jurisdiction.

Capitalized terms used herein but not defined shall have the meanings given them in the Protocol.

This opinion is rendered solely to ISDA for distribution to its members and each other party adhering to the Protocol. This opinion may not be distributed to any other person without our prior written consent, except that we consent to ISDA including a copy of this opinion on the 2001 ISDA Credit Support Protocol Opinions page of its website for information purposes only. This opinion may also be shown by an ISDA member or another party adhering to the Protocol to a competent regulatory authority for such person for information purposes only, on the basis that we assume no responsibility to such authority or any other person as a result or otherwise.

Yours faithfully,

A handwritten signature in cursive script, appearing to read "Allen & Overy", with a long, sweeping flourish extending to the right.

Allen & Overy